

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 93 of 2014**

- Dilip Mandal, S/o Shri Narayan Mandal, Aged About 30 Years, R/o Village P.V. 65 Police Station Pakhanjur Distt. North Bastar Kanker, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh, Through Police Station House Pakhanjur, Distt. North Bastar Kanker, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Shri Gajendra Sahu, Advocate
Shri Chitendra Singh, PL

Hon'ble Justice Shri Prashant Kumar Mishra**Hon'ble Justice Shri Gautam Chourdiya****Order On Board by Shri Prashant Kumar Mishra J.****26/11/2019**

1. Appellant stands convicted by the Trial Court for committing offence under Section 302 of IPC by committing murder of deceased Kalyani by repeated assault over her head by means of axe at about 8:30 am on 18.07.2008.
2. The merg intimation (Ex-P-8) was lodged by PW-6 Mohanlal at about 13:00 hour on the date of incident itself. Soon thereafter the FIR (Ex-P-9) was lodged at about 13:15 hours informing the Police that he had obtained lease of agricultural land belonging to the deceased and had gone to sow corn over the field. The

deceased was also working in the field and at that time at about 8:30 am the appellant reached the place of occurrence and stated to the deceased as to why she is sowing corn over the field. On deceased's claim that the field belongs to her, therefore, she is sowing the corn, the appellant became annoyed and started causing injuries over her back and waist, due to which she fell down and thereafter the appellant caused repeated axe blows on her head, due to which she died instantly. PW-6 Mohanlal rushed back to the village and informed about the incident to PW-9 Deepak Mandal, PW-2 Harlal Kirtaniya, PW-1 Anand Majumdar and other villagers.

3. The postmortem was conducted by PW-3 Dr. N. R. Navratan who submitted his report vide Ex-P-6 finding incised wound over forehead as also over left side of the head. Brain matter visible. The cause of death was cardio respiratory arrest due to shock due to cerebral injury. Homicidal in nature. Case diary statement of the witnesses including eye witness Mohanlal was recorded on the same day, wherein Mohanlal disclosed the entire incident almost in the same manner, in which it is written in the merge information and FIR. Since the appellant absconded after the incident, no recovery could be affected nor any memorandum statement could be obtained from him.
4. The prosecution examined as many as 9 witnesses to bring home the charges. The appellant abjured the guilt but did not examine any defence witness. He pleaded innocence and false implication.

5. Learned counsel for the appellant would refer to the contradictions and omissions in the statement of eye witness, which according to him proves that he was not at the place of occurrence. Thus, the argument is that there is no eye witness to the incident and there being no recovery from the appellant, he is entitled to be acquitted.
6. Per contra, learned State counsel would submit that the contradictions and omissions are very trivial deserving to be ignored. He would further submit that PW-6 Mohanlal is a natural witness.
7. The incident happened at about 8:30 am in the agricultural field belonging to the deceased as is mentioned in the spot map vide Ex-P-11, which is part of crime detail form. PW-6 Mohanlal has obtained lease of the land belonging to the deceased, therefore, his presence on the spot for sowing corn crop is very natural. This witness has not been cross examined by giving suggestion that he has not obtained lease of the land belonging to the deceased. In any case, the fact remains that while deposing in the Court, PW-6 Mohanlal has remained firm by stating the same facts which he had informed to the Police in his mere intimation and FIR. He immediately informed about the incident to the villagers, which finds support from the statement of PW-5 Ramen Mandal.
8. It is argued that the eye witness has stated that the deceased was also assaulted over her back and waist, but no

corresponding injury has been found by PW-3 Dr. N. R. Navratan, therefore, the narration of story is not finding support from the postmortem report, which again proves that PW-6 Mohanlal is not an eye witness. In the FIR as well as in his case diary statement, PW-6 Mohanlal would state that the deceased was first assaulted on back and waist and when she fell down, the appellant repeatedly assaulted by axe over her head. Although injuries on waist have not been mentioned by PW-3 Dr. N. R. Navratan, but during the dead body inquest vide Ex-P-2, the witnesses have found injury marks over her waist caused by the handle of the axe. Thus, the injury found on the person of the deceased by the witnesses fully corroborates the version of eye witness PW-6 Mohanlal that the deceased was also assaulted over her waist.

9. At this stage, learned counsel for the appellant would argue that the offence committed by the appellant would fall under Section 304 Part I or Part II of IPC, therefore, he being in jail since 16.11.2012, he deserves to be dealt leniently.
10. To consider the argument, it is to be kept in mind that the incident happened on the agricultural field belonging to the deceased. The deceased was a lady and had not provoked the appellant for committing the crime. She was without any weapon nor has she retaliated when the appellant started the assault.
11. The appellant initially assaulted the deceased on her back and waist, on which the deceased fell down. The appellant did not stop here and started repeatedly assaulting the deceased over

her head. Thus, he took undue benefit by overpowering the deceased even after she fell down. All these incidents would definitely point out that it is not a case of absence of pre-meditation or giving only one assault to the deceased. In our considered opinion, the present case would not fall within any of the exception to Section 300 of IPC. It is a pure and simple case of culpable homicide amounting to murder. No case for converting the offence from Section 302 to Section 300 Part-I or Part-II is made out.

12. For the above discussion, the appeal fails and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge