

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 855 of 2010

- Sheetal, S/o Ramphal, aged about 30 years, Caste - Gond, Occupation - Farmer.

- Raju @ Kaira S/o Kallu, aged about 21 years,

Both are R/o Vill. Manja, P.S. Ramanujnagar, Distt.-Surguja, C.G.

---- Appellants

In Jail

Versus

- State Of Chhattisgarh, Through P.S. Ramanujnagar, Distt. Sarguja (CG)

---- Respondent

For appellants : Shri H.S. Ahluwalia, Advocate.

For Respondent/State : Shri Chandresh Shrivastava, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board by Justice P. Diwaker

12/01/2016

This appeal arises out of the judgment of conviction and order of sentence dated 28.8.2010 passed by the First Additional Sessions Judge, Surajpur, Distt. Surguja in S.T.No.21/2010 convicting each of the accused/appellants under Section 376(2)(g) and 302/34 of IPC and sentenced to undergo imprisonment for life and fine of Rs.50/- on each count with default stipulations.

02. Brief facts of the case are that on 27.11.2009 in between 2-3 pm the accused/appellants entered the house of the prosecutrix/deceased,

aged about 12 years, and after ravishing her committed her murder. When the brother and sister of the deceased along with their friends returned to their houses from school, they found the house of the deceased closed from all side, they called the deceased but when no response came, they called Dashmet (PW-5). Dashmet also called the deceased, but the door was not opened. One of the doors was closed from inside whereas the another door was closed from outside. Then Dashmet along with the other children entered the house after opening the latch of the door and saw that the deceased was lying dead in the kitchen drenched with blood. Dashmet informed about the same to Jamuna Prasad (PW-1), uncle of the deceased, who in turn rushed to the spot and after seeing the place of occurrence and the dead body, lodged FIR (Ex.P/1) at 17:05 hours on 27.11.2009 against unknown persons. Based on this report, offence under Section 302 of IPC was registered against unknown persons. Merg intimation Ex.P/5 was also registered on 27.11.2009 by PW-1 Jamuna Prasad. Inquest (Ex.P/4) over the dead body was prepared and the body was sent for postmortem which was conducted on 28.11.2009 by PW-10 Dr.H.P.Singh vide Ex.P/12 wherein the doctor notice multiple injuries on her body, fracture of various skull bones including nose bone, tear of genital and lower fornix. In his opinion, the cause of death was syncope due to sudden shock over frontal region by heavy sharp object after sexual intercourse and the death was homicidal in nature. During investigation, it revealed that the accused/appellants were seen near the house of the deceased carrying bamboo sticks in their hands and one witness also saw them coming out from her house and bolting the door from outside. Hence the appellants were interrogated and on

their memorandums recovery of certain articles was made. After investigation charge sheet was filed against the appellants and accordingly, charges under Sections 376(2)(g) and 302/34 of IPC were framed.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 10 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned in para-1 of this judgment.

05. Learned counsel for the appellants submits as under:

(i) that the accused/appellants have been falsely implicated, their conviction is based on circumstantial evidence but the circumstances relied upon by the trial Court are not so conclusive to base their conviction under Section 376(2)(g) and 302 of IPC.

(ii) that statements of PW-2 Suchendra Prasad and PW-6 Sunita are not reliable and likewise, PW-4 Hemlata, a child aged about 7 years, also appears to be a tutored witness.

(iii) that the chain of circumstances against the appellants has not been proved beyond doubt and the articles seized at their instance cannot be used against them in absence of FSL report.

(iv) that the so-called unnatural conduct of appellant No.1 Sheetal as

stated by PW-3 cannot be considered against him.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that there is no reason for this Court to disbelieve the statements of PW-2 and PW-6 who saw the accused/appellants near the house of the deceased on the date of incident. He further submits that PW-4 has categorically stated that he saw the accused/appellants coming out from house of the deceased and then bolting the door of her house from outside. It is further argued that on the basis of memorandum of the accused/appellants, certain articles were seized and as per query report Ex.P/13, blood was found on those articles. He further submits that it has also been opined by the doctor that the injuries suffered by the deceased could have been caused by the seized wooden *Peeda* (a kind of low stool), iron *Jhara*, bamboo stick and sickle.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Jamuna Prasad is uncle of the deceased and lodger of FIR (Ex.P/1). He has stated that on the date of incident he was working in his field and at about 4 in the evening, his niece Dashmet informed him that the deceased is lying in her house in pool of blood with injuries on her head and face. When he reached the place of occurrence, he saw his niece lying flat in the room and there was no clothe below her waist. He has stated that near the dead body, there were a wooden *Peeda*, a bamboo stick, a *chhilni* (a knife like object used for peeling off certain vegetables) and all these articles were stained with blood. He has

