

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 23.08.2018

Judgment delivered on : 25.09.2018

CRA No. 235 of 2013

- Bideram Bhaskar S/o Asharam Bhaskar Aged About 30 Years R/o Lendra PS - Kanker Distt. Kanker C.G., Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through PS Kanker Distt. Kanker C.G., Chhattisgarh.

---- Respondent

For Appellant : Shri Pravin Kumar Tulsyan, Counsel.
For Respondent/State : Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Rajani Dubey

Per Rajani Dubey, J

C A V Order

This is an appeal against the impugned judgment and order dated 22.01.2013 passed by the Sessions Judge, Kanker, District- North Bastar, Chhattisgarh in Sessions Trial No. 21/2011 whereby the appellant has been convicted under Section 302 of Indian Penal Code and has been sentenced with life imprisonment and fine of Rs. 1,000/- with default stipulation.

2. The brief facts of the prosecution case are that, on 22.10.2010 police has registered the case against the accused/appellant under Section 323 and 506 of Indian Penal

Code on the allegation that accused/appellant has caused injury to his mother Brijbati @ Rajbati @ Tijobai and during treatment she died, therefore, police has converted the case under Section 302 of Indian Penal Code. Dr. J.S. Sahu, Medical Officer on emergency duty, Kanker sent the intimation vide Ex. P/3 to police station through his ward boy, on the basis of which S.I Awadesh Mishra, on 01.11.2010 at 8:00 p.m., registered merger intimation Ex. P/15 of IPC. After summoning the witnesses, inquest was prepared and the dead body was sent for post-mortem examination which was conducted by Dr. M.K. Markam (PW-6) vide Ex. P/8 and he opined that the cause of the death was due to head injury. During course of investigation, ASI Vijay Gajbhia (PW-5) recorded the statement under Section 161 and recovered fire-wood at the instance of Asharam Bhaskar (PW-2). After completion of investigation, charge-sheet was filed in the Court of Judicial Magistrate First Class, Kanker, who in turn, committed the case to the Sessions Court.

3. In order to prove the guilt of the accused the prosecution has examined as many as nine witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the crime in question.

4. After providing opportunity of hearing to the parties, the trial Court by judgment impugned, has convicted and sentenced

the appellant as aforementioned in Para 1 of the judgment. Hence, the present appeal.

5. We have heard learned counsel for the parties and perused the judgment impugned and records of the trial Court.

6. Learned counsel for the appellant vehemently argued that in the present case conviction is substantially based on conjectures, surmises and without any legal evidence. The case is only based on eye-witness namely Asharam Bhaskar (PW-2), husband of the deceased, therefore, he is an interested witness and the prosecution did not produce any independent witness. He further argued that the medical report does not corroborate the prosecution story. Medical report and statement of eye-witness is contradictory and the prosecution has failed to prove the case against the appellant beyond reasonable doubt. The trial Court has not appreciated the evidence on record properly and had erroneously come to a conclusion while passing judgment of conviction which is liable to be set aside.

7. On the other hand, learned State Counsel opposed the counsel for the appellant and supported the findings of the lower Court.

8. In the present case, homicidal death of Brijbati due to head injury has not been substantially disputed on behalf of the appellant. Even otherwise, it is also established by the evidence of Dr. M.K. Markam (PW-6) and post-mortem examination report Ex. P/8 that death of the deceased was homicidal in nature.

Asharam Bhaskar (PW-2) husband of the deceased has stated that accused/appellant is his son. On the date of incident, while deceased Brijbati was serving food to her husband, accused/appellant came there and when she asked him to have food at that time, accused/appellant took the burning fire wood and assaulted her on the head as a result of which she sustained injuries & became unconscious. He has further stated that thereafter accused/appellant ran away from the spot. The deceased was then taken to District Hospital, Kanker where she succumbed to injuries on 01.11.2010. Ayaturam (PW-1) and Mangalram (PW-3) both have stated that Asharam Bhaskar (PW-2) has informed them about the whole incident. Mangalram (PW-3) is also a witness to seizure Ex. P/1 by which fire-wood was recovered. Dr. J.S. Sahu (PW-4) was on emergency duty, who sent the merg intimation vide Ex. P/2 to the police station and also sent the information of death of deceased Brijbati vide Ex. P/3 to the police station, Kanker. Dr. M.K. Markam (PW-6) is the autopsy surgeon, who conducted the post-mortem examination vide Ex. P/8 and opined that cause of the death was due to head injury and there was fracture in the left parietal bone and death was homicidal in nature.

9. Close scrutiny of the evidence makes it clear that the accused/appellant picked up the burning fire-wood and caused injury on the head of the deceased resulting in her death. The complicity of the accused/appellant in the commission of the offence has been duly proved by the prosecution.

10. Thus, looking to the act of the accused/appellant and evidence as adduced by the prosecution, his conviction under Section 302 of Indian Penal Code appears to be justified and therefore, the same is maintained. Thus, we do not find any illegality or infirmity in the judgment of conviction and order of sentence. Consequently, the appeal being devoid of merits is liable to be dismissed and is hereby dismissed.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(Rajani Dubey)

Judge

Prakash