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HIGH COURT OF CHHATTISGARH AT BILASPUR

Division Bench

Coram : Hon'ble Shri T.P.Sharma and
Hon'ble Shri R.L.Jhanwar, JJ.

Criminal Appeal No.136 of 2003

Raj Kumar

Versus

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
T.P. Sharma
Judge

HON'BLE SHRI R.L.JHANWAR, J.:

g agree
DL

Sd/-
R.L. Jhanwar
Judge

Post for 29-01-2010

Sd/-
29-01-2010

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Coram : **Hon'ble Shri T.P.Sharma and**
Hon'ble Shri Rajeshwar Lal Jhanwar, JJ.

Criminal Appeal No. 136 of 2003

Appellant : Raj Kumar, S/o L.L. Deshmukh, aged
(in jail) about 20 years, resident of Ashish Nagar,
Risali, P.S. – Newai, Tah & Dist. Durg
(C.G.)

Versus

Respondent : State of Chhattisgarh

CRIMINAL APPEAL U/S 374 (2) OF CODE OF CRIMINAL PROCEDURE

Present :
Shri Vivek Rathore with Shri Amit Tiwari for the appellant.
Shri Rakesh Jha, Dy. Government Advocate for the State/respondent.

JUDGMENT
(Passed on 29th January, 2010)

The following Judgment of the Court was passed by T.P.Sharma, J.

The challenge in this appeal is to the judgment of conviction and order of sentence dated 13.01.2003 passed by 6th Additional Sessions Judge, Durg in Sessions Case No. 157 of 2002 whereby and whereunder after holding the appellant guilty for commission of homicidal death amounting to murder of his mother – Kaushalya and consequent to the evidence of criminal case, the learned Additional Sessions Judge convicted the appellant under Section 302 and 201 of the I.P.C. and sentenced him to undergo life imprisonment under Section 302 of the I.P.C. and to undergo rigorous imprisonment for three years under Section 201 of the I.P.C.

2. The judgment is challenged on the ground that without considering clinching and credible evidence, the learned Additional Sessions Judge convicted and sentenced the appellant as aforesaid mentioned and thereby committed illegality and irregularity.

3. Case of the prosecution in brief is that on fateful day of 04.05.2002 at about 3.00 p.m. the appellant, son of the deceased – Kaushalya, was

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present in his house. Deceased was also present in the house. The deceased received injury inside the house. The appellant lodged Dehati Nalishi Ex.P.21 against three persons that three persons came to his house for repairing hand pump and out of them one person caught hold his hand and pushed him inside the bath room and closed him from outside. They were holding iron pipe screw driver and have assaulted his mother. On the basis of Ex.P.21, registered F.I.R. was lodged. Neighbours came, he took the mother in injured condition to hospital for treatment. Her condition was serious. Lacerated wound was found over her body. During the course of treatment, she died. On the same day, at about 10.30 p.m. merg was recorded vide Ex.P.17 and Ex.P.18. After summoning the witnesses vide Ex.P.19, inquest over the body of Kaushalya Ex.P.20 was prepared. Dead body was sent for autopsy to Government Hospital, Durg vide Ex.P.22 and autopsy was conducted by P.W.8 Dr.C. S. Morey vide Ex.P.13 and found the following injuries:

Swelling over the right hand, fracture of nasal, stitched wound over the right side of the head 2 in number. Multiple fracture of frontal and parietal bone. Hematoma inside the brain.

The above injuries were ante-mortem in nature and death was as a result of coma due to head injury.

4. Cloths were seized vide Ex.P.4. During the course of investigation, the accused was taken into custody on 08.05.2002. He made disclosure statement of the iron *Musar* vide Ex.P.1. The accused produced *Musar* wrapped in paper from upper part of the both rooms. The same was recovered vide Ex.P.2. Nails of the appellant were cut and seized the same vide Ex.P.3. One fiber door stained with blood was seized vide Ex.P.5. Dried blood was seized with the help of cotton vide Ex.P.6. Bed head ticket was seized vide Ex.P.12. Old handle of Almirah was seized vide Ex.P.24. Seized articles were sent for chemical examination vide Ex.P.28. Presence of blood over the *Musar*, cotton, cloths & nails of the accused was confirmed by the Chemical Examiner vide Ex.P.30.

5. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure (for short 'the Code'). After completion of



investigation charge sheet was filed before Court of Judicial Magistrate First Class, Durg who in turn committed the case to the Court of Sessions, Durg from where the learned Additional Sessions Judge had received the case on transfer.

6. In order to prove the guilt of the appellant, the prosecution examined as many as 17 witnesses. The accused was examined under Section 313 of the Code where he denied the circumstances appearing against him and innocence and false implication is claimed. In defence, he has taken specific plea that at the time of incident at about 3.00 p.m. he was present in his house. His mother was also present in the house. Some persons pressed the calling bell and after hearing the call bell, he came out and saw three persons were present with covering their face by a cloth. They told him that they were directed to repair hand pump whereupon he took them near hand pump through back side of the house. But suddenly one person caught hold him and pushed him inside the bath room and closed the door from outside and after threatening him that if he will raise alarm then they will kill his mother and upon which he remained silent for some time and afterwards he broken the doors of the bath room and came out from it. He saw his mother was stained with blood and badly injured. He took out his mother immediately. His hand and cloths were stained with the blood. Informing about this incident to his uncle and other persons he took his mother to hospital and also lodged the report.

7. After hearing the learned counsel for respective parties and after affording opportunity to the parties, the learned Additional Sessions Judge has convicted and sentenced the appellant as aforementioned in paragraph 1.

8. We have heard learned counsel appearing for the parties and perused the judgment impugned and record of the Court below.

9. Counsel for the appellant vehemently argued that in the present case, the deceased was mother of the appellant and there was no motive or cause for causing the death of his mother. Blood was found over the nails and cloths of the accused because the accused has touched the body of his mother which was stained with blood. He himself has lodged the report and took his mother to the hospital for treatment. If the



appellant was author of the crime then there was no occasion for him to lodge the report or took her mother for treatment to the hospital. Her mother was alone in his house and there was sufficient time to finish her. The defence taken by the accused is reasonable and probable and sufficient for casting the doubt over the story of prosecution. The prosecution is required to prove his defence beyond all reasonable doubts. Further he argued that the case is based on circumstantial evidence and in order to convict the appellant on the basis of circumstantial evidence, the prosecution is required to establish the following ingredients:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
- (3) the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

But in the present case, the prosecution has not proved any of the ingredients to connect the appellant in crime in question.

10. On the other hand, learned counsel appearing for the State vehemently opposed the criminal appeal and submitted that the appellant although is son of the deceased but is the author of the crime and has committed the murder of his mother after causing fatal injury to his mother. He has falsely intimated the police with a view to conceal the evidence of the criminal case.

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11. In the present case, the conviction is based on following circumstances:

- A. Accused and deceased were present in the same house at the time of commission of offence.
- B. Previously, the deceased has beaten the accused on account of his education.
- C. Weapon of offence i.e. *Musar* was recovered at the instance of the accused and blood was found over the *Musar*. Hairs and cloths of the accused were also stained with blood.

12. In order to appreciate the arguments advanced on behalf of parties, we have examined the evidence adduced by the prosecution. In the present case, homicidal death as a result ante-mortem fatal injury has not been substantially disputed by the appellant otherwise also established by the evidence of P.W.15 Dr. Ghanshyamdas Agrawal, who has examined the injured for the first time vide Ex.P.9, P.W.11 Dr. A.L.Benjamin, who has also examined the deceased vide Ex.P.15 and P.W.8 Dr. C.S.Morey who has conducted autopsy vide Ex.P.13 which reveal the deceased received injury over her head which was sufficient for causing her death. Death was homicidal in nature.

13. As regards the complicity of the appellant in crime in question, P.W.1 H.K. Deshmukh, uncle of the appellant has deposed that about 3.00 p.m. he came from his office and appellant came to him and informed that somebody has assaulted his mother whereupon he went to inform his brother and thereafter he went to the house of the deceased. At that time, the deceased was lying injured and unconscious, he immediately called Ambulance and took her to Sector - 9 Hospital where she was given treatment but she has died. P.W.2 M.L.Deshmukh, father of the accused and husband of the deceased has deposed in his evidence that previously hand pump installed in his house was having some problem. He had requested his old mechanic for repairing the same. He further deposed that the present accused informed him that three persons came to his house for repairing the hand pump and while he was taking them near hand pump, one of them closed him in bath room and when he came out after breaking the door of bath room, he saw his mother in injured

condition. P.W.3 C.S. Singh has deposed in his evidence that accused has not made any disclosure statement but police has obtained his signature over Ex.P.2. He has seen *Musar (batta)* in police station which the police seized. This witness has not supported the case of prosecution and police has declared him hostile. P.W.17 K.L.Sahu, Sub-Inspector has deposed in his evidence that the appellant has made disclosure statement of *Musar* vide Ex.P.1 and he has seized the same vide Ex.P.2 at the instance of the accused. The presence of blood over the nails and cloths of the accused and *Musar* has been confirmed by Chemical Examiner vide its report Ex.P.30.

14. In the present case, the blood over the nails and cloths of the accused and *Musar* has not been substantially disputed. On the other hand, except the blood over the *Musar*, presence of blood over the nails and cloths has been admitted by the appellant/accused. The evidence of aforesaid witnesses reveals that the appellant was present inside the house at the time of incident and his mother was also present in the same house where she received fatal injury. She was admitted in hospital and finally she died. The present appellant informed his uncle P.W.1 Hemant Kumar Deshmukh and his father P.W.2 M.L.Deshmukh about the incident and has also informed his father that three persons came for repairing the hand pump and closed him inside the bath room and as soon as he came out after breaking the door of the bath room, he saw his mother lying in injured condition. Dehati Nalishi Ex.P.21 also reveals the same fact which has been lodged by the appellant immediately after the incident. In the instant case, the prosecution has not proved any cause / motive for commission of incident. The prosecution has produced *Musar* stained with blood being seized and recovered from the appellant at his instance but the factum of disclosure statement and its recovery had not been supported by the evidence P.W.3 C.S.Singh and only P.W.17 K.L.Sahu, Sub-Inspector has supported the factum of disclosure statement and recovery of the *Musar*. Presence of blood has been confirmed by the chemical examiner vide Ex.P.30 but blood group has not been proved by the prosecution. The only circumstance against the appellant is that *Musar* was recovered at the instance of the appellant but in the absence of any proof of blood group, it is difficult to hold that blood found over the *Musar* and blood of the deceased was one and same or belonged to the

deceased. In the present case, all the facts that the appellant was present in his house and after incident he immediately informed his uncle and father and also lodged report vide Ex.P.21 have been admitted by him. At the time of lodging report at about 3.00 p.m. the deceased was lying unconscious. First time she was examined by Dr. A.L.Benjamin P.W.11 on 4.5.2002. The deceased was brought by the appellant and his neighbour P. Sahu. Subsequently she was further treated by Dr. Ghanshyamdas Agrawal P.W.15.

15. The evidence of Dr. A.L.Benjamin P.W.11 reveals that the accused and his neighbour P.Sahu are the persons who brought the deceased in injured condition to Sector – 9 Hospital for treatment. The appellant was present in his house along with his mother. No third person was present. Sufficient time was available to the appellant to kill his mother. The appellant is a person who has taken his mother to the hospital for treatment and has immediately informed his uncle and father. In case the appellant caused injury to his mother, there was no occasion to take her for immediate treatment to Sector – 9 hospital, the best hospital of the State, to save her. The prosecution has not adduced any evidence to show any motive for the commission of offence.

16. In the instant case, the prosecution has not been able to adduce the circumstantial evidence to show that the appellant was having any motive for causing the death of her mother and has caused fatal injury to his mother. On the other hand, the appellant is a person who has informed his uncle and father about the incident immediately after the incident and has taken his mother immediately to the hospital for treatment to save her life. He has not fled away from the spot. These circumstances negatived the fact that the appellant was the author of the crime or has committed the offence. The trial Court has convicted the appellant based on the factum of seizure of *Musar* and circumstances appearing against him but has not considered the material fact that prosecution has not proved any cause or motive of the offence, he has immediately informed his uncle and father about the incident and thereafter he immediately taken his mother, who was injured condition, to Sector-9 hospital for immediate treatment to save her life which shows that accused / appellant has tried his level best to save his mother's life.

This is strong circumstance against the prosecution and in favour of defence.

17. For the foregoing reasons, we are of the view that the circumstances adduced on behalf of prosecution are not sufficient for drawing an inference that the appellant was author of the crime or has committed the murder of his mother. Inter alia, it revealed that the appellant has tried his level best to save the life of his mother but ultimately he failed. Therefore, the conviction of the appellant under Section 201 and 302 of the I.P.C and the sentence awarded thereunder are not sustainable under law and liable to be set aside and the appeal filed by the appellant deserves to be allowed.

18. In the result, the appeal is allowed. Conviction of the appellant under Section 201 and 302 of the I.P.C and the sentence awarded thereunder are set aside. The appellant be set at liberty at once, if not required in any other case.

Sd/-
T.P. Sharma
Judge

Sd/-
R.L. Jhanwar
Judge