

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 273 of 2012

- Ramkeshwar S/o Sawna Ram Nagesia , Aged about 48 years,
R/o Village Kerapath , Thana Kusumi ,distt. Sarguja C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through - The P.S. Kusumi , Distt. Sarguja
C.G.

---- Respondent

For Appellant	:	Shri N.K.Malviya, Advocate
For Respondent/State	:	Shri U.K.S.Chandel, P.L.

HON'BLE SHRI JUSTICE PRITINKER DIWAKER

HON'BLE SHRI JUSTICE SANJAY K.AGRAWAL

Judgment On Board

23/05/2017

PRITINKER DIWAKER J :

This appeal arises out of the judgment and order dated 31.12.2011 passed by the First Additional Sessions Judge Ambikapur (Sarguja) in Sessions Trial No. 236/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs. 1,000/- with default stipulation.

2. In short the prosecution case is that as accused/appellant was sick, his brother Ram Dev (deceased) came to his house for rendering

his service as exorcist. It is said that on 7.3.2010, at about 12.00 midnight, over some land dispute quarrel took place between deceased Ram Dev and accused Ramkeshwar, on account of which accused/appellant first assaulted Malti (PW-3) wife of appellant with knife and thereafter with the same knife he assaulted deceased Ram Dev. Both of them were taken to Kusmi hospital however looking to the serious condition of Ram Dev, he was referred to district hospital Ambikapur where during treatment he succumbed to his injuries on 09.03.2010. After the death of deceased, Ward boy Rohit (PW-1) had given information to the police and at whose instance merged intimation Ex.P-1 was recorded on 09.03.2010. On 11.3.2010, unnumbered FIR Ex.P-14 was registered and thereafter numbered FIR was registered against the appellant under Section 302 IPC. In the meanwhile, inquest was prepared and dead body was sent for post-mortem examination which was conducted by Dr. Sanjay Singh vide Ex.P-16 and according to him cause of death is perforation peritonitis due to asphyxia. Memorandum of the accused/appellant Ex.P-6 was recorded on 13.3.2010 based on which one sweater stained with blood (Ex.P-9) was found and as per FSL report Ex.P-25, blood was found on the said sweater. Weapon of offence-Knife was seized on 12.03.2010 at the instance of Lundru son of the deceased (PW-10) from the house of appellant. However as per FSL report said knife was covered with rust spots. It is relevant to note that there is no serological report confirming the blood group on the seized articles and the weapon of offence-knife. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed.

3. The prosecution, in order to prove its case, examined 17 witnesses. Thereafter, statement of the accused person was recorded under Section 313 of the Code of Criminal Procedure in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Counsel for the appellant submits as under :

i) that the important witnesses of the prosecution namely Dev Kumar (PW-5), Lakshmaniya Bai (PW-6) and Lundru Ram (PW-10) have not supported the prosecution case.

ii) the star witness of the prosecution Malti (PW-3) has been declared hostile.

iii) that the incident occurred in the house of accused/appellant where apart from him, his wife and son of the appellant were also present who have not stated anything against the accused/appellant and thus it cannot be said that it is he who caused injury to Malti Bai and the deceased.

iv) while referring to the statement of Lakshmaniya (PW-6), it has been argued that when this witness entered the house she saw the deceased holding knife in his hand.

v) that possibility of deceased causing injury to Malti Bai and then in turn Malti Bai also caused injury to the deceased or vice versa where at first Malti Bai caused injury to the deceased and then deceased caused injury to Malti Bai cannot be ruled out.

vi) that the appellant was having some mental ailment and therefore after seeing the brutal incident he fled away from the spot but unfortunately adverse inference has been drawn against him that it is he who had committed the offence and fled from the spot.

vii) that the appellant is in jail since 14.03.2010 and thereby has remained in jail for more than seven years.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is strictly in accordance with law and there is no infirmity in the same. He submits that in a case of house murder it was the duty of the appellant to explain in his statement under Section 313 Cr.P.C. as to how his wife and brother have sustained injuries but no such explanation has been offered by him.

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

8. Malti Bai (PW-3) wife of the appellant has not supported the prosecution case and has been declared hostile. Dev Kumar (PW-5) has been declared hostile. He however has stated that he reached the place of occurrence after the incident had taken place. In cross-examination he has stated that no such confessional statement has been made by the accused/appellant and that no seizure was made in his presence and as the police had asked him to sign certain documents he did so. He has further stated that at times deceased and the appellant used to quarrel over some old land dispute but there was cordial relations between them. Lakshmaniya (PW-6) is the wife of

deceased Ram Dev who reached the place of occurrence after the incident had taken place. She has stated that she saw the accused/appellant fleeing away from the spot. She has further stated that she had not seen the accused/appellant assaulting any one. She has stated that when the appellant was fleeing away, at that time her husband Ram Dev was holding the knife and thereafter he was taken to hospital where he succumbed to the injuries. She has further stated that relation between the appellant and deceased were cordial and they used to visit each others house. Lundru Ram (PW-10) son of the deceased also reached the place of occurrence after the incident had taken place. In the examination-in-chief he has though stated that he saw the accused/appellant beating the deceased however in cross-examination he has stated that he did not disclose anything to the police and when he reached the place of occurrence, accused/appellant was not there and even he had not seen the appellant fleeing away from the spot. He has denied his diary statement Ex.D-1. He has further stated that when he reached the place of occurrence deceased told him that he will not survive. Dr. Sanjay Singh (PW-12) has conducted postmortem examination on the body of deceased Ram Dev and according to him cause of death is perforation peritonitis due to asphyxia. He has further stated that the knife which was produced before him for examination was found rusted. Bimal Sai (PW-2) who at first has been declared hostile but when cross-examined by the APP he admitted the prosecution case however, again when he was cross-examined by the defence he denied the fact that he made any such statement to the police or that he saw the accused/appellant causing injury to the deceased. Thus he appears to be totally unreliable witness. Ganju (PW-4) and Devsai Ram (PW-8) have not stated anything

against the accused/appellant and have been declared hostile. Dr.T.Sai (PW-9) conducted MLC of Malti Bai (PW-3) and noticed number of injuries on her body. However no charge has been framed against the appellant for causing injury to this witness and most importantly Malti (PW-3) has not supported the prosecution case. Praveen Kumar (PW-11) is a witness to memorandum and seizure Ex.P-6 and P-7 has not stated anything against the appellant and has been declared hostile. Arvind Ekka (PW-13) is the Patwari who prepared spot map Ex.P-3. He has also prepared inquest. Anil Singh (PW-16) has helped in the investigation. Emanuel Lakda (PW-17) is the investigating officer who has done investigation.

9. Close scrutiny of the evidence makes it clear that the sole eyewitness to the incident Malti, wife of the appellant has not supported the prosecution case and has been declared hostile. Likewise the other important witnesses namely Dev Kumar (PW-5), Lakshmaniya Bai (PW-6) and Lundru Ram (PW-10) have also not supported the prosecution case. On the memorandum of accused/appellant seizure of sweater was made vide Ex.P-9 and as per FSL report no blood was found on the sweater. Similarly the knife is alleged to have been seized vide Ex.P-8 however it was found rusted and blood was not found and therefore also it cannot be said with certainty that the offence was committed by the said weapon only.

10. True it is that the dead body of the deceased has been found in the house of the appellant but the fact remains that in the said house appellant was residing along with his wife and son. As per statement of Lakshmaniya Bai (PW-6) when she entered the room she saw the

deceased holding knife and accused/appellant fleeing away from the spot.

11. Considering the fact that in the incident, deceased Ram Dev suffered knife injury and likewise Malti also suffered knife injury, the possibility cannot be ruled out that either Malti caused injury to the deceased and in turn deceased Ram Dev also caused injury to the deceased or vice versa. Moreover, in absence of specific proof of making actual assault we cannot presume that it is the accused/appellant who caused injury to the deceased as also to Lakshmaniya Bai (PW-3). The other witnesses have also not supported the prosecution case. The court below ought to have considered that there were glaring discrepancies and contradictions in the evidence of the prosecution witnesses making them unreliable and unbelievable and their evidence was insufficient and untrue and as such it was unsafe to base conviction on such testimonies. This is a case of circumstantial evidence and it is therefore necessary to find whether the circumstances on which prosecution relies are capable of supporting the sole inference that the appellant is guilty of the crime of which he is charged.

12. Thus all the circumstances even if taken together do not conclusively and unerringly point towards the guilt of the accused/appellant, none of the circumstances has been proved to the hilt by the prosecution beyond all reasonable doubt, be it recovery of knife and sweater pursuant to memorandum of the appellant, motive on his part or on the theory of house murder. In a case resiting on circumstantial evidence, the prosecution is required to take extra caution while collecting evidence and proving the same. It must be

proved in such a manner which could lead only one inference that it is the accused/appellant alone who was the perpetrator of the crime in question. However in the present case, the conclusion of the guilt of the appellant herein has not been fully established beyond all shadow of doubt as the circumstances are not conclusive in nature -- neither the chain of events is complete nor the circumstances lead to the conclusion that the offence was committed by the appellant and none else. Hence, the impugned judgment of conviction passed by the trial court cannot be sustained in law.

13. For the reasons aforestated, this appeal deserves to be allowed and the impugned judgment is liable to be set aside. The appellant is acquitted of the charge framed against him by extending benefit of doubt. The appellant is in jail. He is directed to be released forthwith if not required in any other case.

Sd/-
(Pritinker Diwaker)
Vacation Judge

Sd/-
(Sanjay K.Agrawal)
Vacation Judge