

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 913 of 2009

- Jyoidha Prasad Koshle S/o Sakha Ram Koshle R/o Vill. Nachanpali, Ps Koseer, Raigarh

---- Appellant

Versus

- State Of Chhattisgarh, Through District Magistrate, Raigarh, district Raigarh

---- Respondent

For Appellant : Smt. Indira Tripathi, Advocate along with
Ms. Sangita Mishra, counsel for the appellant.
For Respondent /State : Shri Vaibhav Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgement on Board by Pritinker Diwaker, J.

24/10/2017

This appeal arises out of judgment and order dated 27.11.2009 passed by the Additional Sessions Judge, Sarangarh, District Raigarh in S.T. No. 14/2009 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 5,000 plus default stipulation.

2. In the present case name of the deceased is Dileshwari Bai, *Bhabhi* (sister-in-law) of the deceased. As per prosecution case, on 27.01.09, at about 3.00 p.m. accused/appellant assaulted with axe and caused multiple injuries on the body of the deceased as a result of which she died instantaneously. At the instance of Panchram (PW-1) on 27.01.09 at 5.30 p.m. merged intimation Ex.P-1 was recorded and immediately thereafter at 5.35 p.m. FIR Ex.P-2 was registered against

the appellant under Section 302 IPC. Inquest on the dead body was prepared and body was sent for postmortem examination which was conducted by Dr. J.R.Ghritlahre (PW-8) vide Ex.P-13 and according to him, cause of death was hemorrhagic shock due to injuries and death was homicidal in nature. On 28.01.09 itself memorandum of the accused/appellant Ex.P-12 was recorded based on which seizure of blood stained clothes of accused/appellant vide Ex.P-11 was made however, there is no FSL report. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 16 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. 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. Contention of counsel for the appellant is that present is a case of no evidence yet the appellant has been convicted. She submits that the sole eyewitness, i.e. the daughter of the deceased has not supported the prosecution case. She has further argued that there is no FSL report on record and merely on the basis of memorandum and recovery of certain articles, appellant cannot be convicted.

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 on record.

8. Panchram (PW-1) is the informant at whose instance merger intimation and FIR was recorded, has not stated anything against the accused/appellant. Smt. Dasin Bai (PW-2) mother-in-law of the deceased has not stated anything against the appellant and has been declared hostile. Aktu Ram (PW-3) is a witness to inquest Ex.P-7. Ashwani Kumar (PW-4) has not stated anything against the appellant and has been declared hostile. Rajnikant Mishra (PW-5), Puran Singh Sidar (PW-9), Manoj Maravi (PW-11) are the Head Constables who have assisted in the investigation. Ayodhya Prasad (PW-6) husband of the deceased, is a witness to inquest Ex.P-7. Babulal Kosale (PW-7) is a witness to seizure of axe vide Ex.P-10, has turned hostile. Dr. J.R.Ghritlahre (PW-8) is the doctor who conducted postmortem examination on the body of the deceased and opined that cause of death was hemorrhagic shock due to injuries and death was homicidal in nature. Maganlal Sarve (PW-10) is the patwari who prepared spot map. Kamal Kishore (Pw-12) has not stated anything against the appellant and has been declared hostile. Rupa (PW-13) daughter of the deceased and eyewitness to the incident has not stated anything against the appellant and has been declared hostile. T.R.Gautam (PW-14) is the Investigating Officer who has duly supported the prosecution case. Babulal Jangde (PW-15) is a witness to inquest Ex.P-7. Malti Bai (PW-16) is the mother of the deceased has not stated anything specific against the appellant.

On the memorandum of the accused/appellant though seizure of

blood stained axe vide Ex.P-10 and blood stained clothes Ex.P-11 were effected but there is no FSL report.

9. Minute examination of the evidence makes it clear that there is absolutely no legally admissible evidence against the appellant showing his involvement in the commission of offence. The sole eyewitness to the incident examined by the prosecution Rupa (PW-13) daughter of the deceased, has not supported the prosecution case and has been declared hostile. Most of the witnesses in the present case are hearsay witnesses and on their evidence the appellant cannot be convicted. Though on the memorandum of the accused/appellant certain seizures have been effected but in absence of FSL report, the said seizure is of no consequence. Even assuming that there was any motive on the part of accused for committing the murder of the deceased but that itself is not sufficient to uphold the conviction of the accused/appellant. The motive has also not been proved by the prosecution as required under the law. Thus, taking the cumulative effect of the facts and circumstances of the case, the nature of evidence adduced by the prosecution, we are of the view that the trial court has erred in law in convicting the accused/appellant. The prosecution has not been successful in proving the involvement of the accused/appellant in the crime in question.

10. Appeal is thus allowed. Conviction of the accused/appellant under Section 302 IPC is set aside and he is acquitted of the said charge. Accused/appellant is reported to be on bail and therefore no further order is required.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

