

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 324 of 2017

Jagdev Gond S/o. Shri Sonuram, aged about 32 years, R/o. Village Jamgaon, P.S. Dhanora, District Kondagaon, Civil and Revenue District Kondagaon (CG)

---- Appellant

Versus

State of Chhattisgarh Through Police Station Dhanora, District Kondagaon(CG)

---- Respondent

For the Appellant :- Mr. Manoj Kumar Sinha, Advocate
For the respondent :- Mr. Anshuman Shrivastava, PL

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

Judgment on Board
By Manindra Mohan Shrivastava, J.

20.07.2021

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 29.11.2016 passed by the Sessions Judge Kondagaon, District Kondagaon, in Sessions Trial No. 75/2012, whereby and whereunder the appellant has been held guilty for commission of offence under Sections 449 and 302 IPC and sentenced life imprisonment and fine of Rs. 100/- under Section 449 IPC, life imprisonment and fine of Rs. 100/- under Section 302 IPC with default stipulations.

2. An incident of assault took place wherein Amrika Bai was assaulted leading to her death. Her husband Sarju (PW-3) lodged morgue intimation in the police station on 28.06.2009 at 9.10 AM, wherein it was stated that he was informed by Lalsingh (PW-6) that his wife was assaulted and killed by appellant Jagdev. On receipt of intimation, an FIR was also registered (Ex.P-5) at the instance of Sarju (PW-3) at 9.30 AM. After registration of offence the police reached the place of occurrence, inquest was prepared and the dead body was sent for postmortem. Dr. Anand Kapse (PW-5), conducted postmortem and after examining internal and external injury, opined that the cause of death was head injury in parietal bone of skull and was homicidal in nature. The appellant was taken into custody and according to the prosecution, his memorandum was prepared in presence of witnesses and based on his memorandum, the axe allegedly used in commission of offence was seized from the appellant and *lungi* (wearing apparel) said to be stained with blood, was also seized. The appellant was formally arrested. After completion of the investigation, charge-sheet was filed against the accused in the Court of Judicial Magistrate First Class, Keshkaal, who, in turn, committed the case to the Court of Session at Kondagaon, from where it was received on transfer by the Additional Sessions Judge, Kondagaon. The appellant having abjured guilt was put to trial. The prosecution examined as many as seven witnesses to prove guilt and thereafter, the appellant was examined under Section 313 CrPC in respect of incriminating evidence and circumstances. In response

to various queries, the accused/appellant admitted having assaulted the deceased. No defence witnesses were examined. Learned trial Court relying upon the evidence and what was stated by the accused in his examination under Section 313 Cr.PC recorded finding of guilt and convicted the appellant.

3. Learned counsel for the appellant would argue that the evidence of so called eyewitness Lalsingh (PW-6) and Somiya (PW-4) are not free from doubt and they are concocted witnesses. He would next submit that recovery of weapon is said to be made from an open place in the house and recovery of wearing apparel has been admitted only after witness Lalsingh (PW-6) was declared hostile. There is no FSL report to prove presence of blood stains on the seized articles.

In the alternative, learned counsel for the appellant argued that even if it is held that it is the appellant who assaulted the deceased, the background of assault being dispute with regard to cutting of crop and that the appellant had an impression that the deceased was playing witchcraft, the criminal overt act alleged against the appellant would not travel beyond the scope and ambit of section 304 IPC and in the circumstance of the case, no motive, no intention could be attributed, therefore, even if knowledge is attributed to the appellant, the maximum sentence that could be awarded to the appellant would be that provided under Section 304 Part II IPC which period has already been undergone by the appellant, therefore, the conviction be altered and the appellant be set at liberty.

4. On the other hand, learned State counsel would submit that the case of the prosecution rests on the reliable eyewitness account given by Lalsingh (PW-6) and Somiya Bai (PW-4), who are both independent witnesses. He would further submit that the axe was found in the house of the accused and seized therefrom on the basis of the memorandum of disclosure given by the appellant and in response to query, the doctor (PW-5) has clearly stated that the injuries found on the deceased could be caused by the axe recovered from the house of the appellant. He would further submit that though the FSL report was not formally exhibited, the learned trial court has relied upon the same which support the case of the prosecution. It is next submitted that in his examination under Section 313 CrPC, the appellant while confronted with the incriminating evidence circumstance against him appearing in the evidence of prosecution witnesses, admitted having assaulted the deceased and killed her.
5. We have considered the submission of learned counsel for the parties and gone through the record and impugned judgment.
6. The case of the prosecution mainly rests upon the eyewitness account given by (PW-6) Lalsingh and (PW-4) Somiya Bai. Sarjoram (PW-3) is the husband of the deceased and he lodged morgue intimation (Ex.P-12) as also FIR (Ex.P-5) in the police station which have been proved by him. The concerned Investigating Officer, who had recorded these documents, namely S.R. Sonwani (PW-7) has also proved these documents by giving his signature. The contents of the FIR and morgue intimation are

to the effect that the incident was informed by Lalsingh regarding assault giving by appellant to the wife of Sarju with the help of an axe.

7. Lalsingh (PW-6) in his evidence has deposed that while he was standing in front of the house of Sarju across the road, he saw the appellant assaulting Amrika Bai wife of Sarju, on her head due to which, she fell down and the accused ran away. At that time, Sarju and other neighbours also gathered around and it was seen that Amrika bai had died. He has further deposed that after the accused was taken into custody, he was inquired by the police and stated regarding the incident and said that the axe used in the incident was hided in the house and on his disclosure, memorandum in (Ex.P-10) was recorded and he has proved his signature. He further states that thereafter, the police along with the appellant went to the house of the appellant wherefrom an axe which was lying on the floor inside the house was picked up and seized vide seizure memo (Ex.P-3). However, as this witnesses initially did not state regarding seizure of *lungi* (wearing apparel), he was declared hostile and thereafter, upon being examined, he admitted that in his presence from the body of the appellant, *lungi* (wearing apparel) was removed and submitted to the police under (Ex.P-4). In the cross-examination, attempt has been made to discredit his testimony by eliciting that he had signed documents Ex.P-3, Ex.P-4, Ex.P-7, Ex.P-10 and Ex.P-11 without reading those documents and at that time the appellant was not present, however, this witness has remained firm on the

statement regarding recovery of axe from the house of the appellant. Suggestion that he had not seen the incident has also been denied. This witness is an independent witness and there is no reason to disbelieve his testimony.

8. The other eyewitness Somiya (PW-4) has also corroborated the statement of Lalsingh (PW-6) clearly stating regarding assault given by the appellant on the deceased. He has deposed that while she was standing at the doorstep in her house, she saw the appellant approaching and entering the house of Amrika Bai and giving assault to Amrika Bai with the help of an axe. The evidence of witnesses is sought to be discredited and impeached on the ground that this witnesses has admitted that she has come to depose for the first time in the court and earlier she had not disclosed the incident. However, she has denied suggestion that she had not seen the incident of assault on the deceased. Suggestion that the dispute had arisen between deceased Amrika Bai and Lalsingh and it is Lalsingh (PW-6) who had assaulted her, has been emphatically has been denied. It is not a case where this is the only witness to support the case of the prosecution. The evidence of Lalsingh (PW-6) fully supports the case of the prosecution regarding assault given by the appellant.
9. The axe allegedly used in the commission of offence was seized from the house of the appellant and that too on his memorandum. In this regard the memorandum witness Lalsingh (PW-6) has fully supported and proved recording of memorandum in Ex.P-10. He

has also proved recovery of axe from the house of the appellant vide Ex.P-3 and recovery of a *lungi* vide Ex.P-4.

10. Homicidal death is substantially not in dispute in view of the evidence of Dr. Anand Kapse (PW-5) and the postmortem report that Amrika Bai was assaulted and she sustained injuries and thereafter she died.

Therefore, the prosecution has succeeded in proving beyond reasonable doubt that it is the appellant who assaulted deceased Amrika Bai and killed her.

11. The next submission of learned counsel for the appellant is that present case is covered by first exception to section 300 IPC is mainly based on a dispute with regard to cutting of crops. However, in order to bring a case, within that exception. It has to be proved that it must be found proved that the criminal overt act was result of sudden and grave provocation so much so that the offender was deprived of power of self control by such provocation. There is no evidence emerging from the case of the prosecution much less any defence on the appellant to prove that the incident happened all of sudden in the agricultural field. From the evidence of Sarju (PW-3), Somiya (PW-4) and Lalsingh (PW-6), it is clear that while Amrika Bai was in her house, the appellant approached along with an axe in his hand and went inside the house and butchered her. In such cases, first exception stated in section 300 IPC cannot be applied.

Similarly, the argument that the criminal overt act of the appellant was actuated by impulse that the deceased was playing witchcraft, is not reflected from any of evidence of the prosecution witnesses so as to be relied upon.

12. It is also important to note that in his examination under Section 313 CrPC, the appellant had clearly admitted having assaulted the deceased and when he was asked as to why witnesses are speaking against him, he says that witnesses speak against him because, it is he who has murdered Amrika Bai. That puts an end to the case of the defence with regard to culpability as well as with regard to the nature and extent of criminal overt act.
13. In the result, we do not find any good ground to interfere with the impugned judgment of conviction and order of sentence. Appeal is therefore, dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge