

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 358 of 2012

- Dwarika Sahu S/o Banshilal Sahu, aged about 30 years, R/o Village Kudhari , P.S. Sarangarh , Distt. Raigarh (CG)

**---- Appellant
(In Jail)**

Versus

- State of Chhattisgarh Through – Police Station Sarangarh, District Raigarh (CG)

---- Respondent

For Appellant:
For Respondent:

Shri L.C. Dash, Advocate.
Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice P.S. Koshy

Judgement

Per P. Diwaker, J

21/04/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 31.3.2012 passed by the Additional Sessions Judge, Sarangarh, District Raigarh in S.T. No.32/10 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo imprisonment for life & fine of Rs.2,000/-, in default to undergo additional R.I. for 06 months.
2. The prosecution story, in brief, is that on 15.6.2010 at about 6.00 a.m. due to on-going land dispute the accused/appellant had assaulted the deceased with gandasa (chopper for cutting fodder) and chopped off her right hand. When she tried to ran away, accused/appellant chased her and caused multiple injuries to her which resulted into her instantaneous death. At the instance of Kailash Sahu Dehati Merg Intimation (Ex.P-4)

was recorded on 15.6.2010 at 7.35 p.m. and thereafter dehati nalishi (Ex.P-3) was recorded at 7.45 a.m. On the basis of Merg, FIR (Ex.P-2) was registered on 15.6.2010 against the accused/appellant for the offence under Section 302 IPC. Inquest was prepared vide Ex.P-1. Body of the deceased was sent for post-mortem which was conducted by Dr. B.P. Sai (PW-11) on 15.6.2010 vide Ex.P-16 and noticed following injuries:-

- Incised wound of 10x6cm size at the right side of neck.
- Incised wound of 6x2cm size over chin
- Incised wound of 9x8cm size at right wrist.
- Amputated right palm from wrist joint.
- Incised wound of 3x1.5cm size on the chest. Muscle deep.
- Incised wound of 1.5 x 1 cm over right shoulder.
- Incised wound of 3x2cm size at left index finger, clotted blood present.
- Incised wound of 2x1cm size at middle finger.

The doctor has opined that cause of death was haemorrhagic shock due to wrist & head injuries and death was homicidal in nature. After completion of investigation, charge sheet was filed against the accused/appellant and the trial Court has framed the charge under Section 302 IPC against him.

3. So as to hold the accused/appellant guilty, the prosecution examined as many as 15 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, pleaded innocence and false implication.
4. After hearing the parties, the trial Court found that the charge under Section 302 IPC has been proved beyond reasonable doubt against the accused/appellant and he was accordingly convicted and sentenced therefor, as mentioned earlier.
5. Learned counsel for the accused/appellant submits that;

- conviction of appellant is substantially based on the evidence of PW-8 Kumari Rama Sahu, a child witness, but her evidence does not inspire confidence for the reason that it has come in the evidence that this witness was tutored by her maternal grandfather. Further, presence of this witness on the spot at the relevant time is also doubtful because according to PW-14 Uditram at the time of incident she came to his house for watching television.
 - there exists a land related dispute between appellant and deceased due to which he has been falsely implicated in the crime in question.
 - 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 as has been done by the trial Court.
 - Appellant is in jail for the last about six years, therefore, after converting his conviction into Section 304 Part-1, he may be sentenced to the period of detention already undergone by him.
6. 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 statement of Rama Sahu (PW-8), who is an eyewitness of the incident. The appellant had caused as many as six injuries to the deceased in inhuman manner which shows his grave intention of causing homicidal death, amounting to murder, of the deceased.
7. We have heard learned counsel for the parties and perused the material available on record.
8. Jaitram (PW-1) is the witness of inquest (Ex.P-1).

