

Division Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

Cr. A. No. 892 OF 2010

Appellant
(in Jail)

: Jageshwar Ram, S/o. Mangal Sai
Chikwa aged about 48 years, R/o.
Sureshpur, Police Station Sitapur,
District Surguja, (C.G.)

P.R. No. 716/10
Presented by Stn. S. K. Singh
Dated 6/12/10
J. K. Singh
11-25-10

Versus

Respondent

: State of Chhattisgarh through
Police Station Sitapur, District
Surguja (C.G.)

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE
CODE OF CRIMINAL PROCEDURE

HIGH COURT OF CHHATTISGARH, BILASPUR

DB : **Hon'ble Shri Justice T.P. Sharma &
Hon'ble Shri Justice C.B.Bajpai**

Criminal Appeal No. 892 of 2010**Appellant**

Jageshwar Ram

Versus

Respondent

State of Chhattisgarh

Criminal Appeal under Section 374(2) of the Code of Criminal Procedure**Appearance:**

Shri S.K. Guha, Advocate for the appellant.
Shri Ramakant Pandey, Panel Lawyer for the State.

JUDGMENT

(29-01-2015)

Per T. P. Sharma, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 29-09-2010 passed by Sessions Judge, Surguja in Sessions Trial No.23/09 whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of his mother Jugpatiya Bai convicted the appellant under Section 302 of the Indian Penal Code (for short 'IPC') and sentenced him imprisonment for life and fine of Rs.2000/-, in default of payment of fine, additional rigorous imprisonment for 6 months.

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

3. As per case of the prosecution, on fateful intervening night of 04-11-2008 and 05-11-2008, the appellant and unfortunate deceased, mother of the appellant were present in the same room. Two sons of the appellant namely Ratan (PW-5) and Anil (PW-7) were also present with them. The appellant assaulted his mother, then Ratan (PW-5) and Anil (PW-7) rushed to

the house of Inderpati (PW-1) for saving their grand-mother. They knocked the door at night and informed the incident. Then Inderpati (PW-1) and Shivpatiya (PW-4) accompanied them upto their house where they noticed that deceased Jugpatiya Bai was shouting for help, the appellant was assaulting her, he did not open the door. Then Ratan (PW-5) and Anil (PW-7) went to the house of another relative. Inderpati (PW-1) and Shivpatiya (PW-4) came back to their houses. At morning, they noticed homicidal death of the deceased, she was in the house of the appellant and the appellant was also present in the same house, they also noticed injuries on the body of the deceased. Somebody informed police. Finally Inderpati (PW-1) lodged the First Information Report vide Ex-P/1. Merg was recorded vide Ex-P/13 at the instance of Inderpati (PW-1). The Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex-P/7, inquest over the dead body was conducted vide Ex-P/8. Blood stained soil and plain soil were recovered vide Ex-P/9. Spot map was prepared vide Ex-P/14. Dead body of the deceased was sent for autopsy to Community Health Center, Seetapur vide Ex-P/2A. Doctor S.N.Paikara (PW-2) conducted the autopsy vide Ex-P/2 and found following injuries/symptoms:-

- (i) bleeding from mouth and nostrils,
- (ii) head depressed from backside,
- (iii) fracture of parietal bone with internal cerebral haematoma.

Mode of the death was shock and the death was homicidal in nature. Cloth of the deceased was sealed and seized vide Ex-P/11. During the investigation, Patwari prepared the spot map vide Ex-P/3. One iron baisakhi was seized from the appellant vide Ex-P/10. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code'). Seized articles were sent to Forensic Science Laboratory, Raipur vide Ex-P/15. Presence of blood upon baisakhi has been confirmed by the

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Forensic Science Laboratory vide Ex.-P/16.

4. After completion of the investigation, charge sheet was filed before Judicial Magistrate First Class, Seetapur, who, in turn, committed the case to the Court of Sessions, Ambikapur.,

5. In order to prove guilt of appellant, prosecution examined as many as 9 witnesses. Accused was examined under Section 313 of Code wherein he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question. He also examined Moti Lal (DW-1) in his defence who has deposed that there was previous litigation pending before the revenue court at the instance of the deceased.

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

7. We have heard Shri S.K.Guha and Shri Ramakant Pandey and perused the judgment impugned and record of the trial Court.

8. Counsel for the appellant submitted that conviction is substantially based on the evidence of Inderpati (PW-1), Shivpatiya Bai (PW-4), Ratan (PW-5) and Anil (PW-7). Ratan (PW-5) and Anil (PW-7) not supported the prosecution and the prosecution has declared them hostile. Their evidence are not sufficient for drawing inference that the appellant was author of the crime, even otherwise, the prosecution has failed to prove the motive for commission of offence, therefore, the act attributed to the appellant cannot travel beyond the scope of Section 304 Part II of the IPC.

9. On the other hand, counsel for the State opposed the appeal and submitted that conviction is based on the evidence of Inderpati (PW-1), Shivpatiya Bai (PW-4), Ratan (PW-5) and Anil (PW-7). As per their evidence, the appellant and the deceased were present in one room. At night the appellant assaulted the deceased and Ratan (PW-5) and Anil (PW-7) went to

the house of the Inderpati (PW-1) and Shivpatiya Bai (PW-4) for help. They came along with Ratan (PW-5) and Anil (PW-7) to the house of the appellant where the appellant and the deceased were present only, then on being knocked and asked, he did not open the door. On second day morning, dead body of the deceased found inside the room and the appellant was also present in the house. This evidence is sufficient to prove that only the appellant has committed homicidal death amounting to murder of his mother deceased Jugpatiya Bai and none else.

10. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the parties.

11. In the present case, homicidal death as a result of fatal injuries found over the body of deceased Jugpatiya Bai has not been substantially disputed on behalf of appellant, on the other hand, it is established from the evidence of Inderpati (PW-1), Shivpatiya Bai (PW-4), Ratan (PW-5) and Anil (PW-7), FIR (Ex.-P/1), merg (Ex.-P/13), Dr. S.N.Paikara (PW-2) and autopsy report (Ex.-P/2).

12. As regards, complicity of appellant in crime in question, conviction is based on the evidence of Inderpati (PW-1), Shivpatiya Bai (PW-4), Ratan (PW-5) and Anil (PW-7). Ratan (PW-5) and Anil (PW-7) are sons of the appellant and in their evidence they admitted that in the intervening night of the incident, the appellant and the deceased were present in the house. They went to the house of their Buwa for sleeping. They came at morning. The prosecution has declared them hostile. In cross-examination, they have admitted that they went to the house of Inderpati (PW-1) for calling her, they came back to the house with Inderpati (PW-1). At that time the deceased and the appellant were present inside the house. They knocked the door, but the appellant did not open the door. Inderpati (PW-1) and Shivpatiya (PW-4) have deposed in detail that they were called by Ratan (PW-5) and Anil (PW-7) that the appellant is

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assaulting their mother i.e. the deceased Jugpatiya Bai, then they came to the house of the appellant where room was closed from inside. They knocked, but the appellant did not open the door, then they went back to their house and second day morning they saw injured dead body of the deceased and the appellant was also present in the same house. Defence has cross-examined these witnesses at length but has not been able to elicit in their cross-examination to discredit their testimony to the extent that Inderpati (PW-1) and Shivpatiya (PW-4) were not called by Ratan (PW-5) and Anil (PW-7), the appellant and the deceased were not present in one room at the night, the dead body was not found at next day morning, the appellant was also not present in the same room, in these circumstances a heavy burden to explain under Section 106 of the Evidence Act was upon the appellant that who has caused the homicidal death of the deceased, but the appellant has failed to discharge his burden. These circumstances and the injuries found over the body of the deceased are sufficient to infer that the appellant has caused the injuries found over body of the deceased with intent to cause her death and the appellant was the only author of the crime and none else for causing homicidal death amounting to murder of his own mother aged about 65 years. After appreciating the evidence on record, the learned trial Court has convicted and sentenced the appellant as aforementioned.

13. On close scrutiny of the evidence, we do not find any illegality or infirmity in the judgment impugned. Consequently, the appeal being devoid of merit is liable to be and is hereby dismissed.

**Sd/-
T.P. Sharma
Judge**

**Sd/-
Chandra Bhushan Bajpai
Judge**