

(38)

IN THE HON'BLE HIGH COURT OF CHHATTISGARH

AT BILASPUR

Division Bench

CRIMINAL APPEAL No. 891 /2010 (D.B.)

APPELLANT

(In -Jail)

Sant Kumar @ Sant Ram @
Chuddu S/o Sardar Ram
Nagwanshi, aged about 24
years, Occupation -
Agriculture, R/o Village-
Lalitpur, Thana- Sitapur,
Distt. Surguja (C.G.)

VERSUS

RESPONDENT

State of Chhattisgarh.
Through: - Station House
Officer, Police Station -
Sitapur, Distt. - Surguja
(C.G.)

CRIMINAL APPEAL UNDER SECTION 374 (2) OF
CRIMINAL PROCEDURE CODE, 1973

7/10/10
V.P. Jindal
6/12/10
J.E. Jindal
11-20 AM

11/2/15

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HIGH COURT OF CHHATTISGARH, BILASPUR

**DB: HON'BLE SHRI JUSTICE T.P. SHARMA AND
HON'BLE SHRI JUSTICE C.B. BAJPAI, JJ**

CRIMINAL APPEAL No. 891/2010

Appellant Sant Kumar @ Sant Ram @ Chudu

Versus

Respondent State of Chhattisgarh

Appearance:

Shri Suresh Kumar Verma, Advocate for the appellant.

Sushri Pushpa Dwivedi, Panel Lawyer, for the State.

JUDGMENT
(9-2-2015)

Per T.P. Sharma, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 30-1-2010 passed by the Sessions Judge, Sarguja (Ambikapur) in S.T. No. 350/2008 whereby and whereunder the Trial Court after holding the appellant guilty for causing homicidal death amounting to murder of his brother deceased Aasan Ram, convicted the appellant under Section 302 of Indian Penal Code ((for short 'the IPC') and sentenced him to undergo rigorous imprisonment for life and fine of Rs. 1,000/-, in default of payment of fine to further undergo R.I. for six months.
2. Conviction is impugned on the ground that without there being any iota of evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, on the fateful day of 12-9-2008 at about 2.00 pm, the appellant who is brother of the deceased was present in the house of deceased Aasan Ram along with him. He assaulted deceased Assan Ram by hammer over his head and caused his death. The incident was witnessed by P.W. 1 Sardar Ram, P.W. 2 Naihari Bai and

P.W. 3 Basant Ram. P.W. 1 Sardar Ram went to Police Station, Sitapur and lodged FIR vide Ex. P-1. Merg is Ex. P-2. The Investigating Officer left for the scene of occurrence and after summoning witnesses vide Ex. P-10, prepared inquest over the dead body of the deceased vide Ex. P-11. Spot map was prepared vide Ex. P-12. Blood stained soil and plain soil, a hammer and a blood stained lungi of the deceased were seized from the place of incident vide Ex. P-9. The dead body was sent for autopsy to Community Health Centre, Sitapur vide Ex. P-6. P.W. 4 Dr. S. N. Paikra conducted autopsy vide Ex. P-7 and found following injuries:-

(i) Lacerated wound over left occipital region size 3 ½ cm x 2 ½ cm x 1 ½ cm;

(ii) Lacerated wound over frontal region 2cmx1½cmx1cm. Blood was present. Occipital bone was fractured. Cause of death was shock due to head injury.

4. Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge sheet was filed before Judicial Magistrate First Class, Sitapur who in turn committed the case to the Court of Sessions.
5. In order to prove the guilt of the appellant, the prosecution has examined as many as six witnesses. The accused was examined under Section 313 of the Code wherein he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.
6. After providing opportunity of hearing to the parties, learned Sessions Judge convicted and sentenced the appellant as aforementioned.
7. We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
8. Learned counsel for the appellant vehemently argued that conviction of the appellant is based on the evidence of P.W. 1 Sardar Ram, P.W. 2 Naihari Bai and P.W. 3 Basant Ram and they have not witnessed the incident as even as per their

evidence, the appellant was not present on the spot and in absence of any evidence against the appellant, conviction of the appellant is not sustainable in law.

9. On the other hand, learned counsel for the State opposed the appeal and submitted that evidence of P.W. 1 Sardar Ram, P.W. 2 Naihari Bai and P.W. 3 Basant Ram by itself is sufficient to prove the guilt of the appellant. The appellant was present in the house along with the deceased.
10. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the parties.
11. In the present case, homicidal death of the deceased as a result of fatal injury found over the body of deceased Aasan Ram has not been substantially disputed on behalf of the appellant, on the other hand, it is established by the evidence of P.W. 1 Sardar Ram, P.W. 2 Naihari Bai, P.W. 3 Basant Ram, FIR Ex. P-1, Merg Ex. P-2, evidence of P.W. 4 Dr. S. N. Paikra, autopsy report Ex. P-7, that the death of the deceased was homicidal in nature.
12. As regards complicity of the appellant in crime in question, conviction is based on the evidence of P.W. 1 Sardar Ram, P.W. 2 Naihari Bai, P.W. 3 Basant Ram, cousin brother of the appellant. They are eye-witnesses but they have not supported the case of the prosecution. In their cross-examination, they have specifically deposed that they have not seen the incident. They came to spot but they did not see the appellant on the spot. Virtually the prosecution has not been able to collect any evidence to connect the appellant with the crime. In absence of any clinching and credible evidence against the appellant, conviction under Section 302 of IPC is not sustainable in law.
13. While convicting the appellant under Section 302 of the IPC, the trial Court has not considered aforesaid facts and thereby committed illegality.
14. Consequently, the appeal is allowed. Conviction and sentence



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of the appellant under Section 302 of the IPC is hereby set aside. The appellant is in custody. He be released forthwith if not required in any other case, subject to the condition in Section 437 of the Code.

Sd/-
T.P. Sharma
Judge

Sd/-
Chandra Bhushan Bajpai
Judge

P/