further stated that he was informed by Suchendra Prasad (PW-2) that he saw the appellants going towards the house of the deceased carrying bamboo stick in their hands. He has proved FIR (Ex.P/1). He is also a witness to spot map (Ex.P/2), inquest (Ex.P/4) and merger intimation (Ex.P/5).

09. PW-2 Suchendra Prasad has stated that he knew the accused/appellants as also the deceased, who was his neighbour. He has stated that the deceased was murdered and certain articles stained with blood were seized from the place where dead body was lying. He has further stated that there was no cloth below the waist of the deceased. In para-5 he has stated that a day prior to the incident he had seen both the appellants near the house of the deceased in the evening and on the date of incident also, he saw the appellants near the house of the deceased and at that time appellant Sheetal was carrying bamboo stick in his hand. He is a witness to memorandums (Ex.P/6 & P/7) of the appellants and seizure (Ex.P/8 & P/9) effected in pursuance thereof whereby a shirt and an iron *Jhara* stained with blood at the instance of appellant Sheetal and one sickle and an underwear bearing sperms at the instance of appellant Raju were seized. He has proved the memorandums and the seizure. He has also supported the seizure Ex.P/10 made from the spot by which one petticoat, one wooden *Peeda*, one bamboo stick, one *chhilni*, all stained with blood and plain as well as bloodstained soil were seized. In para-20 he has clarified that just prior to the incident he had seen the accused/appellants going towards the house of the deceased carrying bamboo sticks in their hands and the same sticks were found near the

body of the deceased.

10. PW-6 Sunita appears to be sister in relation to the deceased. She too has stated that at the relevant time when she was working in her *Kothar*, she saw accused/appellant Sheetal going towards the house of the deceased carrying bamboo stick in his hand, he was drunk and was muttering something. She has stated that the bamboo stick which was being carried by appellant Sheetal was the same stick subsequently found near the body of the deceased.

11. PW-3 Devendra Prasad has stated that the deceased was murdered in the house and after seeing her dead body while he was returning, on the way he met appellant Sheetal, he was drunk. Accused/appellant Sheetal asked him “whether she (deceased) has died?” and then he (PW-3) told him that she has died, all are going to see her and as to why he (appellant Sheetal) is not going, on which Sheetal kept mum.

12. PW-4 Hemlata, a child witness, has stated that after returning from school when she along with other children was playing near the house of the deceased, she saw the accused/appellants going away after bolting the door of house of the deceased. She has stated that appellant Sheetal told her to run away from there otherwise he would kill her and later she came to know that the deceased has been murdered.

13. PW-5 Dashmet, a child witness, aged about 15 years, has stated that after returning from school along with Namita and Chhatrapal, who are sister and brother of the deceased, she was informed by Namita

and Chhatrapal that door of their house is closed, on which she went along with them to their house and found the house closed from inside, however, the another door was closed from outside. She opened the said door, entered the house and found the deceased lying in pool of blood in the kitchen. Thereafter, she informed about the same to her uncle Jamuna Prasad. She has duly supported the prosecution case.

14. PW-7 Dilkunwar has stated that he was informed by PW-4 Hemlata that she saw the accused/appellants bolting the door of house of the deceased from outside. PW-9 C.R. Rajwade, investigating officer, has duly supported the prosecution case. PW-10 Dr.H.P. Singh conducted postmortem on the body of the deceased on 28.11.2009 vide Ex.P/12 wherein he notice multiple injuries on her body, fracture of various skull bones including nose bone, tear of genital and lower fornix. In his opinion, the cause of death was syncope due to sudden shock over frontal region by heavy sharp object after sexual intercourse and the death was homicidal in nature. In his query report Ex.P/13, he has opined that the injuries suffered by the deceased could be caused by the seized articles i.e. wooden *Peeda*, bamboo stick, *Jhara*, sickle and *Chhilni*.

