

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 60 of 2011

- Jarhu Ram Manjhwari S/o Lt. Lamru Ram Manjhwari, Aged about 25 years, R/o Village Paremer, P.S.-Kapu, Tahsil Dharamjaigarh, Distt.-Raigarh, C.G.

---- Appellant

Versus

- State Of Chhattisgarh, through Station House Officer, P.S. Kapu, Tahsil Dharamjaigarh, District Raigarh

---- Respondent

For Appellant	: Shri V.P.Singh, Advocate
For Respondent/State	: Shri Adil Minhaj, P.L.

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

Judgement on Board by Pritinker Diwaker, J.

08/11/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 22.12.2010 passed by the Third Additional Sessions Judge (FTC) Raigarh, in Sessions Trial No. 56/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life.

2. In the present case, name of the deceased is Lamru Ram, father of the appellant. It is alleged that deceased Lamru had killed his wife and after being released from jail, on 21.02.2010 at 5.00 a.m. when he came to his house, there was some quarrel between the appellant and deceased, as a result of which appellant committed his murder with knife by causing several injuries. FIR Ex.P-1 was lodged on the same day at 4.30 p.m. against the accused/appellant on the basis of report

lodged by Nanhu Ram, uncle of the accused/appellant. Merg intimation Ex.P-2 was recorded on 21.02.10. Inquest Ex.P-5 was prepared and body was sent for postmortem examination which was conducted by Dr. B. L. Bhagat (PW-10) vide Ex.P-15 and according to him, cause of death was syncope due to severe bleeding and death was homicidal in nature. On 22.02.10 memorandum of accused/appellant Ex.P-6 was recorded and based on which seizure of blood stained knife vide Ex.P-14 was made however there is no FSL report. After filing of charge sheet, the trial Court framed the charge against the accused/appellant u/s 302 IPC.

3. In order to establish the guilt of the accused/appellant in the crime in question, the prosecution has examined 12 witnesses. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

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

5. Counsel for the appellant submits as under :

i) that there is no eyewitness to the incident and conviction of the appellant is based on the circumstantial evidence but none of the circumstances from which the inference of guilt of the appellant can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellant who committed the murder.

ii) that out of 12 witnesses 9 of them including that of PW-12 have

turned hostile.

iii) that though on the memorandum of the accused/appellant Ex.P-6 seizure of knife Ex.P-14 was given effect to but there is no FSL report.

iv) In fact the present is a case of no evidence but yet the appellant has been convicted.

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 IPC are strictly in accordance with law and there is no infirmity in the same.

7. We have heard counsel for the parties and perused the material available on record.

8. Nanhu Manjhar (PW-1) is the informant who has been declared hostile. Sukhlal Manjhar (PW-2) and Suraj Manjhar (PW-3) are the witnesses to inquest Ex.P-5 and memorandum of accused/appellant Ex.P-6 have turned hostile. Balram Manjhar (PW-4), Lohara Manjhar (PW-5) and Karan Sai (PW-6) have not stated anything against the appellant and have been declared hostile. Vishkeshan Yadav (PW-7) and Hurkesh Yadav (PW-8) are the witnesses to inquest Ex.P-5 and seizure Ex.P-13 and P-14 have turned hostile. Bhenansiyus Xess (PW-9) is the constable who has assisted in the investigation. Dr.B.L.Bhagat (PW-10) is the doctor who has conducted postmortem examination on the body of deceased and has opined that cause of death was syncope due to severe bleeding and death was homicidal in nature. K.L.Yadav (PW-11) is the Investigating Officer who has duly supported the prosecution case. Futki Bai (PW-12) is the wife of the appellant has not stated anything against the appellant and has turned hostile.

9. Close scrutiny of the evidence makes it clear that there is absolutely no legally admissible evidence showing the involvement of the appellant in commission of the crime. The trial court has erred in law in convicting the appellant for committing the murder of the deceased. All the important witnesses of prosecution have turned hostile. Though on the memorandum of the accused/appellant one Knife was seized but in absence of FSL and serological report, the said seizure is of no consequence. The trial court has erred in law in appreciating the evidence and convicting the accused persons.

9. Thus in the facts and circumstances of the case, we are of the opinion that the prosecution has not been successful in proving the involvement of the accused/appellant in the crime in question. Being so, the appellant is entitled to be acquitted of the charge under Section 302 IPC.

10. Accordingly, the appeal is allowed. Conviction of the accused/appellant under Section 302 IPC is set aside and he is acquitted of the said charge. The appellant are reported to be in jail, he be set at liberty forthwith if not required in any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Arvind Singh Chandel)
Judge