



(31)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 243 of 2006

- Firat Ram S/o Jhadu Ram, aged about 41 years, resident of Pisaud, Police Station Janjgir, District Janjgir-Champa, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through : the Station House Officer, Police Station, Janjgir, District : Janjgir-Champa, Chhattisgarh

---- Respondent

For Appellant.	:	Shri Rajeev Shrivastava, Advocate.
For Respondent/State	:	Shri Vaibhav Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board

By Pritinker Diwaker, J

17/11/2016

This appeal arises out of the judgment of conviction and order of sentence dated 10.03.2006 passed by the Additional Sessions Judge, Janjgir, Sessions Division Bilaspur (C.G.) in S.T. No.153/2005 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs.500/-, plus default stipulations.

02. Brief facts of the case are that on 08.02.2005 FIR (Ex.P/2) was lodged by Kanchan Kumar – son of deceased alleging in it that his mother was informed by Badri Prasad (PW/2) that the accused/appellant and his father deceased Ghasiram are quarreling. After receiving this information from his mother, he immediately rushed



32

to the spot and found his father dead. It has been further alleged that there he came to know that it is the accused/appellant who killed his father. Based on this, FIR (Ex.P/2) for the offence punishable under Section 302 IPC was registered against the accused/appellant. Immediately thereafter mereg intimation (Ex.P/1) was recorded and inquest on the body of deceased was prepared vide Ex.P/11. Body of deceased was sent for postmortem to District Hospital, Janjgir where Dr. O.P. Shrivastava (PW/14) conducted postmortem on the body of deceased on 08.02.2005 and gave his report Ex.P/18 opining the cause of death to be hemorrhagic shock due to injuries on right middle of skull and mode of death to be homicidal in nature.

03. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the accused/appellant and accordingly the charge was framed against him by the trial Court.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 16 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced him as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellant submits as under:

- that the accused/appellant has been convicted on the basis of



33

statement of hostile witness Badri Prasad (PW/2). It has been argued that Badri Prasad (PW/2) has not supported the prosecution case and the Court below has erred in law placing reliance on the said witness;

- that though in the FSL report (Ex.P/20) blood has been found on the certain articles but in absence of serological report, FSL report loses its significance.

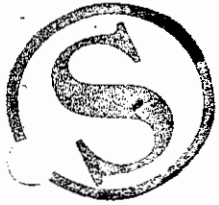
07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

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

09. Kanchan Kumar (PW/1) – son of the deceased has stated that on the date of incident he had gone to his neighbour's house for attending *Chhatti* programme where he was informed by his mother about quarrel between the accused/appellant and deceased. Thereafter, he reached to the place of occurrence and found body of his father lying on the floor with full of blood. One spade was also lying on the spot. Later he came to know that his father has been killed by the accused/appellant. He has further stated that he lodged the merg (Ex.P/1) and FIR (Ex.P/2).

10. Badri Prasad (PW/2) – co-brother (साढ़ू) of the accused/appellant and eye-witness to the incident has turned hostile. He has categorically stated that he did not inform the police that it is the accused/appellant who caused injuries to the deceased.

11. Beba -Mathura Bai (PW/3) – wife of deceased has stated that her husband went from house saying that he was going to Champa. At



34

about 10.00 pm, appellant's co-brother (सादु) Hardiha, whose real name she does not know, came to her and informed that accused/appellant has killed her husband. Thereafter, she informed the incident to her son. This witness has not stated anything specific against the accused/appellant.

12. Ramadhar (PW/4) has turned hostile. Shankar Singh Karsayal (PW/5) – Constable took certain seized articles for FSL and obtained receipt thereof vide Ex.P7. Lekhram Pathak (PW/6) – Constable helped in the initial part of investigation. Rambharos (PW/7) is a witness of inquest made under Ex.P/11 has turned hostile. Ramji Vijay (PW/8) is a seizure witness made under Ex.P/12 by which soil and spade were seized from the spot. Santosh Kumar Kahara (PW/9) is Patwari who prepared spot made vide Ex.P/4. Bhagwat Prasad (PW/10) is a witness to inquest made under Ex.P/11. Sonauram (PW/11) is a witness to inquest (Ex.P/11) has turned hostile. Firtu Ram (PW/12) is a witness to inquest (Ex.P/11), seizure of spade (Ex.P/13), seizure of clothes (Ex.P/14) and arrest memo (Ex.P/15) has turned hostile. Komal Singh (PW/13) – Constable took the body of deceased for postmortem examination and handed over the same to the relatives after postmortem was performed.

13. Dr. O.P. Shrivastava (PW/14) conducted the postmortem on the body of deceased vide Ex.P/18 and found following injuries:-

- (i) Lacerated wound of 3" x 1 ½ x ½ " on right middle of skull, 2" away from right ear.
- (ii) Lacerated wound of 3 cm x 1 cm on right middle of skull, 6" away from right ear.
- (iii) Abrasion with fracture of left lower limb (leg).
- (iv) Fracture of right hip joint.
- (v) Lacerated wound of ½ " x 1 cm x 1 cm on left middle thigh.



35

The Doctor has opined that the cause of death of deceased was hemorrhagic shock and injuries to skull and mode of death was homicidal in nature.

14. Amrit Das (PW/15) – Constable helped in the investigation. B.P. Singsariya (PW/16) is Investigating Officer who has duly supported the prosecution case.

15. Close scrutiny of the evidence makes it clear that there is absolutely no legally admissible evidence against the accused/appellant to connect him with the crime in question. Kanchan Kumar (PW/1) – son of deceased has deposed that he was informed by his mother about the quarrel between accused/appellant and his father deceased. When he reached to the place of occurrence, he saw the dead body of his father lying on the floor with full of blood and one spade was also lying there. Beba (PW/3) – wife of deceased has deposed that she was informed by Hardiha, co-brother (साढ़ू) of accused/appellant, whose real name she does not know, that accused/appellant has killed her husband. This witness has not stated anything specific against the accused/appellant. Badri Prasad – co-brother (साढ़ू) of the accused/appellant and eye-witness to the incident has not supported the prosecution case and turned hostile. In-fact, there is no eye-witness account of the incident. The evidence of Kanchan Kumar (PW/1) and Beba (PW/3) do not inspire confidence of this Court and cannot be made basis for conviction of the appellant.

16. The other piece of evidence against the accused/appellant is seizure made under Ex.P/12, P/13 and P/14 by which certain articles

have been seized and as per FSL report (Ex.P/20), blood has been found thereon. However, even if this FSL report is taken into consideration, in absence of serological report confirming origin of blood, the FSL report loses its significance and cannot be made basis for convicting the accused/appellant especially when there is no other credible and clinching evidence connecting him with the commission of crime. Taking the cumulative effect of the evidence adduced by the prosecution, we are of the view that the trial Court has erred in law in convicting the accused/appellant under Section 302 IPC.

16. Thus considering the evidence collected by the prosecution, this Court is of the opinion that conviction of the accused/appellant under Section 302 IPC is not based on due appreciation of the evidence available on record and that being so he is entitled for benefit of doubt. Consequently, the judgment impugned convicting the accused/appellant under Section 302 IPC is set aside and he is hereby acquitted of the charge levelled against him. The appellant is on bail, his bail bonds stand discharged and he need not surrender.

17. Appeal is thus allowed.

Sd/-
Pritinker Diwaker
Judge

Sd/-
(R.C.S. Samant)
JUDGE