

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 368 of 2011

- Ram Swaroop Yadav, son of Bhagwati Yadav, aged about 28 years, resident of Kanvrakanpa, P.S. Nawagarh, District Durg, Presently R/o Ward No.2 Village Manpur, P.S. Bemetara, District Durg (CG)

**---- Appellant/Accused
(In Jail)**

Versus

- State Of Chhattisgarh, through the Station House Officer, P.S. Bemetara, District Durg (CG)

---- Respondent

For Appellant:
For Respondent:

Shri K.K. Dewangan, Advocate.
Shri Arvind Dubey, Panel Lawyer.

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

Judgement

Per P. Diwaker, J

25/04/2016

1. This appeal has been filed against the judgment of conviction and order of sentence dated 31.3.2011 passed by the Additional Sessions Judge, Bemetara in S.T. No.65/10 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 and fine of Rs.1000/-, in default to undergo additional R.I. for 01 month.
2. Accused/appellant is the husband of deceased Anjani Bai. As per case of the prosecution, marriage of accused/appellant was solemnized with the deceased about ten years prior to the date of incident and accused/appellant used to doubt the character of his wife. In the night intervening

18-19/9/2010 accused/appellant committed murder of his wife Smt. Anjani Bai by causing injuries on her neck by a sickle and thereafter fled from the spot. Incident was witnessed by Kumari Nisha (PW-8), 07 years old daughter of deceased & accused, who had informed about the incident to her maternal grand parents residing nearby and thereafter the matter was reported to the police. FIR (Ex.P-2) was registered on 19.9.2010 at 3.25 a.m. in the night. Merg intimation (Ex.P-3) was recorded on 19.9.2010 at about 3.35 a.m. Inquest on the dead body was made vide Ex.P-3. Dead body was sent for post-mortem which was conducted by Dr. Naresh Tiwari (PW-10) vide Ex.P-16 who noticed following injuries;-

- Contusion of 2x1" on the anterior surface of neck at middle.
- Incised wounds of 3"x ½" x 1" over left lateral surface of neck, obliquely placed. On dissection the injury has cut large vessel of neck and adjacent position of trachea.
- Incised wound at the middle of left lateral surface of neck of 1/6" x 1/6" at the left upper part of neck.
- Incised wound over right lateral surface of neck of 1"x 1/6".

The doctor has opined that cause of death was shock & haemorrhage. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the accused/appellant and accordingly the charge was framed against him by the trial Court.

3. The prosecution in order to bring home the charge levelled against the appellant had examined 11 witnesses in all. Statement of appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
4. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.

5. Counsel for accused/appellant submits that;
 - conviction of appellant is solely based on the evidence of Kumari Nisha (PW-2), a child witness, but her evidence does not inspire confidence and is unreliable.
 - incident took place all of a sudden and out of anger the appellant caused sickle injuries to the deceased and therefore even if the entire case of the prosecution is taken as it is, at best the appellant can be convicted under Section 304 Part-I or II IPC and not under Section 302 IPC as has been done by the trial Court.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of 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 body of the deceased was found in the house of accused/appellant where admittedly the deceased was also living but no reasonable explanation has been offered by accused/appellant in his statement recorded under Section 313 of Cr.P.C. that as to how she died and therefore his conviction under Section 302 of IPC is fully justified. He further submits that though there is no serological report but report of FSL report (Ex.P-24) confirms presence of stains of blood in the articles seized from accused/appellant and he failed to offer any explanation as to how it came on the articles seized from him.
7. We have heard counsel for the parties and perused the evidence available on record.
8. Kumari Nisha (PW-1) is a child eyewitness and daughter of deceased & accused. Before recording evidence of this witness, the Court has asked questions to her and after satisfying itself of the fact that this witness

understands the duty to speak truth and is able to rationally answer the questions put to her, the Court has examined her. She has deposed that on the fateful night upon hearing cries of her mother, she woke up and saw her father (accused) assaulting her mother. She has further stated that she could not see the weapon by which assaults were made by her father, however, after killing her mother, her father (accused) fled from there having worn the shoes. She has further stated that immediately thereafter she rushed the house of her maternal grandmother residing in the same locality and narrated the entire incident to her and thereafter her maternal grandmother came with her on the spot and found the deceased lying in dead condition. In the cross-examination she has clarified that she has not informed the police in her diary statement (Ex.D-1) that accused/appellant assaulted the deceased by sickle and if it is mentioned therein then she cannot tell the reasons. She has denied the suggestion that she does not know as to who had killed her mother. She has further denied the suggestion that at the instance of her maternal grandfather, she is making false statement against her father (accused).

