

NAFRHIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No. 915 of 2011

Bitanuram S/o Thopra Ram Nagvanshi, aged about 46 years, Occupation- Agriculture, R/o village Petla (Katbura), Police Station Sitapur, District Surguja (CG)

----Appellant

Versus

State of Chhattisgarh, through Police Station Sitapur, District Sarguja (CG)

---- Respondent

 For Appellant : Ms Sofia Khan, Advocate
 For Respondent : Mr.Ashish Shukla, G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board by Pritinker Diwaker, J.

22/05/2017

This appeal arises out of the impugned judgment and order dated 15.7.2011 passed by the Sessions Judge, Surguja (Ambikapur), in S.T.No.408/10 convicting the accused/appellant under Section 302 of the IPC and sentencing him to undergo imprisonment for life with fine of Rs.1000/- plus default stipulation.

2. As per prosecution case, on 1.5.2010 at about 4 p.m. on account of trivial issue where deceased Soni Bai @ Sona Bai had failed to perform certain household works, the accused/appellant committed her murder by causing number of injuries with axe. On the spot itself, the deceased succumbed to the injuries. F.I.R. Ex.P/1 was lodged on 1.5.2010 at 10.45 p.m. by Shanzhu Ram (PW-1) against the appellant under Section 302 of the IPC. Immediately thereafter merged intimation Ex.P/2 was also recorded.

Inquest on the body of the deceased was conducted on 2.5.2010 vide Ex.P/4. Dead body was sent for postmortem examination on 2.5.2010 which was conducted by Dr. K.K.Dutta (PW-7) vide Ex.P/10A who noticed the following injuries:-

- (i) Incised wound of 7cm x 1.5 cm x bone deep over right arm.
- (ii) Incised wound of 6.5 cm x 1.5 cm x deep upto brain material over left temporal region.
- (iii) Lacerated wound of 5.5 cm X 1.5 cm over mid parietal region (bone deep)
- (iv) Haematoma over left elbow.
- (v) Contusion over left scapular region.
- (vi) Heamatoma with swelling over left parietal region.
- (vii) Contusion 6 cm x 3 cm over left calf.
- (viii) Fracture of humurus at 1/3 correspondingly to ext injury No.1, fracture of left temporal and parietal bone, portion is depressed into brain material, fracture of right parietal bone, sub-dural and extra-dural heamatoma corresponds to ext injury No.3, fracture of 4th and 5th ribs burried into plura and lung corresponds to ext injury No.5 and 6 and Hemothrox. All are ante-mortem.

According to him, cause of death was shock and coma due to head injury and death was homicidal in nature. After investigation, charge-sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly charge was also framed by the Court below.

3. In order to establish the guilt of the accused/appellant, the prosecution has examined as many as seven witnesses. Statement of the accused/appellant was also recorded under Section 313 of the CrPC in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence, the present appeal.

5. Contention of counsel for the appellant is that,

(i) Statements of three eye-witnesses namely Ladi (PW-2), Enjor Sai (PW-4) and Sukhni Bai (PW-5) are not reliable.

(ii) Ladi (PW-2) and Sukhni Bai (PW-5) are child witnesses and they have narrated in the Court as tutored to them.

(iii) Even if the entire prosecution case is taken as it is, offence under Section 302 of the IPC is not made out against the accused/ appellant.

(iv) The incident occurred in the heat of passion and on sudden provocation and thus, at best his act would fall under Section 304 Part-I of the IPC.

It has been argued that the appellant is in jail for last seven years and therefore after converting his conviction into Section 304 Part-I of the IPC, he may be sentenced to the period already undergone by him.

6. On the other hand supporting the impugned judgment it has been argued by the State Counsel that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same. He submits that there is no reason for this Court to disbelieve the statements of

Ladi (PW-2), Enjor Sai (PW-4) and Sukhni Bai (PW-5). He further submits that though Ladi (PW-2) and Sukhni Bai (PW-5) are child-witnesses, but from their statements, it is clear that they are independent enough to narrate the truth before the Court.

7. Heard counsel for the parties and perused the material on record.

8. Ladi (PW-2) is daughter of the appellant and the deceased. She has stated that the accused/appellant caused injuries on the body of the deceased with axe resulting in her death and thereafter fled away from the spot. In her cross-examination, she remained firm and nothing could be elicited from her. Enjor Sai (PW-4) is another eyewitness to the incident whose house was adjacent to the place of occurrence. He has stated that he saw the accused/appellant causing injuries on the body of the deceased with axe. He has further stated that he tried to intervene in the matter, but yet the appellant did not stop and caused injuries to the deceased. He has further stated in his evidence that at the time of incident the accused/appellant was intoxicated. Sukhni Bai (PW-5) is another child witness to the incident, who while supporting the prosecution case, has stated as to manner in which the accused/appellant caused murder of the deceased. Autopsy Surgeon Dr.K.K.Dutta (PW-7) has also supported the prosecution case stating that he noticed as many as eight injuries on the body of the deceased and the death was homicidal in nature. Investigating officer C.S.Netam (PW-6) has also supported the prosecution case. On the memorandum of the appellant Ex.P/6, seizure of axe was made vide Ex.P/7 which as per FSL report Ex.P/16 contained blood.

9. A close scrutiny of the evidence on record thus makes it clear that on 1.5.2010, it is the appellant who killed the deceased by causing number of

axe injuries on his head and other parts of body. True it is that age of the child witnesses (Ladi PW-2) and Sukhni Bai (PW-5) was 7 and 12 years respectively at the time of incident but had it been a case of no evidence except that of these witnesses perhaps the situation would have been different. But since in the case in hand apart from these two child witnesses, there is one independent eyewitness Enjor Sai (PW-4) residing in the neighbour-hood who had seen the entire incident whose statement also inspires full confidence of this Court.

10. Thus, considering the totality of the case, particularly, statements of Ladi (PW-2), Enjor Sai (PW-4) and Sukhni Bai (PW-5), this Court is of the considered opinion that the trial Court has been fully justified in convicting the accused/appellant under Section 302 of the IPC and the findings so recorded by it are based on correct appreciation of evidence on record. The material available on record leads this Court to arrive at one and the only conclusion that it is the accused/appellant who has committed murder of the deceased. The appeal, therefore, appears to be without any substance and liable to be dismissed and the judgment impugned deserves to be affirmed.

11. In the result, the appeal is dismissed and the judgment affirmed. The appellant is already reported to be in jail, therefore, no further order is required to be passed.

Sd/-

(Pritinker Diwaker)
Vacation Judge

Sd/-

(Sanjay K.Agrawal)
Vacation Judge