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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 903 of 2003

1. Bisahat alias Bala Sahu S/o Shambhu Sahu, aged 53 years, resident of village Kagdehi, Thana – Arang, Distt. Raipur (C.G.)
2. Smt. Vishwasa Bai w/o Bisahat alias Bala Sahu, aged 46 years, resident of village Kagdehi, Thana – Arang, Distt. Raipur (C.G.)

--- Appellants

Versus

1. State Of Chhattisgarh Through – P.S. Arang, District Raipur (C.G.)

---- Respondent

For Appellants.	:	Shri Amit Singh, Advocate.
For Respondent.	:	Shri Ashish Surana, P.L.

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

Judgment On Board

Pritinker Diwaker, J

20/07/2016

This appeal arises out of the judgment of conviction and order of sentence dated 08.05.2003 passed by the VIth Additional Sessions Judge, Raipur (C.G.) in S.T. No.350/2002 convicting the accused/appellants under Section 302/34 IPC and sentencing them to undergo imprisonment for life with fine of Rs.5,000/- plus default stipulations.

02. Prosecution story, in brief, is that on 13.06.2002 at 1.30 am, FIR (Ex.P/22) was lodged by Hariram (PW/11) – relative of the deceased alleging in it that at about 10.00 pm he was informed by Atma Ram

Sahu that the accused/appellants have killed deceased Zabla Sahu. Based on this, FIR (Ex.P/22) the offence under Section 302/34 IPC was registered against accused/appellants. Immediately thereafter at 1.30 pm mereg intimation (Ex.P/32) was recorded at the instance of Hariram (PW/11). Inquest on the dead body of deceased was conducted vide Ex.P/3 and dead body of deceased was sent for postmortem examination to Govt. Hospital, Aarang vide Ex.P/33. Postmortem examination on the body of deceased was conducted on 13.06.2002 by Dr. G.P. Chandrakar (PW/12) who gave his report vide Ex.P/23 and found following injuries/symptoms:-

- i. Rigor mortis was present. Both eyes were closed and depressed inside.
- ii. There was blood clot on face, nose was depressed inside and bone was fractured.
- iii. Frontal bone was depressed inside, parietal bone was broken from two places. Brain matter was came out.

The autopsy surgeon opined that the cause of death was syncope as a result of laceration of brain matter and death was homicidal in nature.

03. On completion of investigation, charge sheet was filed against accused/appellants and two acquitted accused persons namely Dhan Singh and Kanti Bai under Sections 302, in the alternative under Section 302/34 IPC.

04. So as to hold the accused persons guilty, the prosecution examined as many as 16 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted co-accused Dhan Singh and Kanti Bai of all the charges framed against them but convicted and sentenced the accused/appellants as mentioned in para-1 of this judgment.

06. Learned counsel for the appellants submits as under:

- (i) that accused/appellants have been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is not as such which can be made basis for their conviction;
- (ii) that only piece of evidence against accused/appellants is their memorandum (Ex.P/17 and P/19) by which certain articles have been seized and as the FSL report was found to be positive, the appellants have been convicted;
- (iii) that in absence of serological report, the prosecution has failed to prove origin of blood group and thus, the accused/appellants cannot be convicted merely on the basis of FSL report.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that the conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Neelkanth (PW/1), Parasram (PW/2), Rameshwar (PW/3), Ghasuram (PW/4), Aatmaram (PW/5), Ganesh (PW/13) and Fandu Lal

Sahu (PW/14) have turned hostile and did not support the prosecution case.

10. Premlal Sahu (PW/6) is Patwari who prepared spot map vide Ex.P/12. Babulal Patel (PW/7) is Police Constable who took the application (Ex.P/13) to FSL and obtained receipt thereof vide Ex.P/14. Rukhmani Bai (PW/8) – wife of deceased is a hearsay witness. Angad (PW/9) – minor son of deceased has categorically stated in his cross-examination that he had not seen the accused/appellants killing his father. Kisun (PW/10) witness to memorandum (Ex.P/17 and P/19) of accused/appellants and seizure (Ex.P/18 and P/20) has been declared hostile. Hariram (PW/11) lodger of FIR (Ex.P/22) turned hostile. Dr. G.P. Chandrakar (PW/12) conducted postmortem examination on the body of deceased and gave his report Ex.P/23 opining the cause of death as syncope due to laceration of brain matter and death was homicidal in nature. Ram Khilawan (PW/15) witness to inquest (Ex.P/3), memorandum (Ex.P/17 & P/19) and seizure thereof (Ex.P/18 & P/20) has partially supported the prosecution case, however, while deposing in the Court he has improved his statement stating that extra judicial confession was made by accused/appellant No.1-Bisahat. Ajit Patle (PW/16) – Investigating Officer has duly supported the prosecution case.

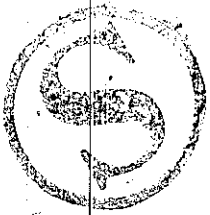
11. On the basis of memorandum (Ex.P/17) of accused/appellant No.1-Bisahat, a club was seized vide Ex.P/18, whereas on the basis of memorandum (Ex.P/19) of accused/appellant No.2-Vishwasa Bai, stone was seized vide Ex.P/20. Clothes of accused/appellant No.1 and 2 were also seized vide Ex.P/6 and Ex.P/7 respectively. As per FSL report, blood has been found on the articles A, C, D, E, F, & G i.e. soil seized



from spot, club, stone, cloth of appellant No.1, cloth of appellant No.2 respectively, however, there is no serological report on record proving the origin of blood.

11. Close scrutiny of the evidence makes it clear that but for the memorandum of the accused/appellants (Ex.P/17 & P/19) and seizure (Ex.P/18, P/20) by which club and stones were seized & Ex.P/6 and P/7 by which clothes of accused/appellants were seized, there is nothing on record to bring home their guilt. The witnesses to memorandum and seizure have also not fully supported the prosecution case though have admitted their signature on the documents. As per FSL report (Ex.P/16), blood has been found on the seized articles i.e. soil seized from the spot, two clubs, stones and clothes of appellants but origin of blood group has not been proved by the prosecution. Thus, taking into consideration the overall evidence on record, it will not be safe for this Court to uphold the conviction of the accused/appellants solely on the basis of their memorandum and seizure which have not even been proved as required under the law. The trial Court while convicting and sentencing the accused/appellants has not considered the evidence in its proper perspective and erred in law in convicting them only on the basis of FSL report which itself is not conclusive in nature.

12. Thus, having given our anxious and careful consideration to the facts and circumstances of the case, we feel that the prosecution has utterly failed to bring home the guilt of the accused/appellants beyond reasonable doubts and therefore they are entitled to be acquitted of the charge under Section 302/34 IPC by extending them benefit of doubt.



70

13. In the result, the appeal succeeds and the impugned judgment of conviction and order of sentence is hereby set aside. The appellants are acquitted of the charge levelled against them by extending them benefit of doubt. The appellants are on bail, therefore, their bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.P.C.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(C.B. Bajpai)
JUDGE

Vijay