

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 51 of 2007

- Ratu Ram S/o Bhago Kanwar, aged about 30 years, resident of village Patrapali, P.S. Gharghoda, District-Raigarh.

---- Appellant (In Jail)

Versus

- State Of Chhattisgarh, through Police Station - Gharghoda, District: Raigarh (CG)

---- Respondent

For Appellant	:	Shri Hanuman Prasad Agrawal, Advocate
For Respondent	:	Shri V.A. Goverdhan, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice R.C.S. Samant

Judgement

P. Diwaker, J

27/1/2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 30.1.2003 passed by the 3rd Additional Sessions Judge (FTC), Raigarh in S.T. No.116/02 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.
2. In the present case, name of deceased is Mangalibai.
3. The prosecution story, in brief, is that on 29.3.2002 when the deceased Manglaibai was collecting Mahua flower in her field, the accused/appellant attacked and assaulted on vital parts of her body by axe which resulted into her instantaneous death. Incident was witnessed by PW-5 Dipak and his younger brother Dilip, aged about 10 years and both of them after reaching their home narrated the entire incident to their family members. Next

morning Dipak (PW-5) disclosed the incident to the villagers and accordingly FIR (Ex.P-7) was lodged on 30.3.2002 at 11.30 a.m. by Ghasiya, son of deceased, against the appellant based on which offence under Section 302 IPC was registered against him. Merg Intimation (Ex.P-6) was also recorded on the same day at the instance of PW-6. Inquest (Ex.P-2) was prepared over the body of deceased and thereafter the body was sent for post-mortem examination which was conducted by Dr. P.L. Bodalkar (PW-7) on 31.3.2002 vide Ex.P-12, who noticed following injuries;-

- Incised wound on the left side of skull of 2½" x ½" x ½" size.
- lacerated wound on the right side of skull of 3" x ½" x ½" size.

In the opinion of autopsy surgeon, cause of death was shock and brain injury. During investigation, memorandum statement (Ex.P-8) of the accused/appellant was recorded and based on which a shirt and axe was seized vide seizure memo of Ex.P-5 & P-9 respectively. Seized articles were sent for chemical examination to the Forensic Science Laboratory, Raipur from where report of Ex.P-16 was received confirming presence of human blood on certain articles.

4. After 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 by the trial Judge against him. The prosecution in order to bring home the charges levelled against the accused/appellant examined nine 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.
5. The trial Court after hearing the parties in the matter and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.
6. Counsel for accused/appellant submits that;

- as per prosecution case, Dipak & Dilip have witnessed the incident, but the prosecution did not produce Dilip as a witness during the trial and no explanation has been given by the prosecution for withholding this material witness from the Court.
 - testimony of Dipak (PW-5), alleged eyewitness, is also liable to be discarded as there are material discrepancies in his testimony.
 - there is absolutely no motive proved by the prosecution as against the appellant and therefore the entire case of prosecution falls to the ground.
 - though from the possession of the accused/appellant, axe & shirt were seized which were subsequently found to be stained with blood vide FSL report (Ex.P-16)) but in absence of serological report, the FSL report has no evidentiary value
 - even if the entire prosecution case is taken as it is, at best the accused/appellant can be held guilty under Section 304 Part-1 of the IPC and not under Section 302 IPC because the incident had occurred all of sudden, in the spur of moment and without any premeditation.
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.
 - it is the quality of evidence which is important and not the quantity. Though said Dilip, who is another eyewitness to the incident, has not been examined by the prosecution but Dipak (PW-5), another eyewitness, has duly supported the prosecution version and remained very firm in his cross-examination as well.

- considering the evidence of eye-witness (PW-5) coupled with the medical evidence, according to which corresponding injuries were found on the body of deceased, though serological report is not there, but the same is not fatal to the prosecution case, particularly when the accused/appellant failed to offer any explanation as to how the articles seized at his instance were found to be bloodstained.
8. We have heard counsel for the parties and perused the evidence available on record.
 9. Mahadev (PW-1), son of deceased, has stated that on the fateful day her mother had gone to the field for collecting Mahua flowers and when she did not return home, he along with other villagers went in search of her mother and found her lying dead in the field under the Mahua tree. He has further stated that afterwards Dipak disclosed to him that accused/appellant has assaulted her mother by axe. In the cross-examination this witness has stated that next day Dipak informed the police that it is the accused/appellant who killed the deceased.
 10. Gosairam (PW-2), father of Dipak, has stated that at about 2.00 p.m. his sons (Deepak & Dileep) came and informed him that accused/appellant had assaulted the deceased by axe. Due to Holi festival, he did not go anywhere. Next day when he visited the spot, he saw the deceased lying dead.
 11. Ramkumar (PW-3) is the witness of inquest (Ex.P-2), police map (Ex.P-3) and map (Ex.P-4) prepared by the Patwari. He is also witness of seizure memo (Ex.P-5) b which shirt and lungi was seized from the possession of the accused/appellant.
 12. Jugunu Lakra (PW-4) is the witness of spot map (Ex.P-4).
 13. Dipak Kumar (PW-5) is an eyewitness to the incident. He has stated that on the fateful day he along with his brother Dilip was keeping watch

on the crop standing in his field. At about 1.30-2.00 p.m. seeing the accused/appellant assaulting the deceased by axe, he and his brother fled from there and disclosed the incident to his grandmother and thereafter to his father. He has further stated that after assaulting the deceased, the accused/appellant fled away to forest. This witness remained firm in the cross-examination and despite several questions being put to him by the defence, he stood to his examination-in-chief that he saw the accused/appellant assaulting the deceased by axe.

14. Ghaisya Ram (PW-6), another son of deceased and lodger of report Ex.P-6), has stated on the date of incident his mother had gone to the field for collecting mahua flower and when she did not return from the field by the time when she normally used to return, he along with some villagers made a search for his mother and found the deceased lying dead under the mahua tree. He has further stated that Dilip & Dipak informed that they have seen the accused/appellant assaulting the deceased by axe.

15. Rajaram (PW-7) is the witness of memorandum statement (Ex.P-8), seizure memo (Ex.P-9) maps (Ex.P-10 & P-11).

16. Dr. P.L. Bodalkar (PW-8) is the person who conducted post-mortem examination over the body of deceased and noticed the injuries as described above.

17. Motilal Sharma (PW-9) is the Investigating Officer and he has duly supported the prosecution case.

18. On close scrutiny of evidence makes it clear that it is the accused/appellant who committed murder of deceased Mangalibai on 29.3.2002 by causing her injuries with axe. Incident was witnessed by Dipak (PW-5), who has fully supported the prosecution case. This witness remained consistent throughout his cross-examination and

nothing substantial was elicited to discredit his version. Agriculture field of this witness was situated adjacent to the field of the deceased where incident had taken place and at the relevant time he along with his brother was present in his field and keeping watch on the crop. Thus, there is no doubt about the presence of this witness on the spot at the relevant which is otherwise also established from the statement of Gosairam (PW-2), who has stated that on the fateful day his sons Dipak & Dilip had gone to the field to keep watch on the crop and at about 2.00 p.m. they returned home and informed that accused/appellant had assaulted the deceased by axe.

As regards the non-examination of Dilip, another person cited as eyewitness to the incident, it is the mandate of Section 134 of the 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 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. In the present case, the order sheets of the Court below available on record goes to show that though said Dilip appeared before the Court for recording of evidence on many occasions, but on account of adjournments being sought by the defence, his evidence could not be recorded. Even otherwise in the light of evidence of Dipak (PW-5), who has consistently deposed before the Court as to the manner in which he witnessed the whole incident and the accused/appellant committing murder of deceased, non-examination of said Dilip would not have any adverse impact on the case of the prosecution.

Looking to the facts and circumstances of the case in particular the evidence of the eye-witness who has categorically supported the case of the prosecution, this Court is not in the agreement of the submission of the counsel for the appellant that as the prosecution has not obtained the serological report to find out genesis of the blood, the conviction cannot be made. There are several judicial pronouncements where it has been categorically held that if there is conclusive evidence on record indicating the involvement of accused/appellant, the Court is not supposed to look for any other evidence including the serological report to slap conviction on the accused. That apart, in his statement under Section 313 CrPC, the accused/appellant has utterly failed to bring forth any explanation as to how the blood stains appeared on the articles seized at his instance.

19. We find no substance in the argument of counsel for the accused/appellant that in the facts and circumstances of case the accused/appellant is liable to be held guilty under Section 304 Part-I IPC. The manner in which offence is said to have been committed, weapon of offence i.e. axe, the part of body on which assaults were made i.e. neck, and the force with which the assaults were made causing fractures in the head, skull etc. leading to her instantaneous death, it is evident that the accused/appellant had intention to cause death of the deceased and had every knowledge that the injuries being inflicted by him on the deceased were sure to result in her death.
20. Thus, 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 and 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.

21. Appellant is reported to be on bail. His bail bonds are cancelled. He be taken into custody and sent to jail forthwith to serve out the remaining part of the sentence imposed on him.

Sd/-

(Pritinker Diwaker)
Judge

roshan/-

Sd/-

(RCS Samant)
Judge