

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.666 of 2011

Samaru Ram Rathia, son of Ghasiya Ram Rathia, aged about 30 years, Occupation Agriculturist, R/o Village Behramuda, P.S. Chhal, Tahsil Dharamjaigarh, District Raigarh (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through S.H.O., Police Station Chhal, Distt. Raigarh (C.G.)

---- Respondent

For Appellant: Mrs. Meera Jaiswal, Advocate

For State/Respondent: Mr. Sumit Jhanwar, 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 8-8-2011 passed by the Sessions Judge, Raigarh, in Sessions Trial No.112/2009, whereby & whereunder learned Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of Janakram on account of witchcraft, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life & pay fine of Rs.10,000/-, in default of payment of fine to further undergo RI for two years.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant and thereby committed an illegality.
3. As per case of the prosecution, on the fateful day of 9-9-2009 at about 8 a.m., unfortunate deceased Janakram was present in his house. Menbai (PW-3), his grand-daughter, was also present along with Janakram. Rameshwari (PW-4), another grand-daughter, had gone to hand-pump for fetching water. The appellant came with axe and caused multiple injuries by axe to Janakram. Menbai (PW-3), child witness, witnessed the incident. She started weeping, thereafter, Rameshwari (PW-4) came and thereafter, her mother and other persons came. Villagers came to know about the incident then they considered for lodging report. Ultimately,

Khageshwar Singh (PW-2) went to Police Station Chhal and lodged FIR vide Ex.P-4 and morgue vide Ex.P-5.

4. The investigating officer left for the scene of occurrence and after summoning the witnesses vide Ex.P-2, prepared inquest over the dead body of the deceased vide Ex.P-1. Spot map was prepared vide Ex.P-3. Bloodstained and plain soil were recovered from the spot vide Ex.P-6.
5. Dead body of the deceased was sent for autopsy to Community Health Centre, Dharamjaigarh vide Ex.P-11. Dr. A.S. Thakur (PW-13) conducted autopsy vide Ex.P-11A and found following symptoms and injuries: -
 1. Incised wound between mid scapular region 12 c.m. x 5 c.m., bone depth.
 2. Incised wound on left lateral posterior aspect 8 c.m. x 6 c.m., bone depth Face matter is not present.
 3. Incised wound on post part mid occipital region 3 c.m. x 4 c.m., bone depth.
 4. Incised wound on post mid left fore arm 3 c.m. x 1 c.m. skin.

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

6. Clothes of the deceased were sealed and seized vide Ex.P-9. Axe and bloodstained clothes of the appellant were seized vide Ex.P-8, same were sent for chemical examination to the FSL vide Ex.P-17. Statements of the witnesses were recorded under Section 161 of the CrPC.
7. After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Dharamjaigarh who committed the case to the Court of Sessions, Raigarh where the trial was conducted.
8. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 13 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.
9. After providing opportunity of hearing to the parties, learned Sessions Judge while acquitting the appellant of the charge under Sections 4 and 5 of the Tonhi Pratadna Nivaran Adhiniyam, 2005, convicted & sentenced the appellant as aforementioned.
10. We have heard learned counsel for the parties, perused the judgment impugned and records of the Courts below.
11. Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of Menbai (PW-3) and Rameshwari (PW-4). As per evidence of Menbai (PW-3), Rameshwari (PW-4) came after the incident i.e.

she has not witnessed the incident. As per evidence of Menbai (PW-3), she did not know appellant Samaru, villagers Mukund, Dileshwar and Khageshwar who came after the incident told that Samaru has killed Janakram. This shows that Menbai (PW-3) has deposed on the basis of information given by Mukund, Dileshwar and Khageshwar. Therefore, her alone evidence is not sufficient for basing conviction of the appellant that too under Section 302 of the IPC.

12. On the other hand, learned State counsel opposed the appeal and submitted that evidence of Menbai (PW-3), child witness, and Rameshwari (PW-4) by itself are sufficient for proving 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.
14. In the present case, homicidal death as a result of fatal injuries found over the body of deceased Janakram, has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Khageshwar Singh (PW-2), Menbai (PW-3), Rameshwari (PW-4), FIR Ex.P-4, morgue Ex.P-5, evidence of Dr. A.S. Thakur (PW-13) and autopsy report Ex.P-11A, that death of deceased Janakram was homicidal in nature.
15. As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on the evidence of Menbai (PW-3) and Rameshwari (PW-4). Menbai (PW-3) is a ten years' aged child witness. After satisfying itself that the witness understands the duty to speak truth and was able to answer the questions put to her rationally, the trial Court has examined her. As per her evidence, she was present along with her grand-father (deceased) at the time of incident. The appellant came and caused injuries to her grand-father then she started weeping, her sister Rameshwari (PW-4) came thereafter, after some time, her mother also came, then persons of the village came. In para 2 of her cross-examination, she has specifically deposed that before causing injuries by the appellant to the deceased, other persons did not come to her house. She has denied the suggestion that she did not know who has caused injuries to her grand-father. She has specifically identified the appellant as Samaru, though she has further deposed that she did not know Samaru. In paras 1 and 2, she has specifically deposed that she knows the appellant who has caused injuries to her grand-father.
16. Rameshwari (PW-4) has substantially corroborated the evidence of Menbai (PW-3) and has deposed that when she came after fetching the water, she saw the part of incident from the ceiling.

17. Although they are child witnesses, but their evidence did not reflect further tutoring or that their evidence is unspecific and unambiguous and requires corroboration from independent sources. They are also competent witnesses in terms of Section 118 of the Evidence Act. In the light of their evidence, no corroboration from independent sources is required. Their evidence are sufficient for drawing inference that the appellant has caused homicidal death of the deceased.
18. Four fatal injuries found over the body of the deceased further show that the appellant has caused homicidal death of the deceased with intent to cause his death amounting to murder.
19. 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.
20. Consequently, the appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

JUDGE

JUDGE