

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 100 of 2013

- Bijendra Sahu S/o Ramdulari Sahu, aged about 50 years R/o Village Deonagar , Birkona, Thana - Koni, Distt. Bilaspur C.G.

---- Appellant

Versus

- State Of Chhattisgarh, Through - The District Magistrate , Bilaspur , Distt. Bilaspur C.G. , Chhattisgarh

---- Respondent

For Appellant	:	Shri Sunil Sahu, Advocate
For Respondent	:	Shri Vivek Sharma, Government Advocate

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

Judgement

Per P. Diwaker, J

12/03/2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 22.1.2013 passed by the learned Sessions Judge, Bilaspur in S.T. No.195/2011 thereby convicting the accused/appellant under Section 302 of the Indian Penal Code (henceforth 'the IPC') and sentencing him to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to undergo Simple Imprisonment for 6 months.
2. Case of the prosecution, in brief, is that deceased Ramshila Bai was married to accused/appellant and she was second wife of accused/appellant. Out of their wedlock, they have two daughters and one son namely Shrawan Kumar (PW-8), aged about 21 years. Before marrying

the accused/appellant, deceased was married to one Chowaram Ram and had one son namely Santosh Kumar Sahu (PW-2), aged about 28 years, from said Chowaram. In the night intervening 22nd & 23rd September, 2011 the accused/appellant is alleged to have killed Ramshila Bai by causing several injuries to her with axe. Incident was witnessed by Kiran Sahu (PW-1) & Shrawan Kumar (PW-8). FIR (Ex.P-11) was lodged on 23.9.2011 at 1.45 a.m. by Shrawan (PW-8) against the accused/appellant under Section 302 of IPC. Immediately thereafter mereg intimation (Ex.P-10) was recorded at 2.15 a.m. at the instance of said Shrawan (PW-8). Inquest (Ex.P-5) was prepared over the body of deceased on 23.9.2011. Body was sent for post mortem examination vide Ex.P-7 which was conducted by Dr. Vijay Kumar Verma (PW-5) and he noticed following injuries on the body of deceased:-

- Lacerated wound of 6 x 5cm x bone deep on forehead just above root of nose.
- Lacerated wound of 4 x 3cm just above to left eyebrow.
- lacerated wound of 3x2cm x bone deep just medial to left eye.
- Incised wound of 6x3cm in size deep cutting the trachea.
- Incised wound of 13x6 cm in size, bone deep, over middle and right side of chest.
- Commuted fracture of frontal, left and right parietal bone of skull.
- Complete cutting of trachea and pharynx.
- Fracture of right clavicle bone on its medial part.

As per opinion of the autopsy surgeon, the deceased died due to external & internal haemorrhage and shock as a result of multiple injuries. On 24.9.2011 memorandum of accused/appellant was recorded vide Ex.P-1 and on the basis of disclosure statement made by accused/appellant, axe was recovered from the village pond at his instance

vide seizure memo Ex.P-2.

3. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly the charge was framed against him. The prosecution in order to substantiate its stand, examined 09 witnesses and exhibited a number of documents. Statements of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication in the crime in question.
4. After hearing counsel for the parties, the trial Court by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.
5. Learned counsel for the appellant submits that;
 - testimony of PW-1 is not reliable as she is interested witness and therefore conviction of the appellant is bad in law.
 - on the date of occurrence the appellant was not in his house and had gone to village Newra.
 - recovery of axe at the instance of appellant is of no consequence as there is no report of FSL confirming presence of blood on it.
 - witness of memorandum and seizure have been examined by the prosecution but they did not support the prosecution case and as such declared hostile.
 - even if the entire prosecution case is taken as it is, the appellant cannot be convicted under Section 302 of IPC and at the most the appellant could be convicted under Section 304 Part I or II of IPC as it appears that the incident occurred without premeditation in the heat of

passion upon a sudden quarrel.

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 has further submits that there is no reason to disbelieve the statement of PW-1 who is an eyewitness of the incident and has duly supported the prosecution case.
7. Heard counsel for the parties and perused the evidence available on record.
8. Kiran Sahu (PW-1) is the wife of son of deceased from her first husband. She has deposed that 4-5 days prior to the date of incident, there was a quarrel between her mother-in-law (deceased) and accused/appellant with respect to registration of land purchased by her husband as the accused/appellant wanted to get the registration done in his name which was not acceptable to the deceased. According to this witness, she and her mother-in-law was sleeping together in a room on the fateful night. On hearing the sound of something being struck, she got up and saw that the accused/appellant was assaulting her mother-in-law (deceased) by axe. He had assaulted her twice. Seeing this, she loudly called her brother-in-law (PW-8). When her brother-in-law reached there, he also saw the accused in the room. Injuries were present on the neck and head of her mother-in-law and blood was oozing. The accused thereafter fled from there. Nothing could be elicited by the defence in cross-examination of this witness so as to discredit her testimony.
9. Santosh Kumar Sahu (PW-2) is the hearsay witness about the occurrence and hence formal in nature. Hariram (PW-3) is the witness of memorandum (Ex.P-1) and seizure memos Ex.P-2 & P-3. This witness

