

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.242 of 2013

Sakin Singh, S/o Shri Ganesh Ram Gond, aged about 45 years, Agriculturist, R/o Village Khodaro, Police Station House Rajpur, Distt. Balrampur-Ramanujganj (Chhattisgarh)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station House Rajpur, Distt. Balrampur-Ramanujganj (Chhattisgarh)

---- Respondent

For Appellant:	Mr. Gajendra Sahu, 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

08/04/2015

The Judgment of the Court was delivered by T.P. Sharma, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 24-11-2012 passed by the Additional Sessions Judge, Ramanujganj, Distt. Balrampur-Ramanujganj in Sessions Trial No.547/2009, whereby & whereunder learned Additional Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of Goverdhan and causing simple injury to Kewla Ram, convicted the appellant under Sections 302 & 323 of the IPC and sentenced him to undergo imprisonment for life & pay fine of Rs.500/-, in default additional RI for six months, and RI for six months, respectively.
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, on the fateful day of 23-9-2009 at about 5 p.m., the appellant assaulted unfortunate deceased Goverdhan by *naagar* and caused his instantaneous death. Kewla Ram (PW-1), Aarti (PW-2) and Dhurvati (PW-19) have witnessed the incident. The appellant has also twisted the scrotum of Kewla Ram (PW-1) and caused injury. The deceased was taken to District Hospital, Ambikapur where he was declared dead. Death was intimated to the police vide Ex.P-24. Morgue was recorded vide Ex.P-23. FIR was registered vide Ex.P-18. Registered

morgue was recorded vide Ex.P-17.

4. The Investigating Officer left for the scene of occurrence and after summoning the witnesses vide Ex.P-5, prepared inquest over the dead body of the deceased vide Ex.P-4. Spot map was prepared vide Ex.P-1. Bloodstained soil and plain soil were seized from the spot vide Ex.P-7. Another spot map was prepared vide Ex.P-8.
5. Dead body of the deceased was sent for autopsy to the District Hospital, Ambikapur vide Ex.P-21. Dr. Anupam Minj (PW-5) conducted autopsy vide Ex.P-11 and found following injuries: -
 1. Lacerated wounds: -
 1. Right side of forehead horizontal 3 c.m. x 1 c.m. x 1 c.m.
 2. Left side of forehead 1 c.m. x 1 c.m. x 1 c.m. oblique.
 3. Right cheek upper part 1 c.m. x 1 c.m. x 1 c.m.
 4. Right cheek mid 1 c.m. x 1 c.m. x 1 c.m.
 5. Right side of chin 2 x 1 x 1
 - Mobile right side jaw with criptus, fracture of mandible between 4th & 5th.
 - Two old wounds over right foot
 - Swelling forehead diffuse.
 2. Blood and blood clot over frontal region of subperiosteal region.
 3. Linear fracture from right side of frontal bone to left side horizontal of 12 c.m. in length involving left temporal bone.
 4. Subdural clot of size 10 c.m. x 4 c.m. from left temporal region to right frontal region.

Mode of death was coma due to head injury.

6. Injured Kewla Ram (PW-1) was also examined by Dr. Preetam Raj (PW-6) vide Ex.P-13 and tenderness of scrotum was noticed. Sealed clothes of the deceased were seized vide Ex.P-16. Patwari prepared spot map vide Ex.P-2. During the course of investigation, the appellant was taken into custody, he made disclosure statement of wooden piece *chimta* and *saankal* (chain) vide Ex.P-14 and same were recovered at his instance 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 Judicial Magistrate First Class, Ambikapur, who committed the case to the Court of Sessions, Ambikapur from where learned Additional Sessions Judge, Ramanujganj, 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 19 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 substantially based on the evidence of Kewla Ram (PW-1), Aarti (PW-2) and Dhurvati (PW-19), but their evidence do not inspire confidence and are not trustworthy. Even as per their evidence, the appellant after causing injury was naked and was dancing near the place of incident, he wished Kewla Ram (PW-1) and thereafter, twisted his scrotum which shows that the appellant was mentally ill and has committed the offence in the state of his mental illness, therefore, his case squarely falls within the exception of Section 84 of the IPC.
12. On the other hand, learned State counsel opposed the appeal and submitted that no specific plea of insanity has been taken by the appellant and the appellant has failed to adduce any evidence to show that he was insane at the time of incident. The appellant has answered the questions put to him under Section 313 of the CrPC, rationally which shows that he was not insane. Evidence of Kewla Ram (PW-1), Aarti (PW-2) and Dhurvati (PW-19) are sufficient for proving the guilt of the appellant. Therefore, by convicting the appellant under Section 302 of the IPC, 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 as a result of fatal injuries found over the body of deceased Goverdhan and simple injury to Kewla Ram (PW-1) have not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Kewla Ram (PW-1), Aarti (PW-2), Dhurvati (PW-19), morgue Exs.P-23 & P-17, FIR Ex.P-18, evidence of Dr. Anupam Minj (PW-5), autopsy report Ex.P-11, evidence of Dr. Preetam Raj (PW-6) and injury report Ex.P-13, that death of deceased Goverdhan was homicidal in nature and Kewla Ram (PW-1) sustained simply injury.
15. As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on the evidence of Kewla Ram (PW-1), Aarti (PW-2), Dhurvati (PW-19).

16. As per evidence of Dhurvati (PW-19), the appellant assaulted the deceased by *naagar*. Head of the deceased was broken. The appellant has badly assaulted the deceased, when they tried to catch the appellant the appellant pelted stones and he also twisted the penis of Kewla Ram (PW-1) after tearing his underwear. Kewla Ram (PW-1) has corroborated the evidence of Dhurvati (PW-19). Aarti (PW-2) has also corroborated the evidence of Kewla Ram (PW-1) and Dhurvati (PW-19).
17. Defence has cross-examined these witnesses at length but has not been able to elicit anything in their cross-examination to discredit their testimony to the extent that the appellant has caused homicidal death of the deceased and has caused simple injury to Kewla Ram (PW-1). Aforesaid evidence are sufficient for proving the guilt of the appellant.
18. As regards the question of motive, motive only aids in criminality and in case of direct evidence it loses its importance. Motive can be inferred on the basis of the weapon used, part of the body effected, nature of injury and other similar circumstances.
19. In the present case, the appellant has taken specific defence that he is insane. Kewla Ram (PW-1) and Aarti (PW-2) have deposed that behaviour of the appellant was like an insane, but, the appellant has not taken the defence of insanity, inter alia, while answering the questions put to him under Section 313 of the CrPC, he has answered the questions rationally.
20. The appellant has cross-examined the witnesses through his counsel. The appellant was under obligation to prove the Exception in terms of Section 105 of the Indian Evidence Act, 1872, but has failed to prove such Exception. In absence of such proof, the only inference would be possible that the appellant has caused homicidal death of the deceased amounting to murder. Therefore, by convicting and sentencing the appellant under Sections 302 & 323 of the IPC, the trial Court has not committed any illegality.
21. After appreciating the evidence available on record, learned Additional Sessions Judge 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 being devoid of merit is liable to be dismissed and is hereby dismissed.

Sd/-
T.P. Sharma
Judge

Sd/-
Inder Singh Uboweja
Judge