

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.560 of 2011

Jairam Nishad, S/o Lagan Nishad, Age 40 years, R/o Village Dipapara Ansula, Thana Pithora, District Mahasamund (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Pithora, District Mahasamund (C.G.)

---- Respondent

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For Appellant: Mr. Bharat Lal Dembra, Advocate.

For State/Respondent: Mr. Mahesh Mishra, Panel Lawyer.

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

Judgment On Board

11/05/2015

T.P. Sharma, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 4-5-2010 passed by the Sessions Judge, Mahasamund, in Sessions Trial No.12/2010, whereby & whereunder learned Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of his wife Aagarmati, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life.
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 6-2-2010 at about 2.30 p.m., the appellant and unfortunate deceased Aagarmati – wife of the appellant, were present in the house, the appellant caused multiples injuries by axe over neck and other parts of body of deceased Aagarmati and caused her instantaneous death. The appellant was running from the house which was seen by his son Ashok Kumar Nishad (PW-1) who came from the field, then he informed the incident to Tikelal Sahu (PW-2). The appellant was sitting in the house of Sitaram (PW-4), the appellant made extra-judicial confession before him and other villagers. Ravilal (PW-3) went to Police Station Pithora and lodged morgue vide Ex.P-9. FIR was recorded vide Ex.P-8.

4. The investigating officer left for the scene of occurrence and after summoning the witnesses vide Ex.P-2, prepared inquest over the dead body of the deceased vide Ex.P-3. Spot map was prepared vide Ex.P-4. Bloodstained and plain soil were recovered from the spot vide Ex.P-7.
5. Dead body of the deceased was sent for autopsy to Community Health Centre, Pithora vide Ex.P-12. Dr. M.S. Kanwar (PW-7) conducted autopsy vide Ex.P-10 and found following symptoms and injuries: -

1. Incised wound on back of neck 12.5 c.m. in two parts (5.6 c.m. deep)
  1. 6.3 c.m. back of neck right side.
  2. 5.4 c.m. back of neck left side.
2. Incised wound of 6.5 c.m. below right mandibular jaw up to right side of neck.
3. All tissues are divided and blood vessels are cut.
4. Second cervical vertebra cut and 3<sup>rd</sup> cervical vertebra dislocated.
5. Dead body is pale due to bleeding in profuse.
6. Bony cage normal.
7. External genitalia, pale healthy.

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

6. Patwari prepared spot map vide Ex.P-1. During the course of investigation, the appellant was taken into custody, he made disclosure statement of axe vide Ex.P-5 and same was recovered at his instance vide Ex.P-5. Seized articles were sent for chemical examination to the FSL vide Ex.P-16. 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, Pithora who committed the case to the Court of Sessions, Mahasamund where the trial was conducted.
8. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 8 witnesses. The accused/appellant 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 Sessions Judge, convicted & sentenced the appellant as aforementioned.
10. We have heard learned counsel for the parties, perused the judgment impugned and records of the Courts below.

11. Learned counsel for the appellant submits that although conviction of the appellant is based on the evidence of Ashok Kumar Nishad (PW-1) and Tikelal Sahu (PW-2), but their evidence do not inspire confidence and are not trustworthy, they have not witnessed the incident and their evidence is based on imagination which by itself is not sufficient for basing conviction.
12. On the other hand, learned State counsel opposed the appeal and submitted that evidence of Ashok Kumar Nishad (PW-1) and Tikelal Sahu (PW-2) are sufficient for proving the guilt of the appellant and it excludes the possibility of innocence of the appellant.
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 vital part of the body of deceased Aagarmati, has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Ashok Kumar Nishad (PW-1), Tikelal Sahu (PW-2), morgue Ex.P-9, FIR Ex.P-8, evidence of Dr. M.S. Kanwar (PW-7) and autopsy report Ex.P-10, that death of deceased Aagarmati 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 Ashok Kumar Nishad (PW-1) and Tikelal Sahu (PW-2).
16. As per evidence of Ashok Kumar Nishad (PW-1), at the time of incident at 2.30 p.m., he came from the field for diesel, he demanded diesel from Tikelal Sahu (PW-2), thereafter, he was going towards his house, he saw his father coming from the house and was fleeing away from the house, he went inside the house where he saw the dead body of his mother, then he came out and went to the house of Tikelal Sahu (PW-2) whom he informed the incident whereupon they searched for the appellant. The appellant was brought before villagers. He made extra-judicial confession before villagers. Tikelal Sahu (PW-2) has substantially corroborated the evidence of Ashok Kumar Nishad (PW-1). Defence has cross-examined these witnesses at length, but has not been able to elicit anything in their cross-examination to discredit their testimony.
17. Evidence of Ashok Kumar Nishad (PW-1) is sufficient for proving the fact that the appellant was fleeing away from his house after commission of incident. The appellant has made extra-judicial confession before Ashok Kumar Nishad (PW-1),

Tikelal Sahu (PW-2) and villagers. These evidence are sufficient to prove the fact that the appellant has caused homicidal death amounting to murder of his wife.

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.As per evidence of Dr. M.S. Kanwar (PW-7), he has noticed as many as three fatal injuries on the person of the deceased which show the grave intention of the appellant for causing homicidal death amounting to murder of his wife.

20.After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant. On close scrutiny of evidence, we do not find any illegality or infirmity in the judgment of conviction and order of sentence.

21.Consequently, the appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

JUDGE

JUDGE