

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1021 of 2004

- Gopi Bhargav, S/o Radheshyam Bhargav, aged about 26 years, resident of village- Akaltari, P.S.- Janjgir, Distt. Janjgir-Champa (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through: P.S. Janjgir, Distt. Janjgir-Champa (CG)

---- Respondent

For Appellant	:	Shri Gurudev I Sharan, Advocate
For Respondent	:	Smt. Madhunisha Singh, Panel Lawyer

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

Judgement

Per P. Diwaker, J

28/03/2017

1. By this criminal appeal, the accused/appellant has challenged the legality and propriety of the judgment of conviction and order of sentence dated 18.11.2004 passed by the Additional Sessions Judge, District Janjgir-Champa in S.T. No.177/04 by which he has been convicted for the offence punishable under Section 302 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.500/-, in default to undergo additional RI for 1 month.
2. Briefly stated, the case of the prosecution is that on 7.2.2004 at about 1.00 p.m. in the afternoon the accused/appellant along with Gore Kashyap took the deceased to the house of Faguwa Yadav for having meals

together. There all of them consumed liquor and Faguaram cooked the chicken. At about 3.30 p.m. PW-6 Sumitra Bai, wife of Faguwa, raised cries saying "*maar diya, maar diya*" and hearing her cries, Umesh (PW-1) went to the house of Faguwa Yadav where he was informed by Sumitra Bai that the accused/appellant is running away after killing his father (deceased). On this, Umesh went inside the house and found his father lying dead on the cot in the verandah with bleeding injury on his neck. He rushed to his house and informed his mother about the death of his father. Thereafter he along with Nathuram & Ramsajeevan went to the police station and lodged the report of incident based on which FIR (Ex.P-1) was registered against the accused/appellant under Section 302 IPC. Merg Intimation (Ex.P-2) was recorded at the instance of Umesh (PW-1). Inquest on the dead body was prepared on 8.2.2004 vide Ex.P-4. Body of deceased was sent for post-mortem examination which was conducted by Dr. S.N. Jangde (PW-16) vide Ex.P-20 and he noticed following injuries;

- Incised wound of 4x1/2 cm over right shoulder joint at lateral aspect.
- Incised wound of 4 x 1 1/2 cm just below the right mandible.
- Chop wound of 4x6 1/2 cm in size over right lateral anterior aspect of neck, sterno mastoid muscular & carotid artery etc. were cut.

The cause of death assigned by the doctor was haemorrhagic shock; mode of death was syncope due to excessive loss of blood as a result of multiple wounds (chop wound over neck) and the death was homicidal in nature.

3. After 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 by the trial Judge against him. The

prosecution in order to bring home the charge levelled against the accused/appellant examined 17 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.

4. The trial Court after hearing the parties in the matter and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.
5. Counsel for accused/appellant submits that;
 - since the testimony of alleged eyewitness Sumitra Bai (PW-6), who has been declared hostile by the prosecution, does not inspire confidence, the trial Court was not justified in placing reliance on a particular portion of her statement for convicting the appellant.
 - testimony of PW-11 Umesh is also of no consequence being a hearsay evidence.
 - though carpenter axe, shirt, full pant & bicycle of the appellant were seized by the prosecution vide Ex.P-10 but the prosecution has utterly failed to establish that the aforesaid articles were stained with human blood and therefore the same cannot be connected with the crime in question.
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 heard counsel for the parties and perused the impugned judgment and record of the trial Court.
8. Umesh Kashyap (PW-1) is the son of deceased and the lodger of FIR

(Ex.P-1) & Merg Intimation (Ex.P-2). This witness has stated that on the fateful day the accused/appellant along with Gore & Faguwa came to his house and took his father (deceased) with them for having meals. He has further stated that after some time upon hearing screams of Sumitra (PW-6) saying "*Loknath ko maar diya*", he rushed to the house of Faguwa and on reaching there, he was stopped by Faguwa & his wife Sumitra from going inside saying that his father is sleeping, however, when he forcibly entered the house of Faguwa, he saw his father lying in a pool of blood and accused/appellant Gopli had fled away from there. He immediately came back to his house, informed his mother and uncle Nathuram that Gopi, Faguwa and Gore have killed his father and thereafter went to the police station along his uncle Nathu & Ramsajeevan and lodged the report. He has further stated that on being informed about the incident, Kotwar Kartik also accompanied them. In the cross-examination this witness has further clarified that when he entered the house of Faguwa, he could only see Faguwa and his wife Sumitra and no one else was there. He has further stated that all the three persons i.e. Savitri, Faguwa & Gore were called by the police being suspect of the crime.

9. Nathuram (PW-2) & Ramakant Sharma (PW-3) are the witnesses of inquest and seizure of certain articles which have been seized from the spot.
10. Ramsajeevan (PW-4) is the person who accompanied Umesh (PW-1) to the police station.
11. Devkunwar (PW-5) has not stated anything specific against the accused/appellant.
12. Sumitra (PW-6) is the alleged eyewitness of the incident but she did not support the prosecution case and therefore declared hostile. She too has

admitted that the police had called her, Faguwa & Gore. She has further stated that she does not know as to who had killed the deceased.

13. Nawalkishore (PW-7) is the person who helped in the investigation. Raju Sharma (PW-8) is the witness of seizure memo Ex.P-10 by which certain articles like carpenter axe, bicycle, full pant, t-shirt were seized. Gorelal (PW-10), Jeevrakhan (PW-11) & Anandram alias Faguwa (PW-12) have not supported the prosecution case and as such declared hostile by the prosecution. Jaichand Singh Rathore (PW-13) & Shankar Singh Karsayal (PW-14) are the police persons who helped in the investigation. Ramkishun Thawait (PW-15) is the Patwari who prepared spot map (Ex.P-18). Dr. S.N. Jangde (PW-16) is the person who conducted post-mortem examination over the body of deceased vide Ex.P-20 and noticed the injuries as described above. Pramod Pandey (PW-10) is the Investigating Officer and he has duly supported the prosecution case.

14. In the present case, the trial Court relying mainly on the evidence of Umesh (PW-1) & Sumitra Bai (PW-6), held the accused/appellant guilty and convicted & sentenced him as mentioned above. However, after close and careful scrutiny of the evidence of the aforesaid witnesses, we are of the opinion that the trial Court was not justified in basing the conviction of accused/appellant on the testimonies of these two witnesses for the reason that whatever has been stated by Umesh (PW-1) is restricted to what he got from Sumitra Bai (PW-6) and the evidence of this witness comes within the category of 'hear-say evidence' and admittedly such hear-say evidence is inadmissible in the light of Section 60 of the Evidence Act, particularly when Sumitra Bai (PW-6) herself did not support the prosecution case and turned hostile. Therefore, no reliance whatsoever ought to have been placed on the hear-say evidence of

Umesh (PW-1) and in doing so, the Court below has erred in law.

As regards the reliance placed by the trial Court upon a portion of the testimony of alleged hostile eyewitness Sumitra Bai (PW-6), no doubt, the evidence of a witness, declared hostile, cannot be rejected in toto and in appropriate cases the Court can rely upon the part of testimony of such witness if that part of the deposition inspires confidence and is corroborated by other evidence, but after minute scrutiny of the evidence of Sumitra Bai (PW-6) available on record, we are of the considered view that her testimony is not worth credence. From perusal of the statement of Sumitra Bai (PW-6) contained in her cross-examination by the Additional Public Prosecutor and the defence as well, it is apparent that at one place she has stated that seeing the accused/appellant running away on their bicycle, she rushed to her house and found the deceased lying dead on the cot and at the other place, she has stated that when she reached her house after grazing the cattle, Umesh (PW-1) and other persons of vicinity were already present in her house and seeing the body of deceased she cried. She went on to add that she does not know as to who committed the murder of deceased. On account of aforesaid serious infirmities and contradictions in the testimony of Sumitra Bai (PW-6) and the fact that there is no corroboration by the other evidence to that part of her statement contained in her cross-examination by the Additional Public Prosecutor, we are of the view that the trial Court was not justified in relying upon any of the portions of her testimony for basing conviction of the accused/appellant.

15. As regards the recovery of bloodstained carpenter-axe & clothing from the accused/appellant, there is no report of FSL on record opining that the articles seized from the accused/appellant were stained with the human

blood and therefore, the recovery effected on the basis of disclosure statement of accused/appellant is also of no help to the prosecution and this cannot connect the complicity of accused/appellant with the crime in question.

16. In view of the above discussion, this Court is of the considered opinion that the prosecution has failed to prove its case against the accused/appellant beyond reasonable doubt and therefore the conviction recorded by the trial Judge against the accused/appellant under Section 302 IPC is liable to be set aside.

17. In the result, the appeal is allowed. Impugned judgment convicting and sentencing the appellant under Section 302 IPC is hereby set aside and he is acquitted of that charge by extending him benefit of doubt. He is reported to be on bail. His bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(RCS Samant)
Judge

roshan/-