

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 569 of 2013

1. Heeralal, S/o Ganpatram Gond, aged about 35 years, R/o Tumdisur, Police Station Doundi, Civil & Revenue District Durg C.G.

**---- Appellant
(In Jail)**

Versus

1. The State of Chhattisgarh, through - The Station House Officer, Police Station Doundi , Civil & Revenue District Durg (C.G.)

---- Respondent

For Appellant:
For Respondent:

Shri Gautam Khetrapal, Advocate
Shri V.A. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgement

Per Pritinker Diwaker J,

03/12/2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 1.7.2011 passed by the Additional Sessions Judge, Balod in S.T. No.49/2011 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for Life & fine of Rs.100/-, in default to undergo additional RI for 03 months.
2. The prosecution story, in short, is that on 3.4.2010 at about 12.30 p.m. FIR (Ex.P-1) was lodged by Khamotin Bai (PW-1) alleging in it that on the previous night the accused/appellant, who is her nephew, came to her house along with his wife Meenabai and after some time of their arrival, they started quarrelling with each other and in that process the accused/appellant while abusing her filthily caused grievous injuries on

her head by *danda/kutela* (a piece of wood like cricket bat used for thrashing the clothes). Based on this report, offence under Sections 294, 323, 506 (B) of the IPC was registered against the accused/appellant. Injured Meenabai was taken to the Community Health Centre, Dondi where she was given primary treatment and thereafter referred to the District Hospital, Durg where she died on 7.4.2010 during the course of treatment. Unnumbered Merg Intimation was first recorded and then numbered merg intimation was recorded vide Ex.P-21. Inquest was conducted on 7.4.2010 vide Ex.P-5 and thereafter dead body was sent for post-mortem examination which was conducted by Dr. Lal Mohammed (PW-7) on 8.4.2010 vide report Ex.P-11. The doctor conducting post-mortem examination noticed one lacerated wound of 1x ¼ x 1 ¼ size above the eye on the right eyelid & fracture in the parietal bone of skull. He opined the cause of death as coma due to head injury. After the investigation, challan was filed under Section 302 of IPC followed by framing of charge accordingly.

3. In order to prove the complicity of accused/appellant in the crime in question, the prosecution has examined 13 witnesses. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured guilt and pleaded innocence & false implication in the case. He has taken the defence that at the time of incident, he was not in the house and had gone along with his cousin Ramesh, son of Khamotin Bai (PW-1), to consume liquor and on return, he found the deceased lying in injured condition near the doorpost. He does not know as to how she fell.
4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned above.
5. Counsel for the accused/appellants submits that;
 - conviction of the accused/appellant is substantially based on the

evidence of Khamotin Bai (PW-1), aunt of accused/appellant, but the testimony of this witness is doubtful and lacked substance and therefore conviction of accused/appellant under Section 302 of IPC is not proper.

- On the disclosure statement (Ex.P-3) of accused/appellant, bloodstained wooden log is said to have been seized but in absence of FSL report, the seizure has no value in the eyes of law.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
7. Heard learned counsel for the parties and perused the evidence available on record.
8. Khamotin Bai (PW-1) is the sole eye-witness of incident and also lodger of the FIR (Ex.P-1). She has stated that accused/appellant is her nephew and on the date of incident, he had come to her house along with his wife. Being sick, she asked the deceased to cook food but she refused. Thereafter she had gone to answer the call of nature and on her return, she saw the accused/appellant & the deceased quarrelling. The deceased was lying at the doorpost with injury on her head from which blood was coming out. As deceased Meenbai became unconscious, therefore, she was not talking. This witness has further stated that she had disclosed the entire incident to the village kotwar Jhinguram and thereafter the deceased was first taken to the Government Hospital, Dondi and thereafter to the hospital at Durg where she died after three days. In Para-3 she has stated that it is the accused/appellant who assaulted Meenbai by stick. She has further stated that she saw the accused/appellant fleeing from the spot carrying stick in his hand. In the

cross-examination she has stated that after taking Rs.100/- from her, Ramesh & accused/appellant had left the house to purchase the liquor. Thereafter she had also gone to answer the call of nature and at that time the deceased was cooking food. This witness has further stated that after 10-15 minutes of her return, the accused/appellant & her son Ramesh came back together. In Para-7 of her cross-examination, she has stated that accused/appellant & deceased both were under the influence of liquor and that she does not know as to how the deceased died and as to who killed her.

9. Dhansai (PW-2) is the witness of memorandum (Ex.P-2) of accused/appellant and seizure memo (Ex.P-3). This witness has stated that he has come to know about the incident through Khamotin Bai (PW-1).
10. Ganpat (PW-3) is the witness of inquest (Ex.P-4), but he has not supported the prosecution case and turned hostile.
11. Ramshila Bai (PW-5) is the mother of the deceased and she has also been declared hostile by the prosecution.
12. Lakhan Singh Damle (PW-5) is the Patwari who prepared the spot map of Ex.P-9.
13. Dr. Lal Mohammed (PW-7) is the witness who conducted the post-mortem examination on the body of the deceased and gave his report Ex.P-11.
14. Manohar (PW-8) is the witness of memorandum (Ex.P-2) & seizure memo (Ex.P-3), but he has not supported the prosecution case and declared hostile. However, he has admitted his signature on the aforesaid documents.
15. Jhinguram (PW-9) is the witness to whom Khamotin Bai (PW-1) had first disclosed the incident. He is the witness of spot map (Ex.P-9) & arrest memo (Ex.P-15), but he has not supported the prosecution case and therefore declared hostile by the prosecution. However, he has admitted

his signature on the aforesaid documents.

16. Dr. N.K. Thakur (PW-10) is the witness who first treated the deceased at Community Health Centre, Dondi.
17. Dayaldas Markande (PW-11) is the witness who recorded the merger intimation (Ex.P-21).
18. R.K. Mandalesh (PW-12) is the Assistant Sub Inspector of Police who helped in the initial investigation.
19. Sanjay Pundir (PW-13) is the Investigating Officer and has duly proved the prosecution case.
20. Close scrutiny of the evidence makes it clear that though named FIR (Ex.P-1) was lodged by Khamotin Bai (PW-1) against the accused/appellant saying that it is the accused/appellant who had caused grievous injuries to the deceased, but in the Court she has not supported the prosecution case and stated that neither she had seen the accused/appellant assaulting the deceased nor fleeing him from the spot. In the examination-in-chief she has stated that when she returned home after easing herself, she saw the accused/appellant & the deceased quarrelling, whereas in the cross-examination she has stated that after departure of her son Ramesh with accused/appellant for purchasing liquor, she too had left the house to answer the call of nature and at that time, the deceased was cooking food. She has further stated that 10-15 minutes after she got back after easing herself, the accused/appellant & her son Ramesh returned. The assertion of Khamotin Bai (PW-1) that the accused/appellant had given blows to the deceased thus stands contradicted by her own statement. Such a contradiction is on a crucial aspect pertaining to the complicity of accused/appellant. This apart, a wooden log having stains like blood was seized on the disclosure statement (Ex.P-2) of accused/appellant and the same was sent for

chemical examination to the Forensic Science Laboratory but the charge sheet has been filed without securing report from the FSL. Thus the prosecution has utterly failed to discharge the burden lies on it of establishing a close link between discovery of material object and its use in the commission of offence by accused/appellant. In these circumstances, this Court is of the considered opinion that conviction of accused/ appellant based on the sole testimony of eyewitness Khamotin Bai (PW-1) was not proper and accused/appellant was entitled to the benefit of doubt.

21. For the foregoing, the appeal succeeds. Conviction & sentence of the appellant under Section 302 of the IPC are hereby set aside and he is acquitted of that charge by extending him benefit of doubt. Appellant is reported to be in custody. He be set at liberty forthwith unless required to be in custody in connection with any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge

roshan/-