

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 900 of 2011**

- Jainbati @ Dhaneshwari, wife of Late Ramesh Gond, aged about 35 years, R/o village Madam Silli, Distt. Dhamtari (CG)

---- Appellant (In Jail)

Versus

- State of Chhattisgarh through Police Station Arjuni Distt. Dhamtari (CG)

---- Respondent

For Appellant:
For Respondent:

Shri Santosh Bharat, Advocate.
Shri V.A. Goverdhan, Panel Lawyer.

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

Judgement

Per. P. Diwaker, J.

11/05/2016

1. This appeal has been filed against the judgment of conviction and order of sentence dated 29.6.2011 passed by the Additional Sessions Judge, Dhamtari in S.T. No.4/11 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.200/-, in default to undergo additional R.I. for 01 month.
2. Accused/appellant is the wife of deceased Ramesh.
3. The prosecution story, in brief, is that the deceased used to suspect chastity of accused/appellant and does not allow her to move out of the house. On 16.10.2010 there has been quarrel between accused/appellant & deceased and in that process the accused/appellant committed murder

of deceased by causing grievous injuries to him by stone & axe. Incident was witnessed by PW-7 Ganga, four years old daughter of accused and deceased. Merg Intimation (Ex.P-1) was lodged on 18.10.2010 by village Kotwar Bhagwantin Bai (PW-10). Inquest on the dead body was made vide Ex.P-5 on 18.10.2010. Body of deceased was sent for post-mortem which was conducted by Dr. S.N. Manjhi (PW-9) on 19.10.2010 vide Ex.P-14 and he noticed following injuries;-

- Cranial cavity exposed at vertex and frontal region bones were fractured into multiple sizes.
- Incised wound over left parietal region of 5x2 cm size.
- Sharp cut present on mandible & maxilla of 5x2 cm size. Mandible & Maxilla bones were fractured in multiple sizes.

The doctor has opined that cause of death was due to incised wounds on face & head and the death was homicidal in nature. After merg inquiry, FIR (Ex.P-13) under Section 302 IPC was registered against the accused/appellant on 23.10.2010. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the accused/appellant and accordingly the charge was framed against him by the trial Court.

4. The prosecution in order to bring home the charge levelled against the accused/appellant examined 11 witnesses in all. Statement of appellant was recorded under Section 313 of Cr.P.C. in which she abjured her guilt and pleaded innocence & false implication.
5. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
6. Counsel for accused/appellant submits that conviction of appellant is solely based on the evidence of Kumari Ganga (PW-7), a child witness,

but her evidence does not inspire confidence and is unreliable for the reason that according to this witness, the injuries were caused by stone, whereas the autopsy surgeon during post-mortem examination had noticed axe injuries also on the body of deceased.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of 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 before this Court to disbelieve the testimony of Ganga (PW-7) who had witnessed the incident and immediately thereafter informed about the incident to PW-1, 3 & 4 and these witnesses have duly supported the prosecution case. He further submits that at the instance of accused/appellant bloodstained axe & stone were seized vide seizure memo of Ex.P-29 and she failed to offer any explanation as to how blood came on these articles. He further submits that body of the deceased was found in the house of accused/appellant where admittedly the deceased was living with accused/appellant but no reasonable explanation has been offered by accused/appellant in her statement recorded under Section 313 of Cr.P.C. that as to how he died and therefore her conviction under Section 302 of IPC is fully justified.
8. We have heard counsel for the parties and perused the evidence available on record.
9. Bhagwantin Bai (PW-1) is the village Kotwar who lodged the Merg Intimation (Ex.P-1). Though this witness has been declared hostile by the prosecution but in the cross-examination by the Additional Public Prosecutor she has admitted that Ganga (PW-1) informed the police that when the deceased was sleeping, the accused/appellant assaulted on his

head by stone and thereafter cut his neck by axe.

10. Niraam Gond (PW-2) is the witness to whom incident was disclosed by Ganga (PW-7), however, he has not supported the prosecution and turned hostile.
11. Milan Sori (PW-3) is the witness of seizure memo (Ex.P-3) by which stone was seized.
12. Dukhram (PW-4) is the Patel of village. This witness has stated that having been informed by accused/appellant that the deceased had expired, he along with other villagers reached the house of deceased and saw the body of deceased. He is witness to the maps (Ex.P-2 & P-6) and seizure memo Ex.P-7 by which bloodstained soil and plain soil was seized from the spot. This witness has further stated that Ganga informed the police that her mother had assaulted her father by stone.
13. Narottam Gond (PW-5) is the witness of memorandum (Ex.P-8) of accused/appellant and seizure memo (Ex.P-9). However, this witness has not supported the prosecution case and turned hostile.
14. Chintaram Gond (PW-6) is the witness of map Ex.P-2, inquest Ex.P-5 and seizure memo Ex.P-7.
15. Kumari Ganga (PW-7) is a child eyewitness and daughter of deceased & accused. Before recording evidence of this witness, the Court has asked questions to her and after satisfying itself of the fact that this witness understands the duty to speak truth and is able to rationally answer the questions put to her, the Court has examined her. She has deposed that while playing she had been to home, she saw her mother assaulting her father by stone. She has further deposed that on account of assault by stone, her father received injuries on the head and his eye came out. She has further stated that at the time of incident her parents i.e. accused

& deceased, alone were in the house and her brother & sister had gone to play. On being asked by the Court about the truthfulness of the fact whether her father was assaulted by her mother, this witness answered in the affirmative. Nothing could be elicited by the defence in her cross-examination which makes her testimony doubtful or unreliable.

16. R.S. Mishra (PW-8) is the Investigating Officer and he has duly supported the prosecution case.

17. Dr. S.N. Manjhi (PW-9) is the doctor who performed autopsy on the body of deceased and noticed the injuries as described above. He has stated that injuries present on the body of deceased were caused by some sharp & hard object, whereas fractures found on the body of deceased were caused by hard and blunt object. This witness has opined that injuries present on the face & head are sufficient to cause death in ordinary course of nature. The query- whether the injuries including fractures present on the body of deceased could be caused by the axe & stone produced before him, has been answered by this witness in the affirmative.

18. Rakesh Gond (PW-10) is the 12 years old son of accused/appellant & deceased. He has stated that on the date of incident when he had gone to play, at that time his mother & father were alone in the house.

19. G. Sinha (PW-11) is the Sub-Inspector who helped in the investigation.

20. Close scrutiny of evidence makes it clear that on 18.10.2010 the accused/appellant had caused injuries on the head & face of the deceased by stone & axe and because of this assault, he died on the spot. The incident was witnessed by Kumari Ganga (PW-7), 4 years old daughter of accused & deceased, who had specifically deposed in her evidence that it is the accused/appellant who had assaulted the deceased

by stone as a result of which his eye came out. Her version finds corroboration from the statements of Bhagwantin Bai (PW-1), Niraam (PW-2) & Dukhram (PW-4), who have categorically stated that Ganga (PW-7) informed that her mother (accused) had killed her father (deceased) and when they reached the house of accused/appellant, they saw the deceased lying in dead condition. Evidence of Ganga (PW-7) further gets corroboration from the medical evidence wherein three incised wounds and multiple fractures were noticed on the head of the deceased and according to the autopsy surgeon injuries present on the face & head of deceased were sufficient to cause death in ordinary course of nature.

That apart, before recording evidence of Ganga (PW-7) the Court had asked certain questions to her and after satisfying itself of the fact that she understands the duty to speak truth and is able to rationally answer the questions put to her, it has examined her. Nothing has been brought by the defence in her cross-examination that being aged about four years there was any infirmity in her understanding of facts perceived, her ability to narrate the same correctly or that she was tutored by her grandparents. Being so, we have no hesitation in holding that evidence of Ganga (PW-7) inspires confidence and is fully corroborated by other witnesses & the medical evidence and there exists no likelihood of being tutored. It is a settled principle of law that if the statement of child witness is reliable, truthful and is corroborated by other prosecution evidence, the Court can safely rely upon the statement of such witness and can form the basis for conviction as well.

Another circumstance pointing towards the guilt of accused/appellant is that body of deceased was recovered from the house of accused/appellant and it is proved by the prosecution that death of the

deceased was homicidal in nature. Undisputedly, the house of accused/appellant where body of deceased was found was in the occupation of the two only i.e. deceased and accused/appellant, and thus in view of Section 106 of the Evidence Act there was a corresponding burden on the accused/ appellant to explain as to how death of the deceased took place, but still no reasonably convincing explanation has been offered by her in the statement under Section 313 Cr.P.C. Moreover, on the basis of disclosure statement (Ex.P-8) made by accused/appellant, bloodstained axe & stone were seized by the Investigating Officer vide seizure memo of Ex.P-9. Dukhram (PW-4), witness to the memorandum (Ex.P-8) & seizure memo (Ex.P-9) has duly supported the prosecution case. According to the forensic report (Ex.P-17), the injuries found on the body of deceased could be caused by the axe & stone so seized. The questions in this regard were put to the accused during her statement under Section 313 Cr.P.C., but except vague denial, she said nothing more.

21. For the reasons set out above, this Court is of the considered opinion that the findings recorded by the Court below are based on due appreciation of the evidence available on record. That being so, the judgment impugned does not call for any interference. Accordingly, the appeal being without substance is liable to be dismissed and it is dismissed as such. Since the accused/appellant is already in custody no extra direction is needed regarding her surrender etc.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(I.S. Uboweja)
Judge

roshan/-