

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 994 of 2011

1. Shyam Kumar, S/o Shri Pakalu, aged about 32 years, R/o Hedaspali, Police Station Basana, Distt. Mahasamund (CG)

---- Appellant (In Jail)

Versus

1. State Of Chhattisgarh, through Police Station Basana, Distt.- Mahasamund (CG).

---- Respondent

For Appellant:
For Respondent:
Lawyer.

Shri S.P.Sahu, Advocate
Shri Vaibhav Goverdhan, Panel

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

Judgement

03/03/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 29.10.2011 passed by the 2nd Additional Sessions Judge, Mahasamund (CG) in S.T. No.61/2010 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life & fine of Rs.1,000/-, in default to undergo additional R.I. for 02 months.
2. The prosecution story, in brief, is that on 12.7.2010 at about 2.00 p.m. the deceased, aged about 7 years, was going to her school and when she reached near the house of accused/appellant, he assaulted her firstly by club and thereafter by a big stone on her head as a result of which she fell down and died instantaneously. Incident was witnessed by Chandram (PW-1), Shaukilal (PW-2) & Mohit (PW-3). At the instance of Chandram

(PW-1) un-numbered merger intimation (Ex.P-1) and un-numbered FIR (Ex.P-2) were recorded against the accused/appellant. Inquest was performed on the body of deceased vide Ex.P-5. Dead body was sent for post-mortem examination which was conducted by Dr. Bharat Bhushan Kosariya (PW-7) on 13.7.2010 vide Ex.P-9 and noticed following injuries;

- Four wounds of 2cm long, 0.5cm wide & 0.5 cm deep, were present on the left side of face & nose.
- Wound having 1cm length, 2cm width & 0.5cm depth was present on the left side of face.
- Wound having 1cm length, 2cm width & 1cm depth was present on the nose.
- Wound on the maxillary area having 2cm length, 2cm width & 1 cm depth was present.
- Wound on the ear having 1cm length, 2cm width & 0.5 cm depth was present.

He opined that cause of death was cardiac arrest due to non-functioning of brain resulting from the injuries and death was homicidal in nature.

3. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly the charge was framed by the trial Court against the accused/appellant.
4. So as to hold the accused/appellant guilty, the prosecution has examined as many as 10 witnesses. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, convicted & sentenced the accused/appellant as mentioned in para-1 of

this judgment.

6. Learned counsel for the accused/appellant submits that though three eyewitnesses namely Chandram (PW-1), Shaukilal (PW-2) & Mohit (PW-3) have been examined by the prosecution but their evidence are not reliable and trustworthy. He further submits that though the articles allegedly seized from the possession of accused were stained with blood but in absence of FSL or serological report, the same is of no help to the prosecution. Lastly he submits that even if the entire prosecution case is taken as it is, at best the accused/appellant can be held guilty under Section 304 Part-1 of the IPC and not under Section 302 of the IPC because the incident had occurred all of sudden, in the spur of moment and without any premeditation.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that there is no reason for this Court to disbelieve statements of Chandram (PW-1), Shaukilal (PW-2) & Mohit (PW-3), who are eyewitnesses of the incident.
8. We have heard learned counsel for the parties and perused the material available on record.
9. Chandram (PW-1) is the maternal grandfather of the deceased. He has stated that on the date of incident the deceased was going towards her school after having her lunch. He has further stated that since there was a meeting in the school, he was also going towards the school. He left the house for the school just after five minutes of the deceased. He has further stated that he saw the accused/appellant assaulting the deceased by bamboo stick as a result of she received injury on her head and fell down. Thereafter the accused/appellant picked-up the stone lying there

and smashed the head of the deceased with it. He has further stated that on hearing his screams, the people of vicinity came there and caught hold of the accused/appellant. Thereafter he went to the police station and lodged the report of incident. He has further stated that he does not know as to why accused/appellant committed her murder. There are minor contradictions in the statement of this witness that accused/appellant first assaulted the deceased with club and thereafter by a big stone, but the same are of no significance.

10. Shaukilal (PW-2) is another person who has witnessed the incident. He has stated that on the fateful day at about 2.00 p.m. while he along with Mohin & Chandram (PW-1) was going toward the school to attend the meeting, on the way he saw that accused/appellant first gave a stick blow to the deceased and thereafter assaulted on her head by the stone. He has also assaulted in the middle of forehead of deceased by spade. Seeing this they rushed towards the locality and came back on spot with other persons. Having been assaulted by accused/appellant, head of the deceased was smashed and bone had come out of her brain.
11. Mohit (PW-3) is also an eyewitness to the incident. He has stated that while he was going along with Shaukilal (PW-2) & Chandram (PW-1) to attend the meeting convened in the school by the teacher, he saw the accused/appellant assaulting the deceased by stick. He is also witness to the inquest (Ex.P-7) and seizure memos of Ex.P-3 to P-6.
12. Rakesh Kumar Vishwakarma (PW-4) is the Patwari who prepared the spot map (Ex.P-8).
13. Rathuram (PW-5) is the witness of inquest (Ex.P-7).
14. Rukhmai Bai (PW-7) is the mother of deceased who reached the spot immediately after the incident.
15. Dr. Bharat Bhushan Kosariya (PW-8) is the autopsy surgeon who

conducted post-mortem on the body of deceased vide Ex.P-8 and opined that cause of death of the deceased was cardiac arrest due to congestion in brain resulting from the injuries caused to the deceased and the death was homicidal in nature.

16. Chetan Yadav (PW-8) is the Assistant Sub-Inspector who lodged un-numbered Merg & FIR.
17. Nand Kishore Dubey (PW-9) is the Assistant Sub-Inspector who lodged numbered Merg & FIR.
18. Amar Singh Dhruv (PW-10) is the investigating officer and he has duly supported the prosecution case.
19. Close scrutiny of the evidence makes it clear that on 12.7.2010 at about 2.00 p.m. while the deceased was going to her school, the accused/appellant had assaulted the deceased with club, spade & big stone and the injuries suffered by her led to her instantaneous death. The incident was witnessed by Chandram (PW-1), Shaukilal (PW-2) & Mohit (PW-3) and they have categorically stated it is the accused/appellant who had assaulted the deceased with club, spade & big stone. Their evidence not only finds corroboration from the promptly lodged FIR (Ex.P-10) but also from the medical evidence wherein it has been stated that cause of death was cardiac arrest due to non-functioning of brain resulting from the injuries. This apart, at the instance of accused/appellant bloodstained clothing, club etc. were seized vide seizure memo of Ex.P-6 and report of FSL (Ex.P-19) confirms presence of blood on the articles seized from the possession of accused/appellant. Seizure witnesses namely Shaukilal (PW-2) & Mohit (PW-3) have duly supported the seizure made from the appellant. However there is no explanation from the accused/appellant as to how the blood stains are there in the articles seized from his possession. Since nothing has been brought on record

by the defence to controvert the stand of the prosecution, this Court does not find any reason to disbelieve statements of eyewitnesses who have described the incident in a lucid manner.

20. From the manner in which the accused/appellant had assaulted the deceased and the nature of injuries caused to the deceased, which were so grave and caused to such vital parts of the body, it is evident that the accused/appellant had intention to cause death of the deceased and had every knowledge that the injuries being inflicted by him on the deceased were sure to result in her death. Therefore, the argument that there was no intention on the part of the accused to commit the murder or that the offence is one that does not fall under Section 302 of IPC for conviction cannot be accepted.

21. Thus, considering the totality of facts and circumstances of case, the un-rebutted eyewitnesses' account which finds due corroboration from the medical evidence, this Court is of the considered opinion that the trial Court was fully justified in convicting and sentencing the accused/appellant under Section 302 of IPC for causing murder of the deceased.

22. In the result, the appeal being without any substance is liable to be and is accordingly dismissed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(I.S. Uboweja)
Judge

roshan/-