



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 449 OF 2006

Charitar son of Bipat, aged 45 years, occupation Agriculture, R/o.
Village Indrapur (Khor), Distt. Sarguja (CG)

---- Appellant

Versus

State of Chhattisgarh through Police Station Ramanujganj, Distt.
Sarguja (CG)

---- Respondent

For appellant : Shri Vivek Shrivastava, Advocate
For Respondent : Shri Vivek Sharma, Govt. Advocate.

DB : HON'BLE SHRI PRITINKER DIWAKER AND
HON'BLE SHRI CHANDRA BHUSHAN BAJPAI, JJ

ORAL JUDGMENT

Per Pritinker Diwaker, J

4-10-2016

1. This appeal arises out of the impugned judgment of conviction and order of sentence dated 18-4-2006 passed by the 1st Additional Sessions Judge (FTC), Ramanujganj, Sarguja in S.T. No. 313/2005 convicting the appellant under Section 302 of the IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs. 100/-, in default of payment of fine to further undergo additional RI for one month.
2. In the present case, name of the deceased is Kalo Bai, wife of the appellant. It is alleged that on 28-4-2005, the appellant and the deceased had left for the jungle for collecting Mahua and thereafter they did not return and the appellant went missing since that day. On 30-4-2005 in the morning hours, dead body of the deceased was found in the jungle and the same was seen by one Sohar Kodaku who informed the same to P.W. 1 Hari. However till 4-5-2005 the dead body remained lying there and

ultimately the same was brought to police station in the skeleton form on 4-5-2005 by the villagers. Merg intimation Ex. 1 was recorded on 4-5-2005 and thereafter FIR Ex. P-2 was registered against the appellant on the same day on the suspicion shown by the villagers that as the appellant had left along with the deceased for the jungle, it is he who might have killed the deceased. Inquest on the dead body was prepared vide Ex. P-7. The body was sent for post mortem which was conducted on 4-5-2005 vide Ex. P-13 by P.W. 12 Dr. Sudhir Kumar Sinha and as the body was in the skeleton form, no definite opinion about the mode and type of death could be given by the doctor nor the doctor has stated that the death was homicidal in nature. After filing of charge sheet, while framing of charge, the trial Court framed charge against the appellant under Section 302 of the IPC.

3. So as to hold the appellant guilty, prosecution has examined 12 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him, pleaded innocence and false implication in the crime in question. By the impugned judgment, the trial Court has convicted and sentenced the accused/appellant under Section 302 of the IPC. Hence this appeal.

4. Learned counsel for the appellant submits that :

- The present is a case of no evidence but yet the appellant has been convicted solely on the basis of his conduct because he went missing from 28-4-2005.
- It has been argued that even if the conduct of the appellant was doubtful, merely on that basis the appellant could not have been



convicted.

- The trial Court has utterly failed to prove the death of the deceased to be homicidal.
 - Even memorandum of the accused has not been recorded by the prosecution and the seizure of axe vide Ex. P-6 has been made in the police station and it has no connection with the commission of murder of the deceased.
5. On the other hand, while supporting the impugned judgment, it has been argued by learned counsel for the State that conviction of the appellant is in accordance with law and there is no infirmity in the same.
6. P.W. 1 Hari is uncle of the appellant. He has stated that the accused-appellant and the deceased had gone to jungle for collecting Mahua and villager Dugan saw the dead body of the deceased lying in the jungle. He has further stated that after receiving the said information, he along with said Dugan went to the jungle and identified the body of the deceased and after returning, gave information to the villagers who started guarding the body. He has further stated that the information was given to the police and then merged intimation Ex. P-1 was lodged. He is also a witness of FIR Ex. P-2, spot map Ex. P-3, seizure of axe and soil Ex. P-6, inquest Ex. P-7. He has not made any allegation against the appellant and he saw the accused-appellant after the incident for the first time in the Court.
7. P.W. 2 Rajnath also saw the dead body of a lady in jungle and identified the same. He is also a witness of seizure Ex. P-6 and inquest Ex. P-7. P.W. 3 Chitaman saw the dead body of the deceased and identified the same. He is also a witness of inquest

Ex. P-7. P.W. 4 Heeraman and P.W. 5 Basdhet have also made almost similar statements as made by P.W. 3 Chitaman. P.W. 6 D.C. Tiwari is the investigating officer and he has supported the prosecution case. P.W. 7 S.S. Amlesh has conducted identification of the weapon and has stated that the axe was identified by the accused. P.W. 8 Ramashankar has prepared spot map Ex. P-12. P.W. 9 Vishwanath is a witness of inquest Ex. P-7. P.W. 10 Bholaram is a witness of identification of axe vide Ex. P-11. P.W. 12 Dr. Sudhir Kumar Sinha has conducted autopsy vide Ex. P-13 and has opined that no opinion can be given regarding mode and type of death.

8. Close scrutiny of the evidence makes it clear that there is absolutely no evidence against the appellant on which basis he can be convicted. The trial Court has erred in law in convicting the appellant solely on the basis of his conduct that he went missing from 28-4-2005. Even accepting that the appellant was missing from the village but merely on that basis he could not be convicted for murder of his wife unless some other evidence is adduced by the prosecution unerringly pointing towards his guilty.
9. In the result, the appeal succeeds. The impugned judgment dated 18-4-2006 is set aside. The appellant is acquitted of the charge under Section 302 of the IPC.
10. Since the appellant is reported to be on bail, no further order is required.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Chandra Bhushan Bajpai)
Judge