

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 409 of 2010**

- Banshiram Pardhi S/o Bankaram Pardhi aged about 52 years R/o Pandari Talab, Near Shitla Mandir, Pandari Tarai, PS Pandari Tarai, Raipur

---- Appellant**Versus**

- State of Chhattisgarh through Police Station, Pandari, Raipur, CG

---- Respondent

For appellant	: Mr. Kalyan Kalamkar, Advocate.
For Respondent/State	: Mr. Vivek Sharma, PL

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Oral Judgment**Per Pritinker Diwaker, J.****28/10/2015**

1. This appeal arises out of impugned judgment and order dated 4-5-2010 passed by the Sessions Judge, Raipur in S.T. No. 221/2009 convicting the accused appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 100/-, in default of payment of fine to further undergo additional RI for one month.
2. As per prosecution case, on 29-8-2009 at about 2.00 pm, accused/appellant committed murder of his wife Saraswati Bai by causing several injuries on her head by a crowbar. Dehati nalishi Ex. P-1 was recorded on 29-8-2009 at the instance of P.W. 3 Ashok Pardhi son of accused and the deceased. On the basis of said dehati nalishi, FIR Ex. P-9 was registered on 29-8-2009 against the accused/ appellant under Section 302, IPC. Post mortem on the body of deceased was conducted by P.W. 6 Dr. Shivnarayan Manjhi on 29-8-2009 and the autopsy surgeon had noticed number of fractures on the head of the deceased. According to him cause of death was due to hemorrhage and shock as a result of face and head injuries, death was homicidal in nature, injuries were caused with hard, blunt and heavy object. Trial Court framed charge under Section 302, IPC against the accused.
3. In order to establish the guilt of the accused/appellant prosecution examined six witnesses. Statement of accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by impugned judgment has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.
5. Contentions of learned counsel for the appellants are as under :-
 - i) that accused / appellant has been falsely implicated.
 - ii) that statement of P.W. 1 Ku. Sanjana Pardhi is not reliable because she is not only inconsistent but also as she is a child witness aged about 9 years.
 - iii) that even if the entire prosecution case is taken as it is, at the best accused can be convicted under Section 304-I of IPC because he had no intention to commit murder of the deceased.
 - iv) that after converting conviction under Section 304-I, IPC, his sentence may be reduced to the period already undergone by him.
6. On the other hand, supporting the impugned judgment, it has been argued by learned State counsel that :-
 - i) that there is no reason for this court to disbelieve the statement of P.W. 1 Ku. Sanjana Pardhi. She has categorically stated as to the manner in which her grand father killed her grand mother.
 - ii) that dead body of the deceased was found inside the house of the accused/appellant and no explanation in this regard has been offered by the appellant in his statement under Section 313 of Cr.P.C.
 - iii) that on the disclosure statement of appellant Ex. P-12, the crowbar was recovered vide Ex. P-13.
7. Heard learned counsel for the parties and perused the material available on record.
8. P.W. 1 Ku. Sanjana Pardhi is grand daughter of the accused/appellant. While supporting the case of the prosecution, has stated that on the date of incident she was playing with her friend. She saw the accused appellant causing injuries to her grand mother by an iron rod. While deposing this statement, it has been recorded by the trial court that "the witness started weeping". She has further stated that after committing murder of the deceased, accused/appellant had left the place. She has further clarified that at the time of incident her mother and father were not in the house. In cross-examination, this witness remained very firm and nothing could be elicited from her which may discredit her version.

9. P.W. 2 Sunita is daughter-in-law of the appellant. She has stated that at the time of incident, she had gone to market and upon coming to know about the incident from her husband on phone, she rushed to the house and there Sanjana (P.W. 1) informed her as to the manner in which accused had killed the deceased. She has further stated that quite often the accused used to quarrel with deceased. P.W. 3 Ashok Pardhi is son of appellant and the deceased. He has made almost similar statement as made by his wife P.W. 2 Sunita. He has denied the suggestion that on the date of incident, the appellant had gone to garage for work. P.W. 4 Devendra Verma made entry in the Rojnamcha Sanha. P.W. 5 B.S. Jagrat the investigating officer has duly supported the prosecution case.
10. P.W. 6 Dr. Shivnarayan Manjhi conducted post mortem on the body of deceased vide Ex. P-16 and noticed following injuries : -

Contused lacerated wound present on face and head extending from lower orbital fossa region to right frontal eminence region 15 x 2 cm transverse obliquely, anterior cranial cavity exposed, bones of skull, face and nasal fractured with multiple small pieces and depressed. Some brain matter came out from wound and some missing, brain lacerated mostly of frontal and parietal and temporal low mostly right side. Maxilla bone fractured.

He opined that death was due to hemorrhage and shock as a result of face and head injuries. Death was homicidal in nature.
11. In his statement under Section 313 of Cr.P.C., appellant has not offered any explanation as to how the dead body of the deceased has been found inside his house.
12. A close scrutiny of the evidence makes it clear that on 29-8-2009, it is the accused/appellant who committed murder of his wife Saraswati Bai. Incident was witnessed by P.W. 1 Ku. Sanjana Pardhi who has duly supported the prosecution case. It is well settled that the evidence of a child witness has to be evaluated with great care and caution and greater circumspection and its credibility has to be examined in light of the facts and circumstances of each case and if it is found credible in all respects it can be relied on for conviction in a criminal case. In the present case, statement of P.W. 1 Ku. Sanjana Pardhi inspires confidence of the court and there is no reason to doubt her statement. This apart, the dead body of the deceased was found in the house of the appellant and no explanation has been offered by the

appellant in his examination under Section 313 of the Cr.P.C. The trial Court after considering all aspect of the case has rightly convicted the accused/appellant under Section 302 of IPC. We find no illegality in the impugned judgment. The appeal has no substance. The same is accordingly dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge