

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No.1660 of 2019

Chetan Gond son of late Mukund Gond, aged about 31 years, resident of Village-Saldih, Police Station-Sankra, District-Mahasamund (CG)

---- Appellant
(In Jail)

Versus

State of Chhattisgarh through the Station House Officer, Police Station-Sankra, District-Mahasamund (CG)

---- Respondent

For Appellant:	Mr.J.K.Saxena, Advocate
For Respondent/State:	Mr.Anmol Sharma, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board
(16.11.2021)

Sanjay K. Agrawal, J.

1. This criminal appeal under Section 374(2) of the CrPC is directed against the judgment dated 1.2.2010 passed by the Sessions Judge, Mahasamund in Sessions Trial No.75/2009, whereby the learned Sessions Judge has convicted the appellant for offence under Section 302 of the IPC and sentenced him to undergo imprisonment for life and fine of ₹1000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year.
2. Case of the prosecution, in brief, is that on 29.8.2009 at about 4.30 p.m. the appellant / accused murdered his mother Balmati Gond (since deceased) by axe by

decapitating her head from rest of the body and thereby committed the offence. Further case of the prosecution is that on 29.8.2009 at about 4.30 p.m. Krishna Kumar Sahu (PW-1) lodged report to the Police Station Sankra vide Ex.P-1 and merg vide Ex.P-2 that deceased Balmati Gond was staying with her son Chetan Gond, the appellant herein and she was maintaining herself by begging and because of her house was damaged, she was residing in the courtyard of her neighbour Suryanarayan Vishal. On the said date i.e. on 29.8.2009 school children started crying while going back to their home that the appellant is killing her mother, then Krishna Kumar Sahu (PW-1) went to the house of the appellant and saw the appellant having murdered his mother Balmati Gond and decapitated her neck from rest of the body keeping the head in one hand and bloodstained axe on another hand, then Krishna Kumar Sahu (PW-1) called Sarpanch and Kotwar. The incident was witnessed by Suraj Kumar Bhoi (PW-5), pursuant to which, FIR under Crime No.84/2009 for offence under Section 302 of the IPC was registered against the appellant herein vide Ex.P-1. Spot map was prepared by the investigating officer vide Ex.P-3. Patwari also prepared spot map vide Ex.P-4. Memorandum statement of the accused / appellant was recorded vide EX.P-6 and on the basis of said memorandum statement, iron axe was recovered from him vide Ex.P-7. Bloodstained soil and plain soil were recovered from the spot vide Ex.P-8. Inquest of the

dead body of deceased Balmati Gond was prepared vide Ex.P-11. All the articles were sent for chemical examination vide Ex.P-14. Dead body of deceased Balmati Gond was sent for postmortem to Primary Health Center, Basna, where Dr.Dinesh Kumar Sinha (PW-4) conducted postmortem of the body of deceased Balmati vide Ex.P-9 and opined that death of deceased Balmati was homicidal in nature.

3. Statements of the witnesses were recorded under Section 161 of the CrPC. After completion of investigation, charge-sheet was filed against the appellant / accused and the case was committed to the jurisdictional Criminal Court for hearing in accordance with law for offence under Section 302 of the IPC. The appellant herein abjured the guilt and entered into defence.
4. In order to bring home the above-stated offence, the prosecution examined as many as 6 witnesses and exhibited 15 documents as Exs.P-1 to P-15, whereas the accused / appellant has examined none in his defence.
5. The trial Court finding the death of deceased Balmati Gond to be homicidal in nature and further relying upon testimonies of eyewitnesses Suraj Kumr Bhoi (PW-5) as well as Krishna Kumar Sahu (PW-1), by its judgment dated 1.2.2010, convicted the appellant for offence under Section 302 of the IPC and sentenced him as aforementioned, against which, this criminal appeal has been preferred by the appellant / accused.

6. Mr.J.K.Saxena, learned counsel for the appellant / accused, would submit that there is no legally admissible evidence on record to convict the appellant for the aforesaid offence. The prosecution has failed to bring home the offence under Section 302 of the IPC, as such, the impugned judgment of conviction recorded and sentence awarded deserve to be set aside.
7. On the other hand, Mr.Anmol Sharma, learned Panel Lawyer for the respondent / State, would submit that conviction of the appellant is based on testimonies of eyewitnesses Suraj Kumar Bhoi (PW-5) as well as Krishna Kumar Sahu (PW-1), as such, it is not the case where conviction can be set-aside, whereas it is the case where death penalty ought to have been awarded by the learned trial Court.
8. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
9. The trial Court has held death of deceased Balmati Gond to be homicidal in nature. Dr.Dinesh Kumar Sinha, who has conducted postmortem, has been examined as PW-4. He has clearly stated that head of deceased Balmati Gond was decapitated from main body of the deceased and cause of death was due to decapitation of head from rest of the body and death was homicidal in nature. His report is Ex.P-9. Considering the material

available on record, particularly taking in view the medical evidence given by Dr.Dinesh Kumar Sinha (PW-4), we are of the opinion that death of deceased Balmati was homicidal in nature, which has also not been seriously disputed by learned counsel for the appellant. Accordingly, we affirm the finding in that regard rendered by the trial Court.

10.Admittedly, father of the appellant herein and husband of the deceased was already dead on the date of incident and the appellant and his mother Balmati both were living together in the courtyard of Suryanarayan Vishal. On the fateful day, school children while returning back from school on 29.8.2009 saw that the appellant was assaulting his mother Balmati Gond by axe, they started shouting, then Suraj Kumar Bhoi (PW-5) reached to the spot and witnessed the incident. In his statement before the Court, he has clearly stated that on hearing cry by school children that the appellant is killing his mother, he came out from his house and saw that the appellant was killing his mother by axe in courtyard of Suryanarayan where they were staying. In para-5 of cross-examination of Suraj Kumar Bhoi PW-5), he has maintained his statement that he has witnessed the incident and as such, he has fully supported the case of the prosecution.

11.Apart from this, Krishna Kumar Sahu (PW-1), who also reached to the spot immediately after the incident, has

also stated that the appellant after having killed his mother was having head in one hand and bloodstained axe on another hand and was moving in front of gali / in front of house, then he called village kotwar and reported the matter to the police station vide Ex.P-1. He has been subjected to extensive cross-examination on behalf of the accused, but he has maintained that he has seen the accused keeping his mother's head in one hand and bloodstained axe on another hand and he made report to the police, as such, the fact of killing his mother by the appellant herein has duly been proved. There is nothing on record on the basis of which testimonies of eyewitnesses Krishna Kumar Sahu (PW-1) and Suraj Kumar Bhoi (PW-5) can be disbelieved.

12. After hearing learned counsel appearing for the parties and after going through the records and for the reasons mentioned hereinabove, we are not inclined to set-aside the judgment of conviction recorded and sentence awarded by learned Sessions Judge. We hereby affirm the judgment of the trial Court.

13. Accordingly, the criminal appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Arvind Singh Chandel)
Judge

B/-