

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.226 of 2011

Amar Singh @ Chhauwa, S/o Tejbal Singh, aged about 28 years,
R/o Village Tarka, Police Station Jilmili, District Sarguja (CG).

---- Appellant

Versus

State of Chhattisgarh, Through District Magistrate, Sarguja (CG).

---- Respondent

For Appellant: Ms. Shipra Biswas, Advocate

For State/Respondent: Mr. Roshan Dubey, Panel Lawyer.

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

Judgment On Board

08/05/2015

T.P. Sharma, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 7-1-2011 passed by the 1st Additional Sessions Judge, Surajpur, in Sessions Trial No.181/2010, whereby & whereunder learned Additional Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of a 5 years' child Gulchand, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life & pay fine of Rs.100/-, in default of payment of fine to further undergo imprisonment for ten days.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellants and thereby committed an illegality.
3. As per case of the prosecution, on the fateful day of 22-3-2010 at about 4 p.m., unfortunate deceased Gulchand, aged about 5

years, along with Rajkumar (PW-1) and others was playing near the shop of the appellant, the unfortunate deceased entered into the shop of the appellant and taken biscuit from the shop of the appellant which the appellant noticed, shouted and chased the children. Children tried to flee away from the shop, but Gulchand was caught by the appellant and the appellant took him near the well and has thrown the child inside the well filled with water. Gulchand died as a result of drowning. Rajkumar (PW-1) has witnessed the incident. He informed the incident to Fuleshwari (PW-3). Chappal of the deceased were found near the well. On second day, morgue was lodged by Rameshwar (PW-2) vide Ex.P-1.

4. The investigating officer left for the scene of occurrence and after summoning the witnesses vide Ex.P-2, dead body of the deceased was taken out from the well and inquest was prepared vide Ex.P-3. Spot map was prepared vide Ex.P-4. FIR was registered vide Ex.P-7.
5. Dead body of the deceased was sent for autopsy to Community Health Centre, Bhaiyathan. Dr. B.C. Paikra (PW-9) conducted autopsy vide Ex.P-8 and found following symptoms and injuries: -
 1. Froth was coming from nose.
 2. Face matter is not present.
 3. Bruise present on right side of chest, size 1 ½" x 1 ½".

Mode of death was asphyxia as a result of drowning.

6. Pair of chappal was seized vide Ex.P-5. Statements of the witnesses were recorded under Section 161 of the CrPC. After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Surajpur who committed the case to the Court of Sessions, Surguja at Ambikapur from where the 1st Additional Sessions Judge, Surajpur, received the case on transfer for trial.
7. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 9 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.
8. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted & sentenced the appellant as aforementioned.

9. We have heard learned counsel for the parties, perused the judgment impugned and records of the Courts below.
10. Learned counsel for the appellant submits that conviction of the appellant is substantially based on the evidence of Rajkumar (PW-1) – child witness aged about 5 years and Fuleshwari (PW-3). Evidence of Rajkumar (PW-1) does not inspire confidence and there is every likelihood of his tutoring. His alone evidence is not sufficient for basing conviction without further corroboration from independent source.
11. On the other hand, learned State counsel opposed the appeal and submitted that evidence of Rajkumar (PW-1), child witness, is sufficient for proving the guilt of the appellant. Child witness is also competent witness in accordance with Section 118 of the Evidence Act. Before recording the evidence of a child witness, the trial Court has satisfied itself that the witness is able to answer the questions put to him rationally, and even he understands the duty to speak truth. Therefore, his evidence cannot be discarded.
12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
13. In the present case, death as a result of asphyxia and drowning of deceased Gulchand, aged about 5 years, has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Rajkumar (PW-1), Rameshwar (PW-2), Fuleshwari (PW-3), Fulkunwar (PW-4), Dr. B.C. Paikra (PW-9), morgue Ex.P-1, FIR Ex.P-7 and autopsy report P-8 that death of deceased Gulchand is due to asphyxia as a result of drowning.
14. As regards homicidal death of the deceased and complicity of the appellant in the crime in question, conviction of the appellant is substantially based on the evidence of Rajkumar (PW-1), aged about 5 years. After satisfying himself that the witness understands the duty to speak truth and was able to answer the questions put to him rationally, the trial Court has examined him. His age was 5 years, but he has specifically answered the questions put to him and he has boldly denied the questions which were not correct. As per his evidence, he along with Gulchand and Vinod was playing near the shop of the appellant, Gulchand took out biscuit from the shop of the

appellant, the appellant chased and caught hold of Gulchand and has thrown him in the well. He has further deposed that he informed the incident to his mother.

15. Another witness Fuleshwari (PW-3) has deposed in her evidence that her son Vinod and Rajkumar (PW-1) informed her that the appellant has thrown Gulchand in the well.
16. Evidence of Rajkumar (PW-1) did not reflect that he was tutored, inter alia, he has very specifically and boldly deposed that the appellant has thrown the deceased inside the well. These evidence are sufficient to prove the fact that the appellant has caused homicidal death of the deceased.
17. Drowning of 5 years' aged child in a well filled with water by itself is an act of commission of murder.
18. 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.
19. Consequently, the appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

JUDGE

JUDGE

Soma