

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1176 of 2013

- Naval Vishal, Aged about 30 years, S/o Shri Upendra Vishal, R/o Village Ankori, P.S. - Basna, Civil & Revenue District – Mahasamund (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through : P.S. Basna, Civil & Revenue District – Mahasamund (C.G.)

---- Respondent

For Appellant : Shri Ashok Dixit, Advocate
For Respondent/State : Ms. M. Aasha, Panel Lawyer

**Hon'ble Shri Justice Rajendra Chandra Singh Samant &
Hon'ble Shri Justice Gautam Chourdiya, JJ**

Judgment On Board By Justice Gautam Chourdiya

14/07/2018

1. This appeal arises out of the judgment of conviction and order of sentences dated 27.09.2013 passed by learned Additional Sessions Judge, (FTC), Mahasamund, District Mahasamund (C.G.) in Sessions Trial No. 14/2013, whereby, the appellant stands convicted and sentenced as under:-

<u>Conviction:</u>		<u>Sentences:</u>
Under Section 376 of the Indian Penal Code (hereinafter referred to as the 'IPC')		Rigorous imprisonment for ten years and to pay a fine of Rs. 500/- and in default of payment to further undergo rigorous imprisonment for two months
Under Section 302 of IPC		Life imprisonment and to pay a fine of Rs. 5000/- and in default of payment to further undergo rigorous imprisonment for one year.
Both the sentences to run concurrently		

2. The case of the prosecution, in brief, is that on the date of incident, i.e. 27.11.2012 at about 4.30 PM, the prosecutrix (since deceased) had gone outside of the village towards pond to answer the call of nature. At that time, the accused/appellant saw the prosecutrix was alone and chasing her from bamboo-bida field to (tikra) of Shaukilal Pradhan near *mahua* tree, pulled her down and committed rape upon her. Fearing that the prosecutrix will disclose this fact to the villagers, the accused/appellant, assaulted the prosecutrix with the help of stones on her head, face and ear as a result of which she died.

3. First Information Report (FIR – Ex.-P/15) was lodged on 28.11.2012 at about 7:00 by Gautam Deep (PW-7), brother of the prosecutrix, in police station-Basna, Mahasamund in Crime No. 397/2012 under Section 302 of the Indian Penal Code (hereinafter referred to as the 'IPC') against the accused/appellant. During investigation, morgue (Ex.-P/10) was recorded on the 28.11.2012 at about 7:10 by Vinod Mandavi (PW-10), Investigating Officer. After giving notice (Ex.-P/16) to the *Panchas*, inquest (Ex.-P/6) on the dead body of the prosecutrix was prepared. *Nazri-naksha* (Spot-map - Ex.-P/17) was prepared by PW-10. Spot map(Ex.-P/8) was prepared by Jaishankar Sao, Patwari (PW-5). Thereafter, the dead body of the prosecutrix/deceased was sent for autopsy. The postmortem examination was conducted by Dr. B.B. Kosariya (PW-8) who prepared his report Ex.P/13. The Autopsy Surgeon (PW-8) noticed following injury on the body of the prosecutrix/deceased:-

- i) Lacerated wound size 4.5 cm x 3.5cm x 1 cm deep on the left temporal area;
- ii) Lacerated wound size 1.5 cm x 1 cm x 1 cm deep above on right eyebrow;
- iii) Lacerated wound size 0.5 cm x 0.3 cm x 0.5 cm above the left ear;
- iv) Pinna is lacerated size 1 cm x 0.5 cm x 0.5 cm deep on the outside of left ear;
- v) Left temporal and left side of frontal bone were fracture, bone is inserted on brain material;

- vi) Multiple injuries were found on the head and face with excessive bleeding.

The Autopsy Surgeon opined that the cause of death was due to cardio-respiratory failure due to stoppage of heart and breath with excessive bleeding and the death had occurred within 26 hours prior to the postmortem examination. Death was homicidal in nature. Dr. B.B. Kosariya (PW-8) has also examined the accused/appellant and opined that the accused is capable to perform sexual intercourse. His report is Ex.-P/12.

4. The accused was taken into custody on 28.11.2012 and the memorandum (Ex.-P/1) of the accused was recorded under Section 27 of the Evidence Act. On the basis of memorandum (Ex.-P/1), clothes-Ex.-P/2 (jeans jacket and jeans pant) of the accused/appellant were seized under Ex.-P/2. Blood stained soil, plain soil, one green coloured basket, one pair of slipper and blood stained stone were seized from the place of occurrence is under Ex.-P/4. Seized articles were sent for chemical examination to the Forensic Science Laboratory (FSL).

5. After investigation, the charge-sheet was filed against the accused/appellant under Sections 302 and 376 of IPC and while framing the charges, the trial Judge framed the charge against the accused/appellant under Sections 302 and 376 of IPC. Appellant denied the charges and prayed for trial.

6. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 10 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C., wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question. The accused/appellant examined himself as DW-1 and one Dr. B.R. Malik as DW-2 in his defence.

7. 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.

8. Learned counsel for the appellant has not disputed the homicidal death of the prosecutrix/deceased. He submitted the prosecution has failed to prove the guilt of the appellant in crime in question. He also submitted that the semen has been found in the report of FSL is not clearly proved that such semen was of the appellant and there were no injuries have been found in the vaginal part or pelvic area, neck or breast of the prosecutrix. He argued that Bhaskar Mehra (PW-2) stating in his statement that he saw the incident from 500 metre and he has not clearly seen as to what happened at the place of incident, therefore, his evidence is of no value. He further submitted that the learned trial Court has convicted the appellant only on the basis of last scene and the circumstantial evidence. He prayed that the appellant is in jail since 28.11.2012 and therefore he may be set free forthwith.

9. On the other hand, Ms. M. Aasha, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment and order passed by the learned trial Court. It has been argued by the State counsel that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same.

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

11. The prosecution has examined as many as 10 witnesses in this case and the prosecution case was mainly based on the evidence of Bhaskar Mehra (PW-2), Vijaya Sidar (PW-9) and Dr. B.B. Kosariya (PW-8) who conducted the autopsy of the prosecutrix and examined the clothes of the prosecutrix/deceased and also on the FSL report (Ex.-P/23) and seizures (Ex.-P/2, Ex.-P/4 and Ex.-P/18).

12. In order to appreciate the argument advanced on behalf of the parties, we have examined the material available on record.

13. So far as place of occurrence is concerned, the place of occurrence is most important. In this case, the place of occurrence is in the field of Shaukilal near *mahua* tree where the accused/appellant was chasing the prosecutrix/deceased and was seen by Bhaskar Mehra (PW-2) and Vijaya Sidar (PW-9). Thereafter, they (PW-2 and PW-9) saw the prosecutrix in dead condition under the *mahua* tree.

14. Bhaskar Mehra (PW-2) stated in his examination that on the date of incident, in the evening, he had gone towards pond to answer the call of nature, there is a bamboo tree, from where he saw that the accused chasing the prosecutrix and caught her near *tikra* of Shaukilal near *mahua* tree and pulled her down and assaulted her with stones. When the accused was assaulting the prosecutrix from stones, he (PW-2) saw that incident. Thereafter, he went back to village and narrated the story to the villagers and when he again went to the place of incident and saw the prosecutrix was lying in dead condition. PW-2, in cross-examination, admitted that he had not clearly seen what happened on the place of occurrence, but he stated in his examination that he has clearly seen the accused was chasing the deceased at the field of Shaukilal near the *mahua* tree.

15. Vijaya Sidar (PW-9) is a witness of spot and stated in her examination that on the date of incident, she, Madakini and Bhoomisuta had gone towards the field to answer the call of nature, at that time, prosecutrix was crying. The accused was chasing the prosecutrix/deceased near the *mahua* tree in the field of Shaukilal. When the prosecutrix cried, then they saw the Naval and prosecutrix, they went back to the village and narrated the story to the villagers. Thereafter, when they came near the *mahua* tree, they saw the prosecutrix was dead on the place near the *mahua* tree. Statement of Vijaya Sidar (PW-9) was not challenged in cross-examination. The statement of Vijaya Sidar (PW-9) has specifically proved that the

accused was chasing the prosecutrix/deceased at the field of Shaukilal near the *mahua* tree. There is no reason to disbelieve the testimony of PW-9. The version of PW-9 corroborates the statement by Bhaskar Mehra (PW-2) about the place of occurrence where the prosecutrix was last seen.

16. As per inquest (Ex.-P/6) prepared by Vinond Mandavi (PW-10), Investigating Officer, it is proved that the dead body of the prosecutrix/deceased was found near the *mahua* tree in the field of Shaukilal. So place of occurrence is not disputed. Ex.-P/6 has proved by Ugrasen (PW-4).

17. As per spot-map (Ex.-P/8) prepared by Jaishankar Sao (PW-5), who is Patwari, proved the same and marked the place of occurrence in red-ink.

18. Ex.-P/4 is the seizure of blood stained soil, plain soil, one green coloured basket, one pair of slippers and blood stained stones which were seized from the place of occurrence by Vinod Mandavi (PW-10), Investigating Officer. Ex.-P/4 has proved by Sahdev Deep (PW-3).

19. Therefore, it is clear that the place of occurrence is not disputed according to the evidence of PW-2, PW-9 and Ex.-P/4 articles seized from the place of occurrence and the articles seized from the place of occurrence were sent for their examination to Forensic Science Laboratory (FSL).

20. Ex.-P/2 is the seizure of clothes of the accused and the seizure was made in the presence of Govind Dadsena (PW-1) and as per the statement of PW-1, the accused gave statement to the police that he (accused) wore the clothes at time of incident was kept inside (*Aada*) of his house. Thereafter, one blue jeans jacket and blue jeans pant in which smear like blood were seized by the police and sent for their chemical examination to FSL. Ex.-P/2 has proved by Govind Dadsena (PW-1).

21. Ex.-P/18 is the clothes of the prosecutrix worn at the time of her death, the blood stained pink coloured nighty, blood stained pink coloured *peticoat*, white

coloured bra and the vaginal swab & vaginal slide prepared were handed over to the concerned police officer and advised for their chemical examination from Forensic Science Laboratory.

22. Govind Dadsena (PW1) is witness of memorandum (Ex.-P/1) given by the accused/appellant and the witness of seizure (Ex.-P/2). Sahdev Deep (PW-3) is a seizure witness of (Ex.-P/4), Ugrasen (PW-4) has proved inquest (Ex.-P/6) and also stated, in para-2 of his evidence, that on the place of occurrence two stones were found with blood stain. Nehru Lal (PW-6), village Kotwar, went along with villagers to place of occurrence, the prosecutrix was lying in dead condition under the *mahua* tree in the field of Shaukilal. Marks of injuries was present on both the ears of the prosecutrix and two blood stained stones were there on the place of occurrence. Gautam Deep (PW-7), brother of the prosecutrix. FIR (Ex.-P/15) was lodged by him and there is no contradiction or omission in the FIR and the morgue (Ex.-P/10) was recorded. In his presence, police has prepared inquest (Ex.-P/6) and has seized the articles on the place of occurrence marked as Ex.-P/4.

23. Jaishankar Sao (PW-5) is Patwari, who prepared the spot-map (Ex.-P/8) and has proved the same. Vinod Mandavi (PW-10) is the investigation officer and he prepared inquest (Ex.-P/6).

24. B.B. Kosariya (PW-8) conducted the autopsy on the dead body of the prosecutrix/deceased and found above mentioned injuries on the dead body of the prosecutrix. Doctor opined that the cause of death was cardio-respiratory failure due to stoppage of heart and breath with excessive bleeding and the death had occurred within 26 hours prior to the postmortem examination and death was homicidal in nature. His report is Ex.-P/13. He also examined the accused and opined that the accused is capable to perform sexual intercourse. His report is Ex.-P/12. Doctor (PW-8) stated, in para-5, that vaginal swab and vaginal slide prepared and the clothes of the prosecutrix wearing at the time postmortem like blood stained

pink coloured nighty, blood stained pink coloured *peticoat*, white coloured bra handed over to the concerned police officer and advised for their chemical examination to Forensic Science Laboratory.

25. In the present case, in defence, accused/appellant examined himself as DW-1 and Dr. B.R. Malik as DW-2. As per statement of accused, his family planning operation was done on 16.02.2012 at Community Health Centre, Basna, but that defence cannot be help for the accused because as per Ex.-P/12, he was capable to perform sexual intercourse. Dr. B.R. Malik (DW-2) has not given any specific statement in support of the accused/appellant.

26. As per FSL report (Ex.-P/23), it is proved that human blood was found on Articles i.e. A1 and A2 stones seized from the place of occurrence; B1 Jacket seized from the accused/appellant; C1 nighty, C2 *peticoat* & C3 Bra of the deceased; D soil seized for the place of occurrence. Similarly, 'A' group of human blood was found on Articles i.e. A1, A2, B1, C1 and C2. Therefore, it is proved that it is most important corroborative piece of evidence to involve the accused in the offence. Presence of human spermatozoa was confirmed in vaginal slides and vaginal swab i.e. Articles F1, F2, F3 and F4 vide FSL report (Ex.-P/23). Therefore, it is clearly indicated that before the incident of murder of the prosecutrix, the accused/appellant had committed rape upon her and after rape, committed murder of the prosecutrix with the help of stones.

27. In the present case, we have scrutinized the evidence of Bhasker Mehra (PW-2) and Vijaya Sidar (PW-9). Their evidence are sufficient to establish that they (PW-2 & PW-9) have seen the accused chasing the prosecutrix/deceased near the *mahua* tree in the field of Shaukilal and the prosecutrix was found dead under the *mahua* tree. Their statements have no major contradiction or omission and other witnesses have given the statements that when they reached the place of occurrence, the prosecutrix was found in dead condition under the *mahua* tree. The

factum of commission of sexual intercourse by the appellant, commission of causing injury with help of stones to the deceased/prosecutrix has been substantially corroborated by postmortem report (Ex.-P/13) and FSL report (Ex.-P/23). As per Ex.-P/12, the accused was capable to commit intercourse and his capability of commit intercourse is natural being a man aged about 30 years, but the accused/appellant has not offered any explanation as to how the human blood was found on his jacket (Article-B1) and in absence of any explanation, aforesaid fact also corroborates the case of the prosecution. As per FSL report (Ex.-P/23), human blood was found on the seized Articles i.e. A1, A2, B1, C1, C2, C3 and D and similarly A1, A2, B1, C1 and C2 the blood stains found to be of 'A' group and presence of human spermatozoa was confirmed in vaginal slides and vaginal swab i.e. Articles F1, F2, F3 and F4. Therefore, it is proved that it was the accused who after committing rape upon the prosecutrix, murdered her with help of stones.

28. In view of the above discussion, we are of the considered opinion that the learned trial Court has rightly convicted the appellant/accused under Sections 302 and 376 of IPC and the conviction is based on credible and clinching evidence sustainable under the law.

29. For the foregoing reasons, we do not find any substance in the appeal. The appeal being devoid of merit is liable to be dismissed and it is hereby dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Sd/-
(Gautam Chourdiya)
Judge