9. Smt. Kumari Bai (PW-2) is the mother of deceased. While supporting the prosecution case she has stated that on the fateful night Nisha (PW-1) came to her and informed about the incident and when she & her husband reached the house of appellant, they found the deceased lying in dead condition.
10. Punaram (PW-3) is the father of deceased and he has also deposed in the fashion as deposed by Smt. Kumari Bai (PW-2).
11. Durga Sahu (PW-4) is the witness of memorandum (Ex.P-7) and seizure memo (Ex.P-8), but he has not supported the prosecution case and turned hostile. However, he has admitted his signature over the aforesaid

documents.

12. Kunwar Singh Yadav (PW-5) is the witness of inquest (Ex.P-6), memorandum (Ex.P-7) and seizure memos (Ex.P-7 to P-10). He has duly supported the prosecution case.
13. Lakeshwar Singh (PW-6) is the Patwari who prepared the spot map of Ex.P-12.
14. Ramsahay Verma (PW-7) is the another witness of inquest (Ex.P-6).
15. Dr. Naresh Tiwari (PW-10) is the doctor who performed autopsy on the body of deceased and noticed the injuries as described above. He has stated that injuries present on the body of deceased were caused by some hard & blunt and hard & soft object respectively. The query-whether the injuries present on the body of deceased could be caused by the sickle produced before him, has been answered by this witness in the affirmative. In the cross-examination this witness has clarified that though he has not mentioned in his report (Ex.P-16) about the nature of the death but according to him, it was homicidal in nature.
16. S.R. Pathare (PW-11) is the Investigating Officer and he has duly supported the prosecution case.
17. Close scrutiny of evidence makes it clear that on the midnight of 18th/19th September, 2010 the accused/appellant had caused injuries on the neck of deceased by a sickle and because of this assault, she died on the spot. The incident was witnessed by Kumari Nisha (PW-1), 7 years old daughter of accused & deceased, who had specifically deposed in her evidence that it is the accused/appellant who had repeatedly assaulted the deceased on her neck and thereafter fled from the spot having worn the shoes. Her version finds corroboration from the statements of Smt. Kumari Bai (PW-2) & Punaram (PW-3), parents of deceased, who reached

the spot on being informed about the incident by this witness. Both these witnesses have categorically stated that in the night at about 1.00 a.m. this witness came to their place and informed that her father (accused) had killed her mother (deceased) and when they reached the house of accused/appellant, they saw the deceased lying in dead condition. Evidence of Kumari Nisha (PW-1) further gets corroboration from the medical evidence wherein as many as three incised wounds were noticed on the neck region of the deceased. This apart, before recording evidence of Nisha (PW-1) the Court had asked certain questions to her and after satisfying itself of the fact that she understands the duty to speak truth and is able to rationally answer the questions put to her, it has examined her. Nothing has been brought by the defence in her cross-examination that being aged about 7 years there was any infirmity in her understanding of the facts perceived, her ability to narrate the same correctly or that she was tutored by her grandparents. Being so, we have no hesitation in holding that evidence of Nisha (PW-2) inspires confidence and is fully corroborated by other witnesses & the medical evidence and there exists no likelihood of being tutored. It is a settled principle of law that if the statement of child witness is reliable, truthful and is corroborated by other prosecution evidence, the Court can safely rely upon the statement of such witness and can form the basis for conviction as well.

18. Another circumstance pointing towards the guilt of accused/appellant is that body of deceased was recovered from the house of accused/appellant and it is proved by the prosecution that death of the deceased was homicidal in nature. Undisputedly, the house of accused/appellant where body of deceased was found was in the occupation of the two only i.e. deceased and accused/appellant, and thus in view of Section 106 of

the Evidence Act there was a corresponding burden on the accused/appellant to explain as to how death of the deceased took place, but still no reasonably convincing explanation has been offered by him in his statement under Section 313 Cr.P.C. Moreover, on the basis of disclosure statement (Ex.P-7) made by accused/appellant, bloodstained sickle & clothing were seized by the Investigating Officer vide seizure memo of Ex.P-8 and the report of FSL (Ex.P-24) confirms the presence of bloodstains on the articles so seized. The questions in this regard were put to the accused during his statement under Section 313 Cr.P.C., but except vague denial, the accused said nothing more.

19. From the nature of the injuries caused to the deceased, it is clear that they were so grave and caused to such vital part of the body of deceased i.e. neck, that there can be no doubt that the intention of the appellant was to cause such bodily injuries which lead to her death. Therefore, the argument that there was no intention on the part of the accused/appellant to commit the murder or that the offence is one that does not fall under Section 302 IPC for conviction cannot be accepted.
20. For the reasons set out above, this Court is of the considered opinion that the findings recorded by the Court below are based on due appreciation of the evidence available on record. That being so, the judgment impugned does not call for any interference. Accordingly, the appeal being without substance is liable to be dismissed and it is dismissed as such. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-