

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 112 of 2011**

1. Radheram @ Mangra, S/o Phakirram Uranw, Occupation Agriculture, R/o Village Kharsota, Tah.-Jashpur Nagar, Distt.-Jashpur, C.G.

---- Appellant

Versus

1. State of Chhattisgarh

---- Respondent

For Appellant	:	Ms. Sharmila Singhai, Advocate
For Respondent/State	:	Mr. Rama Kant Pandey, P.L.

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

Judgement on Board by T.P.Sharma, J.

20/04/2015

Challenge in this appeal is to the judgment of conviction and order of sentence dated 04.12.2010 passed by the Sessions Judge, Jashpur, in Sessions Trial No.03/2010 whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of Kamni Bai, the trial Court convicted the appellant under Section 302 of the I.P.C. and Section 4 of the Chhattisgarh Tonhi Pratadna Nivaran Adhiniyam, 2005, (for short Act of 2005) and sentenced him to life imprisonment with fine of Rs.100/- and to undergo RI for one year with fine of Rs.100/-.

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

3. As per case of the prosecution, on 08.09.2009 at about 4.00 pm, the appellant

killed deceased Kamni Bai on the ground that she was Witchcraft and has used supernatural powers in making illness of his child. Radheram, appellant himself, went to Police Station Jashpur and lodged F.I.R. vide Ex.P.5. Merg was recorded vide Ex.P.6.

4. Investigating Officer left for scene of occurrence and after summoning the witnesses, inquest over the dead body was prepared vide Ex.P.7. Spot map was prepared vide Ex.P.1. Bloodstained and plain soils were recovered from the spot vide Ex.P.9. Dead body was sent for autopsy to Community Health Center, Jashpur vide Ex.P.8. P.W.8 Dr. Purushottam Kumar Singh conducted autopsy vide Ex.P.8A and found following injuries:

- i. Fracture in triangle shape over parietal bone of head. Brain matter was seen.
- ii. Another fracture behind first injury and its size is 3" length.
- iii. Incised wound 2" above the left eye which is 2" in length, its direction is right to left.
- iv. Behind left ear incised wound of 3" and deep bone fracture.

Cause of death was due to excessive blood and death was homicidal in nature.

5. During course of investigation, weapon of offence, i.e., *Balua* from the possession of the appellant was seized vide Ex.P.2. Cloths of the appellant were seized vide Ex.P.3. Cloths and hairs of head of deceased were seized vide Ex.P.4. Seized articles were sent for chemical examination vide Ex.P.12. Hairs were also found upon the weapon of offence vide Ex.p.15 and presence of blood over *Balua* was confirmed by the F.S.L. report. F.S.L. examined hairs found over the weapon of offence but they could not find sufficient for comparison with hairs of the appellant.

6. Statements of the witnesses were recorded under Section 161 of the Criminal Procedure Code, 1973 (for short 'the Code').

7. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Jashpur, who in turn committed the case to the Court of Sessions, Jashpur.

8. In order to prove the guilt of the appellant, prosecution examined as many as 09 witnesses. Accused person was examined under Section 313 of the Code wherein he denied the circumstances appearing against him and innocence and false implication in crime in question was claimed.

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

10. We have heard learned counsel for the parties and perused the record of the trial Court including judgment impugned.

11. Ms. Sharmila Singhai, learned counsel for the appellant, vehemently argued that conviction of the appellant is substantially based on the evidence of recovery of articles and bloodstained weapon of offence *Balua*, but, prosecution has failed to adduce the evidence of such possession and seizure. She further submits that even otherwise blood found over the *Balua* and blood group of the deceased has not been established by the prosecution.

12. On the other hand, Mr. Rama Kant Pandey, learned counsel for the State, opposed the appeal while submitting that the evidence adduced on behalf of the prosecution is sufficient to prove the guilt 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. In the present case, homicidal death as a result of fatal injury found over the body of deceased Kamni Bai has not been substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of P.W.1 Babulal, P.W.2 Seetaram and P.W.3 P.R.Bhata, F.I.R. Ex.P.5, merg intimation Ex.P.6, P.W.8 Dr. Purushottam Kumar

Singh and autopsy report Ex.P.8A.

14. As regards complicity of the appellant in crime in question, conviction of the appellant is substantially based on circumstantial evidence. In the present case, prosecution has proved the fact that the appellant thinking that the deceased, who was a Witchcraft, has exercised her supernatural power of witchcrafting of his child. Blood stained weapon of offence, i.e., *Balua* has been recovered from the possession of the appellant. As per evidence of prosecution witnesses, the fact that the deceased was showing herself as Witchcraft is undisputed. Recovery of *Balua* from the possession of the appellant is also undisputed. These two facts are sufficient to prove the guilt of the appellant. However, in the present case, the conviction is only based on evidence of bloodstained articles found in possession of the appellant. The prosecution was under obligation to prove the fact that blood found upon the *Balua* and blood of the deceased was of the same group. In the present case, prosecution has failed to establish the aforesaid piece of evidence. In absence of aforesaid proof, it will be difficult to hold that the appellant was the author of the crime and none else. Virtually, prosecution has failed to collect the material evidence against the appellant. Therefore, conviction of the appellant under Section 302 of the I.P.C. and Section 4 of the Act of 2005 and the sentenced awarded thereunder are sustainable in law.

15. Consequently, appeal deserves to be and is hereby allowed. Conviction of the appellant under Section 302 of the I.P.C. and Section 4 of the Act of 2005 and the sentenced awarded thereunder are set aside. The appellant is acquitted of the charges under Section 302 of the I.P.C. and Section 4 of the Act of 2005. He be released forthwith, if not required in any other case.

(T.P.Sharma)
JUDGE

(I.S.Uboweja)
JUDGE