

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.291 of 2012

Lahri Korva, S/o Mansai Korva, aged about 30 years, R/o Village Bhudkuduwa, P.S. Lakhanpur, Present Address Tikrapara, Bendopani, Lakhanpur, Distt. Surguja (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Police Station Lakhanpur, Distt. Surguja (C.G.)

---- Respondent

For Appellant: Mr. Vivek Kumar Pandey, Advocate.

For Respondent/State: Mr. Mahesh Mishra, Panel Lawyer.

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

Judgment On Board

05/05/2015

T.P. Sharma, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 29-12-2011 passed by the Sessions Judge, Surguja at Ambikapur, in Sessions Trial No.288/2010, whereby & whereunder learned Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of his wife Budhiyaro @ Guddi, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment of life & pay fine of Rs.2,000/-, in default of payment of fine to further undergo RI for six months.
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, the appellant was suspecting upon the character of his wife – deceased Budhiyaro and as per his suspicion, the deceased was having illicit relation with one Tibul Ram. On the fateful night of 15-4-2010 at about 12 mid night, while the deceased was sleeping inside the hut, the appellant caused fatal injury upon the cheek by axe and caused her instantaneous death. The incident was witnessed by Sani Korva (PW-5) – brother of the deceased, who informed other persons and also to Kenda Ram (PW-4) who ultimately went to the police station and lodged FIR vide Ex.P-5 and morgue vide Ex.P-6.

4. The investigating officer left for the scene of occurrence. After summoning the witnesses vide Ex.P-12A, inquest over the dead body of the deceased was prepared vide Ex.P-12. Spot map was prepared vide Ex.P-13. Bloodstained and plain soil were recovered from the spot vide Ex.P-15.
5. Dead body of the deceased was sent for autopsy to Block Medical Officer, Lakhanpur vide Ex.P-4. Dr. Prem Singh Marko (PW-3) conducted autopsy vide Ex.P-4A and found following injuries and symptoms: -
 - Cut wound over face (size 12 c.m. x 3 c.m. x 2 c.m.) from root of nose to cheek left side. Dry blood clot present over wound.Mode of death was shock and death was homicidal in nature.
6. During the course of investigation, Patwari prepared spot map vide Ex.P-1. The appellant was taken into custody, he made disclosure statement of axe vide Ex.P-7 and same was recovered at his instance vide Ex.P-8. His bloodstained clothes were seized vide Ex.P-9. Statements of the witnesses were recorded under Section 161 of the CrPC. Seized articles were sent for chemical examination to the Forensic Science Laboratory vide Ex.P-16 and presence of blood upon the axe recovered from the appellant has been affirmed vide Ex.P-18.
7. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Ambikapur, who committed the case to the Court of Sessions, Ambikapur where the trial was conducted.
8. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 7 witnesses. The accused 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 convicted & sentenced the appellant as aforementioned.
10. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.
11. Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of Sani Korva (PW-5), but his evidence does not inspire confidence and is not trustworthy. The incident took place at night. As per his evidence, he was staying in a deserted hut in the forest area, there was no light facility and it was not possible to witness the incident. One Tibul who was having illicit relation

with the deceased was trying to attempt to cause injury to Sani Korva (PW-5), but the deceased sustained injury during the course of such incident, thereafter, Sani Korva (PW-5) along with his wife Phul Sundari decided to implicate the appellant and have falsely implicated the appellant. Even otherwise, this is a case of single blow and the act attributed to the appellant does not travel beyond the scope of Section 304 Part-II of the IPC.

12. On the other hand, learned State counsel opposed the appeal and submitted that the appellant has assaulted the deceased while she was sleeping and was in helpless condition. Evidence of Sani Korva (PW-5) is sufficient for proving the guilt of the appellant that the appellant has committed homicidal death amounting to murder of his wife.
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 injury found over the body of deceased Budhiyaro @ Guddi has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Kenda Ram (PW-4), Sani Korva (PW-5), FIR Ex.P-5, morgue Ex.P-6, evidence of Dr. Prem Singh Marko (PW-3) and autopsy report Ex.P-4A, that death of deceased Budhiyaro @ Guddi 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 Sani Korva (PW-5). As per his detailed evidence, he along with his wife Phul Sundari, the appellant, his wife Budhiyaro and others had gone for collection of *mahuwa* to forest, they stayed in one deserted hut, the appellant was sleeping along with his wife Budhiyaro and at late night, he woke up and assaulted his wife and, thereafter, he flee from the spot. Defence has cross-examined this witness at length, but has not been able to elicit any thing in his cross-examination to discredit his testimony. His evidence inspires confidence, it is trustworthy and is supported by the evidence of Kenda Ram (PW-4) and documentary evidence which are sufficient to draw inference that the appellant has caused homicidal death of deceased Budhiyaro @ Guddi.
16. As regards the question of motive, motive only aids in criminality and in case of direct evidence it loses its importance. Motive can be inferred on

the basis of the weapon used, part of the body effected, nature of injury and other similar circumstances.

17. Although this is a case of one blow, but as per evidence of Sani Korva (PW-5), the deceased was sleeping upon the floor, the appellant was sleeping beside the deceased, thereafter, he woke up at night and assaulted the deceased who was sleeping and was helpless by axe and thereafter, caused fatal injury resulting into her death. This shows the grave intention of the appellant of causing homicidal death amounting to murder.
18. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant in the aforesaid manner. 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

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