

(21)

HIGH COURT OF CHHATTISGARH AT BILASPUR
DIVISION BENCH

CORAM: **HON'BLE MR. T.P. SHARMA &**
 HON'BLE MR. N.K. AGARWAL, JJ.

Criminal Appeal No. 559/2006

APPELLANTS

- (1) Ramchandar S/o Sahasram, aged 55 years, R/o Gram Panchayat Shankarpur, Japanpara, Police Station Udaipur, District Surguja (C.G.)
- (2) Manijar Ram S/o Shri Ramchandar, aged 25 years, Gram Panchayat Shankarpur, Japanpara, Police Station Udaipur, District Surguja (C.G.)

VERSUS

RESPONDENT

State of Chhattisgarh; Through Police Station Udaipur District Surguja (C.G.)

CRIMINAL APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE 1973.

Present:- Mr. Abhay Tiwari, Advocate with Mr. Sachin Singh Rajput, Advocate for the appellants.
Ms. Madhu Nisha Singh, P.L. for the State/respondent.

ORAL-JUDGEMENT
(Passed on 31/01/2011)

The following judgment of the Court was passed by

T.P. Sharma, J:-

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 11/7/2006 passed by Third Additional Sessions Judge (F.T.C.), Ambikapur, Surguja (C.G.) in Sessions Trial No. 242/2005 whereby and where under after holding the appellants guilty for commission of

offence of culpable homicide amounting to murder of Manmati in sharing common intention convicted the appellants under Section 302/34 of the Indian Penal Code and sentenced rigorous imprisonment for life with fine of Rs. 500/-, in default of payment of fine amount, additional rigorous imprisonment for one month to each.

2. Conviction is impugned on the ground that without any iota of evidence sufficient for conviction of the appellants, Courts below has convicted and sentenced the appellants as aforementioned and thereby committed an illegality.
3. As per case of the prosecution, on fateful day of 10/5/2005 between 2:00 to 3:00 P.M. *Panchayat* was convened at the instance of Bhoosli Panika. Appellants were present in the *Panchayat*, they were holding axe thereafter they assaulted Manmati by axe from its blunt part and caused her instantaneously death. PW2 Rambai went to the Police Station and lodged First Information Report vide Ex. P-2. Marg intimation was recorded vide Ex. P-3. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex. P-4. Inquest over the dead body of Manmati was prepared vide Ex. P-5. Dead body was sent for autopsy to Govt. Hospital, Udaipur vide Ex. P-18 PW1 Dr. I.D. Bhatnagar conducted autopsy vide Ex. P-1 and found following injuries:-

(i) One bruise of 3" x 3" over right fronto parietal region.

(ii) Bruise over both the shoulders and chest.

(iii) Injury No. 1 was ante-mortem in nature.

Mode of death was coma and death was homicidal in nature.

4. Investigating Officer prepared spot map vide Ex. P-8. Patwari prepared spot map vide Ex. P-6. During course of investigation, appellant Manijar Ram was taken into custody. He made discloser statement of axe vide Ex. P-11, same was recovered at the instance of appellant Manijar Ram vide Ex. P-9. Appellant Ramchandar also made discloser statement of axe vide Ex. P-13, same was recovered at the instance of appellant Ramchandar vide Ex. P-12. Soil was recovered from the spot vide Ex. P-10.
5. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code'). After completion of investigation charge sheet was filed before Judicial Magistrate First Class, Ambikapur who in turn committed the case to the Court of Sessions, Ambikapur from where learned Third Additional Sessions Judge (F.T.C.), Ambikapur, Surguja (C.G.) has received the case on transfer for trial.
6. In order to prove the guilt of the appellants prosecution examined as many as 10 witnesses. Appellants were examined under Section 313 of the Code where they

denied the circumstances appearing against them, innocence and false implication in crime in question are claimed.

7. After affording an opportunity of hearing to the parties, learned Third Additional Sessions Judge (F.T.C.), Ambikapur, Surguja (C.G.) convicted and sentenced the appellants as aforementioned.
8. Mr. Abhay Tiwari with Mr. Sachin Singh Rajput, learned counsel for the appellants and Ms. Madhu Nisha Singh, P.L./Additional Public Prosecutor for the State/respondent are heard. Judgment impugned and record of Court below perused.
9. Learned counsel for the appellants vehemently argued that in the present case, alleged eyewitnesses i.e. PW2 Rambai, PW3 Dheersai & PW4 Panikasai have not seen the incident but they have deposed against the appellants only on the ground of political rivalry. Their evidence does not finds support from the medical evidence. Medical and ocular evidence are contradictory, in these circumstances any inference relating to guilt of the appellants would not be possible.
10. Learned counsel for the appellants further argued that considering the contradictory statement of eyewitnesses if injury found over the body of deceased is considered then even the act of appellants does not travel beyond the scope of Section 304 Part-II of the Indian Penal Code.

11. On the other hand learned P.L./Additional Public prosecutor for the State/respondent opposed the appeal and submits that in the present case, evidence of eyewitnesses PW2 Rambai, PW3 Dheersai & PW4 Panikasai reveal that they have exaggerated their statement in Court but only on the ground of exaggeration entire evidence of these witnesses cannot be discarded. Court are required to separate grain of truth from chaff of falsehood if possible and in present case evidence of these witnesses clearly reveal that both the appellants have caused fatal injury resulting into instantaneously death of deceased Manmati. They have caused injury by dangerous weapon i.e. axe although as per evidence and promptly lodged First Information Report appellants have used blunt part of the axe for causing such injury.
12. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of prosecution.
13. In the present case, homicidal death as a result of fatal injury found over the body of Manmati has not been substantially disputed on behalf of the appellants on the other hand, otherwise also established by the evidence of PW1 Dr. I.D. Bhatnagar and autopsy report Ex. P-1 and death was homicidal in nature.

14. As regard the complicity of appellants in crime in question, conviction is substantially based on the evidence of eyewitnesses PW2, Rambai, PW3 Dheersai & PW4 Panikasai. All three witnesses have categorically deposed that Manmati was present near the *Panchayat* where both the appellants came with axe & stick, they tried to assault Manmati then she ran away then the present appellants chased her and dragged from the house of Chowkidar i.e. PW2 Rambai thereafter they caused injury to her. PW2 Rambai has lodged First Information Report Ex. P-2 and Marg intimation Ex. P-3 on second day, which reveals that injury has been caused from the blunt part of the axe. Autopsy report reveals that 3" x 3" bruise was found over right fronto parietal region, which also considerable the fact that injury has been caused from the blunt part of the axe. Evidence of aforesaid eyewitnesses reveal that firstly appellants chased the deceased Manmati then they dragged her from the house of PW2 Rambai, they were holding axe. In these circumstances, it was not possible for the eyewitnesses to watch the incident from close distance or to intervene the incident but the evidence of aforesaid eyewitnesses reveals that they were present on the spot and they have seen the incident from considerable distance but the fact remain that as per their evidence, appellants have caused injury to deceased Manmati.

15. As regard the motive for commission of offence is concerned, motive is only aid in criminality and loses its importance. In case of direct evidence, even otherwise motive can be inferred on the basis of nature of injury, part of the body where injury was caused, weapon used and other like circumstances.
16. In the present case, both the appellants were holding axe and having sufficient opportunity to chop the neck of deceased or caused fatal injury by sharp part of the axe but they have not caused any injury by sharp part of the axe, only one injury of considerable size has been noticed by the doctor upon the head of deceased Manmati shows that at the time of causing such injury, present appellants had taken proper precaution by not using sharp aged part of the axe but at the time of causing such injury by blunt part of the axe, they were having knowledge that by their act deceased may die. These circumstances shows that appellants have not caused homicidal death of Manmati with intent to cause her death in sharing common intention but at the time of causing death, they were having knowledge that by their act deceased may die. These circumstances are sufficient for drawing an inference that act attributed to the appellants does not travel beyond the scope of under Section 304 Part-II of the Indian Penal Code.

17. While convicting and sentencing the appellants under Section 302/34 of the Indian Penal Code trial Court has not considered circumstances in which incident took place, nature of injury and number of injury and thereby committed an illegality.
18. For the foregoing reasons, criminal appeal is partly allowed. Conviction and sentence of the appellants under Section 302/34 of the Indian Penal Code is altered into under Section 304 Part-II read with Section 34 of the Indian Penal Code and considering the act attributed to them specially causing one injury, they are sentenced rigorous imprisonment for 7 years with fine of Rs. 500/-, in default of payment of fine amount, additional rigorous imprisonment for one month each. Present appellants are entitled for set off for the period already undergone.

Sd/-
T.P. Sharma
Judge

Sd/-
N.K. Agrawal
Judge