

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 244 of 2015

- Sumitra Bai, Daughter of Mangal Sai Gond, aged about 25 years, Resident of Village- Saniwari, Police Station- Udaypur, District – Sarguja (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, through Police Station- Pratappur, District – Surajpur (C.G.)

---- Respondent

For Appellant : Smt. Ranjana Jaiswal, Advocate

For Respondent/State : Shri Vaibhav A. Goverdhan, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board By Justice Pritinker Diwaker

01/08/2018

1. This appeal arises out of the impugned judgment and order dated 16.10.2014 passed by the Additional Sessions Judge, Pratappur, District Surajpur (C.G.) in Sessions Trial No. 1/2013, convicting the appellant under Section 302 of the Indian Penal Code (hereinafter referred to as the 'IPC') and sentencing her to undergo rigorous imprisonment for life and pay a fine of Rs. 500/- and in default of payment to further undergo additional rigorous imprisonment for one month.

2. In the present case, the name of the deceased is Mangal Sai, father of the accused/appellant. As per prosecution case, some religious function was going on at village- Kevra which was attended by the deceased who also brought the appellant along with him. It is said that the appellant was having some mental problem and for her treatment the deceased had come to village-Kevra. On 21.02.2013, the appellant gave a blow of spade on the head of her father and upon hearing the cries, Tilsai-PW-3 rushed to the room and saw the deceased lying in injured condition and at that point of time, the accused/appellant was cutting his (deceased) leg. From the hands of the appellant, spade was taken and then at the

instance of Mahipal-PW-1 in whose house the incident had taken place, merger intimation (Ex.-P/1) was recorded on 21.02.2013 at 8:45 PM. Immediately thereafter FIR (Ex.-P/2) was registered against the appellant under Section 302 IPC. Inquest on the dead body of the deceased was conducted vide Ex.-P/4 on 22.02.2013. From the spot one spade was seized vide Ex.-P/7, however there is no FSL report. The body was sent for postmortem which was conducted on the same day by Dr. A.K. Vishwakarma- PW-7 vide Ex.-P/12. As per the Autopsy Surgeon following injuries were found on the body of the deceased:-

- i) L- 10 cm, with fracture of skull bone, W- 2 mm, earlobe contusion;
- ii) L- 9.5 cm, W- 1 cm depth, fracture of bone with parenchya;
- iii) L- 6 cm, W- 1 cm depth, fracture of bone, parenchya;
- iv) L- 5.5. cm, W- 0.5 cm depth, fracture of bone and parenchya;
- v) L- 5 cm, W- 0.5 cm depth, fracture of bone with parenchya
- vi) Lacerated wound below lower lip L- 1.8 cm, w- 2mm depth, fracture and deep;
- vii) Various contusion on face and variation from 2 cm to 1 cm;
- viii) Lacerated wound and fracture above ankle size L- 9 cm, W- 2.7 depth;
- ix) 2 lacerated wound above fracture of leg, L- 2 cm, W- 2mm depth, 2 mm

Autopsy Surgeon opined that the cause of death was hemorrhagic shock due to head injury and the death had occurred within 12 to 24 hours prior to the postmortem examination. Death was homicidal in nature.

3. After investigation, the charge-sheet was filed against the accused/appellant under Section 302 IPC and while framing the charge, the trial Judge framed the charge against the accused/appellant under Section 302 IPC.

4. So as to hold the accused/appellant guilty, the prosecution has examined 11 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C., in which she denied the circumstances appearing against her in the

prosecution case, pleaded innocence and false implication.

5. The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned above, hence this appeal.

6. Learned counsel for the appellant submits as under:-

- i) that actual occurrence has not been seen by PW-3- Tilsai and it appears that after seeing the dead body of the deceased he became the witness of the incident.
- ii) that the mental condition of the appellant was not in order and it appears that while she was under the effect of some mental ailment, she appears to have caused injury to the deceased which unfortunately resulted in his death.
- iii) that normally no daughter can commit murder of her father.
- iv) that even assuming the incident to be true, lenient view may be taken and the appellant be set-free forthwith.

7. Opposing the submission, it has been argued by the State counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same. State counsel submits that PW-3-Tilsai, after hearing the cries of the deceased immediately rushed to the spot and by that time assault on the head of the deceased was already made by the accused and she was cutting the leg of the deceased. He further submits that there is no ocular and documentary evidence that at the time of offence, the appellant was insane or that her mental condition was as such which could entitle her for the benefit of Section 84 IPC.

8. When this matter was heard yesterday, we asked the State counsel to ascertain the mental condition of the appellant, learned State counsel has informed that the appellant is capable of understanding the things and is in a position to

perform regular work though has low I.Q. (intelligence quotient). He further submits that in case requirement of medical treatment, the same shall be given to the appellant.

9. We have heard the counsel for the respective parties and perused the evidence and material available on record.

10. Tilsai-PW-3 is a son of Mahipal in whose house the appellant and the deceased had come and were residing on the date of incident. He stated that on the date of incident when he was working in his house, the appellant killed the deceased and after hearing his cries, he and his parent rushed to the spot and then the report was lodged. He is also the witness of seizure Ex.-P/9 and spot map Ex.-P/8. He stated that the mental condition of the appellant was not good and for her treatment, she was brought by the deceased. He further stated that the appellant was having some mental ailment. He admits that he had not seen actual assault but after hearing the cries rushed to the spot and saw the deceased. But he has denied the fact that he cannot tell as to who caused the death of the deceased.

11. Mahipal- PW-1 is father of PW-3 in whose house appellant and the deceased were residing. His statement is almost identical to that of PW-3. Upon hearing the cries of PW-3, he also rushed to the place of occurrence and saw the deceased in injured condition and at that time appellant was standing there carrying spade in her hand. He further stated that on his report, the merg intimation (Ex.-P/1) and FIR (Ex.-P/2) were registered.

12. Janki- PW-2 is wife of PW-1. Her statement is also similar to that of PW-1 and PW-3. Ajay-PW-4 is a hearsay witness. Dhobiram – PW-5 is son of the deceased. He came to know about the incident after it had taken place. Jitu Yadav- PW-6 and Fhilmon Toppo- PW-8 assisted in the investigation. Ramnandan- PW-9 is a witness of inquest (Ex.-P/4). Bodhan- PW-10 is a witness of notice for inquest

(Ex.-P/3). Rajesh Tiwari- PW-11 is the Investigating Officer.

13. Dr. A.K. Vishwakarma-PW-7 has conducted postmortem of the deceased and he gave his report (Ex.-P/12). He found injuries and fractures on the body of the deceased and opined that the cause of death was hemorrhagic shock due to head injury and the death had occurred within 12 to 24 hours prior to the postmortem examination. Death was homicidal in nature.

14. Close scrutiny of the evidence makes it clear that prior to 21.02.2013, deceased-Mangal Sai and the appellant were residing in the house of PW-1, Mahipal, for providing treatment to the appellant. As per oral evidence adduced by the witnesses, the appellant was having some mental ailment for which she was being treated. However, there is no documentary evidence on record showing that the appellant was either insane or was having some mental problem. From the evidence of PW-1 - Mahipal, PW-2 - Janki and PW-3 - Tilsai, it is apparent that immediately after hearing the cries, when these witnesses rushed to the spot, they saw the deceased in injured condition and the appellant was carrying spade in her hands. Postmortem report also supports the prosecution case.

15. Considering the evidence of PW-1 - Mahipal, PW-2 - Janki and PW-3 - Tilsai only one conclusion can be drawn that it is the appellant who caused injuries on the body of the deceased resulting in his unfortunate death. True it is that there is some evidence on record that the mental condition of the appellant was not good. However, that is not conclusive in nature to give benefit to the appellant under Section 84 IPC.

While dealing with the point of insanity or unsoundness of mind the Apex Court has in many cases – some of them being – Surendra Mishra Vs. State of Jharkhand, (2011) 11 SCC 495; Mariappan Vs. State of Tamil Nadu, (2013) 12 SCC 270; Sheralli Wali Mohammed Vs. State of Maharashtra, (1973) 4 SCC 79;

Oyami Ayatu Vs. State of M.P., (1974) 3 SCC 299 and Bhikari Vs. State of Uttar Pradesh, AIR 1966 SC 1, has unequivocally held that unless pleaded and proved during trial, the accused/appellant is not entitled to derive the protection of Section 84 of IPC simply by raising the issue at a belated stage. Here also, though this plea was taken before the trial Court but no evidence, oral or medical, could be adduced by the defence from which it could safely be inferred that the cognitive faculties of the accused were so impaired that she was not in a position to see the repercussions, of her act and since it has not been done, the accused/appellant cannot disown her guilt of murdering the deceased. Further, the act of the accused/appellant in denying the charges, pleading trial and innocence in her statement under Section 313 Cr.P.C. makes this Court to draw an inference that her mental faculties were not so impaired to provide her the strength to wriggle out of the rigor of law. Thus, in these circumstances and keeping in mind the aforesaid legal position, the appellant is held to be dis-entitled to have the protection of Section 84 of IPC.

16. Considering the entire evidence available on record in particular the statements of PW-1 - Mahipal, PW-2 - Janki and PW-3 - Tilsai and the postmortem report (Ex.P/12) of the deceased, we are of the view that the trial Court was fully justified in holding the appellant/accused guilty for committing the murder of the deceased- Mangal Sai. We find no illegality or infirmity in it for interference.

17. In the result, the appeal fails and is, accordingly, dismissed. The appellant is reported to be in jail, therefore, no further order regarding her arrest/surrender etc. is required to be passed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Gautam Chourdiya)
Judge