

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 989 of 2013**

- Ashwani Kumar Banjare, Age- 30 years, S/o Kholbahara Banjare, R/o Village- Nipaniya, P.S. Bhatapara, District Balauda Bazar (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through: The District Magistrate, Bilaspur (C.G.)

---- Respondent

For Appellant : Shri Rajkumar Gupta, Advocate

For Respondent/State : Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra, J**Hon'ble Shri Justice Gautam Chourdiya, J****Judgment on Board by Justice Prashant Kumar Mishra****26.11.2019**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 28.09.2013 passed by learned First Additional Sessions Judge, Bilaspur (C.G.) in Sessions Trial No. 156 of 2012, whereby the appellant stands convicted under Section 302 of IPC for committing murder of his wife namely Amar Bai and sentenced to undergo life imprisonment and fine of Rs.1,000/-, in default of payment of fine to undergo further rigorous imprisonment for one month. The appellant has been further convicted under Section 323 of IPC and sentenced to undergo rigorous imprisonment for one month, with direction to run both the sentences concurrently.
2. The appellant has allegedly committed murder of his wife Amar Bai during the intervening night of 23rd– 24th June, 2012. The merger intimation (Ex.-P/14) and F.I.R. (Ex.-P/17) were lodged by PW-9 Malik Ram at about 06:15 and 06:20 hours respectively in the morning of 24.06.2012 informing the police that his son-in-law appellant Ashwani Kumar Banjare was refusing to keep his wife (informant's daughter) with him and had left her in the informant house 8 days back. At about 11:00 pm in the previous night i.e. 23.06.2012, he was sleeping in the house and at the same time the deceased and her

sister Amrautin Bai were sleeping in one cot in the verandah of the house whereas Geeta Bai and two small children were sleeping adjoining on a separate cot. At this time, the appellant came there, gagged her mouth and inflicted repeated injuries over her neck and shoulder. Hearing his daughter's moaning into her gag, they woke up and saw the appellant running away from the place of occurrence. Amar Bai died on the spot instantaneously.

3. The appellant was taken into custody on 25.06.2012 and his memorandum statement (Ex.-P/1) was recorded consequent to which T-shirt and knife were recovered from his possession vide Ex.-P/2 and Ex.-P/3. These articles were sent for FSL examination, the report of which was filed as Ex.-P/25 finding presence of human blood on Article 'D' – T-shirt and Article 'E' – knife. Postmortem examination was conducted by PW-5 Dr. Shringi Netam who submitted her report vide Ex.-P/8 finding following injuries on the body of the deceased:-

- 1) Incised wound found over anterior aspect of neck – length 5 inch; width 0.25 cm & depth 2 inch from right side to middle-line 1.5 inch then become superficial due to this injury structure of neck cut - i) right carotid artery, ii) right jugular vein, iii) right vein & iv) trachea.
- 2) Stab wound found at level of T4-T5 2 inch, right and lateral to vertebral column length 1 inch, width 0.25 cm, depth 3 inch.
- 3) Incised wound found at left anterior aspect of shoulder – length 2.5 inch, width 0.25 cm & depth 0.5 inch.
- 4) Incised wound found at the level of T2-T3 length 1 inch, depth 0.5 inch & width 0.25 cm and 3 inch right and lateral to vertebral column.
- 5) Incised wound found at the level of T5-T6 length 2.5 inch, width 0.25 cm & depth 0.5 inch and 4 inch right and lateral to vertebral column.
- 6) Incised wound found at the level of T5-T6 2 inch right and lateral to vertebral column length 1 inch, width 0.25 cm & depth 0.5 inch.

The Autopsy Surgeon also found puncture of right lung and right pleura. The cause of death was hemorrhagic shock due to incised injury to right external and internal jugular, right carotid artery as well as stab injury to right lung

and the death was homicidal in nature.

