NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 691 of 2011

1. Sunder Sai Kerketta S/o Lavang Sai Kerketta Aged About 55 Years Agriculturist & R/o Village Tukutola, P.S. & Thana Bagicha, District Jashpur Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through - In Charge Officer P.S. Bagicha, Distt. - Jashpur Chhattisgarh

---- Respondent

For Appellant	Shri Shashi Bhushan Tiwary, Advocate
For Respondent	Shri Avinash K Mishra, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

JUDGEMENT

Per P. Diwaker, J

10/09/2015

1. This appeal arises out of the impugned judgment of conviction & order of sentence dated 12.5.2011 passed by the Sessions Judge, District Jashpur in S.T. No.51/2010 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him rigorous imprisonment for life and fine of Rs.100/-.
2. As per case of the prosecution, on 3.5.2010 at about 10.30 p.m. accused/appellant committed murder of his wife namely Smt. Agatha Kerketta by causing axe injury on her neck. The incident was witnessed by Nicolas Kerketta (PW-1), son-in-law of deceased, & Smt. Jayanti Kerketta (PW-2), daughter of deceased & accused/appellant. On 4.5.2010 at about 6.30 a.m. FIR (Ex.P-1) was lodged by Nicolas Kerketta (PW-1) in the Police Station Bageecha on which basis offence under Section 302 of the IPC was registered against accused/appellant. The Investigating Officer left for scene of occurrence and after summoning the witnesses, prepared inquest over the body of deceased vide Ex.P-4 and sent the dead body for post-

mortem examination to the Community Health Centre, Bagicha where Dr. C.G. Bakhla (PW-3) conducted autopsy and noticed one injury on the neck of deceased and fracture of right sterno clevicular joint. Cause of death was haemorrhagic shock due to excessive bleeding and death was homicidal in nature. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly the charge was framed by the Court below against him.

3. In order to convict accused/appellant, the prosecution had examined twelve witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, convicted and sentenced them as described above.

5. Learned counsel for the appellant submits that:

   (i) Nicolas Kerketta (PW-1) & Smt. Jyanti Kerketta (PW-2) had infact not witnessed the incident as they were in the courtyard.

   (ii) even if the entire prosecution case is taken as it is, at best the accused/appellant can be convicted under Section 304 Part-I of the IPC and not under Section 302 of the IPC, as has been done by the Court below;

   (ii) accused/appellant is in jail for the last about five years and therefore, after converting his conviction into Section 304 Part-I of the IPC, he may be sentenced to the period already undergone by him.

6. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the

judgment impugned warranting interference by this Court. He further submits that considering the manner in which axe blow was given by accused/appellant on the vital part of body i.e. neck, he has been rightly convicted under Section 302 of the IPC. He further submits that axe & vest were seized from the possession of accused/appellant vide Ex.P-9 & Ex.P-10 and the report (Ex.P-22) of FSL supports the prosecution case.

7. Heard learned counsel for the parties and perused the material available on record.

8. PW-1 Nicolas Kerketta, lodger of FIR & son-in-law of accused/appellant & deceased, has stated that on the date of incident at about 10.00 p.m. in the night he was sitting in the house of accused/appellant & deceased. Accused/appellant went inside his room to sleep, the deceased followed him and as soon as she entered the room, accused/appellant caused axe injury on her neck as a result she died. He has further stated that his wife Smt. Jyanti Kerketta (PW-2) was standing at the door of courtyard, she came near accused/appellant and snatched axe from him and thereafter they offered support to the deceased. He has further stated that after some time, the deceased died and then he went to the police station and lodged FIR (Ex.P-1). In the cross-examination this witness remained very firm and the defence has not been able to elicit anything to make testimony of this witness unreliable or untrustworthy.

9. PW-2 Smt. Jyanti Kerketta is daughter of accused/appellant & deceased and she had also witnessed the incident. While supporting the prosecution case, she has stated that she too was present in the house along with Nicholas Kerketta (PW-1) and she saw the accused/appellant i.e. her father, assaulting her mother with axe. She has further stated that when she and her husband had snatched the axe from accused/appellant, he said that as to why they are snatching axe from him and he would assault

them also with axe. This witness also remained firm in her cross-examination.

10. Dr. C.D. Bakhla (PW-3) is the autopsy surgeon who conducted autopsy on the body of deceased and noticed one incised wound of 6 ½ x 2 x 4 ½ cm on the right side of neck with fracture of sterno clevicular joint. This witness has opined that cause of death was haemorrhagic shock due to excessive bleeding and nature of death was homicidal.

11. Virendra Kujur (PW-4) is the seizure witness of Ex.P-8 & Ex.P-9 by which bloodstained & plain soil, bangles and axe were seized. Kornelius Xalxo (PW-5) is the seizure witness of Ex.P-10 by which vest of accused/appellant was seized. Sumit Kumar (PW-7) is the person who reached on the spot immediately after it had taken place and saw the deceased in injured condition.

12. J.P. Singh (PW-10) is the investigating officer and has duly proved the prosecution case.

13. Minute scrutiny of evidence makes it clear that on the date of incident accused/appellant caused axe injury on the neck of his wife which has resulted into her death and the incident was witnessed by Nicholas Kerketta (PW-1) & Smt. Jyanti Kerketta (PW-2) i.e. son-in-law & daughter of accused/appellant & deceased. These two witnesses have categorically stated that it is the accused/appellant who had caused axe injury on neck of the deceased. Their evidence also finds corroboration from the medical evidence wherein injury on the neck has been noticed and it has been opined that cause of death was haemorrhagic shock due to excessive bleeding from the injury. Since nothing has been brought on record by the defence to controvert the stand of the prosecution, this Court does not find any reason to disbelieve statements of these eyewitnesses who have described the incident in a lucid manner. This apart, as per FSL

report (Ex.P-22), the axe & vest seized on the basis of disclosure statement of accused/ appellant were found to be stained with blood and he has not offered any explanation in his statement recorded under Section 313 of Cr.P.C. that as to how blood came on the aforesaid seized articles. Thus, complicity of accused/appellant in the crime in question stands proved beyond all reasonable doubt.

14. Further, we find no substance in the argument of counsel for the accused/appellant that act of accused/appellant would fall under Section 304 Part-I of the IPC. Record goes to show that accused/appellant assaulted the deceased with a deadly weapon axe on her neck with such a force that her right sterno clevicular joint got fractured resulting into her instantaneous death. Thus, having regard to the weapon of offence used in commission of offence, the part of body on which assault was made and the gravity of injury, the intention of accused/appellant to cause death of the deceased is apparent and he had every knowledge that injury being inflicted on the deceased would certainly result into her death. Therefore, we are of the view that the trial Court was correct in convicting & sentencing the accused/appellant under Section 302 of the IPC.

15. In the result, the appeal has no substance, the same is liable to be and is hereby dismissed. Since the appellant is already in jail, no further order is required.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-