

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1050 of 2012

(Arising out of judgment dated 19-10-2012 in ST No. 98/2011 of the learned 1st Addl. Sessions Judge, Surguja at Ambikapur (CG))

Nohar Sai Bargah son of Lachchanram Bargah, aged about 42 years, R/o. Devgarh (Sarnapara) police station Sitapur, Distt. Surguja (CG)

---- Appellant

Versus

State of Chhattisgarh through Station House Officer, Police Station Sitapur Distt. Surguja (CG)

---- Respondent

For appellant	: Mr. J.K. Saxena, Adv.
For Respondent/State	: Mr. Vivek Sharma, Govt. Adv.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

JUDGMENT ON BOARD

Per Pritinker Diwaker, J

23/09/2017

1. This appeal has been filed against the judgment of conviction and order of sentence dated 19-10-2012 passed by the 1st Addl. Sessions Judge, Surguja at Ambikapur (CG) in S.T. No. 98/2011 convicting the accused/ appellant under Section 302 of the Indian Penal Code, 1860 (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.1,000/-, in default of payment of fine, to undergo additional R.I. for 4 months.
2. As per prosecution case, on account of old land dispute, on 27-11-2010 at about 5.05 pm, the accused/appellant committed murder of deceased Dhemnaram by causing injury on his vital part by battle axe. FIR Ex. P-7 was lodged on 27-11-2010 at 9.45 pm by P.W. 4 Sohanram Bargah, son of the deceased against the appellant under Section 302 of the IPC. Immediately

thereafter at 9.50 pm on same day, merged intimation Ex. P-6 was recorded at the instance of P.W. 4 Sohanram. Inquest was conducted on 28-11-2010 vide Ex. P-20. Body of the deceased was sent for post mortem on 28-11-2010 which was conducted by P.W. 13 Dr. S.N. Paikra who noticed following injuries on the body of the deceased :-

- I. Incised wound on left side of neck size 6 x 2 x 1 inch.
- ii. Incised wound on head of right parietal size 2 x 1 x ½ inch with clotted blood present. On dissection – fracture of right parietal bone.

Doctor has opined that deceased died as a result of hemorrhagic shock due to head injury and it was homicidal in nature. On the memorandum of appellant Ex. P-1, one blood stained battle axe vide Ex. P-2, clothes of the appellant vide Ex. P-3 were seized. Clothes of the deceased were seized Ex. P-4. Blood stained and plain soil were seized vide Ex. P-5. Statements of witnesses were recorded under Section 161 of the Cr.P.C.

3. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against accused/ appellant and accordingly charge was framed against him by the trial Court. The prosecution in order to bring home the charge levelled against the accused/ appellant examined 14 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
4. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described

above.

5. Learned counsel for accused/appellant submits that the appellant has been convicted solely on the basis of the evidence of P.W. 6 Ku. Anita, a child witness whereas her evidence is not reliable and is shaky.
6. 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 P.W. 6 Ku. Anita though a child witness but is wholly reliable because the manner in which she stated in the court makes it clear that she narrated the truth. It has been argued that the minor deviation in the evidence is required to be ignored considering the fact that she is a rustic villager. He further argued that P.W. 5 Ku. Krata has also supported the prosecution case. Most importantly, on the memorandum of the accused/appellant Ex. P-1, the battle axe used in commission of crime has been seized and as per FSL report Ex. P-23 blood stains are found in the said battle axe.
7. We have heard counsel for the parties and perused the evidence available on record.
8. P.W. 1 Ram Kumar Paikra, P.W. 2 Nainsai, P.W. 3 Mohan Ram, P.W. 7 Ku. Sukhmanian, P.W. 8 Sonkaliya, P.W. 9 Rambilas, P.W. 10 Mendhuram have not supported the prosecution case and have turned hostile.
9. P.W. 4 Sohanram Bargah is son of the deceased and lodged of Merg Ex. P-6 and FIR Ex. P-7. He is also a witness of

memorandum of the accused/appellant Ex. P-1, seizure memo Ex. P-2 of battle axe and clothes of the accused/appellant Ex. P-3. Though he has been declared hostile on some point but by and large he has supported the prosecution case.

10. P.W. 5 Ku. Krata though has been declared hostile but when she was questioned by the AGP she has stated that she saw the accused/appellant near the place of occurrence.

11. P.W. 6 Ku. Anita is the eye-witness to the incident. While supporting the prosecution case, she has stated that she knew the accused/appellant. On the date of incident, she had gone to take water and then saw accused/appellant carrying something in his hand which she could not see and then causing injury to the deceased. By gesture she has informed the court about the weapon which was being carried by the deceased. She states that the deceased died on the spot itself. In cross-examination though she states that it was getting dark but she has clarified that she could see the incident. She has further denied the fact that she has been tutored by P.W. 4 Sohanram Bargah. She has further denied the fact that she has not seen someone assaulting the deceased and that she is making statement in the court at the instance of some one. She has further stated that she is making correct statement.

12. P.W. 11 Pawan Kumar and P.W. 12 C.S. Netam have conducted part of investigation.

13. P.W. 13 Dr. S.N. Paikra is the doctor who performed autopsy on the body of deceased and noticed one incised wound on left side of neck size 6 x 2 x 1 inch, another incised wound on

head of right parietal size 2 x 1 x ½ inch with clotted blood present, fracture of right parietal bone, and opined that the deceased died as a result of hemorrhagic shock due to head injury and it was homicidal in nature.

14. P.W. 14 S.R. Bhagat is investigating offence and has supported the prosecution case.

15. Close scrutiny of the evidence available on record makes it clear that on account of old land dispute, accused/appellant killed the deceased. The incident has been witnessed by P.W. 6 Ku. Anita, a child witness. True it is that the evidence of the child witness has to be examined minutely and cautiously before placing reliance thereon. In the present case, before recording evidence of P.W. 6 Ku. Anita 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 child witness, there was any infirmity in her understanding of facts perceived, her ability to narrate the same correctly or that she was tutored. Being so we have no hesitation in holding that evidence of P.W. 6 Ku. Anita inspires confidence. 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 of conviction as well. Considering the background of the witness that she is a rustic villager, minor variation is required to be ignored. P.W. 6 Ku. Anita remained very firm and

has narrated as to the manner the deceased was murdered by the appellant. If the evidence of this witness is weighed and visualized minutely, it makes it clear that she is a reliable and trustworthy witness. Further more, on the memorandum of accused/appellant Ex. P-1, seizure of battle axe vide Ex. P-2 has been affected. FSL report Ex. P-23 is also positive. P.W. 5 Ku. Krata has also stated that she has seen the accused/appellant near the place of occurrence. No explanation has been offered by the appellant in his statement under Section 313 of the Cr.P.C. in respect of all these incriminating circumstances which further point out towards his guilt and strengthens the case of the prosecution.

16. In view of the aforesaid discussion, in the considered opinion of this court, it can be safely held that it is the accused/appellant who has committed murder of the deceased. While going through the evidence on record, this Court could not lay hand on even a single document which could speak in negative making this Court to form an opinion other than the conviction. There appears to be no reason for this Court to differ from the view taken by the Court below while passing the judgment impugned and that being so it is hereby confirmed.

17. Appeal thus being without any merit is liable to be dismissed and it is dismissed as such.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge