

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 671 of 2010

- Uttam Tandon, son of Late Dhansai Tandon, aged about 45 years, Occupation- Driver, resident of village Mouhapali, PS & Tahsil Kharsiya, District Raigarh (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through Station House Officer, Kharsiya, District Raigarh (CG)

---- Respondent

For Appellant	:	Shri R.K. Pali, Advocate.
For Respondent	:	Shri Bhaskar Pyasi, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgement

Per P. Diwaker, J

30/10/2017

1. This appeal arises out of the judgment of conviction and order of sentence dated 27.8.2010 passed by the 3rd Additional Sessions Judge, Fast Track Court, Raigarh in S.T. No.12/2010 convicting the accused/appellant under Sections 120B/34 & 302/34 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for 7 years & fine of Rs.500/- and RI for Life and fine of Rs.1,000/- with usual default clauses, respectively.
2. As per case of the prosecution, accused/appellant herein used to have doubt on the fidelity of his wife namely Tarabai and had suspicion regarding illicit relationship of his wife with deceased Babulal, a village doctor. It is further alleged that on 9.9.2009 deceased accused Lalaram

and one another person came to the house of deceased and took the deceased with him for providing treatment to one of his family members. On the same night at about 12, Yogesh Kumar, son of deceased, having come to know that his father (deceased) is lying in injured condition in the verandah of accused/appellant herein, he rushed to the house of accused/appellant and on reaching there, he found his father lying there in injured condition. He immediately took his father to the police station on the motorcycle from where the police had sent his father to the Civil Hospital, Kharsiya for treatment. Un-numbered FIR under Section 307/34 of IPC was registered vide Ex.P-29 at the instance of said Yogesh Kumar (PW-16). Numbered FIR was registered vide Ex.P-28. Looking to the critical condition of the deceased, he was referred to K.G. Hospital, Raigarh for better treatment where he succumbed to the injuries while undergoing treatment. On receipt of information regarding death of deceased, un-numbered Merg (Ex.P-27) was recorded on 10.9.2009 and thereafter numbered merg was also registered. Inquest (Ex.P-16) was prepared on 10.9.2009. Post-mortem examination was conducted over the body of deceased by Dr. R.K. Agrawal (PW-6) who noticed following ante mortem injuries on the body of deceased;-

- Contusion on the tip of right middle finger
- lacerated wound of 1 x 1/2 cm on the left middle finger.
- Multiple contusion on both upper arms, back & both the thighs.
- Contusion of 4x1cm size below the left ribs.

He opined that cause of death was shock due to cardio respiratory failure due to anaemia & multiple external contusions. Memorandum statements of accused/appellant was recorded on 11.9.2009 and based on which one gamchha, medicine box, club were seized at the instance of accused/appellant vide seizure memo of Ex.P-8.

3. On completion of investigation, charge sheet for the offence punishable under Sections 302, 342, 120B, 34 of the IPC was filed against five accused persons including present appellant, however, the trial Court has framed the charges under Sections 120B/34 & 302 of IPC against them. The prosecution in order to bring home the charges levelled against the accused persons had examined 22 witnesses in all. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
4. After hearing counsel for the parties and considering the material available on record, the trial Court while acquitting accused Tarabai Tandon, Mukesh Tandon & Santosh Tandon by the impugned judgment, convicted and sentenced the accused/appellant & deceased accused Lalaram Kurre in the manner as described above.
5. Learned counsel for the accused/appellant submits that ;-
 - there is no eyewitness to the occurrence and conviction of the appellant is based on the circumstantial evidence but none of the circumstances from which the inference of guilt of appellant can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellant who committed the murder.
 - Even all the material witnesses had turned hostile and therefore the conviction of the appellant could not be based upon the sole testimony of investigating officer.
 - the trial Court has committed an error in convicting the appellant when on the same set of evidence the other accused persons were acquitted by the trial Court.
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. We have carefully considered the evidence, materials on record and the rival contentions and gone through the judgment of the trial Court.
8. Kumari Poonam Tandon (PW-1), daughter of accused/appellant herein, and Mahadev (PW22), brother of accused, Premchand (PW-4), Jhaduram (PW-5),
9. Dr. Sajan Kumar Agrawal (PW-3) is the person who gave initial treatment to the deceased when he was brought to the hospital.
10. Dr. R.K. Agrawal (PW-6) is the person who conducted post-mortem examination on the body of deceased and noticed the injuries as described above.
11. J.P. Choudhary (PW-5) is the Patwari who prepared the spot map Ex.P-1.
12. Radheshyam Kamal (PW-8), Padawan Patel (PW-9), Krishna Chand Yadav (PW-13), Vinod Kumar Sahu (PW-14) & Devdas Mahant (PW-15) are the police personnel who assisted in the investigation.
13. Mohan Lal Kurre (PW-11) & Ramprasad Baghel (PW-12) are the witnesses of memorandums and seizure memos. However these witnesses have not supported the prosecution case and as such declared hostile.
14. Durgesh Kumar Kurre (PW-16), son of deceased, did not support the prosecution and turned hostile.
15. Smt. Yashoda Bai Kurre (PW-17), wife of deceased, also not supported the prosecution case and as such declared hostile.
16. Radhelal Kurre (PW-18) is another witness of memorandums and seizure memos, but he has not supported the prosecution case and as such declared hostile.
17. Silmani Toppo (PW-19) & L.R. Bhagat (PW-20) have assisted in the

investigation.

18. Jagatraj Singh (PW-21) is the Investigating Officer who has duly supported the prosecution case.
19. Close scrutiny of the material on record makes it clear that there is no legally admissible evidence connecting the accused/appellant with the murder of deceased. The prosecution had built up its case on the complaint made by complainant PW-16 Yogesh Kumar Kurre, son of deceased, however, he turned hostile completely when he appeared the witness box by saying that on the fateful day some persons had come to his house and his father (deceased) left the house with them. He has categorically deposed that he came to know about the injured condition of his father (deceased) when the police had made a call to him. On the contrary, it is evident from the contents of FIR (Ex.P-28) lodged by PW-16 that when he went to the house of accused/appellant, he found his father (deceased) lying in the verandah of house of accused/appellant in injured condition. He even denied that he had lodged named FIR in the police station. Statements (Ex.P-31, P-32 & P-33) said to have been given by this witness (PW-16), but he has categorically denied making of any such statement to the police. Though this witness was cross-examined by learned Additional Public Prosecutor at length, yet nothing could be extracted during his cross-examination which may help the prosecution to prove the culpability of accused/appellant.

This apart, the witnesses to memorandum and seizure memos, who admitted their signatures on seizure memos, have turned hostile and denied that anything was seized in their presence. Most importantly, certain bloodstained articles including weapon of offence i.e. club, seized at the instance of accused/appellant, had not been for chemical analysis and no explanation has been offered as for what reason the same were

not sent. In case of circumstantial evidence, not sending the weapon used in crime for chemical analysis is fatal for the reason that the circumstantial evidence may not lead to the only irresistible conclusion that the accused was the perpetrator of the crime and none else and that in the absence of any report of Serologist as to the presence of human blood on the weapon may make conviction of the accused unsustainable.

The motive behind commission of crime, as projected by the prosecution, was alleged illicit relations between the deceased and wife of accused/appellant herein, but there is not even a whisper in the entire evidence adduced by the prosecution including in the examination-in-chief of son and wife of the deceased that accused had any suspicion regarding the illicit relations between his wife and deceased. Thus, the motive which was alleged against the accused/appellant was also unhelpful to the prosecution.

20. As regards the conviction of accused/appellant under Section 120B/34 of IPC, the Hon'ble Apex Court in catena of its decisions considered the necessary ingredients of the conspiracy and held that there must be evidence to indicate that the accused was in agreement with the other accused persons to do the act which was the ultimate object. In the present case, there is also no evidence at all to show any conspiracy or any evidence to indicate that the accused/appellant had entered into agreement with co-accused persons to do any unlawful act or to commit an offence along with other accused persons. This being the position, his conviction under Section 120B/34 IPC is also not sustainable in law.

21. From the above discussions, it becomes abundantly clear that there is no cogent and clinching evidence to prove the culpability of appellant as all the material witnesses turned hostile on the substantial points. Therefore, we are of the view that the circumstances relied upon by the prosecution

are not enough to connect the appellant with the crime in question and he is entitled to be acquitted of the offences with which he has been charged by extending him benefit of doubt.

22. In the result, the appeal is allowed. Conviction and sentence of the appellant under Sections 302/34 & 120B/34 of the IPC are hereby set aside and he is acquitted of those charges by extending him benefit of doubt. The appellant is reported to be on bail. His bail stands discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

roshan/-