

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 307 of 2013

Jalsingh Rathiya, aged about 32 years, S/o. Babulal Rathiya, R/o. Binjkot, Thana – Kartala, District – Korba (C.G.). Present Address – Khadgaon, Chowki – Jobi, Thana – Kharsiya, District – Raigarh (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through : Police Station-in-charge, Police Station – Jobi, District – Raigarh (C.G.)

-----Respondent

For Appellant	: Mrs. Astha Shukla, Advocate
For Respondent/State	: Mr. Satish Gupta, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri &

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board by Goutam Bhaduri

24/02/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 05.02.2013, passed in S.T. No.53/2011, passed by the learned 2nd Additional Sessions Judge, Raigarh, District – Raigarh (C.G.), whereby and whereunder the learned 2nd Additional Sessions Judge has convicted the appellant under Section 302 and 436 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay fine of Rs.3000/- and to further undergo R.I. for 7

years and to pay fine of Rs.2000/- with default stipulation, respectively.

2. The case of the prosecution in brief is that the appellant – Jalsingh Rathiya is the son-in-law of the deceased -Mankunwar. The appellant was residing along with his mother-in-law and wife in the house of the deceased. The deceased – Mankunwar had sold certain land and thereafter the appellant started demanding money of sale consideration. The deceased having denied to give money, it resulted into frequent quarrel and dispute. Lastly on 17.02.2011 at about 9.30 PM at Village- Khadgaon, after the appellant reached home, he demanded amount of Rs.10,000/- and asked her wife Rambati to get the amount from her mother in absence of fulfilling the demand otherwise extended threat that he would kill her mother. Thereafter, having offered the food, the accused threw away the food and subsequently, when the altercation aggravated, the appellant assaulted the deceased by axe on her temple and thereafter set the house on fire. The report was made by the son of the deceased – Pitambar Rathiya and initially a case under Section 307 and 436 of the Indian Penal Code was registered. When the deceased was admitted to the hospital, during the course of treatment, she died on 18.02.2011. The police started investigation on the report and the treatment sheet was seized along with other documents. From the spot, the articles were seized and the appellant was taken into custody. On his memorandum statement, the weapon used for commission of

crime i.e. axe was seized. After investigation and recording of statement of the witnesses, charge-sheet was filed under Section 302 and 436 of the Indian Penal Code.

3. During the course of trial, the appellant accused abjured his guilt and claimed to be tried. It was contended that the appellant has been falsely implicated in this case. The prosecution on their behalf has examined as many as 19 witnesses. In defence, the appellant did not adduce any evidence. Learned Court below after evaluating the the evidence and the facts, convicted the accused as aforesaid. Hence this appeal.
4. Learned counsel for the appellant would submit that conviction, which is based on the statement of eye-witness namely Rambati can not be relied on as she was interested witness and directly related to the deceased. It is further submitted that the statement would show that there has been material omission and contradiction was made, consequently, the conviction could not have been based on such statement. It is further submitted that the statement would reveal that witness, who is eye-witness, who is said to be the wife had frequent quarrels with the appellant/husband as such and instead of actual accident, the allegations on the appellant/accused have been clamped, which the trial Court failed to appreciate. It is further contended that no serological report was placed on record so as to prove that the weapon, which was containing the blood was the blood of the deceased.

5. The State counsel opposes the arguments and would submit that statement of Rambati (P.W.-2) is beyond doubt and suspicion. He would further submit that statement would reveal that she was eye-witness to the entire incident and merely because of the fact that the eye-witness was relative of the deceased, her statement can not be discarded since she was the eye-witness. He further submits that appellant after committing the crime has set the house ablaze, which also remains unrebutted. Consequently, the finding given by the learned Court below is well merited, which do not call for any interference.
6. We have heard the learned counsel for the parties and perused the record of the Court below.
7. The eye-witness in this case is Rambati (P.W.-2), she has deposed before the Court that appellant Jalsingh Rathiya is her husband and deceased – Mankunwar was the mother. Narrating the incident, it is stated that on date of incident in between 8-9 PM, while her mother was in the house and her brother Pitambar had gone out to village to take a round after taking his meal. One sister Nirajo had gone to sleep at her friend's house at that time, the appellant came to the house and demanded an amount of Rs.10,000/- from her mother, the deceased. The deceased having denied to give money and altercation started. Therefore, the appellant being enraged, assaulted her mother by way of axe

on her temple thereafter, had set the house ablaze and locked himself into the room. Subsequently, her mother was taken to the hospital, wherein she succumbed to the injuries. In the cross-examination of this witness, nothing adverse has come on record, qua the statement supporting the accused, wherein she maintained the stand that on the date of incident, she was present in the house and firmly asserted the fact that she is a eye-witness to the fact that the appellant assaulted her mother. The suggestion given to the witness was denied by her that when the house caught on fire, and everyone were rushing to eliminate the fire, the deceased fell down and sustained injuries. Instead she has made statement categorical attributing the allegations to the appellant.

8. Likewise statement was given by Pitambar (P.W.-1). He has deposed that on the date of incident, after taking his meal, he went to the village and after hearing the noise, when he came to the house, he saw that his mother was lying on the floor and she had the injury on her temple. At that time, the house was on fire and the appellant had closed himself in a room and at that moment her sister Rambati has disclosed the fact that appellant has assaulted her mother by way of axe and set the house on fire. The witness further stated that thereafter, the FIR was lodged vide Ex.P-1. Perusal of document Ex.P-1, FIR would show that similar statement has been made before the police by Pitambar (P.W.-1), which falls in line to the statement made by

Rambati (P.W.-2) and corroborated the facts. In the cross-examination of Pitambar (P.W.-1), nothing has come on record to rebut such statement. Instead suggestion, which was given to the witness that before he can reach home, the appellant had already reached the house, thereafter, the incident happened, supports the case of the prosecution and series of incidents.

9. (P.W.-4) Ghasiram in his statement has stated that after hearing the noise, when he went to the house of the deceased – Mankunwar, he saw that Mankunwar was lying on the floor and she was having the injury on her temple and thereafter, she was taken to the Raigarh hospital, where during the treatment, she died. Similar statement is also made by Gandhi Das (P.W.-3), who has stated that when after hearing the noise, he went to the house and saw that Mankunwar was lying and having injury on her temple. The witness (P.W.-3) Gandhi Das is also a witness to the Panchnama Ex.P-4.
10. Investigating Officer, J.B. Singh (P.W.-19) has stated that on 18.02.2011, a report was made by Pitambar Rathiya against Jalsingh Rathiya with respect to the fact that Mankunwar was assaulted by the appellant on her temple by 2-3 times and thereafter, the appellant set the house on fire. On such report, FIR, Ex.P-1 was registered. This witness has further deposed that Mankunwar was sent for treatment to the Primary Health Center as per document Ex.P-9A and on 18.02.2011, an application was given to the Medical Officer, Primary Health

Center, Kharsiya to record the statement of the deceased dying declaration vide Ex.P-23, but it was not permitted by the doctor on the ground that injured was not in a position to give any statement. It is stated that therefore, according to the FIR, the accused was taken into custody and his memorandum was recorded vide Ex.P-13. The documents would reveal that on the basis of the said memorandum, seizure of axe was made vide Ex.P-14 from the accused from his house.

11. Doctor, who had initially treated the injured is Dr. S.K. Agrawal (P.W.-7). According to him on 18.02.2011, he had examined, the deceased Mankunwar, aged about 50 years and he found two injuries according to document Ex.P-9, which are as under :-

- (i) Incised wound 3x½ cm just below left mandible.
- (ii) Incised wound 5x1 cm left side of fore head to lateral to left eye.

According to this witness, both the injuries were caused by hard, sharp and cutting object and was caused within 6 to 12 hours before such examination.

This witness has further stated that condition of the deceased was serious and she was in the stage of coma and after primary treatment, she was referred to District Hospital. This witness has stated that, the axe, which was seized was produced before him with query as to whether the nature of injury could have been caused by such axe and vide Ex.P-10, he had opined

that article so seized, could have caused the injury.

12. The prosecution has also produced FSL report, which is marked as Ex.P-29, which shows that axe so seized was containing the blood. Ex.P-29 is proved by the Investigating Officer, which was received from Forensic Science Laboratory.
13. Dr. T.K. Tonder (P.W.-16), who conducted the postmortem had given his report vide Ex.P-21. According to this witness on examination of deceased he found that frontal bone was fractured and the brain was ruptured on the front and on the left side, the left mandibular was also fractured and according to the doctor, the reason for death was shock due to head injury and was homicidal in nature. This witness has deposed that injuries were caused within 12 to 36 hours before the examination. In the cross-examination of this witness also, nothing has come on record, so as to deny the fact for the reason of death.
14. After evaluating the entire evidence on record, it will lead to point out that according to the statement of the eye-witness – Rambati (P.W.-2), the appellant had demanded some money for the reason that the deceased, who was his mother-in-law had sold certain land and he demanded money for that. Having refused, the appellant caused assault by an axe and two injuries were inflicted on the head of the deceased, which is proved by the Dr. S.K. Agrawal (P.W.-7), who initially treated the injured and Dr. T.K. Tonder (P.W.-16), who has conducted the postmortem. The

evidence has come on record that because of such injury it resulted into death being homicidal.

15. Rambati (P.W.-2) had deposed that after inflicting the injuries to the deceased, the appellant has set the house ablaze, which is also corroborated by the witness Gandhidas (P.W.-3) and the presence of fire has also been corroborated by Pitamber (P.W.-1), Gandhidas (P.W.-3) and Ghasiram (P.W.-4).
16. After seizure of axe, FSL report Ex.P-29 also affirms the presence of the blood in the axe. Reading of the statement made by the accused under Section 313 of Cr.P.C. would show that no plausible explanation has been given by him as to why his wife would depose against him and presence of blood on the weapon has not been rebutted. Consequently taking into totality, the intention and the motive have also been proved by the prosecution along with the act committed by the appellant.
17. So after careful scrutiny and after survey of the entire evidence and the documents, we are of the considered opinion that no ground is made out warranting interference with the judgment of conviction and sentence awarded to the appellant.
18. In view of the forgoing discussions, the appeal has no merit and is dismissed accordingly.

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(R.C.S. Samant)
Judge