NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 906 of 2010

Tej Ram Manjhi, S/o, Shri Dokri Manjhi, aged about 30 years, R/o village Kosampali, Police Station Tamnar, presently R/o Chirramuda, Police Station Tamnar, Distt. Raigarh (CG)

---- Appellant

Versus

State of Chhattisgarh through Station House Officer, Police Station Gharghoda, Distt. Raigarh (CG)

---- Respondent

For appellant : Mr. Manoj Jaiswal, Advocate.
For Respondent/State : Mr. Adil Minhaj, Panel Lawyer.

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

Judgment on board by Justice Pritinker Diwaker

15/01/2016

1. This appeal arises out of judgment of conviction and order of sentence dated 10-11-2010 passed by the 3rd Additional Sessions Judge, FTC, Raigarh in S.T. No. 29/2010 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life.

2. Brief facts of the case are that on 23-12-2009 Gaura dance was organized at village Chirramuda in which complainant Sadhmati Manjhi was taking part along with her niece Santoshi (deceased aged 6 years). It is alleged that at about 9.00 pm accused/appellant had asked the complainant to hand over said minor Santoshi to him so that he can dance along with her. After about 1 hour, when the complainant looked for her niece and the appellant, she found them missing and then started searching them. It is further alleged that the complainant informed this fact to P.W. 6 Panchu Manjhi and P.W. 5 Sadhuram Manjhi and in turn they started search for appellant and the deceased. During said search, villagers found the accused/appellant returning from village Durridipa and when they inquired from him, he informed

them that after taking the deceased to jungle he had sacrificed her by throttling her neck by her frock. Villagers immediately rushed to the spot and saw the dead body of the deceased. Based on the information given by P.W. 1 Sadhmati Manjhi, merg intimation P.W. 19 was recorded on 24-12-2009 at 9.05 am. On the same day, FIR Ex. P-1 was registered against the accused/appellant under Section 302 of IPC. Inquest on the dead body was performed on 24-12-2009 by P.W. 14 Dr. Dhan Singh Paikra vide Ex. P-15. The autopsy surgeon noticed that ligature mark was present on the neck, knot was two, three round frock on the neck, left side saliva present, hyoid bone fractured and thyroid cartilage fractured, black dot present on the yellow colour frock and, Rigor mortis present, bruise present on face and both arms. The autopsy surgeon opined that mode of death was asphyxia due to throttling caused by cardiorespiratory arrest, death was homicidal in nature and death period within 12 to 15 hrs. After investigation, charge sheet was filed against the accused/appellant for the offence punishable under Section 302 of IPC and charge was also framed accordingly.

3. In order to establish the guilt of the accused/appellant the prosecution has examined 19 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C, in which he denied the charge levelled against him, pleaded innocence and false implication in the crime in question.

4. After hearing the counsel for the respective parties and considering the material available on record, by the impugned judgment, the trial court has convicted and sentenced the appellant as mentioned in para 1 of this judgment.

5. Learned counsel for the appellant submits that :

i. the accused/appellant has been falsely implicated by the family members because of old enmity.

ii. the witness of last seen and extra judicial confession are not reliable and most importantly nobody had seen the accused/appellant taking the deceased with him.

iii. there is no reason for the accused/appellant to commit the murder of

the deceased and there is no evidence of human sacrifice.

Lastly it has been argued that the appellant is in jail since last more than 6 years and after converting his offence under Section 304-I, IPC his sentence be reduced accordingly.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that there is enough evidence of last seen and that apart, there is number of witnesses before whom extra judicial confession was made by the accused/appellant. He further submits that at the instance of the accused/appellant, dead body of the deceased was found in jungle and this important evidence makes it clear that it is the appellant who committed murder of the deceased.

7. P.W. 1 Sadhmati Manjhi is aunt of the deceased and the complainant who lodged Ex. P-19 merg intimation and Ex. P-1 FIR. She has stated that Gaura dance was being organized in the village and she had gone to attend the said dance along with the deceased. During dance, accused/appellant came and asked her to allow him to perform the dance with the deceased and then he started dancing carrying the deceased. He has further stated that thereafter when she did not find the appellant and the deceased, she informed this fact to P.W. 6 Panchuram Manjhi and P.W. 5 Sadhuram Manjhi and in turn they also informed P.W. 2 Jotram Manjhi and thereafter the villagers started searching the appellant and the deceased. During said search, they came to know that it is the accused/appellant who had killed the deceased. She has further stated that she and her family members were not having good relations with the accused/ appellant and they were not in talking terms.

8. P.W. 2 Jotram Manjhi is father of the deceased before whom extra judicial confession was made by the accused/appellant. He has stated that P.W. 1 Sadhmati Manjhi, P.W. 5 Sadhuram Manjhi and P.W. 6 Panchuram Manjhi had informed the villagers that the appellant and the deceased are missing and during search they had gone to the house of the appellant and inquired as to where the deceased had gone. When they threatened the appellant, he informed them that he had killed the deceased. Thereafter the accused/appellant took the villagers to the place where the dead body of the deceased was lying.

9. P.W. 3 Veer Singh Manjhi is a witness of inquest Ex. P-4, spot map Ex. P-6, Panchnama Ex. P-7 and seizure of clothes of the deceased Ex. P-8 and has duly supported the prosecution case. P.W. 4 Bundeshwar Nishad is also a witness of last seen and has duly supported the prosecution case. P.W. 5 Sadhuram Manjhi is the villager before whom extra judicial confession was made by the appellant and has duly supported the prosecution case. P.W. 6 Panchuram Manjhi is a witness of last seen and extra judicial confession and has categorically supported the prosecution case and has stated as to the manner in which the appellant confessed the offence. P.W. 7 Sat Kumar Gond has turned hostile. P.W. 8 Puniram Behra and P.W. 9 Mohar Sai are villagers before whom extra judicial confession was made by the appellant and they have duly supported the prosecution case. P.W. 10 Mukutram Manjhi is a witness of last seen and extra judicial confession and has duly supported the prosecution case. P.W. 11 Ratiram Chauhan is a witness of inquest Ex. P-4, spot map Ex. P-6, Panchnama Ex. P-7, seizure of clothes of the deceased Ex. P-8 and has supported the prosecution case. P.W. 12 Amrud Manjhi is the witness of last seen and extra judicial confession and has supported the prosecution case. P.W. 13 Chhotelal Prabhakar has prepared spot map. P.W. 14 Dr. Dhan Singh Paikra has conducted port mortem and has opined that the mode of death of the deceased was asphyxia due to throttling caused by cardio respiratory arrest, nature of death was homicidal in nature. P.W. 17 Pramod Xess is the investigating officer and has duly supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that on 23-12-2009, it is the accused/appellant who killed the deceased by throttling. He took the deceased aged about 6 years from P.W. 1 Sadhmati Manjhi on the pretext of performing Gaura dance with her and after performing dance for some time, he took her to jungle and killed her by throttling. P.W. 1 Sadhmati Manjhi when not found them, informed P.W. 5 Sadhuram Manjhi and P.W. 6 Panchuram Manjhi. Thereafter villagers made a search for both and went to the house of the deceased and when inquired about the deceased, the appellant confessed that he

had killed her. He made extra judicial confession before P.W. 5 Sadhuram Manjhi, P.W. 6 Panchuram Manjhi, P.W. 8 Puniram Behra and P.W. 9 Mohar Sai. P.W. 10 Mukutram Manjhi is witness of last seen and extra judicial confession. P.W. 14 Dr. Dhan Singh Paikra who performed the autopsy has also supported the case of the prosecution and opined that mode of death was asphyxia due to throttling caused by cardio respiratory arrest and the nature of death was homicidal in nature. The dead body of the deceased was recovered at the instance of the accused/appellant. In view of the evidence available on record, this court is of the considered opinion that it can safely be held that it is the accused/appellant who has committed murder of the deceased.

11. We find no substance in the argument of learned counsel for the appellant that he is liable to be convicted under Section 304-I of the IPC for the reason that the accused has killed a six years old child by throttling. He took her from P.W. 1 Sadhmati Manjhi on the pretext of performing Gaura dance with her and took her to jungle and killed her. The autopsy surgeon also noticed that hyoid bone and thyroid cartilage were fractured. Therefore, in the opinion of this court, the trial court has rightly convicted the appellant under Section 302 of IPC and there is no scope for interference in conviction of the appellant.

12. Appeal thus being without any merit is liable to be dismissed and it is hereby dismissed. Since the appellant is reported to be in jail, no further order regarding his surrender etc. is required.

Sd/-
Pritinker Diwaker
Judge

Sd/-
Chandra Bhushan Bajpai
Judge

Pathak