

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 319 of 2011

Sipat Singh Kanwar S/O Manjal Singh Kanwar, R/O Village Nonbirra, P.S.-Pali,
Distt.-Korba, C.G.

---- Appellant
(in jail)

Versus

State Of Chhattisgarh through the Police Station Pali, District Korba (CG)

---- Respondent

For appellant.

Mr. Ravi Maheshwari, Advocate.

For Respondent

Mr. Rahul Tamaskar, Panel Lawyer.

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

Order On Board

30/06/2015

Per P. Diwaker, J

1. This appeal arises out of the judgment of conviction and order of sentence dated 30.12.2010 passed by the Additional Sessions Judge, Katghora, District Korba in S.T.No.43/2010 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo rigorous imprisonment for life and to pay a fine of Rs.500/-, in default to undergo additional R.I. for 03 months.
2. As per prosecution case, on 08.02.2010 at about 9.00 a.m. when deceased Dukli Bai Gond was going towards village pond for taking bath, on the way the accused/appellant caused injuries by axe on temporal region & jaw of the deceased as a result of which she died instantaneously. This incident was witnessed by PW-3 Banwali Singh (independent witness), PW-5 Satish, minor son of the deceased, and PW-6 Shashi, minor daughter of the deceased. Banwali Singh (PW-3) immediately informed the incident to the village Kotwar Nohardas (PW-4) who, in turn, gave merg intimation (Ex.P-8) on 8.2.2010 at about 10.30 a.m. based on which FIR (Ex.P-14) was registered against the

accused/appellant under Section 302 of the IPC. Post-mortem on the body of the deceased was conducted by Dr. Pradeep Agrawal (PW-10) who noticed following injuries:-

- One lacerated wound in front of left ear transversely placed, elliptical shape, of 4cm x 2cm size and underlying bone was fractured.
- Swelling on the left side of face and temporal region.

Cause of death was shock & coma due to head injury and the death was homicidal in nature. After investigation, charge sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly the charge was also framed for the same section.

3. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and 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 the accused/appellant as mentioned in para-1 of this judgment.
5. Learned counsel for the appellant submits as under:
 - (I) that three eyewitnesses to the incident i.e. Banwali Singh (PW-3), Satish (PW-5) and Shashi (PW-6), are inconsistent and therefore their evidence is required to be ignored;
 - (ii) that as per statement of Satish (PW-5) & Shashi (PW-6), son & daughter of the deceased, it is the accused/appellant who was taking care of the family of the deceased after the death of her husband and

therefore there was no occasion for the accused/appellant to kill the deceased;

6. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the 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 submits that there is no reason for this Court to disbelieve the evidence of independent eyewitness Banwali Singh (PW-3) and two minors i.e. Satish (PW-5) & Shashi (PW-6). He further submits that there is no evidence to show that as to why the accused/appellant has been falsely implicated in the crime in question.
7. Heard learned counsel for the parties and perused the material available on record.
8. Banbail Singh (PW-3), an independent eyewitness, has stated that he knew the accused/appellant and the deceased. On the date of incident, he saw the accused/appellant assaulting the deceased with an axe near the village pond and after committing murder of the deceased, the accused/appellant fled towards the forest. He has further stated that he informed the incident to village Kotwar Nohardas (PW-4). He has further stated that earlier the accused/appellant used to work as labourer in the house of the deceased and atleast twice they had a quarrel. He has further clarified that he could see the incident as on that date he has also gone to the village pond.
9. Nohardas (PW-4) is the village Kotwar to whom the incident was informed by Banwali Singh (PW-3) and it is this witness who lodged merg intimation (Ex.P-8).
10. Satish (PW-5), minor son of the deceased, has stated that he knew the accused/appellant, on the date of incident when his mother was going

towards village pond for taking bath, at that time the accused/appellant came and caused two injuries to her mother by axe as a result of which she fell down and died. He has further stated that there was some dispute between the accused/appellant and the deceased as the accused/appellant used to demand some money from his mother.

11. Shashi (PW-6), minor daughter of the deceased, while supporting the prosecution case has categorically stated as to the manner in which the accused/appellant assaulted the deceased with axe and caused her death. She has further stated that earlier the accused/appellant used to work in her house and had threatened her mother for facing dire consequences. In the cross-examination she remained very firm.
12. Dr. Pradeep Agrawal (PW-10) conducted post-mortem on the body of the deceased and opined that cause of death was shock & coma due to head injury. He has further stated that on internal examination, he has noticed fracture of temporal bone and jaw bone.
13. Krishna Kumar Diksena (PW-1), Nagar Sainik, helped in the initial investigation. Sumer Singh (PW-2) is the seizure witness of Ex.P-2 to Ex.P-6 and has duly supported the prosecution case. Naresh Kumar Yadav (PW-10) has stated that at the time of inquest the appellant was also present there along with other villagers and had confessed that it is he who has killed the deceased and thereafter he also informed that after killing the deceased, he ran away towards the forest. He is also the witness of arrest memo (Ex.P-9).
14. Patwari Arjun Prasad Jaiswal (PW-8) has prepared spot map (Ex.P-7). Mangal Singh (PW-9) is the witness of inquest (Ex.P-3). M.M. Minj (PW-11) is the Investigating Officer and has duly supported the prosecution.
15. Close scrutiny of the evidence makes it clear that on 08.02.2010 it is the

accused/appellant who killed the deceased by causing two injuries on her head & face by an axe as a result of which the deceased sustained fracture of temporal bone & jaw bone and died on the spot itself. The incident was witnessed by Banwali Singh (PW-3), Satish (PW-5) & Shashi (PW-6) and from their evidence it appears that all the three witnesses have witnessed the incident from different places and all of them have supported the incident in a categorical term. Minor variations in their statements are required to be ignored because they had not seen the incident together and have seen the incident from different places. There is no other evidence on record to show as to why Banwali Singh (PW-3), Satish (PW-5) & Shashi (PW-6) would falsely implicate the accused/appellant. Banwali Singh (PW-3) is an independent witness, whereas Satish (PW-5) & Shashi (PW-6) are son & daughter of the deceased, and they have explained the manner in which the deceased was killed.

16. For the foregoing, we are of the opinion that the Court below was justified in holding the accused/appellant guilty under Section 302 of the IPC for committing homicidal death of the deceased, amounting to murder, and the findings recorded by the Court below are based on proper appreciation of evidence adduced on behalf of the prosecution warranting no interference by this Court.
17. In the result, the appeal being without any substance is liable to be and is hereby dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE