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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1050 of 2000

Balram Gond S/o Bilok Gond, age 35 years, Resident of village
Amka, P.S. Khadgawan, District Korla

---- Appellant

Versus

State Of Madhya Pradesh (Now Chhattisgarh) Through : Station
House Officer, Khadgawan, District Korla.

---- Respondent

For Appellant	:	Shri Md. Tariq Haidar, Advocate (Appointed by the Chhattisgarh High Court Legal Aid Services Authority)
For Respondent/ State	:	Shri Neeraj Mehta, Panel Lawyer.

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.**

Judgment On Board

Per P. SAM KOSHY, J

06/07/2015

1. The Appellant stands convicted under Section 302 IPC to life imprisonment with fine of Rs. 500/-, in the event of failure to pay which, he was required to undergo further six months simple imprisonment as ordered on 31.8.1999 by the Additional Sessions Judge, Manendragarh, District Korla, in Sessions Trial No. 376 of 1998.

2. As per the prosecution case, accused Balram Gond is said to have assaulted his wife Rajmatiya on 17.10.1998 at around 5 pm on doubting her of having an illicit relationship with Nohar Lal. On account of the assault Rajmatiya died instantly. The matter was reported the next day i.e.18.10.1998 at around 12.10 pm by PW-12, Gendlal marked as Exhibit P-15. PW-12 stated to have seen the accused assaulting the deceased and

on a query, the accused has admitted of having assaulted his wife. Subsequently, the body of the deceased was sent for postmortem, marked as Exhibit P-25. Postmortem was conducted by PW-11, Dr. R.P. Singh who found the following injuries:

- “(i) Lacerated wound 5 x 2cm bone deep right molar region.
- (ii) Lacerated wound 2 x 1cm right zygomatic area. Bone deep.
- (iii) Contusion 4 x 3cm right mandibular region.
- (iv) Contusion 10 x 6cm left lower half of arm.”

Because of the injuries, the deceased sustained fracture on the right maxillary bone and also fracture of mandible right side. In addition, there was also fracture of humerus lower part of left side and the Doctor opined that the cause of death was due to shock and fractures received on multiple bones and the death was homicidal in nature.

3. During the course of investigation, the statements were recorded wherein eyewitnesses stated before the police that the Appellant had assaulted the deceased and when the deceased tried to save herself by running out of her house, the accused chased her and assaulted her with a wooden stump of a cot. Subsequently, the matter was put to trial before the Court below wherein it was registered as Sessions Trial No. 376 of 1998.

4. In the trial court, only four persons came forward to support the case of the prosecution i.e. PW-1, Kayaso Bai, PW-4, Bechan, PW-5, Mangli and PW-12, Gendlal. Rest of the eyewitnesses had turned hostile. Since there was clear statement of the other eyewitnesses and statement of PW-12, before whom extra judicial confession was made, the trial court found the case of the prosecution of having been proved beyond reasonable doubt and convicted the Appellant for the offence under Section 302 of IPC leading to filing of the appeal.

5. Learned Counsel for the Appellant nominated by the High Court Legal Services Committee, during the course of argument submitted that three witnesses PW-2, Hemkumari alias Buddhiman Bai, PW-3, Baijnath Singh and PW-6, Biharilal have turned hostile and have not supported the case of the prosecution. He submitted that PW-1, Kayaso Bai, the sister-in-law and PW-5, Mangli, the mother-in-law of the Appellant are near relatives of the deceased and are therefore interested witnesses. Referring to the statement of PW-12, who has deposed that on reaching the place of occurrence, he has asked the Appellant about what had happened and it was then told that he stated of having assaulted the deceased on account of her having an illicit relationship with Noharlal. This extra-judicial confession made by the Appellant before PW-12, Gendlal, the lodger of the FIR is not voluntary and is an extracted piece of evidence and therefore would not be admissible. The prosecution has also failed to produce the FSL report of the articles which were seized during the course of investigation, particularly the wooden stump and the clothes of the Appellant as well as the sample of the blood stained earth seized from the place of occurrence. For the foregoing reasons, counsel for the Appellant submitted that the prosecution has failed to prove its case beyond reasonable doubt and in the given facts and circumstances benefit of doubt should go to the Appellant and the impugned judgment deserves to be set aside.

6. The State Counsel however opposing the appeal submits that the aforesaid infirmities which have been cited above would not demolish the case of the prosecution on account of the fact that there are clear and cogent eyewitness account who have supported the case of the prosecution, particularly PW-1, Kayaso Bai, the sister-in-law of the Appellant-accused, who in very categorical terms stated before the Court to have witnessed the Appellant assaulting the deceased with wooden stump of cot. She further

states that even after the stump having been broken, the Appellant continued to give repeated blows to the deceased resulting in her death. Similarly, PW-4, Bechan who is an independent witness and a neighbour who was called at the place of occurrence by PW-3, Baijnath Singh, the son-in-law of the deceased. PW-4, Bechan in his deposition before the Court has categorically submitted of having witnessed the incident on his reaching the place of incident. He has even described that his house was just around 66 feet away from the house of the Appellant. PW-4 further stated that the assault by the Appellant on the deceased was so severe that the wooden stump broke into three-four pieces. He further stated that after he had reached the spot, he tried to intervene and requested the Appellant with folded hands not to assault the deceased, upon which the Appellant is said to have threatened the said witness, PW-4, Bechan and also continued with his attack. Later on when he came near the deceased, he found that the deceased was badly injured and just in about 5-10 minutes time, she succumbed to the injuries.

7. Further, the statement of PW-5, Mangli was also referred to by the State Counsel who also in her deposition has very categorically supported the case of the prosecution of having witnessed the incident and there is not much which the defence could extract from her cross-examination.

8. The deposition of PW-8, Deenanath Singh, the Patwari proves the spot map (Exhibit P-12) prepared by him and in his deposition he has stated to have prepared the spot map at the instance of the eyewitnesses PW-1, Kayaso Bai, PW-4, Bechan and other family members present at the time of the occurrence which includes the witnesses who have turned hostile.

9. In the statement under Section 313 CrPC, the accused-Appellant, has taken a defence of alibi and has stated that he was not present at the time of incident in the village which he has not been able to substantiate in any

manner during the course of the trial. Once the prosecution has been able to lead cogent evidence particularly that of the eyewitnesses account, the onus immediately shifts upon the accused person to prove his alibi which the Appellant in the instant case has failed to do and the fact that he has taken a false defence of alibi which has not been substantiated becomes an incriminating factor against the Appellant.

10. In the circumstances, the evidence which has come on record sufficiently proves the case of the prosecution of the Appellant having assaulted the deceased, which resulted into death of the deceased. We therefore do not find any good ground for interference with the findings arrived at by the Court below.

11. For the foregoing reasons, the appeal fails and is accordingly dismissed. The Appellant is reported to be on bail. His bail bonds are cancelled. He is directed to surrender forthwith or be taken into custody forthwith to serve the remaining part of the sentence imposed on him.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE