

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 91 of 2008

- Gopal Giri, S/o. Lt. Sukhcharan Giri, aged about 36 years,
Occupation Labour/Beggering, R/o. Ramnagar, Jadata, Police
Station Kusumi district Surguja Ambikapur (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through Station House Office, Police
Station Kusumi, District Sarguja (CG)

---- Respondent

For Appellant	: Shri Sandeep Shrivastava, Advocate
For Respondent/State	: Smt. Madhunisha Singh, P.L.

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice R.C.S.Samant**

Judgment On Board

Per Pritinker Diwaker, J.

30/03/2017

This appeal has been preferred against the judgment and order dated 11.12.2007 passed by the Sessions Judge, Sarguja (Ambikapur) in Sessions Trial No. 82/2007 convicting the accused/appellant under Sections 302 IPC and sentencing him to undergo imprisonment for life

and to pay fine of Rs. 500/-.

2. In the present case, name of the deceased is Bifaiyya Bai wife of accused/appellant. As per the prosecution case, on 05.08.06 at about 12.00 noon, accused/appellant and his wife were seen going to sow in the field and on the next day, her dead body was found in the newly constructed house of one Aghnu Ram. Merg intimation Ex.P-12 was recorded on 06.08.2006 at about 11.00 a.m. by son of the deceased Basant Giri (PW-9). Inquest Ex.P-4 was prepared and body of the deceased was sent for postmortem examination vide Ex.P-10 which was conducted by Dr. T.Sai (PW-8) and according to him, cause of death was coma and external and internal hemorrhage due to head injury and death was homicidal in nature. After receiving postmortem report, FIR (Ex.P-13) was registered on 09.08.2006 under Section 302 IPC against the accused/appellant. On the basis of memorandum of accused/appellant Ex.P-7 dated 09.08.06 seizure Ex.P-8 was effected and one wooden beam of cot was recovered. However as per FSL report Ex.P-19, no blood was found on the said piece of wooden beam. After investigation, charge sheet was filed on 18.05.07 against the accused/appellant under Section 302 IPC and accordingly charge was framed.

3. So as to prove the guilt of the accused/appellant, prosecution has examined 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which, he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, learned trial Court has convicted and

sentenced the accused/appellant as mentioned in para-1. Hence the present appeal.

5. Contention of Shri Shrivastava, counsel for the appellant is that

i) the appellant has been convicted solely on the basis of circumstantial evidence but the nature of evidence is so weak which cannot be made basis for his conviction.

ii) the main piece of evidence against the appellant is the evidence of last seen by Ajay Giri (PW-1), Dheeran Giri (PW-2), Banwari Giri(PW-3) and Sonmati (PW-4) however these witnesses have deposed different things and their statements are self-contradictory.

iii) from the evidence it also appears that after the quarrel both accused/appellant and the deceased got themselves separated.

iv) as per FSL report Ex.P-19 blood has been found on the soil seized from the spot and on the blouse of the deceased but no blood has been found on the weapon of the offence i.e. wooden beam of the cot.

6. On the other hand, supporting the impugned judgment, it has been argued by the State counsel that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

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

8. Ajay Giri (PW-1) son of the deceased and accused/appellant has stated that on 05.08.06 at about 12.00 noon, when his mother was going to the field for sowing, the accused/appellant followed her and near the jack fruit tree he started assaulting his mother with hands and fists, then he intervened and brought his mother back home. Thereafter he went to the market and on the next day he was informed by Chinta Guruji that his mother is lying dead near his house. Dheeran Giri (PW-2) has stated that on 05.08.06, when he was returning from the market, on the way he saw the accused/appellant abusing his wife and the appellant was in drunken condition. He has stated that on the next day, Chinta Guruji had informed him that dead body of Bifaiya Bai was lying in his newly constructed house. He is also a witness to spot map (Ex.P-1). Banwari Giri (PW-3) has stated that accused/appellant and his wife used to consume liquor and quarrel with each other. On the date of incident, in the evening, he saw the accused/appellant holding the hand of his wife and they were talking to each other. He has stated that on the next day, body of the deceased was found. This witness was later declared hostile. Sonamati (PW-4) has made almost similar statement as has been made by Banwari Giri (PW-3). Tamadia Giri (PW-5) is a witness to seizure Ex.P-6 by which plain and blood stained soil was seized from the spot. He is also a witness to memorandum of accused/appellant and seizure Ex.P-8 by which one wooden beam of cot was recovered. Lakhpattia Bai (PW-6) has not stated anything against the accused/appellant and has been declared hostile. Motilal Singh Thakur (PW-7) is the patwari who prepared spot map Ex.P-2. Dr. T.Sai (PW-8) conducted postmortem examination on the body of deceased Bifaiya Bai vide Ex.P-10 and opined that the cause of death was coma and external and internal hemorrhage due to head injury and

death was homicidal in nature. Basant Giri (PW-9) - son of the deceased has not stated anything specific against the accused/appellant. S.R.Yadav (PW-11) Investigating Officer has duly supported the prosecution case.

9. As per FSL report Ex.P-19, blood has been found on the soil seized from the spot and also on the blouse of the deceased however no blood has been found on the wooden beam of the cot seized at the instance of the appellant.

10. Close scrutiny of the evidence makes it clear that the only piece of evidence against the accused/appellant is the evidence of last seen by witnesses namely Ajay Giri, PW-1, Dheeran Giri (PW-2) and Banwari Giri (PW-3) and Sonamati (PW-4). As per the statement of Ajay Giri (PW-1), at about 12.00 noon, he saw accused/appellant and the deceased quarelling whereas as per Dheeran Giri (PW-2), Banwari Giri (PW-3) and Sonamati (PW-4) at about 5.00 p.m. they saw the accused/appellant and his wife quarreling. Further Ajay Giri (PW-1) has also stated that upon his intervention they got separated and thereafter he went to his workplace. Further, dead body of the deceased has been found in the newly constructed house of one Chinta Guruji on 06.08.06 i.e. after about more than 15 hours of the quarrel. In the case of evidence of last seen, the time gap is very important and unless the said evidence is conclusive, it is not safe for this Court to convict the accused/appellant on the basis of such evidence alone. Moreover, the witnesses have not clearly stated that they saw the accused/appellant and the deceased near the house of Chinta Ram whereas as per Ajay Giri (PW-1) after the quarrel in the afternoon they got separated and on

the next day her body was found lying in the newly constructed house. Furthermore, though on the basis of memorandum of appellant Ex. P-7 seizure Ex.P-8 of wooden beam of the cot was made however there is no FSL or Serological report that any blood was found on the seized article. Thus the prosecution has failed to establish the guilt of the accused/appellant beyond reasonable doubt and therefore benefit of doubt has to be extended to him.

11. Consequently, the appeal is allowed. Impugned judgment convicting and sentencing the accused/appellant as mentioned above is set aside. He is acquitted of the charges levelled against him. Accused/appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-

Pritinker Diwaker
Judge

Sd/-

R.C.S.Samant
Judge