

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 920 of 2013

Ramprasad, son of Ramhau Gond, aged about 35 years,
resident of village- Kadma, Police Station – Kukdur, Civil &
Revenue District – Kabirdham (CG)

--- Appellant

Versus

State of Chhattisgarh, Through Station House Officer, Police
Station- Kukdur, Civil & Revenue District- Kabirdham (CG)

---- Respondent

For Appellant : Shri Suryakant Mishra, Advocate
For Respondent / State : Shri Mahesh Mishra, Panel Lawyer

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

JUDGMENT

19/03/2015

Per **T.P.Sharma, J.:-**

- 1) Challenge in this appeal is to the judgment of conviction & order of sentence dated 08.10.2008 passed by the Sessions Judge, Kabirdham in Sessions Trial No.61 of 2007, whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of Jhumku, the trial Court has convicted the appellant under Section 302 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 & sentenced the appellant as aforementioned and thereby committed illegality.

3) As per case of prosecution, on fateful day of 20.08.2007 between 5-6 pm, the appellant assaulted deceased Jhumku by battle axe and caused his death. Kodyabai (PW-1) was present on the spot. When she tried to save the deceased, then the appellant also assaulted her by the battle axe, by which her bangles were broken. The deceased fell down and died on the spot. Tulsu Gond, son of the deceased, went to Police Station Kukdur and lodged FIR vide Ex.P/16 and Morgue Intimation vide Ex.P/15. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P/12-A, inquest over the dead body of the deceased was prepared vide Ex.P/12. Bloodstained soil and plain soil were recovered from the spot and were sealed, match stick and 23 pieces of broken bangles were also seized from the spot vide Ex.P/11. Panchnama of injury of Kodyabai (PW-1) and presence of broken bangles on the spot was prepared vide Ex.P/1. Dead body of the deceased was sent for autopsy to the Primary Health Centre, Kukdur vide Ex.P/8-A. Dr.Narendra Golan (PW-5) conducted autopsy vide Ex.P/8 and found following injuries :-

- i) Incised wound of 6 x ½ x 7 cm below the left ear;
- ii) Lacerated wound of 15 x 6 cm up to brain deep over the scalp;
- iii) Brain matter was coming out.

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

- 4) Injured Kodyabai (PW-1) was also examined by Dr. Narendra Golan vide Ex.P/7, but he could not visualize the external injuries. Patwari Genduram Maravi (PW-3) prepared spot map vide Ex.P-2.
- 5) During the course of investigation, the appellant was taken into custody, he made disclosure statement of battle axe vide Ex.P/3 and the same was recovered at his instance vide ExP/4 along with one plastic container of kerosene. Clothes of the appellant were seized vide Ex.P/5. Spot map was prepared vide Ex.P/14. Clothes of the deceased were seized and sealed vide Ex.P/17.
- 6) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge-sheet was filed before the Court of Judicial Magistrate First Class, Kawardha, who in turn, committed the case to the Court of Sessions, Kabirdham.
- 7) In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 9 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.

- 8) After providing opportunity of hearing to the parties, the trial Court has convicted & sentenced the appellant as aforementioned.
- 9) We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 10) Learned counsel for the appellant vehemently argued that conviction is substantially based on the evidence of Kodyabai (PW-1), but her evidence does not inspire confidence and is not trustworthy and her evidence alone is not sufficient for proving the appellant guilty for commission of the offence. Even otherwise, the act attributed to the appellant does not travel beyond the scope of Section 304 Part-II of the IPC.
- 11) On the other hand, learned Panel Lawyer for the State opposes the appeal and submits that the evidence of Kodyabai (PW-1) is sufficient to prove the guilt of the appellant. As per her evidence, the appellant has assaulted the deceased by battle axe and caused fatal injury. When she tried to intervene, the appellant also assaulted her and broke her bangles, which were recovered from the spot vide Ex.P/11. Panchnama of the aforesaid fact has also been prepared vide Ex.P/1. Therefore, on the basis of aforesaid evidence, the Court below has rightly convicted and sentenced the appellant as aforementioned.

- 12) In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution.
- 13) In the present case, homicidal death as a result of fatal injuries found over the body of deceased Jhumku has not been substantially disputed on behalf of the appellant. Even otherwise, it is also established from the evidence of Kodyabai (PW-1), Phulibai (PW-2), FIR (Ex.P/16), Morgue Intimation (Ex.P/15), Dr.Narendra Golan (PW-5) and autopsy report (Ex. P/8), that death of deceased was homicidal in nature.
- 14) As regards the complicity of appellant in crime in question, conviction is substantially based on the evidence of Kodyabai (PW-1). As per her evidence, at about 4 pm on the date of the incident, she was going for taking bath. She saw the appellant assaulting the deceased by battle axe upon backside of his head. She also noticed bleeding from there. When she tried to intervene and save the deceased, then the appellant also assaulted her by battle axe and caused injury by handle of the axe, by which her bangles were broken on the spot. Jhumku died on the spot. Phulibai (PW-2) also witnessed the incident. She deposed in her evidence that the appellant assaulted Jhumku by some object, by which he fell down in front of the house of Kodyabai (PW-1). But in her

cross-examination she has admitted that when she reached to the spot, at that time, the deceased fell down, though in para-4 she further admitted that the appellant was standing near the deceased. In her cross-examination, Kodiyabai (PW-1) has specifically admitted her presence on the spot. Even she was suggested by the appellant that she received injury at the time of scuffle and her bangles were broken on account of it. She has further deposed in para-5 of her evidence that before her reaching to the spot, the deceased fell down, but she has explained that before that, one injury was caused to the deceased. Evidence of this witness reveals that she had seen the incident from some distance and she has seen that the appellant assaulted the deceased with battle axe. She tried to save the deceased, but, she did not succeed, *inter alia* she received injury by the handle of that axe and her bangles were also broken, which were seized from the spot vide seizure memo (Ex.P/11). This evidence and evidence of Phulibai (PW-2), narrating presence of the appellant on the spot in commission of offence are sufficient to prove the appellant guilty for causing homicidal death of the deceased.

- 15) As regards the question of motive, in case of direct evidence motive loses its importance. Even otherwise, motive is only an aid in criminality and can be inferred on the basis of

nature of injury, kind of weapon used, part of the body effected and other similar circumstances. Motive is a state of mind of person at the time of commission of offence and only the person concerned would be in a position to explain that what was his intention or motive behind commission of any act.

- 16) In the present case, the appellant has caused repeated assaults by battle axe to the deceased resulting his instantaneous death. The appellant has not taken any defence and has failed to show that why he has caused homicidal death of the deceased. In absence of such evidence the inference would be possible that the appellant has caused homicidal death with intent to commit murder of the deceased.
- 17) After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant as aforementioned.
- 18) On close scrutiny of the evidence, we do not find any illegality and infirmity in the judgment of conviction and order of sentence.
- 19) Consequently, the appeal, being devoid of merit, is liable to be dismissed and is hereby dismissed.

JUDGE

JUDGE