

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 95 of 2014

- Angeshwar Sahu S/o Baldau Sahu Aged About 35 Years R/o Village Barduli, Thana Jarhagaon, Distt. Bilaspur C.G. Present Distt. Mungeli C.G. , Chhattisgarh

---Appellant

Versus

- State Of Chhattisgarh Through Ps - Jarhagaon, Mungeli C.G. Civil And Rev. Distt. Mungeli C.G. , Chhattisgarh

---- Respondent

For the Appellant : Mr. Shyam Sunder Lal Tekchandani, Advocate.
For the State/Respondent : Mr. Wasim Miyan, Panel Lawyer.

Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on board

Per R.C.S. Samant, J.

15/09/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 12.11.2013 passed by the Additional Sessions Judge, Mungeli in Session Trial No.03/2012 whereby appellant was convicted under Sections 302 & 449 of Indian Penal Code (for short 'IPC') and sentenced to undergo life imprisonment and to pay fine of Rs.1000/- and RI for 10 years with fine of Rs.1000/-, with usual default clause, respectively. All the sentences have been directed to run concurrently.

2. The prosecution case, in brief, is this that in the night intervening 10th & 11th December, 2011, Dameshwar PW-8 upon hearing cries of his mother came out of his room and saw the appellant running away from kitchen-garden carrying an axe in his hand. He went inside the room and found his father Panchuram lying dead with incised injuries on his head, hand, neck, mouth & nose. He was informed by his mother Lachchhan Bai PW-9 that it was appellant, who had murdered the deceased. Morgue intimation Ex.P-12 was recorded on the basis of information given by Dameshwar PW-8. FIR (Ex.P-11) under Section 302 of IPC against the appellant was also registered at the instance of Dameshwar (PW-8). After completion of investigation, charge-sheet was filed before the concerned Court.
3. Appellant was charged under Section 302 of IPC. He denied the charge and sought trial. After completion of prosecution evidence, the appellant was examined under Section 313 of CrPC in which he denied all the incriminating evidence appearing against him, pleaded innocence and false implication. It is also pleaded that the family of deceased was jealous because of the progress made by the family of appellant and also for the reason that the appellant used to make fun of deceased Panchuram, saying that he is having two wives and for these reasons, he has been falsely implicated in this case for taking revenge. No witness was examined in defence. After completion of trial, the impugned judgment has been passed, in which, appellant stand convicted as mentioned herein-above.
4. It is submitted by counsel for appellant, that the conviction against

the appellant is without any substance which has been erroneously held by the trial Court. The evidence of witnesses of prosecution was not beyond reasonable doubt. No independent witness has been examined for the prosecution of this appellant. All the witnesses are the family members of the deceased who were interested in getting the appellant convicted and punished. Statements of interested eyewitnesses were full of contradictions and omissions, therefore, the same ought not to have been relied upon by the trial court. Hence, the conviction of the appellant is bad in law and it is prayed that he may be acquitted of charge.

5. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the counsel for the appellant. It is submitted that prosecution has proved its case beyond reasonable doubt. Eyewitness Lachchan Bai PW-9 has clearly stated that it is the appellant who had caused death of the deceased. Statement of Dameshwar PW-8 is equally relevant in support of the same. Postmortem report also clearly shows that the death of deceased was homicidal in nature. Hence, this appeal is totally without any substance and the same is liable to be dismissed.
6. We have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
7. The question that requires determination in this appeal is as to whether the prosecution has been able to establish guilt of accused/appellant, on the basis of evidence beyond reasonable

doubt ?

8. Death of the deceased Panchuram is not disputed. His death has occurred due to injuries inflicted upon him has been proved by the prosecution. Dr. Vibha Sindur PW-12, who conducted postmortem examination, has reported vide Ex.P-15A that she noticed one incised wound left side of the neck of size 3X3 cm in which the blood vessels were cut, one incised wound over right side of size 7x3x3 cm one incised wound on right side of zygomatic area up to left cheek 12x2 cm upto bone deep, 1 incised wound size 3X1X1 cm, 1 incised wound on right shoulder, one incised wound of size 4x1x1 cm right arm and one fracture in humerous bone. She has opined that all the injuries were ante-mortem in nature, the cause of death was excessive bleeding and shock due to neck injury and the death was homicidal in nature. In cross-examination, there is no rebuttal regarding the findings of injuries on the body of the deceased and such that the death of the deceased was other than homicidal in nature. Hence, it is clearly established that the deceased was done to death by inflicting incised wounds on the vital parts of his body with sharp edged weapon of offence. Therefore, this finding in the impugned judgment needs no interference.
9. The case of prosecution is mainly based on the testimonies of eyewitnesses to the incident namely Dameshwar PW-8 & Lachchhan Bai PW-9. According to Lachchhan Bai PW-9, wife of deceased, at the time of incident she was present with the deceased. The appellant had come to the deceased some time before the incident

took place, asking him to provide him Rs.20,000/-. The deceased assured him that he will arrange money for him in the morning. The appellant was not satisfied with the reply and he went away abusing him. She has further stated that in the night between 11:00-12:00, the appellant trespassed into the house and came inside the room. She awoke at that time. She saw the appellant inflicting injuries on the deceased with an axe which resulted in his death. Seeing this, she started crying. On being asked by another wife of her husband, she informed her about the incident. In cross-examination, she has stuck to the version given by her in examination-in-chief. She has denied all the adverse suggestions given by defence. All other statement in cross-examination have no relevance as to contradict or rebut the statement which she has given in examination-in-chief.

10. Dameshwar PW-8 has also deposed in the similar manner as has been deposed by PW-9. According to this witness, on the date of incident and the time of incident, he was sleeping in his room and upon hearing the cries of his mother, he got up and went towards the room of his father. On reaching there, he saw the appellant running away and at that time he was holding axe in his hand. In the cross-examination this witness has remained firm. The statement of this witness that he saw the appellant fleeing from his house carrying an axe is relevant and admissible in evidence as *res gestae* under Section 6 of the Evidence Act.

11. PW-1 Manmati, another wife of deceased Panchuram, has stated that upon hearing cries when she came out, she was informed by

PW-9 that appellant had killed Panchuram (deceased). This witness was immediately informed about the incident and regarding the statement of act of appellant no question was put to her in her cross-examination, so as to rebut her statement in examination-in-chief.

12. Other witnesses examined by the prosecution are regarding the investigative procedure.

13. Inspector B. Kujur PW-11 has stated that on the basis of memorandum (Ex.P-3) of appellant, he seized one bloodstained iron axe, vide seizure memo Ex.P-3; one pair of shoes & bloodstained clothes of appellant were seized vide Ex.P-4.. Although the seized articles were sent for FSL examination but the report of FSL has not been produced before the Court.

14. Parmanand Sahu PW-4 & Shivkumar PW-5 are the witnesses of seizure who have supported the Investigating Officer, hence, on this basis, it can be held that the seizure of articles, as mentioned herein above, have been made by the investigating Officer at the instance of the appellant. Although in absence of FSL report this evidence cannot be regarded as conclusive to convict the appellant.

15. The grounds raised in this appeal that any independent witness was neither listed nor examined by the prosecution before the trial Court and the key witnesses of this case are close family members of the deceased. The time of the incident in this case is very much relevant and important, as it is not a time when the residents of vicinity move

on the streets. Further the incident had taken place inside the house of the deceased, which shows that there was no possibility of presence of any independent witnesses in such a place. The presence of Lachchhan Bai PW-9 & Dameshwar PW-8 under the roof where the offence was committed is very much natural. Further, nothing has been established by the defence by way of bringing any statement in cross-examination of the prosecution witnesses to show any specific interest of the witnesses to falsely implicate the appellant.

16. After close scrutiny of all the evidence on record of the trial Court, we are of considered opinion that prosecution has proved its case beyond reasonable doubt, that it is the appellant who caused fatal neck injuries to the deceased by sharp edged weapon i.e. axe, which resulted in his death. Further, looking to the nature and number of injuries, the weapon used in commission of crime and part of the body chosen by accused/appellant i.e. neck, it was clear that the appellant had intentionally caused injuries with the knowledge that such act would cause death of deceased. Therefore the charge of offence under Section 302 of IPC against the appellant is proved and there is no requirement to interfere with the impugned judgment.

17. In the result, the appeal being meritless is liable to be and is hereby dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(R.C.S. Samant)
Judge

