

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 955 of 2013

- Kirtan Ram Bhuiya S/o Mohar Lal Aged About 34 Years, occupation Agriculture, R/o Village-Mohanpur P.S. Lailunga, Distt. Raigarh C.G. , Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Lailunga, Raigarh, Distt. Raigarh, Chhattisgarh

---- Respondent

For the Appellant : Mr. Harish Kuntiya, Advocate.

For the State/Respondent : Mr. Wasim Miyan, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava &

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

Per R.C.S. Samant, J.

15/09/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 12.8.2013 passed by the First Additional Session Judge, Raigarh, Chhattisgarh, in Session Trial No.11/2012, convicting the accused/appellant under Section 302 of Indian Penal Code (for short 'IPC') and sentencing him to undergo Life Imprisonment with fine of Rs.15,000/- with default stipulation.

2. The prosecution case, in brief, is this that on 11.10.2011, at about 5 pm, when Makardhwaj PW-1 was watching television in his house, the appellant/accused came to his house, said to his mother Kaushalya Bai that on account of sorcery practiced by her, his child has fallen sick and saying so, he threatened to kill her. Thereafter, on the same day at about 6.30 in the evening, when the deceased was standing in the front of the house of Chutu PW-5, the appellant came there carrying club in his hand and saying that she is a sorcerer and she has practiced sorcery on his son, assaulted her thrice by the club, as a result of which she died. Makardhwaj PW-1 lodged FIR in the Police Station Lailunga. The case was investigated and after completion of investigation, charge-sheet was filed before the concerned Court.
3. The appellant was charged with offence under Section 302 of IPC and Section 5 of C.G. Tonhi Pratadna Adhiniyam, 2005. The appellant denied the charged and prayed for trial.
4. On completion of prosecution evidence, the appellant was examined under Section 313 of CrPC, in which, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witness was examined in defence. After completion of trial, the impugned judgment has been passed, in which appellant has been convicted and sentenced as mentioned herein above.
5. It is submitted by counsel for the appellant that the trial Court has erroneously convicted the appellant for the offence under Section 302 of IPC, without there being any evidence proving the guilt of

appellant beyond reasonable doubt. Statements of witnesses are full of contradictions and omissions, which create on about the prosecution story, therefore, the same ought not to have been made the basis for convicting and sentencing the appellant. In the alternative, it is prayed by counsel for appellant, that the appellant had no intention to cause homicidal death of the deceased, which is clear from the weapon of offence i.e. club, used in commission of crime. All that can be said is that the appellant had the knowledge that the injury inflicted by him was likely to cause death of the deceased. In these circumstances, the act committed by the appellant would come within the ambit of Section 304 Part II of IPC and not under Section 302 of IPC as has been done by the trial court.

6. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the counsel for the appellant. It is submitted that prosecution has proved its case beyond reasonable doubt. Conviction of accused/appellant is based on the testimony of eyewitnesses Makardhwaj PW-1 & Chutu @ Nityanand PW-5, who have duly supported the prosecution and remained firm in their cross-examination. Postmortem report Ex.P-12A, which has been proved by Dr. Yogeshwar Singh PW-7, shows that there was a fracture on occipital region and the brain matter had come out. Thus, there is ample evidence to show that the accused/appellant had intended to cause death of deceased. Hence, there is no scope for interference in the impugned judgment.
7. We have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.

8. The question that requires determination in this appeal is as to whether the prosecution has been able to establish guilt of accused/appellant, on the basis of evidence beyond reasonable doubt ?
9. Death of deceased Kaushlya Bai is not disputed. Dr. Yogeshwar Singh has conducted the postmortem examination of deceased on 12.12.2011 and found that the deceased had a one blunt injury on her left hand and wrist, middle finger of her left hand was broken. A big lacerated wound was present on the left side of the skull coupled with fractured of skull and the brain matter coming out. Another lacerated wound of 4X2cm size was present on left leg below the knee, another lacerated wound bone deep on the back side of the skull of size 8X4X2 cm on which the brain matter had come out and there was one more lacerated wound of size 8X6X2 cm bone deep of the occipital region of the skull. On the basis of these findings, the witness has opined, that the death was caused due to internal hemorrhage and damage caused to the spinal cord. The injuries were caused by the some hard and sharp edged weapon and the death was homicidal in nature vide his report Ex.P-12A. In cross-examination, he has denied that such injuries could have been caused due to fall and there is no such evidence by way of admission of any other witnesses of prosecution that the injuries could have been possible due to fall of the deceased. No witness was examined in defence to prove the different theory, it is clearly established that the death of the deceased was caused due to fatal injuries caused on her head regarding which the finding in the impugned judgment

needs no interference.

10. The person making the assault was this appellant is supported with the evidence of Makardhwaj PW-1, who has stated, that in his presence, the appellant had assaulted his mother deceased Kaushlya Bai uttering that she has to cure his child otherwise he is going to kill her. He is the lodger of morgue intimation ExP-1 and FIR Ex.P-2. He has further clarified in his examination-in-chief that the appellant had assaulted his mother with club and brick bat on the face, head and wrist of the deceased and continued doing so even after the fall of deceased on the ground. In cross-examination, he has denied the suggestion that at the time of incident he was not present on the spot. He had denied all the adverse suggestions given to him by the defence and has stuck to his version given in the examination-in-chief.

11. Chutu @ Nityanand PW-5 is another eyewitness, who has supported the prosecution. He has clearly stated about witnessing the incident, in which, appellant had assaulted the deceased with a brick bat because of which she died. As his statement before the Court was not in accordance with his earlier statement Ex.P-1, with the permission of Court, the prosecutor has confronted him with earlier statement Ex.P-11 for the reason that he had omitted to give statement about assault with club, but otherwise this witness has clearly stated that it was the appellant who had assaulted the deceased. In cross-examination, his statement has remained un rebutted.

12. Other eyewitnesses Basant PW-2 has not supported the prosecution case and therefore she has been declared hostile by the prosecution but this does not effect the evidence of other eyewitness which has been scrutinized thoroughly.

13. Inspector K.P. Jaiswal has proved the investigation done by him. Although the prosecution has produced witnesses of memorandum and seizure, to establish recovery of bloodstained weapon of offence from the possession of accused/appellant. However, the evidence seizure of blood stained club from the appellant vide Ex.P-7, bloodstained clothes vide Ex.P-8 are not conclusive in nature because the prosecution has failed to produce the report of FSL confirming presence of blood on the articles so seized at the instance of accused/appellant, but, present being a case of eyewitnesses account where they have deposed about the incident in a clear and lucid manner, hence, the failure in bringing connecting evidence is not of much consequence.

14. After close scrutiny of the evidence of the prosecution case, we are of the considered opinion that the prosecution has been able to prove its case beyond reasonable doubt. The eyewitness account clearly shows that it was the appellant who assaulted the deceased with club & brickbat which resulted in her death and according to the medical evidence, it is clear that the injuries were caused to the deceased with such a force to make sure that her death is caused.

15. After due consideration, we of the view that the appellant has assaulted the deceased with intention to cause her death.

16. In the result, the appeal being meritless is liable to be and is hereby dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(R.C.S. Samant)
Judge

Nisha