

(2018) 06 CHH CK 0117

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 757 Of 2013

Larang Sai

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: June 23, 2018

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 374(2)
- Indian Penal Code, 1860 - Section 302

Hon'ble Judges: Manindra Mohan Shrivastava, J; Sanjay Agrawal, J

Bench: Division Bench

Advocate: R.V. Rajwade, R.K. Gupta

Final Decision: Allowed

Judgement

Sanjay Agrawal, J

1. This criminal appeal has been preferred by the accused/appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter

referred to as the Cr.P.C. in short) questioning propriety of the judgment dated 05.07.2013 passed by the Additional Sessions Judge, (F.T.C.), Raigarh,

in Sessions Trial No. 93/2011 whereby the appellant has been convicted for having committed an offence punishable under Section 302 of the Indian

Penal Code (for brevity, the IPC) and sentenced to life imprisonment with fine amount of Rs.2000/- and, in default of payment of fine amount, he has

to undergo additional rigorous imprisonment for six months.

2. Briefly stated, case of the prosecution is that on 25.05.2011 at about 05.00 PM, the appellant was removing the thatched tiles (Khappar) from the

roof of his house in order to sell the same. It was, however, resisted by his deceased brother Ratiram, which led to create the scene as his deceased brother was claiming half share over the same. Owing to which, the deceased Ratiram entered into his brother's house and both started quarrelling with each other. During the course of alleged quarrel, the appellant took out his bow and arrow and has stabbed his deceased brother Ratiram with an arrow of the bow. The arrow struck the right of his chest piercing through rib. The deceased rushed out from his house shouting that the appellant stabbed him with an arrow of his bow and reached the place where Anjore Sai, Radheram, Bandhura, Dilsagar, Dhaniram and Mangalsai were standing and narrated them that his brother Larang Sai has stabbed him with an arrow of his bow and at his request, Anjore Sai pulled off the arrow from his body. He thereafter went towards his house by staggering and fell down in front of the door of his house and died.

3. Based upon the aforesaid incident, merger intimation (Ex.P.1) was lodged by Budhan Sai, the uncle of the deceased Ratiram on 26.05.2011 at 10.15

AM and based upon which, F.I.R. (Ex.P.2) was registered on the same day at 10.20 AM by the Station House Officer, Dharamjaigarh, District

Raigarh against the appellant Larang Sai under Section 302 IPC. Inquest of the dead body was conducted on 26.05.2011 vide Ex.P.4. After inquest,

the dead body of the deceased Ratiram was sent for its autopsy to Civil Hospital, Dharamjaigarh where Dr. B.L.Bhagat (P.W.8) has conducted the

post-mortem examination and submitted its report vide Ex.P.18 opining that the cause of death is due to syncope as a result of severe bleeding and is

homicidal in nature. During investigation, the alleged used weapon (arrow) and blood stained soil were recovered from the place of the incident on

26.05.2011 vide seizure memo Ex.P.15.

4. After usual investigation of the matter as such, the offence punishable under Section 302 of IPC was registered against the appellant Larang Sai by

the concerned Station House Officer, Dharamjaigarh, Dist. Raigarh and submitted its final report on 06.07.2011 before the Judicial Magistrate First

Class, Dharamjaigarh and the matter was thereafter committed to the learned Additional Sessions Judge, Raigarh for its trial.

5. After considering the prima facie materials available on record, the trial Court has framed charge under Section 302 of IPC against the appellant on

03.09.2011, who pleaded not guilty and claimed to be tried.

6. In order to bring home the guilt of the appellant, the prosecution examined as many as 9 witnesses while none was examined by the appellant in support of his defence.

7. The trial Court, after considering the evidence led by the prosecution, has convicted the appellant in relation to the offence punishable under Section 302 IPC and sentenced him as aforesaid.

8. Being aggrieved, the appellant has preferred this appeal. Shri R.V.Rajwade, learned counsel for the appellant submits that the judgment under

appeal convicting the appellant as passed by the trial Court is apparently contrary to law as the same has been passed without considering the

evidence in its proper perspective. He submits further that there is no eyewitness to the incident yet the conviction has been made even in absence of

any cogent and reliable evidence. The judgment impugned is, therefore, liable to be set aside.

9. On the other hand, Shri Raj Kumar Gupta, learned Deputy Advocate General appearing for the State/respondent has supported the impugned

judgment by submitting, inter alia, that it has been passed upon due and proper appreciation of evidence of prosecution case, and therefore, does not

call for any interference.

10. We have heard learned counsel for the parties and perused the entire record carefully.

11. Budhan Sai (P.W.1) is the uncle of the appellant and has stated in his evidence that on 25.05.2011 at about 4.00 PM a dispute arose between the

appellant and his deceased brother Ratiram when the appellant was removing the thatched tiles from the roof of his house for selling the same. He has

stated further that the deceased claimed his interest over the tiles and that by starting quarrel entered into his brother's (appellant's) house. At the

relevant time, Anjore Sai, Radheram, Bandharam, Dilsagar, Dhaniram and Mangal Sai were present outside of the appellant's house. At 5.00 PM the

deceased Ratiram came out from the appellant's house shouting that his brother has stabbed him with the arrow and the arrow struck the right of his

chest piercing through rib. Upon hearing so, Anjore Sai pulled off the arrow from his body and thereafter the deceased by staggering went towards his house and died. This witness, however, denied all these versions in his cross-examination and stated contrary to it. In his cross-examination, it was stated by him that he is not aware with regard to the alleged dispute, which took place between the appellant and his deceased brother. He has stated further that he received information pertaining to death of his brother Ratiram and then lodged the report in the police station at the instance of Panchayat members and further stated that he would not have lodged the report if he was not instructed by the Panchayat members. According to him, he deposed everything in the Court at the instance of others and has stated further that he came to know from Anjore Sai that the appellant has killed his brother Ratiram. However, Anjore Sai, who was examined as P.W.4, has turned hostile and not supported the said version of Budhan Sai (P.W.1), as he has stated in his cross-examination that he does not know as to how the alleged arrow was struck on deceased's chest and has stated further that deceased Ratiram has not stated anything about it. Both these witnesses have thus not supported the prosecution case and their evidence, under these circumstances, cannot be relied upon. Likewise, Bihnin Bai (P.W.2), wife of the deceased Ratiram, has also stated the same thing and her evidence cannot be relied upon. Radheram (P.W.3) is the labourer and knows nothing about the alleged incident and has turned hostile without supporting the prosecution case. Dilsagar (P.W.5) has also turned hostile without supporting the prosecution case. Bandhura Korwa (P.W.6) is the witness of arrest memo (P.W.12) and knows nothing about the alleged incident and has turned hostile. Nandan Sai Minj (P.W.7) is the witness of inquest (Ex.P.4) and seizure memo (Ex.P.15) and is, thus, a formal witness.

12. Dr. B.L.Bhagat (P.W.8) has conducted autopsy on the dead body on 27.05.2011 and submitted its report vide Ex.P.18 opining that the cause of death was syncope as a result of excessive bleeding and death is homicidal in nature. He has thus assisted the prosecution case. K.P.Jaiswal (P.W.9) is the Investigating Officer and has also assisted the prosecution case.

13. From perusal of the entire evidence of the prosecution witnesses, it is clear that none of them are eyewitnesses and the entire case is based upon

circumstantial evidence and that from perusal of their evidence, it is difficult to hold that the appellant has killed his brother Ratiram for want of any cogent and reliable evidence adduced by the prosecution in this regard. There is no iota of evidence by which it can be held that the appellant is involved in relation to the crime in question committed on 25.05.2011. According to the statement of Budhan Sai (P.W.1), it is clear that he lodged the report only at the instance of Panchayat members and would not have lodged the same if he would not have been instructed by the Panchayat members. It emerged further from his evidence that he came to know from one Anjore Sai (P.W.4) that deceased Ratiram was killed by his brother, the appellant herein and similar is the statement of deceased's widow Bihanin Bai (P.W.2) as she has also deposed that she came to know about the alleged incident from the said Anjore Sai (P.W.4). However, their evidence could not be corroborated by said Anjore Sai (P.W.4). Other prosecution witnesses are not even aware regarding the occurrence of the alleged incident. The burden was heavily upon the prosecution to establish the involvement of the appellant in connection with the alleged crime beyond all reasonable doubt, which the prosecution has failed completely here in the instant case. In absence thereof, it is difficult to hold that the appellant was involved in any manner in relation to the commission of alleged crime. The findings as recorded by the trial Court convicting the appellant under Section 302 IPC are, therefore, liable to be and are hereby set aside.

14. In view of foregoing discussions, the appeal is allowed and the conviction of the appellant under Section 302 IPC and sentence thereof recorded vide judgment dated 05.07.2013 is hereby set aside. The appellant is acquitted of the charge so framed against him. He shall be set at liberty forthwith, if not required in any other offence.