

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.662 of 2012

Purushottam @ Parasuram Thakur, aged about 57 years, S/o Faganu Ram Thakur, R/o Baijnathpara, Mahaveer Colony, Durg, Police Station Durg, Distt. Durg, Chhattisgarh.

---- Appellant

Versus

State of Chhattisgarh through Police Station Durg, Distt. Durg, Chhattisgarh.

---- Respondent

For Appellant:	Mr. Mirza Kaiser Baeg, Advocate.
For Respondent/State:	Mr. Mahesh Mishra, 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 12-6-2012 passed by the Sessions Judge, Durg in Sessions Trial No.47/2011, whereby & whereunder learned Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of Raju @ Rajesh and causing injury by knife to Ganeshi Bai, convicted the appellant under Sections 302 & 324 of the IPC and sentenced him to undergo imprisonment for life & pay fine of Rs.500/-, in default additional RI for two months, and RI for six months & fine of Rs.200/-, in default additional RI for one month, 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, the appellant and deceased Raju @ Rajesh were neighbours at Baijnathpara, Mahaveer Colony, Durg, on 14-10-2010 at about 11.45 p.m., the deceased was watching TV, the appellant – neighbour of the deceased, came in the house of the deceased and abused him relating to watching of TV, it was objected by the deceased, then the appellant challenged him, the deceased came out from his house, the appellant came with big stone (local grinder) and threw the same upon the chest of the deceased, thereafter, he went to his house and came with a

knife and caused fatal injury upon the chest of the deceased, thereafter, he came with axe and assaulted the deceased by axe and also assaulted Ganeshi Bai (PW-1) – wife of the deceased, by knife and caused injury. Ganeshi Bai (PW-1) went to Police Station Durg and lodged morgue vide Ex.P-1 and FIR vide Ex.P-2.

4. The Investigating Officer left for the scene of occurrence and after summoning the witnesses vide Ex.P-9, prepared inquest over the dead body of the deceased vide Ex.P-10. Spot map was prepared vide Ex.P-3. Bloodstained soil, plain soil and one local grinder (big stone) were seized from the spot vide Ex.P-11. Injured Ganeshi Bai (PW-1) was examined by Dr. Arvind Kumar Mishra (PW-8) vide Ex.P-14 and following injuries were found: -

1. Incised wound over back side of right forearm, 1 c.m. x 0.5 c.m.
2. Three incised wounds over left arm (upper) anterior aspect, 1 c.m. x 0.5 c.m., 2 c.m. x 0.5 c.m. and 2 c.m. x 0.5 c.m.
3. Incised wound over left eye, 0.5 c.m.

5. Dead body of deceased Raju @ Rajesh was sent for autopsy to the District Hospital, Durg vide Ex.P-6. Dr. Parvez Akhtar (PW-12) conducted autopsy vide Ex.P-23 and found following injuries and symptoms: -

1. Abrasion on left side of upper arm anterior extending from anterior axillary field to upper $\frac{1}{3}$ region of 7 c.m. x 1 c.m.
2. Abrasion over lateral aspect of upper left arm mid $\frac{1}{3}$ of size, 4 c.m. x 1 c.m.
3. Abrasion on left forearm mid $\frac{1}{3}$ dorsal aspect, 6 c.m. x 1 c.m.
4. Lacerated wound over right side of hyphthenal eminence (ulnar end) of 3 c.m. x 2 c.m. x 2 c.m.
5. Compound fracture over right shin mid $\frac{1}{3}$ of 10 c.m. x 6 c.m. with fracture of bones.
6. Compound fracture over left shin mid $\frac{1}{3}$ with wound of 12 c.m. x 6 c.m. with bone fracture, muscles and bones expelled, only metallic blade of a knife present over front of chest, pierced vertically on left steroid border at level of 5th & 6th rib. Size of wound on skin is 2.5 c.m. x 1 c.m., spindle in shape. Length of metallic blade above skin is 6.5 c.m.. On opening of thoracic cavity, the blade pierced the skin, costocondal region on left side of sternum at level of 5th & 6th ribs piercing the right vertical anterior surface in middle. Size of wound on right vertical is 1 c.m. x 1 c.m. with edges approximately each other and connecting into vertical cavity.
7. Thoracic cavity is full of clotted blood.

Mode of death was shock due to injury to the heart.

6. One sharp edged part of knife was found in penetrating condition upon the chest of the deceased which was taken out and sealed. Clothes of the deceased were also sealed and seized vide Ex.P-7. Patwari prepared spot map vide Ex.P-4. Axe and clothes of the appellant were seized vide Ex.P-12. Statements of the witnesses were recorded under Section 161 of the CrPC. Seized articles were sent for chemical examination to the Forensic Science Laboratory vide Ex.P-18. Presence of blood upon knife and clothes of the appellant has been affirmed vide Ex.P-20.
7. After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Durg, who committed the case to the Court of Sessions, Durg where trial was conducted.
8. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 13 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 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 Ganeshi Bai (PW-1) – injured witness and Prakash Tamboli (PW-5) present on the spot, but their evidence does not inspire confidence and are not trustworthy. Incident took place at night, even as per case of the prosecution, on account of disturbance of TV, the incident took place which shows that the appellant has not caused homicidal death amounting to murder of the deceased. The act attributed to the appellant does not travel beyond the scope of Section 304 Part-II of the IPC.
12. On the other hand, learned State counsel opposed the appeal and submitted that evidence of Ganeshi Bai (PW-1) and Prakash Tamboli (PW-5) are sufficient to prove the guilt of the appellant that the appellant has caused injury to the deceased by a big stone, thereafter, he went to his house, came with a knife and caused injury by knife, again he went to his house and came with an axe, and caused injury to the deceased by axe and also assaulted Ganeshi Bai (PW-1) by knife. This shows the grave intention of the appellant in causing injury to the deceased and to Ganeshi Bai (PW-1).
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 Raju @ Rajesh and simple injuries by sharp edged weapon to Ganeshi Bai (PW-1) have not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Ganeshi Bai (PW-1), Prakash Tamboli (PW-5), morgue Ex.P-1, FIR Ex.P-2, evidence of Dr. Parvez Akhtar (PW-12), autopsy report Ex.P-23, evidence of Dr. Arvind Kumar Mishra (PW-8) and injury report Ex.P-14, that death of deceased Raju @ Rajesh was homicidal in nature and Ganeshi Bai sustained injuries by sharp edged weapon.
15. As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on the evidence of Ganeshi Bai (PW-1) and Prakash Tamboli (PW-5).
16. As per evidence of Ganeshi Bai (PW-1), on the eve of Navratri, her husband deceased Raju @ Rajesh was running a cycle stand near Navratri Utsav, he came to his house between 11-11.30 p.m., thereafter, he started TV and watching TV then the appellant came and abused on account of starting of TV, the appellant called her husband out of the house then the appellant came with local grinder and assaulted with local grinder upon his chest, she tried to intervene on which the appellant caused injury to her by knife. She shouted then neighbours came, she took her husband to the police station, thereafter he was taken to hospital. She lodged FIR and morgue vide Ex.P-1 and P-2. Prakash Tamboli (PW-5) has deposed that after hearing the sound, he reached to the spot and witnessed the incident.
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. Ganeshi Bai (PW-1) has admitted that the appellant also came with axe and caused injury. Evidence of these witnesses find support from the promptly lodged FIR. Evidence of these witnesses, promptly lodged FIR Ex.P-2 and morgue Ex.P-1 are sufficient for drawing inference that the appellant has caused homicidal death of deceased Raju @ Rajesh and caused injury by knife to Ganeshi Bai (PW-1).
18. As regards the question of motive, there is no propriety for causing injury to Ganeshi Bai (PW-1). As per evidence of Ganeshi Bai (PW-1), initially, on account of starting of TV some hot talks took place between the appellant and the deceased, and after the hot talks, the appellant caused injuries to the deceased by throwing a local grinder (*silbatta*) which shows the merciless act of the appellant, thereafter, the appellant went inside the house, came with knife and caused injury upon the chest of the deceased which shows the further grave intention of the appellant, when it was objected by Ganeshi Bai (PW-1) then he assaulted her by knife. This also corroborates the grave intention of the appellant. These circumstances clearly demonstrate that the appellant has caused homicidal death of the deceased with

intent to cause his death amounting to murder and also voluntarily caused simple injuries by knife to Ganeshi Bai (PW-1).

19. After appreciating the evidence available on record, learned 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.

20. 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