9. Kailash Chandra Sahu (PW-2) is the person at whose instance Dehati Merg Intimation & Dehati Nalish were recorded. However, he has not supported the prosecution case and turned hostile.
10. Sriram Sahu (PW-3) has not supported the prosecution case and has been declared hostile by the prosecution.
11. Ghasiya Sahu (PW-4) is the witness of village meeting convened in the village in connection with dispute between appellant and deceased.
12. Janki Bai (PW-5) & Kushwa Sahu (PW-6) are the witnesses of inquest (Ex.P-1).
13. Narayan Sahu (PW-7) has not supported the prosecution case and turned hostile.
14. Rama Sahu (PW-8), a child witness aged about 13 years, is the daughter of deceased and an eyewitness of the incident. The trial Court before recording statement of this witness had satisfied itself that she had capacity to understand and to give rational answers. This witness has stated that at the time of incident she was sitting in the verandah and from there she had witnessed the incident. She has stated that accused/appellant had assaulted her mother by *gandasa* as a result of which her right hand got chopped off. When her mother started running towards the road, the accused/appellant chased her and gave repeated blows of *gandasa* on her neck. In the lengthy cross-examination this witness remained very firm and the defence has not been able to elicit anything from her which makes her evidence unreliable or doubtful. Rather, she has denied the suggestion of being tutored by her maternal grandfather or being present in the house of Uditram (PW-14).
15. Laksheshwar (PW-8A) is the person who reached the place of occurrence after the incident had taken place and saw the body of the deceased. He has stated that Kailash Sahu (PW-2) informed him that it is the

accused/appellant who had murdered the deceased. He has stated that after commission of the offence, the accused/appellant had left the village and thereafter the matter was reported to the police. He is also a witness to memorandum (Ex.P-9) and seizure memos (Ex.P-10 to P-13).

16. Giledbeen (PW-10) has stated that a day prior to the incident the deceased had lodged the report against the appellant.

17. Dr. B.P. Sai (PW-11) is the person who conducted post-mortem examination on the body of the deceased and gave his report of Ex.P-16. According to this witness, he noticed as many as seven injuries on the body of deceased including amputated right hand from wrist and opined the cause of death as haemorrhagic shock due to head & wrist injuries and the death was homicidal in nature. The query raised by the police – whether injuries present on the body of the deceased could be caused by the *gandassa* produced before him, has been answered by this witness in the affirmative vide Ex.P-18.

18. Laxman Das (PW-12) is the another witness who reached the place of occurrence after the incident had taken place. He has also proved the factum of dispute between accused and deceased.

19. Dharamu Yadav (PW-13) is the witness of Inquest (Ex.P-1) and seizure memos (Ex.P-12 & P-13).

20. Udit Ram (PW-14) is the witness of memorandum (Ex.P-9) and seizure memos of Ex.P-10 & P-11, however, he has not supported the prosecution case and turned hostile.

21. Karnal Singh Bal (PW-15) is the investigating officer and he has duly supported the prosecution case.

22. Close scrutiny of the evidence makes it clear that on 15.6.2010 at about 6.00 a.m. in the morning the accused/appellant had assaulted the deceased with *gandasa* and injuries suffered by her led to her death. The

incident was witnessed by Kumari Rama Sahu (PW-8), daughter of deceased, who had seen the accused chasing and assaulting the deceased by *gandasa*. Statement of this witness gets corroboration from the FIR (Ex.P-2) lodged immediately after the incident lodged by Kailash Sahu (PW-1), a hostile witness, naming therein the accused/appellant as the perpetrator of offence. Her evidence further gets corroboration from the medical evidence according to which the cause of death was haemorrhagic shock due to injuries on head & wrist caused by sharp object. The query raised by the prosecution as to whether the injuries present on the body of the deceased could be caused by the seized *gandasa*, was also answered by the doctor in affirmative. This apart, on the basis of disclosure statement (Ex.P-9) made by accused/appellant, bloodstained clothing etc. were recovered vide seizure memos of Ex.P-11 & Ex.P-12 and there is no explanation from the accused/appellant as to how the blood stains are there in the articles seized from his possession. Since Kumari Rama Sahu (PW-8), daughter of deceased, has categorically stated to have seen the entire incident by sitting in her courtyard, the statement of Uditram (PW-14) showing her presence at the relevant time in his own house for watching television does not convince the conscience of this Court because at the beginning of the day nobody would unnecessarily go to the house of anyone for watching television. Description of the incident made by Rama Sahu (PW-8) as to in what manner the deceased was assaulted by the accused appears to be quite trustworthy and this Court does not see any reason to disbelieve the same.

23. Further, we find no substance in the argument of counsel for the accused/appellant that in the facts & circumstances of case accused/appellant is liable to be held guilty under Section 304 Part-I of the IPC. From the

nature of the injuries caused to the deceased, it is clear that they are so grave and caused to such vital part of the body like neck, that there can be no doubt that the intention of accused/appellant was to cause death of the deceased and had every knowledge that bodily injuries being inflicted by him on the deceased would lead to her death.

24. 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.

25. In the result, the appeal being devoid of substance is liable to be and is, accordingly, dismissed. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(P.S. Koshy)
Judge

roshan/-