did not support the prosecution case and as such declared hostile. However, he has admitted his signature on the memos. Vishal Das (PW-4) did not support the prosecution and declared hostile by the prosecution. Dr. V.K. Verma (PW-5) is the person who conducted post-mortem examination over the body of the deceased and noticed the injuries as described above. Rupesh Guru Diwan (PW-6) is the Patwari who prepared the spot map Ex.P-9. Shankar Soni (PW-7) is the witness of memorandum (Ex.P-1). He has denied that any statement was made by accused in his presence leading to any recovery. Therefore, he has been declared hostile by the prosecution. However, he has admitted his signature on document Ex.P-1. Shrawan Kumar Sahu (PW-8) is the another eyewitness to the prosecution, but, he did not support the prosecution case and turned hostile. However, he has admitted his signature on Merg Intimation (Ex.P-1) & FIR (Ex.P-11). S.B. Dey (PW-9) is the investigating officer who has duly supported the prosecution case.

10. Close scrutiny of the evidence available on record makes it is clear that it is the accused/appellant who had committed murder of deceased Ramshila Bai. Incident was witnessed by Kiran Sahu (PW-1), who has categorically stated that she and her mother-in-law (deceased) were sleeping together in one room on the fateful night, upon hearing the sound of something being struck, she got up and saw the accused/appellant assaulting the deceased. She has further deposed that after assaulting the deceased, the accused/appellant fled from there. Statement of PW-1 gets corroboration from the version given in the FIR (Ex.P-11) lodged immediately after the incident i.e. within two hours of incident. It is well settled that when soon after the occurrence the FIR is lodged at the police station, false story being cooked-up and/or false implication of accused stands ruled out. The medical evidence also lends support to the

testimony of Kiran Sahu (PW-1). According to Dr. V.K. Verma (PW-5), who had prepared post-mortem report (Ex.P-5) after post-mortem examination of the body of deceased, the injuries found on the body of deceased were caused by hard & sharp object. To a specific query put to him, the doctor opined that Injury No.4 & 5 found on the body of deceased could have been caused by the sharp edged side of axe produced before him for examination. After the incident, a bloodstained axe was seized from the possession of accused/appellant and no explanation was offered by him as to how the axe was blood stained. Kiran Sahu (PW-1) was cross-examined at length by the defence, no dent could be made in the assertion made by her that the deceased died because of the axe injuries caused by the accused/appellant.

True it is that another eyewitness of the incident, namely Shrawan Kumar Sahu (PW-8), did not support the prosecution and turned hostile, but it does not affect the prosecution case at all because the principal eyewitness to the crime i.e. PW-1, remained consistent throughout her examination in the Court and has fully supported the prosecution. She has categorically stated as to the manner in which the deceased was done to death by accused/appellant. The facts stated by her conform to and consistent on material points from the facts stated earlier to the police either in FIR or case diary statement. Thus, the hostility of PW-8 is not fatal in the face of otherwise cogent and convincing evidence of PW-1, corroborated by promptly lodged FIR and medical evidence. It is also well-established that it is quality of evidence and not quantity of evidence which is material. Quantity of evidence was never considered to be a test for deciding a criminal trial and emphasis of Courts is always on quality of evidence.

Admittedly, the prosecution has failed to produce the report of FSL

but, in our view, that would not provide a handle to the defence to attack the prosecution case. No doubt, it would have been better if the investigating officer would have sent the bloodstained articles to the FSL for chemical examination. However, the said omission on the part of the investigating officer is not a flaw of that type so as to invite the consequence of jettisoning the sworn testimony of the eye-witness.

11. Thus, on the basis of the documentary and ocular evidence, we are fully satisfied that the prosecution has been able to prove its case beyond reasonable doubt and has brought home the guilt of accused/appellant under Section 302 of IPC.
12. For the reasons afore-stated, we do not find any infirmity in the judgment of conviction recorded by the trial Court, which warrant our interference. This appeal is, accordingly, dismissed. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

(Pritinker Diwaker)
Judge

(Sanjay Agrawal)
Judge

roshan/