15. Close scrutiny of the evidence makes it clear that on 27.11.2009 the accused/appellants gained entry in the house of the deceased and after committing rape committed her murder by causing several injuries to her. PW-2 Suchendra Prasad has stated that a day prior to the incident he had seen both the appellants near the house of the deceased in the evening and on the date of incident also, he saw the appellants near the house of the deceased and at that time appellant

Sheetal was carrying bamboo stick in his hand. In para-20 he has clarified that just prior to the incident he had seen the accused/appellants going towards the house of the deceased carrying bamboo sticks in their hands and the same sticks were found near the body of the deceased. Similarly, PW-6 Sunita who appears to be sister in relation to the deceased has also stated that at the relevant time when she was working in her *Kothar*, she saw accused/appellant Sheetal going towards the house of the deceased carrying bamboo stick in his hand, he was drunk and was muttering something. She has further stated that the bamboo stick which was being carried by appellant Sheetal was the same stick subsequently found near the body of the deceased. Both these witnesses have duly supported the prosecution case. Furthermore, as per statement of PW-4 Hemlata, a child witness, she saw the appellant Sheetal going out from the house of the deceased after bolting the door from outside and on seeing her, he threatened her to run away from there. There is no reason for this Court to disbelieve their statements. They appear to be natural witnesses and their evidence inspire confidence of the Court.

16. This apart, based on the memorandums (Ex.P/6 & P/7) of the appellants, seizure (Ex.P/8 & P/9) of certain articles was made, which were found to be stained with blood. The witnesses to memorandums and seizure have fully supported the prosecution case. As per query report Ex.P/13, the doctor has opined that the injuries sustained by the deceased could be caused by the articles seized at the instance of the appellants. Besides this, conduct of appellant Sheetal is also very relevant. According to PW-3 Devendra Prasad after seeing the body of

the deceased while he was returning, on the way he met appellant Sheetal, who was drunk and on seeing him, accused/appellant Sheetal asked him "whether she (deceased) has died?" and when he asked appellant Sheetal as to why he is not going to see the deceased, appellant Sheetal kept quiet.

17. PW-1 Jamuna Prasad has stated that on being informed by his niece Dashmet when he reached the place of occurrence he saw the deceased lying flat in pool of blood with no clothe below her waist. Likewise, PW-2 Suchendra Prasad has also stated that when he saw the dead body, there was no clothe below her waist. As per seizure memo (Ex.P/9) whereby underwear of appellant Raju was seized, it was stained with sperms. PW-10 Dr.H.P. Singh, who conducted postmortem of the deceased, has opined that the deceased was subjected to sexual intercourse soon before her death as certain injuries were noticed by him on the vaginal part of the deceased. All these circumstances, if taken cumulatively, make it clear that the accused/appellants before committing murder of the deceased had subjected her to forcible sexual intercourse.

18. Thus, in totality of the facts and circumstances of the case, in particular the evidence of PW-2, PW-4 and PW-6, coupled with the medical evidence corroborating their statements, and the conduct of the accused/appellant at the time of incident and subsequent thereto, we are of the considered opinion that the prosecution has been successful in proving the guilt of the accused/appellant based on circumstantial evidence beyond reasonable doubt. Being so, the findings recorded by the trial Court holding the accused/appellants

guilty under Section 376(2)(g) and 302 of IPC cannot be faulted with.

19. In the result, the appeal being devoid of any substance is liable to be dismissed and is, accordingly, dismissed. The appellants are reported to be in jail, therefore, no further order regarding their surrender etc. is required.

20. Before we part with the case, we note with a lot of concern that notwithstanding series of decisions by the Apex Court that name of the victim of sexual assault should not be indicated in the judgment in order to prevent social victimization or ostracism of the victim, the trial Judge has done the reverse. This speaks volumes of judicial indiscipline.

Registrar General to send a copy of this judgment to the concerned Judge and also inform him that in future he has to be careful while writing judgments involving offences specified in Section 228A of IPC.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(C.B. Bajpai)

Judge