4. Prosecution examined as many as 17 witnesses to bring home the charges. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. Accused/appellant examined one defence witness namely Manglu Kurre as DW-1. Based on the evidence, trial Court convicted the accused/appellant for offence under Sections 302 & 323 of IPC.
5. Having been convicted on the basis of evidence brought on record by the prosecution, the appellant would challenge the conviction on submission that PW-9 Malikram, PW-10 Amrautin Bai and PW-11 Geeta Bai are falsely projecting themselves to be eyewitnesses whereas none of them has seen the incident. It is also argued that the appellant has been falsely implicated for the reason that the deceased was demanding her share of land from PW-9 Malikram which would have ultimately come to the share of the appellant, therefore, PW-9 was not favouring partition of land to the deceased or to the appellant.
6. Per contra, learned counsel for the State would support the impugned judgment.
7. Heard learned counsel for the parties and perused the material available on record.
8. Entire prosecution case is mainly based on evidence of three witnesses namely PW-9 Malikram, PW-10 Amrautin Bai and PW-11 Geeta Bai. Coupled with these oral statements, the memorandum statement (Ex.-P/1) and FSL report (Ex.-P/25) as well as the postmortem report (also exhibited as Ex.-P/25) are also corroborative piece of evidence which we shall deal with hereinafter.
9. FIR (Ex.-P/17) and the case diary statements were recorded on the date of incident itself. In the FIR, PW-9 Malikram would inform the police that after

murder was committed, he saw the appellant running away from the place of occurrence. In his case diary statement, PW-9 Malikram informed the police that when deceased started crying because of the injury sustained by her, PW-10 Amrautin Bai, he (PW-9) and PW-11 Geeta Bai woke up and saw the appellant running away. PW-11 Geeta Bai stated in her case diary statement (Ex.-D/3) that deceased Amar Bai and PW-10 Amrautin Bai were sleeping in one cot. When the appellant caused injuries to the deceased, Amrautin Bai woke up and started shouting that her sister is killed. Hearing this shout of Amrautin Bai, she (PW-11) woke up and saw the appellant running away towards the kitchen-garden. Her husband PW-9 Malikram also reached the spot and he also saw the appellant running away. The narration of the incident as informed to the police has been deposed by PW-10 Amrautin Bai in the same manner stating that the appellant gagged her sister and caused injury over her neck by knife. Hearing her sister (deceased) moaning into her gag, she (PW-10) woke up, shouted and embraced the deceased. Her parents also woke up immediately and thereafter, the appellant ran away from the spot. This witness (PW-10) has received injury in the process of scuffling or when the appellant was running away causing minor injury on her right arm. This witness was also sent for medical examination. Her MLC has been proved as Ex.-P/25 finding one abrasion over the right arm caused 8-12 hours prior to her examination. Although PW-5 Dr. Shringi Netam has stated that examination of PW-10 was done on 29.06.2012 but this date is not correctly stated by the Doctor because the witness was sent for medical examination on 24.06.2012 vide Ex.-P/24. The date mentioned over Ex.-P/25 (MLC report) is 24.06.2012 and not 29.06.2012. Thus, PW-10 is almost in the nature of an injured eyewitness. Her statement is fully credible and trustworthy. There is no delay in recording her case diary statement. She has not exaggerated the incident or the manner in which it has happened.

10. True it is that PW-9 Malikram and PW-11 Geeta Bai have also tried to project

themselves as eyewitnesses, but in view of the case diary statements of these two witnesses as also the contents of FIR (Ex.-P/17) which was lodged by PW-9 Malikram it appears that these two witnesses had not seen the actual offence but had seen the appellant running away from the place of occurrence. Thus, while they have not actually seen the appellant causing injury but they provide necessary corroboration to the statement of PW-10 Amrautin Bai inasmuch as they have seen the appellant running away within a minute or so of the occurrence.

11. Considering the eyewitness account brought forth by the prosecution coupled with the positive FSL report finding human blood over the T-shirt and knife recovered from the appellant, it clearly appears that the prosecution has proved the case against the appellant beyond reasonable doubt. The trial Court has not committed any error in convicting the appellant for committing offence under Sections 302 & 323 of IPC.

12. In the result, the appeal being bereft of any substance is liable to be and is, accordingly, dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge