

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 990 of 2007

- Shyam Sunder Gupta, S/o Mahaveer Sao, aged 63 years, Occupation-Agriculturist, resident of village Alka, District Surguja (CG)

---- Appellant (In Jail)

Versus

- State Of Chhattisgarh, through Station House Officer, Police Station-Chalgali, District Surguja (CG)

---- Respondent

For Appellant	:	Shri P.K. Verma, Sr. Advocate assisted by Shri Virendra Verma, Advocate.
For Respondent	:	Shri Vivek Sharma, Government Advocate.

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

Judgement

P. Diwaker, J

16/12/2016

1. This appeal has been filed against the judgment of conviction and order of sentence dated 8.10.2007 passed by the 1st Additional Sessions Judge (FTC), Ramanujganj in Sessions Trial No.461/06 convicting the accused/appellant under Section 302 of the Indian Penal Code, 1860 (for short 'the IPC') and sentencing him to undergo imprisonment for life and to pay fine of Rs.500/-, in default to undergo additional R.I. for 01 month.
2. Brief facts of the case are that there was old land related dispute between appellant and deceased namely Kamlawati Bai. On the date of incident when the accused and the deceased were working in the field, some dispute cropped up between them as a result of which the appellant

committed murder of the deceased by causing her injuries by battleaxe. Merg Intimation (Ex.P-1) was recorded on 19.7.2006 at 8.00 a.m. at the instance of Ravindra Kumar (PW-2). On the same day at 8.05 p.m., FIR (Ex.P-2) was registered against the appellant for commission of offence punishable under Section 302 IPC. Inquest was prepared vide Ex.P-9. Body was sent for post-mortem examination which was conducted by Dr. Janeshwar Singh Paikra (PW-15) vide Ex.P-11 and he noticed multiple incised wounds of different sizes at the back side of neck and that the body was cut off through root of neck with all structure. According to the doctor, cause of death was cardio respiratory arrest due to profuse haemorrhage and the death was homicidal in nature.

3. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly the charge was framed against him by the trial Court. The prosecution in order to substantiate its stand, examined 15 witnesses and exhibited a number of documents. Statement of 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 in the crime in question.
4. After hearing counsel for the parties the trial Court by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.
5. Learned counsel for the accused/appellants submits that the impugned judgment is totally erroneous because the eyewitnesses to the incident and author of FIR turned hostile and did not support the prosecution case. He further submits that the prosecution did not obtain FSL report in the matter and in absence thereof it is difficult for the Court to reach the

conclusion as to whether the said battleaxe has been used in commission of offence or not. In these circumstances, the impugned judgment is not sustainable in law and the appellant deserves to be acquitted of the charge of murder.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of 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 counsel for the parties and perused the evidence available on record.
8. Panchhi (PW-1), one of the eyewitnesses to the incident, has not supported the prosecution case and declared hostile.
9. Ravindra Gupta (PW-2), son of accused, Manoj Gupta (PW-3), husband of deceased, Jitan Gupta (PW-4), another eye-witness of incident, Jagdhari (PW-5); Siyaram Gupta (PW-6) & Surendra Gupta (PW-7) turned hostile and did not support the case of the prosecution.
10. Jagarnath Gupta (PW-8) is the witness of memorandum (Ex.P-4) and seizure memo (Ex.P-5) by which alleged weapon of offence i.e. battleaxe, was seized, but he too has not supported the prosecution and turned hostile.
11. Rambali (PW-9) & Ramkewal (PW-11) are the hear-say witnesses and they have not stated anything specific against the accused/appellant.
12. Sagar Das (PW-10) is the witness of seizure memo Ex.P-10.
13. Vishwanath (PW-12) is the another witness of memorandum (Ex.P-4) and seizure memo (Ex.P-5).

14. Manmati (PW-13) is the neighbour of accused/appellant and she has not stated anything specific against the accused/appellant.
15. C.D. Tirkey (PW-14) is the investigating officer who has duly proved the case of the prosecution.
16. Dr. Janeshwar Singh Paikra (PW-15) is the witness who conducted the post-mortem examination on the body of deceased and gave his report vide Ex.P-11. According to this witness, the cause of death was cardio respiratory arrest due to profuse haemorrhage and death was homicidal in nature.
17. Minute examination of the evidence makes it clear that there is no legally admissible evidence connecting the accused/appellant with the crime in question. Conviction of accused/appellant is solely based on the basis of recovery of weapon of offence - battleaxe, effected allegedly on the basis of disclosure statement made by accused/appellant, for the simple reason that the charge sheet was filed on the basis of direct evidence of eye witnesses but none of them supported the prosecution and even the lodger of FIR namely Ravindra Gupta (PW-2) turned hostile and did not support the prosecution case. However, in our considered opinion, the alleged recovery of weapon of crime has also not been proved by the prosecution in accordance with law because it is only an expert from the FSL who can explain whether or not the said weapon contained human blood and if so, of what blood group, but in the present, for the reasons best known to the prosecution, the said battleaxe was not sent to the chemical examiner to ascertain whether or not the said weapon contained human blood and if so, then was it of the same blood group as the deceased or not. There is no justification on record as to why the alleged weapon of offence was not sent for chemical examination to the FSL

despite its availability. Thus, the prosecution has not been in a position to prove that the battleaxe seized at the instance of accused/appellant was used in commission of crime in question and being so, the accused/appellant is definitely entitled to be acquitted of the charge by extending him benefit of doubt.

18. In the result, the appeal is allowed. Conviction and sentence of accused/appellant under Section 302 IPC are hereby set aside and he is acquitted of that charge by extending him benefit of doubt. Appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

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

roshan/-