

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 595 of 2014

Jannuaram Anchla son of Bhukkuram Anchla, aged about 30 years, Occupation Agriculturist, resident of Aadafarsi, Police Station Pakhanjur, District North, Bastar Kanker (CG).

---Appellant

Versus

State of Chattisgarh through Station House Officer, Police Station Pakhanjur, District North Bastar Kanker (CG)

---Respondent

For Appellant : Mr. Mukesh Shrivastava, Advocate

For Respondent : Mr Anand Verma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

10/06/2020

Accused/appellant and the deceased in this case are son and mother respectively. FIR (Ex.P-1) lodged by Bhukkuram (PW-1) – the father of the accused/appellant indicates that in the night of 04.04.2013 when the wife of accused/appellant namely Sareeta (PW-2) returned home after answering the call of nature, the accused/appellant expressed his suspicion over her fidelity and when the deceased tried to intervene in the matter, the accused/appellant picked up an altercation with her and also bashed her with wooden piece, which ultimately claimed her life on the same day. On the memorandum of accused/appellant (Ex.P-11), the club used in commission of offence was seized under Ex.P-12 in the presence of two witnesses, one being Chenuram (PW-5) and the other namely Mohan (not examined). The postmortem examination was conducted on the next day by Dr. D.K. Sinha (PW-7) who gave his report Ex.P-14. After completion of investigation, charge sheet

was filed against the accused/appellant under Section 302 IPC followed by framing of charge accordingly.

2. After appreciation of the evidence on record learned Court below vide judgment impugned dated 29.04.2014 passed in ST No.65/2013 did not find the accused/appellant guilty under Section 302 IPC and thus acquitted him of the said charge. Instead thereof, it convicted him under Section 304-II IPC and sentenced him to undergo RI for 10 years with fine of Rs.1000/-, plus default stipulation. Hence this appeal.

3. Counsel for the accused/appellant submits that almost all the witnesses have not supported the case of the prosecution and turned hostile, but even then the accused/appellant has been convicted under Section 304-II IPC, which is not sustainable in the eye of law. According to him, even the lodger of the FIR has also not supported the case of the prosecution and therefore also the conviction of the accused/appellant under the said section cannot be allowed to stand and is liable to be set aside. He also submits that by getting the benefit of remission he has also been released from jail on 04.12.2019 as is evident from the report of jail Superintendent dated 20.05.2020.

4. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are strictly based on the due appreciation of the evidence of the witnesses and therefore, the findings recorded by it convicting and sentencing the accused/appellant as described above requires no interference by this Court.

5. It is relevant to note here that Bhukkuram (PW-1), Sareeta (PW-2) – both father and wife of the accused respectively have not lent support to the case of the prosecution and have been declared hostile. Likewise, another witness namely Rukmaya (PW-3) – the sister-in-law of the accused has also not supported the case of the prosecution. However, the doctor (PW-7) who conducted the postmortem examination on the body of the deceased has duly supported the case of the prosecution as is evident from the postmortem report Ex.P-14. He, in his evidence recorded in the Court, has found injuries on back, left arm and left thigh of the deceased. He further noticed the rupture of the spleen and clotting of blood in the abdomen of the deceased. As per the postmortem report Ex.P-14, the bone of her left arm was also found to be fractured and the cause of death as opined by him was cardiogenic shock due to internal bleeding, and the death was homicidal in nature. While answering to the query, the doctor vide report Ex.P-15 has categorically stated that the death of the deceased could have been caused with the club produced before him for examination. This apart, witness to the seizure of club namely Chenuram (PW-5) has also supported the case of the prosecution. Investigating Officer (PW-6) has also described the entire investigation undertaken by him and thus supported the case of the prosecution. Though PW-1, PW-2 and PW-3, the important witnesses to the case of the prosecution have been declared hostile, the case of the prosecution does not fail because these witnesses have tried to save the accused/appellant only for the reason that he was their sibling, otherwise the circumstances in which the deceased was eliminated themselves show the involvement of the accused in the crime in

question. Medical evidence is also specific to the effect that it is the abdominal injury which led to the death of the deceased. Of course, the material on record does not show any intention on the part of the accused to commit the murder of her own mother yet while assaulting her with the club it can safely be inferred that he had the knowledge that the injuries inflicted by him would be sufficient to end her life. This being the position, his conviction under Section 304-II IPC cannot be said to be at fault and therefore, this Court does not find any reason to interfere with the same. The view taken by the Court below convicting the accused/appellant under Section 304-II IPC is fully justified and therefore, it is hereby affirmed.

6. As regards sentence, the report received from the Superintendent, Central Jail, Jagdalpur (Bastar) dated 20.05.2020 shows that after getting the benefit of remission the accused/appellant has already been released from jail on 04.12.2019, therefore, no observation regarding the sentence part is required to be made by this Court.

7. In view of what has been discussed as above, the appeal being without any substance is liable to be dismissed and is hereby dismissed as such.

Sd/-

(Vimla Singh Kapoor)

Judge