

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 56 of 2011**

1. Faganuram @ Gobha S/o Bisahuram, aged about 40 years, R/o Village Erkod, PS Manpur, District Rajnandgaon, CG.

---- Appellant**Versus**

1. State of Chhattisgarh through the Police Station Manpur, District Rajnandgaon, CG

---- Respondent

For Appellant	:	Shri SC Verma and Shri ML Sen, Advocates
For Respondent/State	:	Shri Adhiraj Surana, Dy. GA

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri R.P. Sharma****Judgment on Board by Pritinker Diwaker, J****20/09/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 21.12.2010 passed by Sessions Judge Rajnandgaon, in Sessions Trial No. 08/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 3,000/-, plus default stipulations.

2. Name of the deceased in the case in hand is Nainbati Bai - daughter of the accused/appellant. It is said that in the night of 5.11.2009 the deceased, despite being forbidden by her father (accused herein), went to participate in a folk dance (played with the help of wooden sticks) where her brother (PW-4) and sister (PW-8) were also present. At about 10-11 PM she left for home to collect her own play sticks but did not return thereafter. On dance

programme being over, brother and sister of the deceased returned home and not finding the deceased on her bed they told her mother Ghasnin Bai (PW-12) and father (the accused herein) about her absence. However, the next day i.e. on 6.11.2009 body of the deceased with injuries caused by sharp edged weapon, was found in her backyard. FIR Ex. P-6 was lodged on that very day at 4.45 PM by village Patel Rai Singh (PW-2) against an unknown person for the offence punishable under Section 302 IPC. Immediately thereafter *merg* Ex. P-7 was also recorded. After making inquest vide Ex. P-2 the dead-body was sent for postmortem examination which was conducted by Dr. Seema Thakur (PW-10) who gave her report Ex. P-17. On 10.11.2009 memorandum of accused/appellant Ex. P-8 was recorded based on which seizure of axe was made under Ex. P-9. In the memorandum the accused/appellant has confessed to have killed the deceased as she went out to participate in the folk dance in spite of his refusal. FSL report Ex. P-26 shows the presence of blood on the axe but no serological report to prove whether it is of the human origin that too of the blood group of the deceased, is on record. After investigation, charge-sheet was filed by the police under Section 302 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 15 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph

No.1 of this judgment.

5. Counsel for the accused/appellant submits as under:

(i) That there is no eyewitness to the incident and the entire case of the prosecution is based on circumstantial evidence though the chain of circumstances relied upon by the prosecution itself is not complete.

(ii) That the only piece of evidence is the memorandum of the accused/appellant Ex. P-8 based on which seizure of axe was made under Ex. P-9.

(iii) That though as per FSL report Ex. P-26 the blood was present on the axe but in the absence of serological report to show whether the blood was of human origin and that too of the blood group of the deceased, such seizure is of no help to the case of the prosecution.

(iv) That the witnesses to memorandum and seizure have also not supported the case of the prosecution.

(v) That the trial Court has erred in law in holding the accused/appellant guilty under Section 302 IPC on the basis of unreliable circumstances not forming the complete chain.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Ramdhin (PW-1) is the witness to inquest Ex. P-2. Rai Singh

(PW-2) is the witness who lodged FIR Ex. P-6 and *merg* Ex. P-7. He has stated that the name of the assailant could not come to the fore nor did the accused tell him anything about the deceased. He is also the witness to memorandum Ex. P-8, seizure of axe made under Ex. P-9 and the arrest of the accused/appellant made under Ex. P-10. He has again reiterated that he was not aware of the name of the killer of the deceased. Shyamlal Gada (PW-3) - the witness to memorandum of the accused Ex. P-8 and seizure of axe made under Ex. P-9 has not supported the case of the prosecution and has been declared hostile. Vishesh Kumar (PW-4) is the brother of the deceased who had also gone to attend the dance programme. According to this witness, on the date of incident he along with his two sisters including the deceased had gone to participate in a folk dance programme. Meanwhile, deceased went home to collect her own play sticks but did not return thereafter. Half an hour thereafter he also went back home but the deceased was not there and in the morning her dead-body was found in the backyard of his house and then he informed the accused/appellant accordingly. Similar statement has been made by Ku. Vishwasa (PW-8) who too had gone to participate in the dance programme along with deceased and (PW-4). Thakur Ram Marar (PW-5), Shyamlal (PW-9) and Ghasnin Bai (PW-12) - the mother of the deceased, have not supported the case of the prosecution and have been declared hostile. PW-9 has however stated that one Santram Marar (PW-7) was also called by the police suspecting him to be the assailant. Asharam Marar (PW-6) has also not supported the case of the prosecution and has been declared hostile. Santram (PW-7) is the witness who was called in the meeting as a suspect for the killing of the deceased. He is also stated to have

been made sit by the police. This witness however has not stated anything specific against the accused/appellant. Dr. Seema Thakur (PW-10) is the witness who conducted postmortem examination on the body of the deceased and gave her report Ex. P-17 stating that she noticed two incised wounds on her body – one in the right mandible region in the size of 4 x 1.5 x 2 inch and another on the neck in the size of 3 x 1 x 3 inch caused by the sharp object. Cause of death, according to this witness, was haemorrhage, and mode as homicidal in nature. Ku. Imla (PW-11) is the witness who was also enjoying dance programme along with the deceased but she has not stated anything specific against the accused/appellant. Samund Singh (PW-13) and F.J. Tigga (PW-15) are the witnesses who assisted in the investigation. G.R. Chandel (PW-14) is the investigating officer who has duly supported the case of the prosecution.

9. In this case there appears to be no direct evidence to show the involvement of the accused/appellant in the commission of murder of the deceased. Nobody is stated to have seen him executing the crime in question. Only the circumstantial evidence such as memorandum of the accused Ex. P-8 where he has spoken to have killed the deceased out of anger as she did not follow his words and went to participate in the folk dance; and the seizure of blood stained axe made under Ex. P-9, has been made the basis for holding the accused guilty under Section 302 IPC. Even the witness (PW-2) who lodged the FIR and the *merg* has stated in his evidence that he was not aware of the name of the assailant nor did the accused tell him anything about the deceased. Mother of the deceased who was present in the house along with the accused

throughout the night too has not stated anything against the accused/appellant and has turned hostile. However, to the misfortune of the accused/appellant herein, while arriving at the conclusion of his guilt the Court below has overlooked the settled legal position that in the cases where the evidence is of a circumstantial nature, there must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused - ***Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210.*** No doubt, that FSL report confirms the presence of blood on the axe so seized but this alone cannot be made a basis to connect the accused/appellant with the crime in question. Unless it is proved by the report of a serologist that the said blood was human blood and that too of the blood group of the deceased, seizure of blood stained axe is of no significance. While dealing with the question involving seizure of blood stained articles it has been held by the Apex Court in the matter of ***Kansa Behera Vs. State of Orissa, AIR 1987 SC 1507*** as under:

“11. As regards the recovery of a shirt or a dhoti with blood stains which according to the serologist report were stained with human blood but there is no evidence in the report of the serologist about the group of the blood and therefore it could not positively be connected with the deceased. In the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small blood stains on the cloths of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the blood stains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn.”

In the case in hand, even the witnesses to memorandum and seizure have not supported the case of the prosecution and have been declared hostile.

10. In view of the aforestated factual and legal position, this Court has no hesitation in observing that the Court below has not been justified while appreciating the evidence adduced by the prosecution and slapping conviction on the accused/appellant under Section 302 IPC. Such erroneous findings and resultant conclusion impugned in this appeal cannot be sustained. Accordingly, the appeal is allowed, judgment impugned is set aside and the accused/appellant is acquitted of the charge levelled against him. Since the accused/appellant is languishing in jail as on date, he be set free forthwith if not required in any other case.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(R.P. Sharma)

Judge