

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 46 of 2010**

(Arising out of judgment/order dated 17.12.2009 in Case No. 09/09 of the learned Sessions Judge, Kabirdham)

- Gangaram S/o Darbari Ram, aged about 45 years, R/o Village Lata. Police Station Bodla, Kabirdham (CG)

---- Appellant

**Versus**

- State Of Chhattisgarh, through District Magistrate, Kabirdham, District Kabirham.

---- Respondent

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| For Appellant  | : | Smt. Indira Tripathi, Advocate     |
| For Respondent | : | Shri V.A. Goverdhan, Panel Lawyer. |

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

**Judgement**

**P. Diwaker, J**

**29/11/2017**

1. This appeal has been filed against the judgment of conviction and order of sentence dated 17.12.2009 passed by the Sessions Judge, Kabirdham (Kawardha) in S.T. No.09/09 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.1,000/-, in default to undergo additional R.I. for 3 months.
2. In the present case name of deceased is Punuram.
3. The prosecution story, in brief, is that about 10-12 days prior to the date of incident i.e. on 19.12.2008, Punuram (since deceased) had committed rape with Satwantin Bai, daughter-in-law of accused/appellant and since

then the accused/appellant was in a mood to take revenge of rape on his daughter-in-law. It is further case of the prosecution that on 19.12.2008 at about 7.00 a.m. the deceased left his house and was going to nearby market to purchase the cattle, the accused/appellant had stopped him on the way and committed his murder by causing axe injuries to him. In the same afternoon the body of deceased was found lying near Beeja Nala. FIR (Ex.P-10) against unknown persons was lodged at the instance of Hariram (PW-2), father of the deceased. Merg Intimation was recorded vide Ex.P-11. Inquest was prepared on the body of deceased vide Ex.P-2 and the body was sent for post-mortem examination which was conducted by Dr. K.P. Jangde (PW-10) vide Ex.P-12 and he noticed following injuries on the body of deceased;-

- Incised wound on the left side of skull, oval in shape, of the size 3x1.50cm. Brain matter was coming out. Multiple skull bone fractures. Parietal bone and occipital bone were fractured.
- Lacerated wound at the upper parietal region, oval in shape, of the size 3x1.5cm. Brain matter was coming out.

The doctor has opined that cause of death was haemorrhagic shock due to brain injury and the death was homicidal in nature. Memorandum of accused/appellant was recorded vide Ex.P-6 based on which one axe was recovered at his instance vide seizure memo Ex.P-7. Seized axe was sent for chemical examination to the FSL and as per report (Ex.P-16), the axe seized at the instance of accused/appellant was found to be stained with blood. The test identification parade was conducted by the Naib Tahsildar (PW8) vide Ex.P-5 and during test identification parade, one Dheeraj, sole eyewitness of the incident, had identified the accused/appellant as the assailant. Statements of witnesses were recorded under Section 161 CrPC.

4. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against accused/appellant and accordingly the charge was framed against him by the trial Court. The prosecution in order to bring home the charge levelled against the accused/ appellant examined 12 witnesses in all. Statement of accused/ appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
5. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
6. Counsel for accused/appellant submits that;
  - Identifying witness namely Dhiraj, who was also cited as an eyewitness of incident, died a natural death before he could appear as a witness in this case and could not be examined, therefore, the entire prosecution story including test identification parade proceedings cannot be believed.
  - though the axe allegedly seized at the instance of appellant was found to be stained with human blood, but in absence of serological report opining its origin and group, the same cannot be taken against the appellant.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. We have heard counsel for the parties and perused the evidence available on record.
9. Manak (PW-1) is the witness of inquest (Ex.P-2), seizure memos of Ex.P-3 to P-9 and test identification proceeding.

10. Hariram (PW-2), father of deceased, is the person at whose instance FIR (Ex.P-10) was registered.
11. Smt. Girija Bai (PW-3), wife of deceased, has not stated anything specific against the accused/appellant. However, she has admitted that her husband was the lecherous. He used to visit to Satwantin quite frequently. She tried to stop him from going to Satwantin, but he did not listen to her.
12. Nigam Das (PW-4) has stated that 12-13 days prior to the date of incident, the deceased came to him and told that he has committed a mistake as he had outraged the modesty of a girl who was working in the field. According to this witness, the deceased had requested him to save him if any complaint is made against him.
13. Lakhanlal (PW-5) is the witness of memorandum (Ex.P-6). Pardeshi (PW-6) is the hearsay witness. According to this witness, he was informed by said Dhiraj that he saw the accused/appellant assaulting one person of village Bisnupura by axe.
14. Kamal Kaushik (PW-7) is the Patwari who prepared the spot map Ex.P-8.
15. T.L. Thumrali (PW-8), Naib Tahsildar, is the person who conducted the test identification proceedings (Ex.P-5). This witness has stated that one Dhiraj had identified the appellant as the person who had attacked and assaulted the deceased.
16. Vinod Kumar Tiwari (PW-9), Sub Inspector, had assisted in the investigation.
17. Dr. K.P. Jangde (PW-10) is the doctor who conducted post-mortem examination over the body of deceased and noticed the injuries as mentioned above. This witness has opined that cause of death was brain injury, mode of death was haemorrhagic shock and the death was homicidal in nature. The query - whether the injury present on the body of deceased could be caused by the axe produced before him, has been

answered by this witness in the affirmative vide Ex.P-13.

18. Navneet Patil (PW-11) is the investigating officer who has duly supported the prosecution case.
19. Chandrahas Kosle (PW-12) did not support the prosecution case and turned hostile.
20. Close scrutiny of the evidence available on record makes it clear that there is no evidence, direct or circumstantial, against the accused/appellant connecting him with the crime in question. It appears that the entire prosecution was launched against the accused/appellant on the basis of disclosure made by one Dhiraj to the effect that on the fateful day he saw one person of village Bishnupura assaulting the deceased by axe and subsequent identification of accused/appellant by said Dhiraj as the assailant in the test identification proceeding. Said Dhiraj being the eyewitness of the occurrence was most vital witness to the occurrence, however, this witness could not be examined before the trial Court because he expired prior to his examination in the Court. Under such circumstances, the eyewitness could not establish the identification of accused/appellant before the trial Court and therefore, it was not proved by the prosecution beyond doubt that it is the accused/appellant who committed the alleged crime. The evidence of other witnesses being post occurrence witnesses, do not inspire confidence and in our considered view it will not be proper to sustain the judgment of conviction simply relying upon those witnesses. Even it is settled position that non-examination of the person whose testimony may have deleterious impact on the veracity of the other witnesses would be an incongruity which would cast a doubt on the prosecution case.

True it has come in the evidence of PW-5 & PW-6 that said Dhiraj disclosed them about the incident and that he had identified the

accused/appellant as the assailant in the test identification parade conducted vide Ex.P-5 but it is apparent that these witnesses are not eyewitnesses to the occurrence and they stood within the category of hearsay witnesses, therefore, their evidence cannot be given credence so as to base conviction.

Admittedly, the dead body was recovered from near the brook situated near the field of the accused/appellant, but the fact remains that the said place is an open place and not in exclusive possession of accused/appellant. Most importantly, the body of the deceased was not recovered from the said place at the instance of accused/appellant. Therefore, mere recovery of dead body from near the field of accused/appellant is not sufficient to conclusively prove involvement of accused/appellant in murder of the deceased.

21. As regards the recovery of bloodstained axe at the instance of accused/appellant, the prosecution has not taken any step to prove that the blood stains found on the said axe was of human blood that too of the same group as of the deceased. In absence of determination of blood and its origin, mere presence of blood on the axe seized from the accused/appellant is of no consequence. Furthermore, as per seizure memo Ex.7, the axe was recovered from an open place, which was easily accessible to all and, thus, inference cannot be drawn that seized weapon was in exclusive possession of the appellant. Hence, the recovery of alleged weapon of offence i.e. axe, effected at the instance of accused/appellant in this case has no evidentiary value.

22. So far as the the motive behind commission of offence in question is concerned, on a thorough and careful appreciation of the evidence adduced by the prosecution, we are of the considered view that the prosecution had failed to establish the motive for the murder of deceased

as alleged by it. There is no positive evidence on record to show that the deceased had illicit relation with the daughter-in-law of accused/ appellant. Thus the basis of the case of the prosecution crumbles to the ground like a house of cards.

23. For the foregoing reasons, the appeal is allowed. Conviction and sentences of appellant under Section 302 IPC are hereby set aside and he is acquitted of that charge. Appellants are reported to be on bail. His bail bonds stand discharged.

Sd/-  
(Pritinker Diwaker)  
Judge

Sd/-  
(Arvind Singh Chandel)  
Judge

roshan/-