

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 438 of 2010

- Laxmi Prasad @ Pulu S/o Kapil Satnami, aged about 24 years, R/o Vill. Ramhepur, Jhikhan, Thana Lormi, Distt. Bilaspur.

---- Appellant

In Jail

Versus

- State of Chhattisgarh, Through the Police Station Lormi, Distt. Bilaspur (CG)

---- Respondent

For appellant : Shri N.K. Malviya, Advocate.
For Respondent/State : Shri Ajit Singh, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board by Justice Pritinker Diwaker

15/09/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 13.5.2010 passed by the II Additional Sessions Judge (FTC), Mungeli, Distt. Bilaspur in S.T.No.48/08 convicting the accused/appellant under Sections 302 of IPC on three counts for committing murder of Bajharinbai, Rajkumar @ Raju & Kantibai and Section 404 of IPC for dishonestly misappropriating the ornaments worn by deceased Bajharinbai at the time of her death and sentencing him to undergo imprisonment for life, to pay a fine of Rs.2,000/- on three counts u/s 302 of IPC and R.I. for one year, to pay a fine of Rs.500/- u/s 404 of IPC with default stipulations.

02. In the present case, deceased Bajharinbai was the second wife of Dharmu and was residing at Village-Hardi along with her grand-son Rajkumar @ Raju, aged about 10 years, and grand-daughter Kantibai, aged about 5 years. The accused/appellant is grand-son of Dharmu from his first wife (step-grand-son of Bajharinbai). As per prosecution case, the accused/appellant came to Village-Hardi and was residing with Bajharinbai since about a week prior to the incident. In the intervening night of 6th & 7th August, 2008 the accused/appellant first committed murder of Bajharinbai by abruptly hitting Bajharinbai with grinding stone on her chest and thereafter on her head and during this when Rajkumar @ Raju and Kantibai woken up, he also committed their murder by hitting them with the same stone. Further case of the prosecution is that the accused/appellant had also snatched the ornaments from the body of deceased Bajharinbai and then ran away from the said village to Delhi for his livelihood. On 12.8.2008 when Malikram (PW-7), a local villager, was passing through the house of the deceased, he had some doubt in his mind as the house was locked from outside and a foul smell was emanating from it. He immediately gave information to PW-1 Jilesh, son of Bajharinbai, at Delhi and also gave information to the police on 13.8.2008, based on which entry was made in the Rojnamchasanha vide Ex.P/29C. Police party reached the house of deceased Bajharinbai, prepared Panchanama Ex.P/11 of house of Bajharinbai, broke open the lock of the door and then found three dead bodies of Bajharinbai, Rajkumar @ Raju and Kantibai inside the house in decomposed condition. The police also noticed blood spread all over the house. FIR (Ex.P/19) was recorded under Section 302 of IPC against the accused/appellant and merged intimations

(Ex.P/20, P/21 & P/22) as to death of Rajkumar @ Raju, Kantibai & Bajharinbai were also recorded. Inquest over the dead bodies of Kantibai, Rajkumar @ Raju and Bajharinbai were performed as per Ex.P/4, P/5 & P/6 respectively and thereafter, the dead bodies were sent for postmortem. Postmortem on the dead bodies of Bajharinbai, Kantibai & Rajkumar were conducted by Dr. R.S. Ayam (PW-9) vide Ex.P/24, P/25 & P/26 respectively and he noticed that the dead bodies were in a decomposed condition with multiple rupture of left lateral neck (partial ruptured) involving oesophagus, trachea, larynx, major vessels, associated with neck muscles etc. breaking of ribs and fracture of cervical spines. In his opinion, the cause of death was shock due to internal excessive hemorrhage and rupture of major vessels of neck and that the death was homicidal in nature. After arresting the accused/appellant on 21.8.2008 his disclosure statement (Ex.P/16) was recorded, based on which receipt books from the jewellery shop of the ornaments i.e. silver chain and golden nose pin were seized vide Ex.P/15. Further, vide Ex.P/24 seizure of clothes of the deceased persons was made whereas vide Ex.P/17 receipt of Rs.500/- of silver chain and receipt of Rs.500/- of golden nose pin were also seized. By another seizure memo Ex.P/18, one grinding stone stained with blood and one bloodstained quilt were seized. The seized articles were sent for chemical examination to Forensic Science Laboratory and as per FSL report (Ex.P/39), blood was found on Article A, C, E i.e. soil from the place of occurrence and Articles G i.e. grinding stone, Articles I, J-1 & J-2 i.e. seized clothes of the deceased persons. Silver chain and golden nose pin of the deceased were duly identified by PW-3 Narayan and PW-10 Devcharan vide Ex.P/23. After investigation charge sheet

was filed against the accused/appellant under Sections 302 & 404 of IPC and thereafter, charges under Section 302 of IPC on three counts and Section 404 of IPC were framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 15 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that the accused/appellant has been convicted solely on the basis of circumstantial evidence but nature of circumstantial evidence is not as such based on which the appellant can be held guilty for commission of the offence.

(ii) that the evidence adduced by the prosecution is not sufficient to sustain conviction of the appellant, the appellant is innocent and has been falsely implicated in the crime.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same. He submits that memorandum and seizure have been duly proved by the prosecution. The articles seized at the instance of accused/appellant

have been correctly identified by the prosecution witnesses. He further submits that the appellant was residing with the deceased Bajharinbai in the same house, after committing murder he ran away from there to Delhi and therefore, his conduct is also suspicious and points towards his guilt.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Jilesh is a witness of inquest of dead bodies (Ex.P/4, P/5 & P/6), seizure Ex.P/7, P/8 and P/9 by which bloodstained soil was seized from the place of occurrence as also the spot map Ex.P/13. Though this witness has been declared hostile, but he has admitted his signatures on the documents and partly supported the prosecution case. PW-3 Narayan, son of deceased Bajharinbai. has stated that her mother Bajharinbai was residing in the house along with Kantibai and Rajkumar. Accused/appellant was also residing with them 10-15 days prior to the incident. He has further stated that before the incident he had called up his mother and then he came to know that the accused/appellant was also residing with her mother and despite asking by his mother to leave the house, he was not ready to leave the house and had quarreled with his mother. He has stated that identification of certain ornaments was made before him and he identified those ornaments as that of his mother. PW-4 Ramlochan who is a witness of inquest Ex.P/4, P/5 & P/6 of the deceased persons has supported the prosecution case. PW-6 Sukhnandan is a witness to memorandum of the appellant Ex.P/16 and seizure Exs.P/15, P/17 & P/18. He has duly supported the prosecution version. PW-7 Malik Ram

is a witness at whose instance entry in the Rojnamchasanha Ex.P/29C was made and FIR and merg intimations were recorded. PW-8 Yuvraj Kurre, Executive Magistrate, who conducted identification of the seized articles vide Ex.P/23, has duly supported the prosecution case and stated that the witnesses correctly identified the ornaments.

09. PW-9 Dr.R.S. Ayam conducted postmortem on the body of the deceased Bajharinbai, Kantibai & Rajkumar vide Ex.P/24, P/25 & P/26 respectively and noticed that the dead bodies were in a decomposed condition with multiple rupture of left lateral neck (partial ruptured) involving oesophagus, trachea, larynx, major vessels, associated with neck muscles etc. breaking of ribs and fracture of cervical spines. In his opinion, the cause of death was shock due to internal excessive hemorrhage and rupture of major vessels of neck and that the death was homicidal in nature. On examination of the seized grinding stone, he further opined that the injuries suffered by the deceased persons could be caused by the said stone. PW-10 Devcharan, son of deceased Bajharinbai, duly identified the seized ornaments during identification proceedings as that of his mother vide Ex.P/23. In para-5 he has further stated that he boarded the train along with his wife and the accused/appellant from Delhi for Village-Hardi, however, when the the train began to move, the accused/appellant jumped out of the running train and ran away. PW-12 Manish Soni, a jeweller, has proved seizure of receipt books and articles from his shop. PW-13 J.S. Khan, investigating officer, has duly supported the prosecution case. PW-14 Malikram has stated that on or around the date of incident the accused/appellant came to him and informed that he wanted to sell

golden nose pin and silver chain, so he took the accused/appellant to one Suresh Soni where the accused/appellant sold those articles for Rs.1,000/- and took its receipt. PW-15 Santosh Ram, Patwari, prepared the spot map Ex.P/12 and is also a witness to Panchanama Ex.P/13.

10. Close scrutiny of the evidence makes it clear that about a week prior to the date of incident i.e. 6/7th August, 2008 the accused/appellant had come to the house of deceased Bajharinbai who was residing at Village-Hardi along with her minor grand-children Rajkumar @ Raju and Kantibai. Evidence goes to show that deceased Bajharinbai used to ask the accused/appellant to leave her house, but he was not willing to leave her house and on account of this there used to be quarrel between both of them. According to the prosecution on the date of incident the accused/appellant first committed murder of deceased Bajharinbai by brutally assaulting her with grinding stone and when hearing the commotion the minor children Rajkumar @ Raju and Kantibai woke up, he also caused grievous injuries to them with the said stone and thereby committed their murder as well. After commission of the incident the accused/appellant having locked the house from outside left the place for Delhi. PW-10 Devcharan, son of deceased Bajharinbai, has stated that on being informed by his brother-in-law that his mother Bajharinbai and children are missing and the house is locked from outside, while he was coming from Delhi along with his wife and the accused/appellant by train, the accused/appellant jumped out of the running train and ran away. During investigation after arrest of the accused/appellant on the basis

of his disclosure statement, receipt books pertaining to sale of the ornaments were seized and the witnesses have proved memorandum of the accused/appellant and seizure effected in pursuance thereof. PW-14 Malikram has stated that on or around the date of incident the accused/appellant had come to him and informed that he wanted to sell golden nose pin and silver chain, on which he took the accused/appellant to one Suresh Soni where the accused/appellant sold those articles and obtained its receipts. PW-3 Narayan, son of deceased Bajharinbai and PW-10 Devcharan have duly identified the ornaments as that of deceased Bajharinbai. Further, at the instance of the accused/appellant the grinding stone was seized which was subsequently found to be stained with blood as per FSL report Ex.P/39. This apart, medical evidence also supports the prosecution case according to which the injuries suffered by the deceased could be caused by the grinding stone seized. Except making bald denial of all the incriminating circumstances appearing against him in the prosecution case, the accused/appellant has not offered any satisfactory explanation in his defence under Section 313 Cr.P.C.

11. Thus considering the overall circumstantial evidence including the medical evidence adduced by the prosecution coupled with the conduct of the accused/appellant, we are of the opinion that the prosecution has successfully proved guilt of the accused/appellant on the basis of circumstantial evidence adduced by it beyond all reasonable doubt. The findings recorded by the trial Court holding the accused/appellant guilty under Section 302 of IPC on three counts and Section 404 of IPC are based on proper appreciation of the evidence

on record, warranting no interference by this Court.

12. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. The accused/appellant is reported to be in jail, therefore, no further order as to his surrender etc. is required.

Sd/
(Pritinker Diwaker)

Judge

Sd/
(I.S.Uboweja)

Judge