

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.235 of 2012

Mahendra Kumar Dewangan, S/o Shri Katharam Dewangan, aged 25 years, R/o Village Bhainsbod, Police Station Balod, Distt. Durg (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Station House Officer, Police Station Kotwali, Jagdalpur, Distt. Bastar (C.G.)

---- Respondent

For Appellant: Mr. R.S. Marhas, Advocate.

For Respondent / State: Mr. Ramakant Pandey, Panel Lawyer.

Hon'ble Shri Justice T. P. Sharma and
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board

22/04/2015

T.P. Sharma, J: -

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 30-1-2012 passed by the 1st Additional Sessions Judge, Bastar at Jagdalpur, in Sessions Trial No.52/2010, whereby & whereunder learned Additional Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of his wife Khileshwari Dewangan, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life & pay fine of Rs.300/-, in default of payment of fine to further undergo RI for three months.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant, and thereby committed an illegality.
3. As per case of the prosecution, the appellant had visited the house of Sirmotin Bai (PW-5) several times along with unfortunate deceased Khileshwari Dewangan. On 3-2-2010, the appellant again came with deceased Khileshwari to the house of Sirmotin Bai (PW-5), both stayed in the house of Sirmotin Bai (PW-5). At about 12 noon, the appellant caused fatal injuries to Khileshwari, she came out from the house badly stained with blood and shouted and made dying declaration that the appellant has assaulted her, she fell down and became unconscious, then primary medical assistance was given by Tankeshwar Dewangan (PW-1) along with Trivedi Lal

Dewangan (PW-4), thereafter, they took her to hospital for treatment, but the doctor has noticed that she was dead. Death was intimated to the police station by the doctor. Tankeshwar Dewangan (PW-1) went to Police Station Kotwali, Bastar and lodged FIR vide Ex.P-1. The appellant also caused injury to himself. He was brought to Maharani Hospital, Jagdalpur where he was treated by doctor.

4. The Investigating Officer left for the scene of occurrence and after summoning the 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-2. Bloodstained soil, plain soil and broken bangles were seized from the spot vide Ex.P-3.
5. Dead body was sent for autopsy to Maharani Hospital, Jagdalpur vide Ex.P-7A. Team of doctors consisting of Dr. (Mrs.) S. Dhruw and Dr. K.M. Gupta (PW-6) conducted autopsy vide Ex.P-7 and found following injuries: -
 1. Incised wound on back of neck & skull extending from left post articular region running obliquely downward up to the level of 2nd cervical vertebra cutting the skin, fascia, muscle, vessels and nerve. Blood clot present over the wound. Size 16 c.m. x 3 c.m. x 5 c.m.
 2. Incised wound with blood clot present 1 c.m. below and parallel to injury No.1 of size 3 c.m. x 1 c.m. x 1 c.m.
 3. Incised wound with blood clot present on the right side of chest anteriorly 3 c.m. lateral to the nipple placed obliquely at the level of 4th & 5th ribs cutting the skin, fascia and inter-coastal muscle. Size 5 c.m. x 3 c.m. x 3 c.m.
 4. Incised wound with blood clot at the top of the right shoulder joint. Size 3 c.m. x 1 c.m. x 1 c.m.
 5. Incised wound with blood clot at the mid portion of sternum cutting the skin, fascia and muscle placed transversely. Size 12 c.m. x 3 c.m. x 1 c.m.
 6. Incised wound with blood clot present at the middle $\frac{1}{3}$ area of the right upper arm extending from flexure aspect running laterally and posteriorly cutting skin, fascia, muscle, big vessels with linear fracture of mid $\frac{1}{3}$ portion of right humerus bone. Size 14 c.m. x 6 c.m. x 6 c.m.
 7. Incised wound with clot at the mid of the right forearm posteriorly oblique. Size 3 c.m. x 1 c.m. x 2 c.m.
 8. Incised wound with blood clot of the back of right side chest on mid scapular region. Size 4 c.m. x 2 c.m. x 2 c.m.

Mode of death was coma and death was homicidal in nature.

6. During the course of investigation, the appellant was taken into custody, he made disclosure statement of battle axe and blade vide Ex.P-4. Battle axe was recovered

at the instance of the appellant vide Ex.P-5. Sealed clothes of the deceased were seized vide Ex.P-6. Seized articles were sent for chemical examination vide Ex.P-13. Presence of blood upon battle axe has been confirmed vide Ex.P-15. Statements of the witnesses were recorded under Section 161 of the CrPC.

7. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Jagdalpur, who committed the case to the Court of Sessions, Jagdalpur from where learned 1st Additional Sessions Judge, Jagdalpur, received the case on transfer for trial.
8. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 11 witnesses. The accused was examined under Section 313 of the CrPC in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.
9. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted & sentenced the appellant as aforementioned.
10. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.
11. Learned counsel for the appellant vehemently argued that conviction of the appellant is based on the evidence of Tankeshwar Dewangan (PW-1), Ramratan Sahu (PW-2), Khem Singh Dewangan (PW-3), Trivedi Lal Dewangan (PW-4) and Sirmotin Bai (PW-5), but their evidence do not inspire confidence and are not trustworthy. Evidence of these witnesses are not connecting in nature. In absence of complete chain of circumstances, conviction of the appellant is not sustainable under the law. The appellant was not known to the witnesses. The deceased was also not known to Sirmotin Bai (PW-5). Therefore, test identification was required, but for the reasons best known to the investigating officer, the investigating officer has failed to conduct test identification to assure the identity of the deceased and the appellant. In absence of such evidence, conviction of the appellant is bad in law.
12. On the other hand, learned State counsel opposed the appeal and submitted that as per evidence of Sirmotin Bai (PW-5), the appellant had visited her house along with the deceased, thereafter, she noticed blood in front of her house and the appellant and the deceased both were missing. As per evidence of Tankeshwar Dewangan (PW-1) and Trivedi Lal Dewangan (PW-4), deceased Khilleshwari came out from the house of Sirmotin Bai (PW-5) stained with blood, she was badly injured, she shouted that Mahendra Dewangan after causing injuries to her is fleeing from the spot, they also noticed that one boy was coming out from the house of Sirmotin Bai (PW-5) and fleeing from the spot. As per evidence of Ramratan Sahu (PW-2) and Khem Singh Dewangan (PW-3), they noticed a woman lying in front of the house of Sirmotin Bai

(PW-5), she was badly injured and they shifted her to hospital. If these evidence are considered together then the only inference would be possible that the appellant and the deceased were present in the house of Sirmotin Bai (PW-5), the deceased came out from the house of Sirmotin Bai with injuries and shouted that Mahendra Dewangan i.e. the appellant has assaulted her, thereafter, she fell down and became unconscious, one person was also coming out from the same house and was seen fleeing from the spot. The appellant has not offered explanation that who has caused injuries to the deceased. These circumstances are sufficient to complete the chain of circumstances and are sufficient for drawing inference that the appellant has caused homicidal death amounting to murder of the deceased. Therefore, while convicting and sentencing the appellant as aforementioned, the trial Court has not committed any illegality.

13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
14. In the present case, homicidal death of deceased Khileshwari Dewangan as a result of fatal injuries found on her body has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Tankeshwar Dewangan (PW-1), Ramratan Sahu (PW-2), Khem Singh Dewangan (PW-3), Trivedi Lal Dewangan (PW-4), Sirmotin Bai (PW-5), FIR Ex.P-1, evidence of Dr. K.M. Gupta (PW-6) and autopsy report Ex.P-7, that death of deceased Khileshwari Dewangan was homicidal in nature.
15. As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on the evidence of Tankeshwar Dewangan (PW-1), Ramratan Sahu (PW-2), Khem Singh Dewangan (PW-3), Trivedi Lal Dewangan (PW-4) and Sirmotin Bai (PW-5).
16. As per evidence of Sirmotin Bai (PW-5), the appellant came to her house along with one woman, they were staying in her house, she went for purchasing ration, when she came after purchasing ration, she did not find the appellant and that woman in her house, but she noticed blood in front of her house. In her cross-examination, she has deposed that the appellant came with Khileshwari. Tankeshwar Dewangan (PW-1) and Trivedi Lal Dewangan (PW-4) have deposed that they were standing near the house of Sirmotin Bai (PW-5), one woman came out from the house of Sirmotin Bai and shouted that Mahendra has assaulted her, she was stained with blood, she fell down and became unconscious, then they provided primary treatment, thereafter, they took her to hospital, but she died. Tankeshwar Dewangan (PW-1) has lodged FIR vide Ex.P-1. They have also deposed that one boy came out from the house of Sirmotin Bai and fled away from the spot, they could not identify him.

17. Trivedi Lal Dewangan (PW-4) has also deposed that he also came to know that the appellant had cut his neck by blade. Ramratan Sahu (PW-2) and Khem Singh Dewangan (PW-3) have deposed that they noticed one woman lying in front of the house of Sirmotin Bai (PW-5), she was badly injured and she was brought to hospital. Tankeshwar Dewangan (PW-1) and Trivedi Lal Dewangan (PW-4) have deposed that the injured woman was Khileshwari.
18. Evidence of Tankeshwar Dewangan (PW-1), Ramratan Sahu (PW-2), Khem Singh Dewangan (PW-3) and Trivedi Lal Dewangan (PW-4) clearly reveal that deceased Khileshwari came out from the house of Sirmotin Bai (PW-5), she was badly injured, she was stained with blood and she shouted that Mahendra has assaulted her. One boy came out from the house of Sirmotin Bai and then he fled away from the spot. These evidence are sufficient to prove the fact that deceased Khileshwari sustained injuries inside the house of Sirmotin Bai and she made dying declaration that Mahendra has assaulted her, thereafter, she died. One boy came out from the house of Sirmotin Bai and fled away from the spot.
19. As per evidence of Sirmotin Bai (PW-5), only two persons were present in her house i.e. the present appellant and one woman. The woman sustained injuries inside her house and died. Another person is the appellant. Offence was committed in secrecy where only two persons i.e. the appellant and the deceased were present. The deceased died as a result of fatal injuries sustained by her. The appellant was under obligation to offer explanation in terms of Section 106 of the Evidence Act that who has caused homicidal death of the deceased, but he has failed to offer explanation. These circumstances alone are sufficient for drawing inference that only the appellant was the author of the crime and none else.
20. Aforesaid circumstances, nature and number of injuries found over the body of the deceased are further sufficient to prove the fact that the appellant has caused homicidal death of the deceased amounting to murder.
21. After appreciating the evidence adduced on behalf of the prosecution, the trial Court has convicted and sentenced the appellant in the aforesaid manner. On close scrutiny of evidence, we do not find any illegality or infirmity in the judgment of conviction and order of sentence.
22. Consequently, the appeal is devoid of merit, same is liable to be dismissed and is hereby dismissed.

Sd/-
JUDGE
(T.P. Sharma)

Sd/-
JUDGE
(Inder Singh Uboweja)