

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 546 of 2012

- Jeremius Tirky, S/o. Martial Tirky, aged about 31 years, R/o. Village Menderbagha, Police Station Pharsabaha, District – Jashpur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through : The Station House Officer, Police Station – Balrampur, District – Surguja (C.G.)

---- Respondent

For Appellant : Mr. Raj Kumar Pali, Advocate.
For Respondent/State : Mr. Ashish Shukla, Government Advocate.

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

Delivered on : 14/03/2016

Per, I.S. Uboweja, J.

1. Challenge in this appeal is to the judgement of conviction and order of sentence dated 31.12.2011 passed by the First Additional Sessions Judge, Ambikapur, District – Surguja (C.G.) in Sessions Trial No. 538/2009, whereby and whereunder the trial Court after holding guilty for causing homicidal death amounting to murder of Surajmati using deadly weapon, convicted the appellant under Section 302 of the IPC & under Section 27(1) of the Arms Act and sentenced him to undergo imprisonment for life & to pay fine of Rs.1,000/-, in default of payment of fine amount to undergo further R.I. for four months and to undergo R.I. for three years & to pay fine of Rs.500/-, in default of payment of fine amount to undergo further R.I. for two months.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on the fateful night of 12.10.2009 at about 8.30 p.m., Rajendra Ram alias Ragendra (PW-1), nephew of deceased Surajmati and Charan Ram (PW-5) were eating and drinking in the house of the deceased. At this juncture accused/appellant, who was the Police Constable, entered the house of deceased along with his service rifle and demanded food articles from deceased and followed her upto kitchen. Rajendra Ram and Charan Ram left the house after taking their meals. Later on, in the night, Rukmani (PW-9), who was the tenant of deceased and residing adjacent to the house of the deceased, heard the voice of appellant that "चला दूँ चला दूँ" thereafter, heard thrice sounds of gunshot. She came out of her house and intimated to other neighbours what she heard. When they entered the house of deceased Surajmati, they found her dead body killed by the accused with the help of service rifle. Matter was intimated to police station, Balrampur by Rajendra Ram (PW-1) and the Merg (Ex.P-17) was lodged. After preliminary enquiry the First Information Report (Ex.P-16) was registered against the appellant.
4. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P-10, inquest over the dead body of the deceased was prepared vide Ex.P-11. Three empty cartridges, one piece of bullet, bloodstained soil and plain soil were seized from the spot vide Ex.P-3. Spot map was prepared vide Ex.P-6. Patwari prepared spot map vide Ex.P-7. Dead body of the deceased was

sent for autopsy to the Community Health Centre, Balrampur vide Ex.P-20, where Dr. N.K. Dutt (PW-4) conducted autopsy on the dead body of the deceased vide Ex.P-8 and found following injuries and symptoms :

- (i) One entrance wound left side of the back of chest below left scapular region in between lower limb ribs 1 cm diameter trajectory upwards, forwards diagonal directing towards left shoulder. Blood dots present wound ante-mortem;
- (ii) One exit wound oval in shave $\frac{1}{2}$ cm long 5" below to clavicle, above to left breast ;
- (iii) One exit wound $\frac{1}{2}$ cm long oval, 1" above & medial to 2nd wound;
- (iv) One exit wound $\frac{1}{2}$ cm long oval near left shoulder joint.

Cause of death was shock due to profuse internal haemorrhage caused by destruction of internal vital organs by some high velocity projection like gun-shot and the death was homicidal in nature.

5. During the course of investigation, the appellant was taken into custody, he made a disclosure statement of used rifle magazine and bullets vide Ex.P-1 and the same were recovered at his instance vide Ex.P-2. Issuing register of the used rifle and magazine was seized vide Ex.P-9. Seized articles were sent for examination to the Commandant, 10th Battalion, Silphili, District – Surguja vide Ex.P-24 and received a report thereof vide Ex.P-14.
6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After

completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Ramanujganj who in turn committed the case to the Court of Sessions, Surguja, from where learned Additional Sessions Judge received the case on transfer for trial.

7. In order to bring home the charges of the accused/appellant, the prosecution examined as many as fifteen witnesses. Accused /appellant was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question.
8. After providing opportunity of hearing to the parties, learned First Additional Sessions Judge convicted and sentenced the appellant as aforementioned.
9. We have heard learned counsel for both the parties and perused the judgment impugned including the record of court below.
10. Learned counsel for the appellant vehemently argued that conviction of the appellant has been substantially based on the evidence of Rajendra (PW-1), Charan Ram (PW-5) and Rukmani (PW-9), but their evidence does not inspire confidence and is not trustworthy as they have not witnessed the incident and their evidence is based on conjunctures and surmises. Evidence of above witnesses is not sufficient for definite conclusion, therefore, the appellant is entitled to be acquitted from the charges levelled against him.
11. On the other hand, learned State counsel opposed the appeal and submitted that evidence of Rajendra (PW-1), Charan Ram (PW-5) and

Rukmani (PW-9) is sufficient to prove the guilt of the appellant and their evidence cannot be discarded, it is unchallenged to the extent that the appellant was last seen holding the gun near the deceased in her house where he had gun-shot fired at deceased thrice and thereafter neighbours saw the dead body of deceased and fleeing the accused from the spot and incriminating evidence is memorandum of accused and seizure of used rifle and bullets at his instance, therefore, the trial Court has rightly convicted and sentenced the appellant as aforementioned.

12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
13. In the present case, homicidal death of the deceased as a result of fatal injuries found over the dead body of the deceased Surajmati has not been substantially disputed on behalf of the appellant. On the other hand, it is also established by the evidence of Krishna (PW-3), death intimation (PW-17), FIR (Ex.P16), Dr. N.K. Dutt (PW-4) and autopsy report (Ex.P-8) that death of deceased Surajmati was homicidal in nature.
14. As regards the complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of Rajendra (PW-1), Charan Ram (PW-5) and Rukmani (PW-9). They are witnesses of last seen, they have stated in their statements that on the night of incident they had seen the accused/appellant in the

house of deceased in the company of the deceased. Rajendra (PW-1) and Charan Ram (PW-5) both have stated that at about 9.00 p.m. before them accused had entered with gun in the house of the deceased and demanded meal, then deceased entered in kitchen, accused also followed her and they left the house of the deceased. Later on, they heard that accused/appellant committed murder the deceased by gun-shot. Rukmani (PW-9) has also stated that she was the tenant of deceased and was residing adjacent to the incident place. She further stated that accused oftenly used to visit the house of deceased for taking meal, she heard voice of accused at about 10-11 p.m. that "चला दूँ चला दूँ" thereafter heard sound of gun-shot thrice, she became scared and after leaving the house by accused, she along with neighbours went to the spot and saw the dead body of the deceased. All the witnesses have been cross-examined by the defence at length, but has not been able to elicit anything to discredit their testimonies. All the witnesses have clearly proved that they have lastly seen the deceased in the company of the accused/appellant in her house and at that moment accused was holding his service rifle, thereafter, no one had seen that accused left the house prior to the incident. Rukmani has clearly proved that after the incident accused/appellant left the house of deceased. Although there is no eyewitness to the incident, but it is clear from the evidence of those witnesses that when the deceased and accused were present in the house of the deceased, no other was present there and

accused was holding the gun and Rukmani (PW-9) heard the voice of accused that “चला दूँ चला दूँ” and thereafter she heard sound of gun-shot fire thrice and after leaving the house by accused, deceased was seen dead on the spot.

15. Investigating Officer, Kanhaiya Tiwari (PW-14) has proved the Merg (Ex.P-17), FIR (Ex.P-16), Inquest (Ex.P-11), Spot map (Ex.P6) and also stated that he recorded memorandum of accused vide Ex.P-1 and at his instance one *insas* rifle and three magazines out of which two magazines containing 20-20 live round bullets and one magazine containing 17 live round bullets were recovered from the bushes behind rest house vide Ex.P-2.
16. Memorandum and seizure witness Jagdish (PW-2) has clearly supported the version of Kanhaiya Tiwari (PW-14) in his examination-in-chief, but in cross-examination he denied that fact, but has admitted his signature on those documents, which shows that he is falsely denying that fact. Memorandum and seizure is clearly proved by the evidence of Investigating Officer Kanhaiya Tiwari (PW-14), he stated that bloodstained soil, plain soil, three empty cartridges, one bullet part were seized from the spot vide Ex.P-3 and articles were sent for examination.
17. Armourer Rameswar (PW-6) and head constable Devsai Neti (PW-11) have proved the fact that seized rifle and 60 round cartridges were issued to the appellant by the department and also proved the issuing register - Article 'A' and minute book register – Article 'B'.

18. Sub-Inspector-cum-Armourer, Thiyodor Lakra (PW-12) has proved that he has examined the sent articles i.e. one rifle, three empty cartridges, one particle of bullet and found that empty cartridges and particles of bullet are the same which were used by the seized rifle. He also proved his examination report Ex.P-14.
19. Time gap between last seen of the accused with the deceased and finding her dead body is very minimum and it is also considered that accused/appellant has not given any explanation under Section 106 of the Evidence Act about the special knowledge of the death of deceased, he has also not given any explanation about departing the company of deceased. Thus, last seen theory and the weapon used in commission of the death of deceased have been clearly proved by the prosecution.
20. On close scrutiny of the evidence, it clearly reveals that the appellant has caused homicidal death amounting to murder of deceased – Surajmati by using deadly weapon, therefore, we do not find any illegality and infirmity in the judgment impugned.
21. Consequently, the appeal, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE