
(2018) 06 CHH CK 0119

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 106 Of 2015

Amarsai

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: June 25, 2018

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 313
- Indian Penal Code, 1860 - Section 302, 304

Hon'ble Judges: Pritinker Diwaker, J; Gautam Choradiya, J

Bench: Division Bench

Advocate: Anand Gupta, Rahul Tamaskar

Final Decision: Dismissed

Judgement

P. Diwaker, J

1. This appeal arises out of the judgment of conviction and order of sentence dated 28.11.2014 passed by the learned Additional Judge to the Court of

Additional Sessions Judge, Ramanujganj, District Surguja (Ambikapur) in S.T. No.138/2013 convicting the accused/appellant under Section 302 of the

Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for life & fine of Rs.500/-, in default to undergo additional RI for 1 month.

2. The prosecution case, in brief, is that in the night intervening 18 th & 19th February, 2013, the appellant returned home in drunken state, woke-up

his wife (PW-1) and demanded food. On being scolded by the deceased, the accused/appellant, in a fit of anger, dragged the deceased to the door of

house and gave 2-3 axe blows to her as a result of which she started bleeding and ultimately died. When Brishpati Bai (PW-1), wife of accused, tried

to intervene, accused/appellant assaulted her also by axe. Thereafter, the accused fled from the house. Dehati Nalishi (Ex.P-1) was recorded on

19.2.2013 at 3.30 p.m. at the instance of PW-1. Immediately thereafter dehati merg (Ex.P-2) was recorded. On the basis of dehati nalishi, on

19.2.2013 FIR (Ex.P-22) was registered against the accused/appellant for the offence under Section 302 of IPC. Numbered Merg was prepared vide

Ex.P-15. Inquest over the body of deceased was conducted vide Ex.P-8. Body was sent for post-mortem examination which was conducted by Dr.

Joseph Lakda (PW-13) vide Ex.P-17A and he noticed following injuries on the person of deceased:- â€¢ Fracture in left wrist joints.

â€¢ Depressed fracture & frontal fracture in left side of head and membrane rupture.

â€¢ Black colour contusion over left side of forehead. â€¢ Clotted blood in both the nostrils of nose.

The doctor has opined that cause of death was shock due to head injury and the death was homicidal in nature. Injured Brahspati Bai (PW-1) was

also medically examined by Dr. Joseph Lakda (not examined) vide Ex.P-18A and he noticed one contusion at her left knee joint caused by hard and

blunt object. Statements of witnesses were recorded in the course of investigation.

3. After investigation, charge sheet under Section 302 of IPC was filed against the accused/appellant and accordingly the charge was framed by the

trial Court. The prosecution in order to bring home the charge levelled against the appellant examined 13 witnesses in all. Statement of appellant was

recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.

4. After hearing the parties in the matter and appreciating the evidence adduced by the prosecution, the trial Judge by the impugned judgment

convicted and sentenced the accused/appellant in the manner as indicated above.

5. Learned counsel for the appellant submits that sole eyewitness to the incident has not supported the prosecution case during trial in any manner and

therefore the trial Court ought to have acquitted the appellant. He further submits that the appellant had no intention to kill the deceased as the assault

with the axe was carried out in a fit of anger due to reason that he was scolded by the deceased as a consequence of which the appellant got

provoked and he lost his self-control. Thus, if the entire prosecution case is taken as it is, at best the appellant can be convicted under Section 304 Part

I of the IPC and not under Section 302 of IPC as has been done by the trial Court.

6. On the other hand, learned counsel appearing for the State has supported the impugned judgment and submitted that conviction of accused/

appellant is strictly in accordance with law. He submits that if the evidence placed on record is read as a whole, it would clearly establish that the

accused was very much present in the house during the intervening night of 18th & 19th February, 2013 and the accused being son of the deceased

was under an obligation to explain as to how his mother met homicidal death inside the house during the intervening night of 18/19-2-2013 and since

the accused has not come out with any kind of explanation in this regard, the trial Court was justified in holding that the prosecution has been able to

establish the complicity of accused to the homicidal death of the deceased. He further submits that the manner in which assaults were carried out

leave no doubt that the appellant acted with intention to kill the deceased, therefore, his conviction under Section 302 of IPC is just and proper.

7. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.

8. Brahspati Bai (PW-1) is wife of accused and daughter-in-law of deceased. She has deposed that on the date of incident she, her younger son and

mother-in-law were present in the house. The accused returned home about 12 in the midnight and gave 2-3 club blows to her, as a result of which

she along with her son ran away from the house and did not know what happened thereafter. She has admitted that at the time her mother- in-law

(deceased) was in the house and she did not know as to what appellant did with the deceased after her departure from the house. At this state, this

witness has been declared hostile by the prosecution and in the cross-examination by the Public Prosecutor, she has admitted that accused had

dragged the deceased to the door.

9. Somra (PW-2) & Ramdas (PW-3) are the witnesses of memorandum (Ex.P-4) and seizure memo (Ex.P-5), but they have not supported the

prosecution case and turned hostile. However, these witnesses have admitted their signature on memorandum and seizure memos.

10. Bhinsari (PW-4), Lohra (PW-6), Mitku Bhagat (PW-7), Smt. Parbatiya (PW-10), Sanjay (PW-11) have not supported the prosecution case and as

such they have been declared hostile. Ramdeo (PW-8) is the witness of inquest (Ex.P-8). Ramdhan Aarmo (PW-8) is the Patwari who prepared the

spot map (Ex.P-6). M.L. Shukla (PW-12) is the investigating officer who has duly supported the prosecution case.

11. Dr. Shashikala Toppo (PW-13) is the doctor who conducted post-mortem examination over the body of deceased and noticed the injuries as

described above. She opined cause of death of the deceased as shock and excessive haemorrhage due to head injury (depressed bone fracture of

right frontal bone and membrane) and nature of death was homicidal. This witness had also examined the weapon seized from the accused/appellant

and opined vide Ex.P-26A that the injuries caused to the deceased could be caused by the recovered weapon.

12. In this case, according to the prosecution, Brahspati Bai (PW-1), wife of the accused, was the sole eyewitness to the occurrence, but during trial

she turned hostile and did not support the prosecution case. However, from a careful and dispassionate scrutiny of evidence of Brahspati Bai (PW-1),

what transpires is that at the relevant time there were only three persons i.e. accused, his mother (deceased) and his wife (PW-1), present at the

house where the occurrence, admittedly, took place and that on the fateful night the accused had dragged the deceased towards the door. Thus,

though PW-1 claimed that she had not seen any assault on the deceased at the hand of accused, but her evidence clearly shows that before the

deceased was found lying dead in the house, the accused/appellant had a quarrel with her in presence of Brahspati Bai (PW-1) and in that process, he

dragged her towards the door. It is well settled that the evidence of a hostile witness can be relied upon to the extent the hostile witness's evidence

supports the prosecution case or favours the defence. In such a situation, when there is acceptable evidence which establishes presence of

accused/appellant in the house during intervening night 18/19-2-2013 and the accused/appellant being the son of the deceased was under an obligation

to explain as to under what circumstances his mother met with homicidal death inside the house, but the appellant in his statement under Section 313

CrPC did not offer any explanation as to how the deceased received injuries which were found on her body. This apart, medical evidence shows presence of injuries on the person of the deceased attributable to hard and blunt object, the axe seized at the instance of accused/appellant was sent for examination to the doctor (PW-13) who opined that the injuries suffered by the deceased could be caused by the axe sent to him for examination. Hence, we are of the considered view that the circumstances enumerated above sufficiently reflects the complicity of accused/appellant in the crime and of no one else.

13. So far as the submission of counsel for the accused/appellant that the act of the appellant comes within the ambit of Section 304 Part-I of IPC is concerned, from the nature of injuries caused to the deceased, it is clear that they are so grave and caused to such vital parts of the body i.e. head, that there can be no doubt that the intention of appellant was atleast to cause such injuries on the body of the deceased that would be in all likelihood cause her death. Therefore, the argument that there was no intention on the part of accused/appellant to commit murder or that the offence is one that does not fall under Section 302 IPC for conviction cannot be accepted.

14. For the foregoing reasons, this Court is of the considered opinion that the findings recorded by the trial Court convicting the accused/appellant under Section 302 IPC are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.