

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 142 of 2010**

- Mehtar, son of Dukaruram Muria, caste Muria, aged about 30 years, occupation Labour, residence of village Badeparakot, Police Station Frajerpur, District Bastar, Chhattisgarh.

---- Appellant**Versus**

- State of Chhattisgarh Through Police Station Frajerpur, District Bastar, Chhattisgarh.

---- Respondent

For Appellant	:	Shri C.J.K. Rao, Advocate.
For Respondent/State	:	Shri Bhaskar Pyasi, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board by Pritinker Diwaker, J**12/10/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 16.12.2009 passed by the Sessions Judge, Bastar at Jagdalpur (C.G.), in Sessions Trial No.49/2009 convicting the accused/appellant under Section 302 IPC & sentencing him to undergo imprisonment for life and to pay fine of Rs.500, in default of payment of fine amount to undergo S.I. for one month.

2. In the present case, name of deceased is Radhe. It is alleged that deceased Radhe used to practise sorcery resulting in the death of buffalo of the appellant. It has been further alleged that on

16.02.2009 at about 6.00 pm, when deceased was sitting in his courtyard, the accused/appellant reached there, gave axe blow on the head of deceased and fled from the spot. After hearing the sound of axe “ढक”, Somari (PW/4)- wife of deceased, came out from her room and saw the deceased in pool of blood. She further noticed that the axe was stuck in his head, she took out the same and with the help of villagers deceased was taken to Maharani Hospital, Jagdalpur where Dr. R.B.P. Gupta (PW/6) medically examined him on 16.02.2009 vide Ex.P/7 and noticed two lacerated wounds over occipital region and left temporal area in the size of 12 x 2 cm and 4 x 2 cm respectively, however, in the mid night deceased succumbed to his injuries. On the basis of report lodged by Somari (PW/4), an FIR (Ex.P/5) was registered against an unknown person under Section 307 IPC. Merg intimation (Ex.P/6) was recorded on 17.02.2009 on the basis of information received from the hospital regarding the death of deceased. Inquest on the body of deceased was conducted on 17.02.2009 vide Ex.P/11 and body was sent for postmortem examination to Maharani Hospital, Jagdalpur vide Ex.P/13 where Dr. L.L. Thakur (PW/9) conducted postmortem on the body of deceased and gave his report (Ex.P/25) noticing following injuries:-

- (i) Stitched wound in the size of 3” over parietal temporal region.
- (ii) Stitched wound in the size of 4” over occipital region.

The Doctor has opined the cause of death of deceased to be coma and shock due to head injury.

3. From the spot, axe was seized vide Ex.P/3 and from the possession of accused/appellant his shirt was seized vide Ex.P/19,

however, there is no FSL report on record to prove presence of blood thereon. After filing of the charge-sheet, the trial Court framed the charge against the accused/appellant under Section 302 IPC.

4. In order to prove complicity of the accused/appellant in the crime in question, the prosecution has examined 13 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.

5. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment. Hence, this appeal.

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

(i) That the accused/appellant has been convicted mainly on the basis of so called eye-witnesses Somari (PW/4) and Smt. Bimla (PW/11) but these witnesses are not reliable and merely on the basis of suspicion, they have made allegation against the accused/appellant.

(ii) That other piece of evidence against the appellant is his so called confessional memorandum statement (Ex.P/18) but none of the witnesses to the said memorandum has been examined by the prosecution.

(iii) That relation between the accused/appellant and the deceased were cordial and motive has not been proved by the prosecution. It has been argued that the so called incident between the accused/appellant and the deceased (sorcery resulting in death of buffalo of appellant) was of 6-8 years prior to the incident, and it has nothing to do with the murder of deceased.

7. 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.

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

9. Somari (PW/4) is wife of the deceased and lodger of FIR (Ex.P/5). In court, she has stated that there used to be dispute between her husband and the appellant over performing of pooja of god and goddesses. The accused/appellant used to alleged against her husband that he was playing sorcery resulting in the death of his buffalo. She has further stated that at the time of incident, when she was cooking food in her house, her daughter-in-law Bimla (PW/11) was also present. The accused/appellant came and after causing injuries to her husband he fled from the spot. She has also stated that immediately thereafter villagers gathered and when they asked as to who killed the deceased, she expressed her suspicion upon the accused/appellant saying that as the appellant used to visit her house, it is he who might have assaulted the deceased. This witness has also stated that she took out the axe which was stuck in deceased's head and at that time he was alive. In cross-examination, she states that the incident took place in the dark. In para 10, she states that the previous dispute between the appellant and the deceased with regard to witchcraft had taken place about 6-8 years prior to the incident and since then their relations were cordial. She further states that merely on the basis suspicion she named the appellant to be the assailant. She also stated that even after sustaining injuries her husband was asking for liquor and was talking with village sarpanch and other villagers.

This witness has admitted the fact that her husband did not disclose the name of the person who had assaulted him. Even in the hospital, her husband was talking but did not say anything about the assailant.

10. Smt. Bimla (PW/11), daughter-in-law of the deceased, has stated that when she was cooking food, the accused/appellant came there and caused injuries on the head of deceased. However, in cross-examination, she has admitted that she informed all these facts to police but if the same has not been recorded in her diary statement, she could not tell the reason. In para 11, this witness has admitted that she had not seen the appellant causing injuries to the deceased and after the incident about 25-30 villagers came there but none of them had seen the appellant assaulting the deceased.

11. Radhamani (PW/1), Ramchandra (PW/2) and Sondhar Kashyap (PW/3), witnesses to seizure memos (Ex.P/2 and P/3), have turned hostile. Baisakhu (PW/5), son of the deceased, has stated that about 3-4 years prior to the incident there was some dispute between the appellant and the deceased but since then their relations were very cordial and that merely on the basis of suspicion they thought that it is the appellant who might have killed the deceased.

12. Dr. B.R. Gupta (PW/6) medically examined the deceased vide Ex.P/7 and noticed two lacerated wounds over occipital and parietal region of the deceased. A.K. Dewangan (PW/8) - Investigating Officer has duly supported the prosecution case. Dr. L.L. Thakur (PW/9) conducted autopsy on the body of deceased and gave his report Ex.P/25 opining the cause of death of deceased to be coma

and shock due to head injury. Asha Mahapatra (PW/10) is Patwari who prepared spot map vide Ex.P/30. Budru (PW/13) is witness to seizure of appellant's shirt made under Ex.P/19.

13. Close scrutiny of the evidence makes it clear that but for the statements of PW/4 and PW/11 there is no legally admissible evidence showing the involvement of the accused/appellant in commission of the offense. These witnesses have not actually seen the appellant killing the deceased and merely on the basis of suspicion they have named the appellant to be the perpetrator of the crime. These witnesses have categorically admitted that as about 6-8 years prior to the incident there was some dispute between the appellant and the deceased regarding playing of sorcery, they thought that it is the appellant who might have killed the deceased and that is why they have named him. The evidence of these witnesses do not inspire much confidence of this Court so as to hold the appellant guilty of the offence. The another piece of evidence which has been relied upon by the prosecution is the so called confessional statement of appellant (Ex.P/18). The prosecution has not been able to prove it as none of the witnesses to the said memorandum have been examined by it to establish its authenticity that any such confessional statement was made by the appellant. Moreover, merely on the basis of memorandum statement, conviction of the accused cannot be made. Thus, in absence of non-examination of the witnesses to the confessional memorandum statement (Ex.P/18), it loses its efficacy. All that apart, the weapon of offence axe and clothes of appellant were seized vide Ex.P/3 and P/19 respectively but there is no FSL report on record to prove presence of blood thereon and thus in absence of FSL as well as serological report, the seizure loses its

significance. In the present case, the prosecution witnesses (PW/4 and PW/11) have merely raised suspicion against the appellant and the same is evident by their examination-in-chief and cross-examination. Though the facts involved in the case and the evidence on record give rise to the suspicion about the involvement of the accused/appellant in the crime in question, in a series of cases it has been held by the Apex Court that howsoever strong the needle of suspicion moves, it cannot take the place of evidence. One such judgment of the Apex Court dealing with this fact is **Commissioner of Police, Delhi & Others V. Jai Bhagwan**¹.

14. Thus, considering this factual and legal position and taking the cumulative effect of the evidence, we are of the view that there is no conclusive piece of evidence proving the guilt of the accused/appellant for commission of offence beyond all reasonable doubt and being so, the benefit of doubt, of course, has to go to the accused/appellant.

15. Accordingly, the appeal is allowed, judgment impugned is hereby set aside and the accused/appellant stands acquitted of the charge levelled against him. The appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge

vijay

¹ 2011 (6) SCC 376