

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 737 of 2016

- Raju Ilami S/o Shri Somadu Aged About 30 Years R/o Village Badepara, Bacheli, P.S. Bacheli, Tahsil And District Dantewada, Civil And Revenue District Dantewada, Chhattisgarh.

---- Appellant.

Versus

- State Of Chhattisgarh Through Police Station Bacheli, District Dantewada, Chhattisgarh., Chhattisgarh

---- Respondent.

For the Appellant	:-	Mr. Manoj Kumar Sinha, Adv.
For the State	:-	Mr. Ravish Verma, GA.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Vimla Singh Kapoor, J.

02.07.2021

This appeal is directed against the judgment of conviction and order of sentence dated 05.03.2016 passed by learned Sessions Judge, South Baster, Dantewada in Sessions Trial No.27/2010, whereby and whereunder the appellant has been held guilty for the offence under Section 302 IPC and sentenced for life Imprisonment.

2. Facts of the case in brief are that on 03.10.2009 FIR (Ex.P-1) was lodged by Budhram (PW-1) stating that on the previous day i.e. on 02.10.2009 when he was in his house, Bheema (PW-2), Hunga (PW-4) and Guddi (not examined) told him that deceased Kalmumi Podiya was killed by the accused/appellant by causing injuries on head with the help of a stone. The FIR further states that when he went to the spot the deceased was lying on

the road with bleeding injuries on his head. FIR further discloses that near the body of the deceased a 10-12 KG stone was also lying and it is this with which the deceased is alleged to have been killed. After investigation *challan* was filed under Section 302 IPC and the Court below framed the charge against the accused/appellant under Section 302 for committing murder of the deceased and under Section 323 IPC for causing injuries to Deve (PW-7).

3. By the judgment impugned referred to above, learned Court below convicted the accused/appellants under Sections 302 and 323 IPC and sentenced him to undergo imprisonment for life under Section 302 and imprisonment for one year under Section 323 IPC. Hence this appeal.

4. Counsel for the accused/appellant submits that even if, the entire case of the prosecution is taken as it is no offence under Section 302 IPC is made out against him. He further submits that there is no eye witness to the incident and the entire case of the prosecution rests on the circumstantial evidence. According to him the chain of the circumstances is not complete so as to arrive at the conclusion of holding the accused/appellant guilty under Section 302 IPC.

5. State counsel however supports the judgment impugned to be just and proper.

6. Heard counsel for the parties and perused the evidence of the witnesses with greater degree of care and caution.

7. The important witness to the entire incident happens to be Deve (PW-7) according to whom, apart from being assaulted by the accused/appellant, the deceased was also assaulted by him which ultimately led to his death. Bheema (PW-2) has also stated that on hearing the noise, he went to the spot and saw the deceased lying dead and he was told by Deve (PW-7) that it is the accused/appellant who had killed her son, the deceased herein. Likewise from the evidence of PW-3 also it appears that he was told by Hunga (PW-4) and Laxman (not examined) that the deceased was murdered by the accused/appellant. This apart, the blood stained stone was seized from the spot which was confirmed by the FSL report (Ex.P-13). Subsequently, the serological report (Ex.P-14) also confirms that the blood present on the said stone was the human blood. Doctor K Gautam (PW-6) who conducted postmortem examination on the body of the deceased and gave report (Ex.P-9) has noticed number of injuries of various diameters on his chest on the temple, on the parietal region of forehead, swelling on abdomen etc. and all those injuries were antemortem in nature. The doctor has further opined that on internal examination, the frontal parietal and temporal bone was found to be fractured and the cause of death was coma due to intracranial hemorrhage on account of head injury. Homicidal death has also been confirmed by the said doctor.

Subsequently, the stone seized from the spot has also been examined by the doctor and by way of query report (Ex.P-10) he has opined that those injuries could have been caused by the said stone. Investigating Officer (PW-5) has also supported the case of the prosecution.

8. Learned counsel for the appellant, however, submitted that the evidence of Deve (PW-7) – mother of the deceased does not inspire confidence in view of what has been elicited in her cross-examination.

A close scrutiny of evidence of Deve (PW-7) discloses that in her examination-in-chief she stated that while she was carrying water, Raju Ilami, the appellant had assaulted her but she does not know what weapon was used though she sustained injury on her head. She has also stated that after she was assaulted, her son Kalmuni Pondiya was also murdered, but she does not know what weapon was used because she fainted.

In her cross-examination she admits that as she had fainted therefore she could not see as to who has assaulted Kalmuni Pondiya. It has also been elicited in her statement that the time of incident is stated to be night whereas according to her in the Court statement the incident is alleged to have happened during day time. She has also stated that she could see anything in the night. She has also admitted that she does not know with what weapon, she and her son were assaulted.

9. The evidence of this witness Deve (PW-7) firstly proves that she was assaulted by appellant. Though she states that she does not know what weapon was used, her evidence that she was assaulted could not be impeached in her cross-examination. Further her evidence to that extent is also corroborated from medical evidence as doctor (PW-6), who examined Deve (PW-7) has proved injuries on her body. More than one injury has been found and her right parietal region was found swelled, said to have been caused by hard and blunt weapon. Out of six injuries, for some of injuries, she was referred to Higher Medical Center which shows that the injuries were appearing to be more than simple one. Swelling in the parietal bone shows that she was assaulted on her head and that probably was the reason that as soon as blow was given on her head, she loss consciousness and fainted.

10. However, in view of her statement that after assault on her she had fainted therefore, she could not see as to who assaulted her son renders doubtful her statement in her cross-examination that appellant assaulted her son Kalmuni Pondiya also and therefore, corroboration would be necessary.

11. As has been discussed in paragraph herein-above number of prosecution witnesses were informed immediately after the incident that the appellant assaulted Deve and her son Kalmuni Pondiya. They are Bheema (PW-2) and Hunga (PW-4). Importantly, Bheema (PW-2) has stated that when he heard cries

of Deve (PW-7) he saw that she was lying injured and upon being asked she informed that her son was assaulted by appellant Raju Ilami and she has also been assaulted. He then states that at the spot he had also seen Kalmuni Pondiya lying. To this extent the evidence of this witness has remained intact and not impeached in her cross-examination. Therefore, the evidence of this witness proves that when Bheema (PW-2) reached the spot he found that both Deve (PW-7) and her son Kalmuni were lying at the spot. From this reasonable inference can be drawn that both of them were assaulted at the spot due to which they fell down.

12. Therefore, the evidence of the aforesaid witnesses including medical evidence removes cloud if any on the testimony of Deve regarding she having seen the appellant assaulting her son. Both Deve (PW-7) and her son the deceased were found lying injured at one spot, Deve stated that at the spot she was assaulted by Raju Ilami. Deve found sustained as many as six injuries and the medical evidence also shows injury on deceased Kalmuni by heavy object.

13. Thus the aforesaid discussion leads to the only irresistible conclusion that the deceased was murdered by the accused/appellant after his head been crushed with the help of stone and likewise his mother Deve (PW-7) was also inflicted injuries on her head and she too had undergone medical treatment by the same doctor (PW-6). Being so, the findings recorded by learned Court below do not require any interference

by this Court and therefore, the appeal is liable to be and is hereby dismissed with affirmation of the judgment impugned.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Ajay