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IN THE HIGH COURT OF JUDICATURE AT BILASPUR: C.G.
CRIMINAL APPEAL NO. 940/2003

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

Appellant :
(In jail)

Ram Kumar S/o Mana Ram Sahu,
aged about 19 years,

R/o Village Pandri Tarai,
Teh. & Thana, Benetara,
Dist. Durg (C.G.).

VERSUS

R. to D.R. (J)

Respondent :

State of C.G.

Through P.S., Benetara,
District Durg.

3341/57

Filed on 28/8/03
by Shri Satya C. Appal
Advocate

HIGH COURT OF CHHATTISGARH, BILASPUR**DB : Hon'ble Shri Justice T.P. Sharma &
Hon'ble Shri Justice C.B. Bajpai****Criminal Appeal No. 940 of 2003****Appellant**

Ram Kumar

Versus

Respondent

State of Chhattisgarh

Criminal Appeal under Section 374(2) of the Code of Criminal Procedure**Appearance:**Shri Sanjay S. Agrawal, Advocate for the appellant.
Shri Roshan Dubey, Panel Lawyer for the State.**JUDGMENT**

(02-02-2015)

Per T. P. Sharma, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 21-8-2003 passed by the IIIrd Additional Sessions Judge (FTC), Bemetara in Sessions Trial No.77/2003 whereby and whereunder the learned Additional Sessions Judge, after holding the appellant guilty for causing homicidal death amounting to murder of Adhaniya Bai, convicted the appellant under Section 302 of the Indian Penal Code (for short 'IPC') and sentenced him imprisonment for life and fine of Rs.25000/-, in default of payment of fine, additional rigorous imprisonment for 2 years.

2. The conviction is impugned on the ground that without there being any iota of evidence, Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on account of previous enmity on 26-01-2003, about 9.00 a.m., the appellant caused death of Adhaniya Bai by pushing her into well. She died as a result of drowning. Gopal Das. (PW-1) Kotwar, lodged the merg vide Ex.-P/1. The Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.-P/4, inquest over the

dead body was prepared vide Ex.-P/3. Broken bangle and chappal were seized from the spot vide Ex.-P/6. Initially dehati nalishi was recorded vide Ex.-P/12, thereafter, the First Information Report was registered vide Ex.-P/10. Spot map was prepared vide Ex.-P/17. Dead body of the deceased was sent for autopsy to Civil Hospital, Bemetara. Doctor M.M.Devdhar (PW-5) conducted the autopsy vide Ex.-P/7 and found following injuries:

- (i) contusion over right mandibular region of $2\frac{1}{2} \times \frac{1}{2}$ cms.
- (ii) contusion over right chin of $1 \times \frac{1}{2}$ cms.,
- (iii) contusion of $2 \times \frac{1}{2}$ cms. on left mental region of mandible,
- (iv) abrasion of $\frac{1}{2} \times \frac{1}{2} \times \frac{1}{10}$ in depth over right frontal prominence.

Mode of death was asphyxia. During the course of investigation, statement of Umabai (PW-6) was recorded under Section 164 of the Code of Criminal Procedure, 1973 (in short 'the Code') vide Ex.-P/8.

4. After completion of the investigation, charge sheet was filed before the Judicial Magistrate First Class, Bemetara, who, in turn, committed the case to the Court of Sessions Judge, the learned Additional Sessions Judge received the case on transfer for trial.

5. In order to prove guilt of appellant, prosecution examined as many as 10 witnesses. Accused was examined under Section 313 of Code wherein he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question.

6. After providing opportunity of hearing to the parties, the learned Additional Sessions Judge convicted and sentenced the appellant as aforementioned.

7. We have heard Shri Sanjay S.Agrawal and Shri Roshan Dubey and perused the judgment impugned and record of the trial Court.

8. Counsel for the appellant vehemently argued that as per the case of

prosecution, there was motive for commission of offence on account of previous property dispute. As per the evidence adduced on behalf of the prosecution, the deceased died as a result of drowning when she fell down inside the well filled with water. But, the prosecution has failed to prove the fact that the appellant killed the deceased or even has pushed the deceased in the well. In absence of such evidence conviction of the appellant under Section 302 of the IPC is not sustainable under the law.

9. On the other hand, counsel for the State opposed the appeal and submitted that the appellant was having motive for commission of the offence. At the time of incident the appellant was roaming near the well where the dead body of the deceased was found. These evidence are sufficient to prove the guilt of the appellant that only the appellant was the author of crime.

10. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.

11. In the present case, death as a result of drowning of deceased Adhaniya Bai has not been substantially disputed on behalf of appellant, on the other hand, it is established from the evidence of Gopal Das (PW-1), Bisahu (PW-2), Rajimbai (PW-3), Datt Narayan Puri (PW-4), dehati nalishi (Ex.-P/12), FIR (Ex.-P/10), Dr. M.M.Devdhar (PW-5) and autopsy report (Ex.-P/7).

12. As regards, complicity of appellant in crime in question, conviction is based on the circumstantial evidence. In the present case, as per evidence of Gopal Das (PW-1), Bisahu (PW-2), Rajimbai (PW-3) and Datt Narayan Puri (PW-4), there was previous dispute between the deceased and the appellant. The deceased was found dead inside the well, the chappal and broken bangle of the deceased were lying near the well, but as per their evidence nobody was seen near the well causing injury to the deceased or pushing her into the well. In absence of aforesaid evidence only on the ground that the appellant was having enmity with the deceased, the appellant cannot be convicted. Virtually,

this is a case of no evidence and the Court below has convicted and sentenced the appellant as aforementioned. We are unable to uphold the conviction of the appellant.

13. Consequently, the appeal deserves to be and is hereby allowed. The appellant is acquitted of the charge under Section 302 of the IPC. He be set at liberty at once.

Sd/-
T. P. Sharma
Judge

- Sd/-
Chandra Bhushan Bajpai
Judge

