



2019 INSC 1006

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.331 OF 2011

LAXMINATH

APPELLANT(S)

VERSUS

STATE OF CHHATTISGARH

RESPONDENT(S)

J U D G M E N T

DEEPAK GUPTA, J.

This appeal by the accused is directed against the judgment of the High Court dated 27.03.2008 whereby the High Court while upholding the judgment of the Trial Court convicted the accused for offence punishable under Section 302 of the Indian Penal Code and sentenced him to life imprisonment.

We agree with the learned counsel for the appellant that the High Court has not discussed the entire evidence in the manner in which the First Appellate Court in a murder case should discuss the same. However, we are of the considered opinion that keeping in view the fact that the occurrence is of 12.12.1997 and 22 years have elapsed, it would not be fair to either side to remand the case only on this count. We, therefore, have, with the assistance of the counsel, gone into the entire relevant evidence in detail. The FIR (Ext.P/5) was lodged at the instance of PW-1, who is the cousin of the accused

and father of the deceased. In this FIR it is stated that his brother (Laxminath-Deceased) wanted to construct a house on his land to which his son Kursan (deceased) objecting and, therefore there was altercation between them.

At about 8-9 am in the morning accused Laxminath came armed with an axe, entered his house and attacked his son and gave three blows of the axe on the side of the face as a result of which his son died. He further states that his wife and daughter-in-law raised an alarm and shouted that the deceased had been killed by the accused. Therefore, he has lodged the report.

On the basis of this report, the investigation was conducted. The case of the prosecution is that a confessional statement was made by the accused and the confession led to the recovery of axe, which was used as the weapon of offence. The prosecution filed chargesheet under Section 173 of the Cr.P.C. against the accused. The accused was charged for having committed the murder of Kursan. He pleaded not guilty and claimed trial. After trial he was convicted by the Trial Court and sentenced to life imprisonment. The appeal was dismissed and hence this appeal before us.

We have carefully gone through the statements on record. Only five witnesses have been examined. The first is the informant, who in the Court stated that he heard the voice of his wife Kosibai (PW-2) that accused

Laxminath has killed Kursan. He ran home and found that Kursan was lying dead with injuries on the side of his head. He was informed by his wife and daughter-in-law Lachchandei (PW-3) that Laxminath had murdered the deceased with an axe. He then went to the Sarpanch of the village to complain and a Panchayat was called but the accused did not attend the Panchayat. PW-1 has been cross-examined with regard to the motive for the crime and he has admitted that the accused had built the house even prior to the date of occurrence, though, according to him, the accused built the house on the land of the complainant. He has not been cross-examined in respect of the allegations that his wife and daughter-in-law told him that the accused had murdered the deceased or that he reached the house on hearing the cries of his wife.

Kosibai (PW-2) is the wife of PW-1 and mother of the deceased. She states that she was sweeping the courtyard and at that time Kursan was sleeping inside. Accused Laxminath came there, armed with an axe and killed Kursan by giving blows of the axe on the side of the head. She states that she asked Laxminath not to kill her son but he did not pay heed to her request. She raised an alarm and on hearing her alarm her husband came from the field and found that Kursan was dead. Daughter-in-law had also come there in the meantime. PW-2 had informed her husband about the occurrence and the manner in which Kursan was killed. She has also been confronted with the

statement recorded under Section 161 Cr.P.C. wherein it is not mentioned that she was sweeping the courtyard. She first denied the suggestion that she had witnessed the occurrence but she immediately corrected herself and said that she had not actually seen accused Laxminath killing Kursan but she had seen him coming out of the room with an axe in his hand.

PW-3 is the daughter-in-law and wife of the younger brother of the deceased. She states that she was outside the front portion of the house and cleaning the same, whereas the mother was on the back portion. The accused came and gave blows to the deceased with an axe and he died as a result thereof. She admittedly is not an eye-witness. She has not witnessed the accused giving blows. However, her statement is to the effect that she saw the accused coming out of the room with an axe in his hand. There is some contradiction between her statement and the statements of PW-2 and PW-1 with regard to the motive but she has stated that after the occurrence, she came to know that there was some dispute with regard to the land. She has virtually not been cross-examined as far as her statement of seeing the accused coming out of the room is concerned.

PW-4 is the village Sarpanch who states that the Panchayat was called but according to him the accused came to the Panchayat and confessed the crime. This is contradictory to the statement of PW-1. PW-5 is the

doctor and he has proved that the death was homicidal with regard to which there was not much dispute. PW-6 is the Investigating Officer who has proved the recovery of the axe and the statement made by the accused and on this aspect he has not been cross-examined at all. The only cross-examination directed to him is that he recorded the statements of the witnesses under Section 161 Cr.P.C. as they told by them to him. With regard to the investigation there is no cross-examination at all.

It is true, as contended by Mr. Goburdhun, learned counsel for the appellant that there are some contradictions in the statements of the witnesses, inasmuch as whereas initially the case set up in the FIR, by PW-1 was that the accused wanted to raise construction which was being objected to but during the course of trial it has been revealed that in fact the construction had already been raised. However, it is clear from the statements of the witnesses that there was some dispute as to whether this construction had been raised on the land of the complainant or not. As far as contradictions between the statements of PW-2 and 3, we do not think there is any major contradiction after going through the original record in Hindi. This contradiction, in our view, is not sufficient to discredit the testimony of the witnesses on material issues. The Trial Court rightly held that these two witnesses were not eye-witnesses but they were witnesses of facts immediately after the

occurrence. They had seen the accused entering the room armed with an axe and leaving the room armed with an axe. In the meantime Kursan died because of blows of axe. This can lead to only one inevitable conclusion that it was the accused who murdered Kursan. The versions of these witnesses are supported by the medical evidence because the injuries found on the body of the deceased tally with the version given by the eye-witnesses.

It was contended that axe was not sent for forensic examination. That may be true and the investigating officer may have committed lapse in this regard, but the statement of doctor does show that this injury can be caused by an axe and furthermore recovery of the axe, which has been stated to by the investigating officer, has not been subjected to any cross-examination. Even otherwise on the statements of PW-1, 2 and 3 alone, we are of the considered opinion that prosecution has proved its case beyond reasonable doubt.

We, therefore, find no merit in the case. The appeal is accordingly dismissed.

.....J.
(DEEPAK GUPTA)

.....J.
(ANIRUDDHA BOSE)

New Delhi
September 05, 2019

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s).331/2011

LAXMINATH

Appellant(s)

VERSUS

STATE OF CHHATTISGARH

Respondent(s)

Date : 05-09-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Appellant(s)

Mr. D. N. Goburdhan, AOR

For Respondent(s)

Dr. Rajesh Pandey, Adv.
Mr. Mahesh Pandey, Adv.
Ms. Tanuja Manjari Patra, Adv.
Ms. Shweta Mulchandani, Adv.
Mr. Manoj Selvaraj S., Adv.
Ms. Aswathi M.k., AOR
Ms. Yogita Ahuja, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed non-reportable judgment.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(RENU KAPOOR)
BRANCH OFFICER

(signed non-reported judgment is placed on the file)