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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 157 of 2006

1. Anirudh alias Kamalkant Rathore, S/o Mahabir Prasad Rathore, aged about 22 years, resident of village Khokhora, Police Station: Janjgir, District Janjgir-Champa (CG)

---- Appellant
(Accused) (In jail)

Versus

1. State Of Chhattisgarh, through the Station House Officer, Police Station Janjgir, District Janjgir-Champa (CG)

---- Respondent

For Appellant:
For Respondent:

None.
Mr. Adil Minhaj, Panel Lawyer.

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

Judgement

Per P. Diwaker, J

05/09/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 8.2.2006 passed by the Additional Sessions Judge, Janjgir in S.T. No.133/05 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for life and fine of Rs.500/-, in default to undergo additional RI for 3 months.
2. In the present case name of deceased is Smt. Sandhya Rathore, wife of Ravindra Rathore (PW-15). Accused/appellant is brother-in-law of the deceased.
3. As per prosecution case, on 17.1.2005 at 6.00 p.m. dehati nalishi

(Ex.P-25) was recorded at the instance of Ravindra Rathore (PW-15), husband of deceased, alleging in it that on the date of incident, when he was demanding some money from his father (acquitted accused), the accused/appellant came there and he too started demanding money from acquitted accused and therefore a quarrel took place between him and accused/appellant. On the same evening at about 5.30 p.m, the accused/appellant after snatching axe from the hands of his father assaulted him. Seeing this the deceased intervened whereupon accused/appellant assaulted on her head & hand as a result of which she fell down. It is alleged that acquitted accused caused injuries to him by scissors on his back & ribs. Incident was witnessed by Jagdish & Gajadhar Prasad Rathore. Based on this dehati nalishi, offence under Section 307/34 IPC was registered against the accused persons. Injured were sent hospital for medical examination. Injured Ravindra Rathore and Smt. Sandhya Rathore (deceased), were medically examined by Dr. S. N. Jangde, (PW-3) vide Ex.P-12 & P-13 respectively. After the death of deceased in the hospital, merg intimation was recorded vide Ex.P-24 on 17.1.2005. Inquest was prepared vide Ex.P-16. Body was sent for post-mortem examination which was conducted by Dr. B.S. Chandel (PW-7) on 18.1.2005 who noticed following injuries;-

- One lacerated wound on the right side of forehead of 3x1x1cm
- Lacerated wound at the parietal occipital region of the head of 8x2x3cm. Some part of brain material was visible. Bony crackers are felt.
- Abrasion on the back of right elbow of 2x2cm size.

The doctor has opined that cause of death is coma due to head injury

(injury to brain) and the death was homicidal in nature. After completion of investigation, the charge sheet against the accused persons has been filed and the trial Court has framed the charges under Section 302, 302/34 & 307 IPC against the accused persons.

4. So as to hold the accused persons guilty, the prosecution has examined as many as 19 witnesses. Statement of accused persons were also recorded under Section 313 Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.
5. After hearing the parties, the trial Court while acquitting co-accused Mahavir Prasad of the charges, convicted and sentenced the accused/appellant in the manner as described above.
6. Main grounds urged by the appellant in the memo of appeal are that;
 - star witness of the prosecution i.e. Ravindra Rathore (PW-15) has turned hostile and did not support the prosecution case and thus there being no incriminating evidence against the appellant, he is entitled for acquittal.
 - Though the blood stains were found on the axe seized at the instance of Gajadhar (PW-1) and shirt & full pant of accused/appellant, but it has not been established that the blood stains were of human blood and that they were matching with the blood group of the deceased.
7. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court. He further



submits that even if the star witness of the prosecution turned hostile, but considering the seizure of bloodstained axe & clothing of accused/ appellant, the prosecution has successfully established its case. He further argued that though no serological report could be filed on record, but FSL report confirms presence of blood on almost all the seized articles and the accused/appellant failed to offer any explanation regarding presence on it.

8. We have heard counsel for the parties and perused the material available on record including the judgment impugned.
9. Gajadhar Singh (PW-1) has stated that on the date of incident seeing the accused/appellant and Ravindra (PW-15) quarrelling, he asked them as to why they are quarrelling and thereafter he snatched the axe from them and kept in the house of Hriday. He has further stated that he handed over axe to the police. He has admitted his signature on Ex.P-1 & P-2. At this stage, this witness has been declared hostile.
10. Jagdish Prasad (PW-2) has also not supported the prosecution case and turned hostile. However, this witness has also stated that he saw the accused/appellant, Ravindra (PW-15) & deceased were quarrelling.
11. Dr. S.N. Jangde (PW-3) is the person who medically examined Ravindra (PW-15) and the deceased vide Ex.P-12 & P-13 respectively.
12. Mayaram Rathore (PW-4) is the witness of inquest Ex.P-16.
13. Dr. B.S. Chandel (PW-7) is the doctor who conducted post-mortem on the body of deceased vide Ex.P-21 and noticed the injuries as mentioned above. He has opined that injuries were ante mortem in nature and caused by hard and blunt object. This witness has further opined that the cause of death was head injury (injury to brain) and the death was

homicidal in nature. In the cross-examination this witness has admitted that injuries present on the body of deceased could not be possible from any sharp-edged weapon or axe.

14. Hridaylal (PW-8) has not supported the prosecution case and declared hostile. However, he is the person from whose the axe in question was recovered.
15. Sonaram Sahu (PW-11) is the Patwari who prepared the spot map Ex.P-2.
16. D.P. Pandey (PW-12) is the witness of inquest (Ex.P-16).
17. Ghanshyam Rathore (PW-13) as not supported the prosecution case and turned hostile.
18. Ravindra Rathore (PW-15) is the injured witness and husband of the deceased. This witness also turned hostile and did not support the prosecution case. He has stated that due to fall from the tree with axe, he received injuries. He has further stated that he does not know as to how the deceased received injuries. In the cross-examination the prosecution has failed to elicit anything material from this witness. In the cross-examination he has denied to have made any incriminating statement to the police.
19. Ishwar Singh Rathore (PW-16) is the father of the deceased. He has stated that on being asked, his son-in-law Ravindra informed him that it is the accused/appellant who caused injuries to the deceased.
20. Vinita (PW-17) is the minor daughter of Ravindra (PW-15) & deceased. This witness has not stated anything against the accused/appellant.
21. B.P. Singhsaria (PW-19) is the investigating officer who did the investigation and has duly proved the prosecution case.
22. Minute examination of the evidence on record makes it clear that the



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prosecution has miserably failed to prove its case against the accused/appellant. Ravindra Rathore (PW-15) is the star witness for the prosecution being an injured one and on the basis of report of this witness, the accused/appellant & acquitted accused were apprehended by the police. This witness in his testimony before the Court denied that he gave any statement to the police concerning the incident in question and he does not know as to how the deceased received injuries. He was cross-examined at length by the prosecution but there is nothing in his cross-examination that could bring in the case of prosecution. Similar is the case with Vinita (PW-17), minor daughter of deceased, who deposed in the Court that she is not aware as to how the deceased received injuries. She too denied giving any statement to the police. She had also denied that she had seen the accused/appellant assaulting her mother by axe. This witness was also cross examined at length by the prosecution but again there is nothing that could bring any relief to the prosecution case. These two witnesses were related to the deceased and it is very unlikely that after witnessing the assaults on the deceased they would lie in order to save the murderer of their wife & mother respectively. Since the aforesaid witnesses have not assigned any criminal role to the accused/appellant by not deposing anything incriminating against him, it is difficult to hold that the prosecution has proved its case against the accused/appellant beyond reasonable doubt and being so, he is entitled for benefit of doubt. It is settled proposition also that the prosecution is duty bound to prove its case against the accused and if any doubt arises in the story of prosecution, the benefit of it must go to the accused.

True it is that in the FSL report blood stains were noticed on the axe and clothing of the accused/appellant and the same were also sent to the



Serologist, but no document has been filed by the prosecution to establish that the blood stains were of human blood and further that they were matching with the blood group of the deceased. Mere recovery of axe, so called weapon of offence, cannot be an evidence by itself that could nail the accused/appellant, particularly when the autopsy surgeon (PW-7) has admitted in the cross-examination that the injuries found on the body of deceased could not be possible from any sharp-edged weapon or axe. Thus, we are of the view that the solitary circumstance of blood stains found over the articles allegedly seized from the possession of the appellant would not be sufficient against him to hold him guilty for an offence like murder.

23. In the result, the criminal appeal is allowed. Conviction and sentence of accused/appellant under Section 302 IPC are hereby set aside and he is acquitted of the aforesaid charge by extending him benefit of doubt. The appellant is already on bail therefore his bail bonds stand discharged.

Sd/-
Pritinker Diwaker
Judge

Sd/-
C.B. Bajpai
Judge

roshan/-