

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on : 06/01/2018Judgment delivered on : 24/01/2018Criminal Appeal No.396 of 2013

(Arising out of judgment dated 23.2.2013 in Sessions Trial No.188/2011
of the learned First Additional Sessions Judge, Surajpur)

Daulat Ram S/o Gokul Dhanuhar, Aged about 45 years, R/o village
Kedarpur, Katelpara, Police Station-Premnagar, District-Surajpur
(Chhattisgarh)

---- Appellant
(In Jail)

Versus

State of Chhattisgarh, through Police Station Premnagar, District Surajpur
(Chhattisgarh)

---- Respondent

For Appellant: Mr. Ashish Surana, Advocate.

For State/Respondent: Mr. Shashank Thakur, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Sharad Kumar Gupta

C.A.V. Judgment

Sanjay K. Agrawal, J

1. This criminal appeal is directed against the judgment of conviction and order of sentence dated 23.2.2013 passed by the First Additional Sessions Judge, Surajpur in Sessions Trial No.188/2011, whereby the First Additional Sessions Judge has convicted the appellant under Section 302 of the IPC and sentenced to undergo imprisonment for life and fine of ₹ 100/-, in default of payment of fine to further undergo imprisonment for ten days.
2. The prosecution case as unfolded during the course of trial is as under: -

3. It is the case of the prosecution that on 9.1.2011 at about 11 p.m. the appellant caused death of his brother-in-law Duhan (since deceased) by causing injury by axe. Deceased Duhan is brother-in-law of appellant-Daulat Ram. Lodhurat (PW-1) is brother of deceased Duhan, Sumriya Bai (PW-3) is wife of the deceased and Ramniya (PW-4) is wife of the accused/appellant and sister of the deceased. On 10.1.2011 at 12.30 p.m. merger intimation was registered vide Ex.P/4 on the report of Lodhurat (PW-1), brother of the deceased and thereafter, First Information Report Ex.P/5 was lodged by Lodhurat (PW-1) at Police Station Premnagar on 10.1.2011 and offence under Section 302 of the IPC was registered against Daulat Ram/appellant herein. Inquest was conducted by the Station House Officer of Police Station Premnagar vide Ex.P/7 on 10.1.2011. Memorandum of the accused/appellant was recorded vide Ex.P/11 and on the basis of memorandum, axe was seized from him vide Ex.P/12. Dead body of the deceased was sent for postmortem to Community Health Centre, Premnagar, where Dr.Deep Kumar (PW-2) conducted postmortem vide Ex.P/1 and opined that cause of death was due to hypovolemic shock. The jurisdictional police completed the investigation and filed the charge-sheet. The appellant abjured guilt and entered into defence.
4. In order to bring home the offence, the prosecution examined as many as 5 witnesses and exhibited 12 documents Exs.P-1 to P-12. Statement of the accused/appellant under Section 313 of the CrPC was recorded in which he denied guilt. However, he examined none in his defence.

5. The trial Court after appreciating oral and documentary evidence on record held that Sumriya Bai (PW-3) and Ramniya (PW-4) both are eyewitnesses and proceeded to convict the appellant for offence under Section 302 of the IPC and sentenced him as mentioned in opening paragraph of this judgment.

6. Mr. Ashish Surana, learned counsel appearing for the appellant, would submit as under:-

(i) That, Sumriya Bai (PW-3), wife of the deceased, is not eyewitness and she has not seen the occurrence as she reached the spot after incident. Therefore, by holding her as eyewitness, learned First Additional Sessions Judge has committed illegality.

(ii) Likewise, Ramniya (PW-4) is not eyewitness and she is hearsay witness. She has clearly stated in her evidence that the alleged occurrence was informed to her sister-in-law Sumriya Bai (PW-3). Therefore, the trial Court has committed illegality by holding and accepting her as Eyewitness.

(iii) That, merely because Ramniya (PW-4) has stated in her cross-examination that she has seen the incident assaulting deceased by the appellant, she cannot be accepted as eyewitness and her testimony is not trustworthy and reliable.

(iv) That, memorandum and seizure have not been proved. Even incident is of 9.1.2011 and memorandum is alleged to

have been made on 27.9.2012.

(v) That, hearsay evidence cannot be converted into substantive evidence.

Therefore, the impugned judgment of conviction recorded and sentence awarded deserves to be set aside.

7. Mr. Shashank Thakur, learned Government Advocate appearing for the State/respondent, would submit that both Sumriya Bai (PW-3) and Ramniya (PW-4) are eyewitnesses, both are close relatives of the deceased and Ramniya (PW-4) is wife of the accused and there is no reason to make incorrect statement and falsely implicate the appellant in crime in question.
8. Replying to the submission of Mr. Shashank Thakur, Mr. Ashish Surana submits that in order to convict a person there must be reliable material on record and even on the basis of improvement, which is not supported by other reliable evidence, conviction cannot be based as the Court should be cautious in accepting the improved statement if it is not supported by other reliable evidence.
9. We have heard learned counsel for the parties and considered their rival submissions made herein-above and gone through the record with utmost circumspection.
10. First question would be whether the death of deceased Duhan was homicidal in nature.
11. In order to prove the death, Dr. Deep Kumar (PW-2) has been examined, who has conducted postmortem over the body of

deceased Duhan and submitted his report vide Ex.P/1 and cause of death was shown to be hypovolemic shock. Over the body of the deceased, number of injuries were found and all injuries were ante-mortem in nature. Cause of death was due to hypovolemic shock. Therefore, the finding that death of the deceased was homicidal in nature is based on evidence available on record and accordingly, it is held that death of deceased Duhan was homicidal in nature.

12. This would bring us to the next question whether death was caused by the appellant.

13. On the fateful day, at the place of occurrence, only deceased and accused were present, no one else was present, they were sitting together, when Sumriya Bai (PW-3) heard noise, she came out from house and saw her husband lying on the floor with injuries. In the statement before the Court, she has clearly stated that it is the appellant who caused death of her husband by axe as he has come to her house as guest. Ramniya (PW-4) is wife of the accused/appellant, who was also present in the deceased house. She has clearly stated in para 6 of her statement that her husband has assaulted the deceased by axe. Ramniya (PW-4) is not only wife of the accused, but the deceased was her brother also. In her cross-examination, she has clearly stated that recovered axe was owned by her brother (deceased) Duhan and she has witnessed the incident. She has also informed the police about the same and that has been omitted in her statement under Section 161 CrPC.

The aforesaid witness has clearly stated that assault was made by the present appellant by axe. Minor omission in the statement under Section 161 CrPC made by Ramniya (PW-4) would not make her testimony inadmissible in evidence. There is no reason on her part to make wrong statement and falsely implicate her husband. As stated earlier, she is also sister of the deceased. She has clearly stated the correct version of the incident. Not only this, on the memorandum statement of the accused/appellant Ex.P/11, axe was recovered from him vide Ex.P/12.

14. Thus, on the basis of testimony of Sumriya Bai (PW-3) and Ramniya (PW-4), it can be safely inferred that it is only and only the present appellant who has caused death of deceased Duhan by axe blow by which the deceased suffered grievous injuries and died on the spot.

15. On the basis of aforesaid analysis, we are of the considered opinion that the prosecution has proved its case beyond reasonable doubt and the trial Court has not committed any illegality in convicting the appellant under Section 302 of the IPC.

16. Accordingly, the criminal appeal being without substance is liable to be and is hereby dismissed.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sharad Kumar Gupta)
Judge