

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 995 of 2012

- Karlus Toppo S/o Suleman Toppo Aged About 35 Years R/o Village Kaliba Manjhiyatoli , P.S. Narayanpur , Distt. Jashpur C.G.

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through Station House Officer, P.S. Narayanpur , Distt. Jashpur C.G.

---- Respondent

For appellant : Shri RK Tiwari, Advocate.

For Respondent/State : Shri Ravindra Agrawal, Panel Lawyer.

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

Judgment On Board By Justice Pritinker Diwaker

18/03/2016

This appeal arises out of the judgment of conviction and order of sentence dated 5.6.2012 passed by the Additional Sessions Judge, Kunkuri, Distt. Jashpur in S.T.No.66/10 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.2000/- with default stipulation.

02. As per prosecution case, on 15.5.2010 at about 4 pm when deceased Birjiniya was sitting on the small stool in the house of one Brijkishore (PW-6), the accused/appellant reached there, picked up a spade from the spot and assaulted the deceased with it, thereby

causing as many as four incised wounds on her head, as a result of which she died instantaneously. The incident was witnessed by PW-6 and this apart, upon hearing the cries of the deceased, Sushil (PW-5), Arun Khalkho (PW-7) and Kristopher (PW-8) also rushed to the spot and saw the appellant standing near the dead body carrying spade in his hand. The accused/appellant was detained by the villagers on the spot itself and thereafter, handed over the police. On 15.5.2010 itself FIR (Ex.P/6) was lodged by PW-5 Sushil Khalkho, son of the deceased, based on which offence under Section 302 of IPC was registered against the appellant. Immediately thereafter merger intimation Ex.P/7 was also recorded. Inquest over the dead body was prepared vide Ex.P/10. Thereafter, the dead body was sent for postmortem which was conducted by PW-3 Dr. Smt. Sangeeta Tirkey vide Ex.P/3, who noticed four incised wounds on the body of the deceased including fracture of maxillary and nasal septum bone, right and left temporal bones, and opined that the cause of death was hemorrhagic shock due to fracture of skull bone and that the death was homicidal in nature. MLC of the appellant was also conducted on 17.5.2010 and 19.5.2010 vide Exs.P/4 & P/5 wherein the doctor noticed abrasions on his right upper lid, right eye, both elbow region, pain over occipital region and opined that the injuries were simple in nature, caused by hard and blunt object. After completion of investigation, charge sheet was filed against the appellant under Section 302 of IPC followed by framing of charge accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 13 witnesses. Statement of the accused was

also 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.

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 him as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that PWs-5 & 6 have though been cited as eyewitnesses to the incident but in cross-examination PW-5 has categorically denied witnessing the incident and as for PW-6, considering the statements of PWs-7 & 8 it is apparent that PW-6 also reached the spot after the incident was over.

(ii) that the accused/appellant was of unsound mind at the time of occurrence as his daughter was missing, he was searching her frantically and it appears that during the course of search when he reached the house of PW-6 where the deceased was sitting on a small stool, he might have assaulted the deceased and thus, considering the mental status of the appellant, he cannot be held guilty under Section 302 of IPC.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in it. He submits that PW-6 eyewitness to the incident has categorically stated

as to the manner in which the deceased was done to death by the appellant and remained intact in his cross-examination. He submits that PWs-5, 7 & 8 have also supported the prosecution case and corroborated the evidence of PW-6 to the extent that they saw the accused/appellant standing near the dead body carrying spade in his hand. Lastly, he submits that the defence of insanity has not been proved as required under the law and therefore, the same is of no consequence.

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

08. PW-6 Brijkishore, in whose courtyard the incident had taken place, has stated that at the relevant time he was taking food in his house along with Sushil, Laxman, Kristopher and Arun. After hearing the cries of the deceased when he came out from the house, he saw the appellant assaulting the deceased with spade, which was snatched from him by them and he was ousted from there. Though they brought the vehicle for taking the deceased to hospital, by that time she had expired. He has admitted that he is not aware as to where the accused/appellant was residing and later he came to know that daughter of the appellant was missing and whom he was searching in different villages. He has stated that at the relevant time the deceased was sitting on a small stool and they were taking meal inside the house. Upon hearing her cries when they came out of the house, the deceased was lying on the ground. In para-12 he has reiterated that he saw the accused/appellant assaulting the deceased with spade, which was snatched from him by them.

09. PW-5 Sushil, son of the deceased, has though in examination-in-chief has stated that he saw the accused/appellant assaulting the deceased with spade but in cross-examination has denied the said fact. However, from his statement it is apparent that he has admitted presence of the appellant on the spot. PW-7 Arun Khalkho, who was working in the house of Brijkishore, has though stated in examination-in-chief that upon hearing the commotion, when he along with Sushil, Brajesh and others came out of the house, they saw the appellant holding spade in his hand and the deceased lying on the ground with injuries over her head and bleeding, but in cross-examination he has denied the fact that he saw the appellant assaulting the deceased with spade. PW-8 Kristopher has also stated in his examination-in-chief that he saw the appellant assaulting the deceased with spade, but while denying the said fact in cross-examination has admitted that when he came out of the house, he saw the deceased lying on the ground and the appellant carrying spade in his hand.

10. PW-3 Dr. Smt. Sangeeta Tirkey conducted postmortem on the body of the deceased vide Ex.P/3 and noticed following injuries:

- (i) incised wound over face at root of nose size 2" x 1.5" below this fracture of nasal septum and right side maxillary bone,
- (ii) convulsion of skin over face at just above right eyebrow size about 2",
- (iii) incised wound over face at just front of the left ear size about 2 inch x 1 inch below this fracture of mandible bone,
- (iv) incised wound over right temporal region of size about 2.5" x 1" x 1.5 cm below this depressed fracture of temporal bone, below this haematoma over brain of size about 4 inches x 5 inches.

In her opinion, the cause of death was hemorrhagic shock due to fracture of skull bone and that the death was homicidal in nature.

11. PW-1 Ram Prasad Chakresh, Up-Sarpanch of the village came to know about the incident after it had taken place and when he reached the spot, he saw the appellant tied up with rope by the villagers and also saw dead body of the deceased. PW-4 Dr. Smt. K. Kujur had medically examined the accused/appellant on 17.5.2010 vide Ex.P/4 and noticed following injuries:

- (i) abrasion over right upper lid and redness in both eyes.
- (ii) abrasion over both elbow regions.
- (iii) patient was complaining of pain in occipital region, no visible sign present.

In her opinion, the injuries were simple in nature caused by hard and blunt object.

This witness examined the accused/appellant on 19.5.2010 also and vide Ex.P/5 noticed following injuries:

- (i) abrasion over right upper lid, redness in both eyes and complaint of diminution of vision.
- (ii) abrasion over both elbow regions.
- (iii) complaining pain in occipital region.

She did not give any opinion as to Injury No.(i) and advised for consulting eye specialist for this.

In cross-examination, she has admitted that the injuries found on the body of the appellant could not be self-inflicted.

12. PW-10 Drimil Khalkho and PW-11 Prakash Tigga are witnesses of inquest. PW-12 Jitendra, Patwari, prepared the spot map Ex.P/11. PW-13 K.R. Bhagat, investigating officer, has duly supported the

prosecution case.

13. Close scrutiny of the evidence makes it clear that on 15.5.2010 when deceased Birjiniya was sitting in the courtyard of the house of Brijkishore (PW-6), the accused/appellant reached there, picked up a spade from the spot and assaulted the deceased with it on her head resulting in her spontaneous death. PW-6 Brijkishore, an eyewitness to the incident has categorically stated as to the manner in which the appellant committed murder of the deceased. Thus, there is no reason for this Court to doubt the veracity of eyewitness PW-6 Brijkishore. The defence has utterly failed to elicit anything from him to render his evidence untrustworthy or shaky.

14. It is the mandate of Section 134 of Evidence Act that quality and not quantity of evidence is material. Section 134 enshrines the well recognized maxim "Evidence has to be weighed not counted". the matter thus depends upon the circumstances of each case and the quality of evidence even of a single witness whose testimony has either to be accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof.

15. Though PW-5 Sushil, PW-7 Arun Khalkho and PW-8 Kristopher in their cross-examination have denied the fact that they saw the appellant assaulting the deceased, but from their evidence it is apparent that they admit presence of the appellant on the spot carrying spade in his hand and the deceased lying dead nearby. This apart, medical evidence also lends support to the prosecution case,

according to which corresponding injuries were noticed on the body of the deceased.

16. It has come in the evidence of the prosecution witnesses that after commission of murder by the appellant, he was caught by the villagers and tied with the rope. PW-11 Prakash Tigga has consistently stated in his deposition that on hearing commotion when he went to the spot, he saw scuffle between the appellant and the villagers and on being enquired, he came to know that the appellant has committed murder of the deceased and then asked the villagers to hold the appellant and went to police station. He has further stated in para-7 that when he went to the spot he saw the appellant scuffling with some persons and that there was injury below his eye. According to PW-4 Dr. Smt. K. Kujur, on medical examination of the appellant vide Exs.P/4 & P/5, she had noticed abrasion over right upper lid, redness in both eyes, abrasion over both elbow regions and that he was complaining of pain in occipital region and that the injuries were simple in nature caused by hard and blunt object. She has further stated that these injuries could not be self-inflicted. On question being put to this effect, the appellant instead of explaining those injuries has simply pleaded ignorance about the same, which further points towards his guilt.

17. On the basis of aforesaid evidence, ocular and medical, it stands established beyond reasonable doubt that it is the appellant who committed murder of the deceased.

18. As regards the second limb of the argument that at the time of incident the appellant was of unsound mind, no such plea was taken by

the appellant at any stage of trial. Had it been so, the appellant ought to have filed appropriate application before the trial Court to establish the said plea. Per contra, on charge being framed and read over to the appellant, he having denied the same prayed for trial. Though in the evidence of PW-5 & PW-6 it has come that at the relevant time the appellant was searching his missing daughter in different villages frantically, but merely on that basis it cannot be held that at the time of incident he was suffering from unsoundness of mind and was unable to know the consequences of his act. Furthermore, from perusal of his statement under Section 313 of Cr.P.C. it is evident that after properly understanding the nature of the questions and its consequences, he has replied to them, either by denial or pleading ignorance. Thus, keeping in view the facts and circumstances of the case, the conduct of the appellant as well as the nature of evidence on record and the legal position with respect to plea of insanity, we are of the considered view that the appellant is not entitled to raise the plea of insanity at this stage and therefore, the same is turned down for being out of place.

19. In the result, the appeal being sans merits is liable to be dismissed and is, accordingly, dismissed. Appellant is reported to be in jail, therefore, no further order regarding his surrender etc. is required.

Sd/

(Pritinker Diwaker)
Judge

Sd/-

(I.S. Uboweja)
Judge

