

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 624 of 2011

- Gouri Bai Patel, W/o. Dhan Sai @ Dhanau Patel, aged about 35 years, Occupation Labour R/o. Hamalpara, Police Station Kharsia, District Raigarh (CG)
- Naththu Ram Yadav S/o Indrajit Singh Yadav, R/o Rambhatha, P.S. City Kotwali, Distt.-Raigarh, C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Kharsia, District Ragiarh (CG)

---- Respondent

For Appellants	: Shri Manoj Jaiswal and Shri Kumaresh Tiwari, Advocates
For Respondent /State	: Shri Avinash K.Mishra, P.L.

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

Judgement on Board by Pritinker Diwaker, J.

21/09/2017

This appeal arises out of judgment and order dated 29.07.2011 passed by the First Additional Sessions Judge, Ragiarh, district Raigarh in Sessions Trial No. 134/2010 convicting the accused/appellant under Sections 302/34 and 201/34 of IPC and sentencing him to undergo imprisonment for life and RI for 7 years.

2. In the present case, name of the deceased is Dhanau Patel, husband of appellant No.1 Gowri Bai. It is alleged that Gowri Bai had developed illicit relation with appellant No.2 Nathu Yadav and both of them decided to eliminate Dhanau Patel and accordingly on 05.08.2010 at first they caused injury on the fact of deceased by a grinding stone

and thereafter committed his murder by throttling. After committing the murder of the deceased with the help of some villagers, body of the deceased was taken to the cremation ground however one Nityanand Patel (PW-14), a journalist reached the cremation ground along with Nayanand Vaishnav (PW-11) and asked Gowri Bai that she has committed the murder of deceased. He thereafter informed the police that the death of Dhanau Patel is not natural but it is a case of murder. Nityanand Patel (PW-14) made a written complaint to the police based on which unnumbered FIR Ex.P-2 was registered on 06.08.10 at outpost Kharsia against the appellants under Section 302, 201 and 34 IPC. Merg intimation Ex.P-10 was also recorded and on 06.08.10 numbered FIR Ex.P-7 was registered against the appellants at police station Kharsia. Inquest Ex.P-20 was prepared and body was sent for postmortem examination vide Ex.P-16 by Dr. Sajan Kumar Agrawal (PW-10) and according to him, cause of death is asphyxia due to throttling and death was homicidal in nature. On the basis of memorandum of accused/appellant Gowri Bai Ex.P-9 seizure Ex.P-10 of one grinding stone was made. Memorandum of accused/appellant Natthu Ram Yadav Ex.P-12 was recorded however there is no seizure. Grinding stone so seized was not sent for FSL. After filing of the charge sheet, trial judge has framed charge against the appellants under Sections 302/34 and 201/34 IPC.

3. The prosecution has examined 14 witnesses to prove its case. Statement of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After conclusion of the trial, the trial Court vide its judgment

impugned, found the accused/appellants guilty of the offence as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Counsel for the appellant submits as under :

i) that there is no eyewitness account to the incident and the appellants have been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence collected by the prosecution is very weak and the chain of circumstantial evidence is not complete.

ii) that all the important witnesses have turned hostile including that of PW-11 and PW-12.

iii) that the appellants are in jail since 07.08.2010.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellants is 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. Pardeshi Patel (PW-1) is a villager who had also gone for the cremation of the deceased, has turned hostile. He however has stated that appellant No.1 Gowri Bai had not gone to the cremation ground and that she was having good relation with her husband i.e. the deceased. He has further stated that the deceased was a drunkard. Kapil Dev Agrawal (PW-2) is also a villager to whom the appellant Gowri Bai had approached for arrangement of wood for cremation. Santosh Patel (PW-3) brother of the deceased has turned hostile. He too, has stated that appellant Gowri Bai had not gone to cremation

ground and that the deceased was a drunkard. smt. Neera Bai Patel (PW-4) villager has not stated anything against the appellant and has been declared hostile. She has also stated that the relation between Gowri Bai and her husband was normal. Seema Sawadia (PW-5) has not stated anything and has turned hostile. she however has stated that the deceased was a drunkard. Sada Sai (PW-6) is the SI who recorded FIR. Hussain Khan (PW-7) is a witness to memorandum and seizure has turned hostile. Mahendra Kumar Khare (PW-8) is the Constable who assisted in the investigation. J.P.Choudhary (PW-9) is the patwari who prepared the spot map. Dr.Sajan Kumar Agrawal (PW-10) conducted postmortem examination on the body of deceased Dhanau and according to him, cause of death is asphxia due to throttling and death was homicidal in nature. Nayanand (PW-11) is the person who had gone to the cremation ground along with Nityanand (PW-14) and he was also there when the FIR was lodged, has turned hostile. Akash Bharti (PW-12) has not stated anything against the appellant and has turned hostile. R.S.Tiwari (PW-13) is the Investigating Officer who has duly supported the prosecution case. Nityansand Patel (PW-14) is the informant and journalist who is alleged to have gone to the cremation ground doubting the death of the deceased and it is he who lodged the written complaint Ex.P-21, has also turned hostile. Though on the memorandum of accused/appellant No.1 one grinding stone was seized vide Ex.P-10 but there is no FSL report.

8. Close scrutiny of the evidence makes it clear that there is absolutely no legally admissible evidence showing the involvement of the appellants in the commission of the offence. All the important witnesses of prosecution have turned hostile. The seizure of grinding stone is of no consequence because there is no FSL or Serological

report. 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/appellants in the crime in question on the basis of cogent and reliable evidence. Being so, the appellants are entitled to be acquitted of the charge under Section 302 IPC.

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

Registry is directed to send copy of the impugned judgment immediately to Central Jail, Bilaspur.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge