

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1033 of 2008**

1. Palendra Kumar alias Palen son of late Bodhan Das, caste Satnami, aged 28 years, R/o Deogaon, PS Palari, District Raipur CG

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station Palari, District Raipur, CG

---- Respondent

For Appellant: Shri Yogehswar Sharma, Advocate
 For Respondent/State: Shri Adhiraj Surana, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice RCS Samant****Judgment on Board by Pritinker Diwaker, J****22/06/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 22.10.2008 passed by the Additional Sessions Judge Bhatapara, Camp Court Baloda Bazar, Raipur, in Sessions Trial No. 08/2007 convicting the accused/appellant under Sections 302, 450 and 404 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 500/- u/s 302; RI for five years with fine of Rs. 300/- u/s 450 and RI for three years with fine of Rs. 200/- u/s 404 IPC, plus default stipulations.

2. As per the prosecution case, acquitted accused Baital alias Chhotku hired the services of the accused/appellant herein and gave Rs. 10,000/- to him for committing the murder of his wife. Accused Baital alias Chhotku also assured the accused/appellant to

get him bailed out in the event a case was registered against him. On 19.7.2007 when deceased Bhudhin Bai was in her house, the accused/appellant went to her house and committed her murder by first hitting her head against the wall and then tying her neck with his *lungi* and applying pressure on her neck with the help of a club. Case of the prosecution further shows that after committing the murder of the deceased, the accused/appellant took out all her ornaments and kept the same in his house which were recovered on 21.7.2007 on his memorandum Ex. P-10 vide seizure memo Ex. P-11. Un-numbered *merg* Ex. P-22 was recorded on 19.7.2007 against unknown person and thereafter inquest on the dead-body was conducted on 20.7.2007 vide Ex. P-2. Body of the deceased was then sent for postmortem examination which was conducted by Dr. Bhan Singh Dhruv (PW-13) who gave his report Ex. P-18. Thereafter, numbered *merg* Ex. P-23 was recorded on that very day against unknown person followed by FIR Ex. P-22 registered on 21.7.2007. After filing of charge sheet, the trial Court framed the charge against the accused/appellant u/s 450, 302/34, 120-B and 404 and against accused Baital alias Chhotku u/s 302/34 and 120-B IPC.

3. In order to prove the complicity of the accused persons in the crime in question, the prosecution has examined 15 witnesses. Statements of the accused persons under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below acquitted accused Baital alias Chhotku of the charges levelled against him but 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 present is a case of no evidence but yet the accused/appellant has been convicted for committing the murder of Budhin Bai – the wife of acquitted accused Baital alias Chhotku.

(ii) That the only piece of evidence against the accused/appellant is the so called memorandum Ex. P-10 and seizure of ornaments made under Ex. P-11, that of club made under Ex. P-12 and that of clothes made under Ex. P-13.

(iii) That the seized articles have not been identified and thus it cannot be said that the ornaments so seized belonged to the deceased.

(iv) That there is no FSL report on record and therefore seizure becomes insignificant.

6. On the other hand, State counsel while supporting the judgment impugned has submitted that the findings recorded by the Court below convicting the accused/appellant under Section 302, 450 and 404 IPC are strictly in accordance with law and there is no infirmity in the same.

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

8. Rajau Ram (PW-1) is the witness to inquest Ex. P-2, seizure of ornaments of the deceased. Bisambhar (PW-2) – the witness of inquest has not supported the case of the prosecution and has been declared hostile. Smt. Shanta Bai (PW-3) – another witness to inquest Ex. P-2 has not stated anything specific. Jumaluram (PW-4) and Smt. Dhan Bai (PW-5) – the witnesses to extrajudicial

confession have not supported the case of the prosecution and have been declared hostile. Mahendra Kumar (PW-10) is the Patwari who prepared spot map Ex. P-9. Ubaran alias Pitamber (PW-11) and Saradhu Markandey (PW-12) are the witnesses to memorandum Ex. P-10 and seizure made Ex. P-11, P-12 and P-13. Dr. Bhan Singh Dhruv (PW-12) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-18 stating that he noticed multiple injuries – abrasions, contusions, on the body of the deceased including the vital parts such as face and neck and the cause of death was complication of brain hemorrhage and other compressions of neck. Mode of death has been opined to be asphyxia and the death as homicidal in nature. L.R. Giri (PW-15) is the investigating officer who has duly supported the case of the prosecution.

9. Having thus heard counsel for the parties and taken note of the material available on record, this Court has no hesitation to say that the prosecution could not collect any legally admissible evidence to hold the accused/appellant guilty of barging into the house of the deceased and then committing her murder. Though on the basis of disclosure statement of the accused/appellant certain ornaments and clothes were recovered but as the same remained un-identified to be that of the deceased, such seizure is rendered insignificant and cannot be made a basis for conviction of the accused/appellant for gaining an unlawful entry into the house of the deceased and committing her murder. Prosecution has also not been able to obtain and produce the FSL report and for this reason also the seizure of articles becomes absolutely useless. Even there is no evidence that the said ornaments were mis-appropriated by the accused/appellant from the deceased and being so his

conviction under Section 404 IPC is also not sustainable in the eye of law. Court below has gone palpably wrong in appreciating the evidence and holding the accused/appellant guilty for the offences under sections 302, 450 and 404 of the Indian Penal code and being so the findings recorded by it cannot be allowed to stand.

10. In the result, the appeal is allowed, judgment impugned is hereby set aside and the accused/appellant is acquitted of the charges levelled against him. As the accused/appellant is already on bail, no order to set him free etc. is necessary.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge