

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 490 of 2011

1. Manak Ram Nagwanshi S/o Baijnath Nagwanshi, Occupation-Agriculture, R/o Village Bodapahari, P.S.-Bagicha, Distt.-Jashpur, C.G.

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

Versus

1. State Of Chhattisgarh, through P.S. Bagicha, District Jashpur.

---- Respondent

For appellant:
For Respondent:

Shri Shrawan Agrawal, Advocate
Shri Vivek Sharma, Government Advocate.

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

Judgement

Per P. Diwaker, J

03/02/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 28.3.2011 passed by the Sessions Judge, Jashpur in S.T. No.35/2010 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life & fine of Rs.100/-.
2. The prosecution story, in brief, is that on 2.1.2010 at about 7.00 p.m. deceased Smt. Savni Bai, mother of accused/appellant, left the house by saying that she is going to the house of accused/appellant. However, she did not return thereafter and on the next morning she was found lying dead near the house of accused/appellant. Baijnath Nagwanshi (PW-1) lodged FIR (Ex.P-16) on 3.1.2010 at 4.00 p.m. raising his suspicion on the accused/appellant. Based on this FIR, offence under Section 302 IPC was registered against the accused/appellant. At the instance of Baijnath (PW-

1), Merg Intimation (Ex.P-17) was recorded on 3.1.2010 at 4.30 p.m. Inquest was conducted vide Ex.P-1 and thereafter dead body was sent for post-mortem examination which was conducted by Dr. (Smt.) V. Bakhla (PW-6) vide Ex.P-2. The doctor conducting the post-mortem examination noticed following injuries:-

- Bruise on the front both sides of neck.
- Abrasion on the left side of back in whole extent, irregular in size and shape.
- Abrasion of 2x2cm in size on the lower angle of right scapular.
- Abrasion of 3x3cm in size on the right elbow
- lower limbs were stained with soil

According to the doctor, the cause of death was haemorrhagic shock and the death was homicidal in nature. During the course of investigating, accused/ appellant was arrested and his memorandum statement (Ex.P-7) was recorded based on which one vest & adze (bansula) was recovered vide seizure memos (Ex.P-8 & P-10). Bloodstained soil and plain soil was seized from the spot vide Ex.P-15. Seized articles were sent for chemical examination to the Forensic Science Laboratory and presence of blood upon the soil seized from the spot i.e. courtyard of the appellant, was confirmed vide Ex.P-14.

3. After completion of investigation, charge sheet was filed against the accused/appellant under Sections 302 & 201 of the IPC and accordingly the charges were framed by the trial Court against him.
4. So as to hold the accused/appellant guilty, the prosecution has examined as many as 11 witnesses. Statement of the accused/appellant was 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.

5. After hearing counsel for the parties, the trial Court while acquitting the accused/appellant of the charge under Section 201 IPC, by the impugned judgment, convicted and sentenced him as mentioned in para-1 of this judgment.
6. Learned counsel for the accused/appellant submits that;
 - present is a case of no evidence and merely on the basis of suspicion accused/appellant has been arrested and prosecuted.
 - since the place of occurrence is not clear, the seizure of bloodstained soil and FSL report is of no consequence.
 - the prosecution failed to establish the motive of the offence.
 - absence of blood in the clothing seized from the possession of appellant speaks volume about the innocence of the appellant.
 - PW-1 Baijnath, husband of deceased, has improved in the Court and gone to the extent of saying that he had witnessed the incident, whereas in his diary statement & FIR lodged by him, he has not stated so.
7. 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. He further submits that even if the evidence of Baijnath (PW-1) that he had witnessed the incident is disbelieved, then also this witness has stated in categorical terms that on the fateful day the deceased left the house saying that she is going to the house of accused/appellant and thereafter on the second day her dead body was found. Further, presence of blood upon the soil seized from the courtyard of accused/appellant has been confirmed vide FSL report Ex.P-14 and the appellant has failed to offer any explanation regarding the same. He further submits that the conduct of accused/appellant in fleeing

away after the death of his mother creates a strong doubt against him.

8. We have heard learned counsel for the parties and perused the material available on record.
9. Baijnath (PW-1) is the father of accused/appellant and husband of the deceased. He has stated that on the date of incident at about 7.00 p.m. the deceased the house saying that she is going to the house of accused/appellant and thereafter did not return in the night. He has further stated that in search of deceased when he reached the house of accused/appellant, he saw that on account of assault given by accused/ appellant, his wife had fallen down and started agonizing. Seeing this, he got afraid and came back home. This witness has further stated that on the next morning Assi Ram came to his house and informed that the deceased is lying dead in the field of Jolo. He has further stated that he has noticed blood in the courtyard of accused/appellant. Accused/appellant was not present in his house and had fled to his in-laws house. In the cross-examination he has stated that he has disclosed this fact to the police that he saw the accused/appellant assaulting his wife and if this fact is not mentioned in case diary statement, he could not tell reasons.
10. Thedarius Kuju (PW-2) has stated that he saw the body of deceased in the field of one Joloram. Number of villagers gathered there including that of Baijnath (PW-1). He has stated that house of accused/appellant is situated near the place from where the dead body was lying. In the morning he saw the accused/appellant going away with his family.
11. George Minj (PW-3) is the villager who saw the accused/appellant running away to somewhere with his family.
12. Dr. (Smt.) V. Bakhla is the autopsy surgeon who conducted post-mortem on the body of deceased and query raised to this witness- whether the injuries present on the body of deceased could be caused by the seized weapon

produced before her, was answered in the affirmative vide Ex.P-3.

13. Yogesh Singh (PW-8) is the Patwari who prepared the spot map (Ex.P-4).
14. L.R. Chouhan (PW-7) is the investigating officer and he has duly supported the prosecution case.
15. Smt. Kamla (PW-10) is the wife of accused/appellant. She has not supported the prosecution case and declared hostile by the prosecution.
16. Gopal Vaishya (PW-11) is the Inspector who helped in the investigation.
17. Close scrutiny of the evidence makes it clear that on 2.1.2010 at about 7.00 p.m. the deceased had gone to the house of her son i.e. accused/appellant, and next morning her dead body was found lying near the house of accused/appellant. Baijnath (PW-1), father of accused/appellant & husband of deceased, has categorically stated that on 2.1.2010 at 7.00 p.m. the deceased had left the house by saying that she is going to the house of accused/appellant and thereafter she did not return in the night. According to medical evidence, cause of death was haemorrhagic shock and the death was homicidal in nature. At the instance of accused/appellant, adze (bansula) was recovered and the query raised by the prosecution – whether the injuries present on the body of the deceased could be caused by the weapon so seized, has been answered by the doctor (PW-6) in the affirmative vide Ex.P-3. This apart, report of FSL confirms the presence of blood in the soil seized from the courtyard of accused/appellant and therefore it was bounden duty of accused/appellant to satisfactorily explain as to how blood was found on the soil seized from his courtyard but no explanation much less satisfactory explanation has been offered by him, except making bald denial of all the incriminating circumstances, in his statement recorded under Section 313 Cr.P.C. Most importantly, after the incident the accused/appellant was not present in his house and in the morning of 3.1.2010 i.e. day on which dead body of

deceased was recovered, the prosecution witnesses saw him going away with his family. This conduct of accused/appellant in running away to somewhere with his family, particularly when the dead body of his mother was lying nearby and there is no whisper in his statement under Section 313 Cr.P.C. that he was not aware of the factum of death of his mother, raises an accusing finger towards him that it is he who brutally committed murder of the deceased.

18. Thus, on the basis of aforesaid circumstantial evidence the prosecution has succeeded in proving involvement of accused/appellant in commission of the offence beyond reasonable doubt. The findings recorded by the court below being strictly based on the unfettered appreciation of the evidence available on record require no interference in this appeal. The judgment impugned is thus maintained and the appeal meets the fate of dismissal. Order as such. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-