

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 811 of 2011**

- Devprasad S/o Nathuram Kosaria, aged about 40 years, R/o Singabhata, P.S. Abhanpur, District Raipur (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh Through : P.S. Abhanpur, District Raipur (C.G.)

---- Respondent

For Appellant.	:	Shri B.L. Dembra, Advocate.
For Respondent/State	:	Shri Vivek Sharma, G.A.

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

Judgment On Board**By Pritinker Diwaker, J****16/05/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 28.04.2011 passed by Sessions Judge, Raipur in S.T. No.206/2010 convicting the accused/appellant under Section 302 and sentencing him to undergo rigorous imprisonment for life with fine of Rs.500/-, in default of payment of fine to further undergo R.I. for two months.

02. In the present case name of deceased is Krishna Bai (aunt of the appellant). It is said that prior to one and half month of the incident, the deceased was residing in the house of appellant, as his wife had some mental ailment. Further, undisputed fact is that Jamun Bai (PW/1) aged about 14 years is daughter of the appellant. On 13.06.2010 at

about 10.00 pm, when the appellant returned from his work place, he saw Jamun Bai (PW/1) working in the kitchen, whereas deceased Krishna Bai was sitting in the courtyard along with her friend Kachra Bai (PW/3) consuming liquor. Upon seeing this, the appellant scolded deceased and then some quarrel took place between them. The appellant picked-up a club from his house and caused number of injuries to the deceased as a result of which she died. The incident was witnessed by Jamun Bai (PW/1) and Kachra Bai (PW/3), however, they kept quiet till 26.06.2010, whereas during merg inquiry, their diary statements were recorded. After the death of deceased, merg intimation (Ex.P/12) was lodged on 14.06.2010 by the appellant himself and on 25.06.2010 FIR (Ex.P/13) was registered against the unknown person under Section 302 IPC. Inquest on the body of deceased was prepared on 14.06.2010 vide Ex.P/4. Body of deceased was sent for postmortem to Dr. B.R. Ambedkar Hospital, Raipur where Dr. S.K. Bagh (PW/11) conducted postmortem on the body of deceased on 14.06.2010 and gave his report Ex.P/10 opining the cause of death to be cardio respiratory failure as a result of multiple injuries to the body and death was homicidal in nature.

03. After recording diary statements of Jamun Bai (PW/1) and Kachra Bai (PW/3), memorandum of the appellant was recorded on 26.06.2010 under Ex.P/2, based on which, one club was seized from him vide Ex.P/3, however, there is no FSL report to this effect.

04. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the appellant and

accordingly charge was framed against him by the trial Court.

05. So as to hold the accused/appellant guilty, the prosecution examined as many as 13 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.

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

07. Learned counsel for the appellant submits as under:

- that both the eye-witnesses to the incident Jamun Bai (PW/1) and Kachra Bai (PW/3) have not supported the prosecution case and turned hostile;
- that present is a case of no evidence yet the appellant has been convicted only on the ground that the body of deceased has been found in the house of appellant;
- that apart from the appellant, Jamun Bai (PW/1) and wife of the appellant were also residing in his house and on the date of incident Kachra Bai (PW/3) was also present there, and thus, it cannot be said that it is the appellant who was alone residing in the house along with the deceased, and it is he alone who could have committed the murder of the deceased.

08. On the other hand, supporting the impugned judgment it has

been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

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

10. Jamun Bai (PW/1) and Kachra Bai (PW/3) are the eye-witnesses to the incident but they have turned hostile and not deposed anything specific against the appellant. Harish Kumar (PW/2) - Sarpanch of the village is witness to memorandum (Ex.P/2) of the appellant and seizure made under Ex.P/3 of club. It is relevant to note that though on the memorandum (Ex.P/2) of the appellant, seizure of club has been made under Ex.P/3 but there is no FSL and serological report on record and thus, the seizure is of no consequence. Dr. S.K. Bagh (PW/11) conducted the postmortem on the body deceased vide Ex.P/10 and found following injuries:-

- (i) Contusion of 3 x 2 cm on left scapular region just above interior angle of scapula.
- (ii) Two contusions of 4 x 3 cm and 4 x 5 cm on shoulder.
- (iii) Contusion of 4 x 6 cm on left loin region at the level of T₂ T₄.
- (iv) Contusion of 4 x 3 cm on left buttock region upper quadrant part transversely just below the posterior superior iliac spine.
- (v) Three contusions of 4 x 9 cm, 4 x 8 cm and 4 x 8 cm on left leg lower part.
- (vi) Contusion of 4 x 3 cm on left ankle at lateral aspect.
- (vii) Four contusions of 5 x 4 cm, 4 x 3.5 cm, 4 x 5 cm and 4 x 2.5 cm on right lower leg.
- (viii) Four contusions of 5 x 4 cm, 4 x 3.5 cm, 5 x 3.5 cm and 2 x 3 cm on right thigh posterolateral aspect.

- (ix) Contusion of 5 x 3 cm on lateral aspect of right arm.
- (x) Contusion of 3 x 1.5 cm on right supra-orbital ridge.
- (xi) Contusion of 3 x 2 cm on root of nose slightly medial to medial of eye.
- (xii) Two contusions of 8 x 6 cm and 6 x 7 cm on left loin region .
- (xiii) Contusion of 2 x 3 cm on right great toe above nail bed.

The Doctor has opined that the cause of death of deceased was cardio respiratory failure as a result of multiple injuries to the body and death was homicidal in nature.

11. Nand Kumar Jangde (PW/7) turned hostile. S.D. Pandey (PW/10) is Investigating Officer who has duly supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that the two eye-witnesses to the incident PW/1 and PW/3 have not supported the prosecution case and turned hostile. It is undisputed fact that in the house in question, apart from the appellant, his daughter Jamun Bai (PW/1) and wife were also residing, and on the date of incident Kachra Bai (PW/3) was also present in the house. Thus, it cannot be said that it is the appellant who alone was present in the house and could have committed murder of the deceased. The trial Court while convicting and sentencing the accused/appellant has not considered the evidence of these witnesses in its true perspective and thus erred in law.

13. The another piece of evidence against the accused/appellant is seizure made under Ex.P/3 by which one club has been seized but there is no FSL as well as serological report on record to show

presence of human blood on it, and as such this circumstance has also not been proved to the hilt by the prosecution to prove involvement of the accused/appellant in the crime in question. Being so, the seizure Ex.P/3 effected on the basis of memorandum of the accused/appellant loses its efficacy. All that apart, there is no other evidence, much less credible and clinching in nature 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.

14. 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 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 reported to be in jail. He be set at liberty forthwith if not required in any other case.

15. Appeal is thus allowed.

Sd/-
(Pritinker Diwaker)
JUDGE

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