

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 274 of 2012**

1. Raj Kumar Banjare @ Khoju S/o Itwari Ram Banjare, aged about 32 years, R/o village Bhathagaon, PS Bhilai-3, District Durg, CG, at present R/o Raipura Satanamipara, PS DD Nagar, Raipur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station DD Nagar, Raipur, CG

---- Respondent

For Appellant: Shri Santosh Bharat, Advocate
 For Respondent/State: Shri Vaibhav Goverdhan, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice RCS Samant****Judgment on Board by Pritinker Diwaker, J****21/06/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 6.1.2012 passed by the Sessions Judge Raipur, in Sessions Trial No. 107/2011 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1000/-, plus default stipulation.

2. Name of the deceased in the present case is Radhika Bai – wife of the accused/appellant. It is alleged that on 8.3.2011 as a routine matter she had left her house early in the morning along with Smt. Ghasan Bai (PW-1), Ku. Poornima Lahri (PW-2), Smt. Rajkumari (PW-3) and Smt. Sati Bai (PW-4) and all these women were working under a contractor of the Municipal Corporation. It is

further alleged that near Agroha Colony the accused/appellant came from behind and assaulted her with a plumbing tool (*paana*) by inflicting number of injuries which ultimately led to her death. The other women accompanying the deceased asked the accused not to assault but he continued doing so and thus committed the murder of his wife. Information to this effect was given to the police which immediately came to the spot and registered Dehati Merg Ex. P-2 at the instance of Ghasan Bai (PW-1). Soon thereafter, Dehati Nalisi Ex. P-1 was recorded on the same day at 6.50 AM followed by FIR Ex. P-18 which was registered at 12.20 afternoon against the accused/appellant under Section 302 IPC. Inquest Ex. P-4 was conducted on the body of the deceased and the dead-body was sent for postmortem examination which was done by Dr. Ullhas Gonnade (PW-13) who gave his report Ex. P-20. On the same day i.e. 8.3.2011 memorandum of the accused/appellant was recorded vide Ex. P-10 based on which recovery of plumbing tool was made vide Ex. P-11 and as per the query report Ex. P-21 given by the doctor the injuries suffered by the victim could have been caused by the tool so seized. Further, as per the FSL report Ex. P-22 the clothes of the accused and the tool seized at his instance contained blood though there is no serological report on record. After filing of charge sheet, the trial Court framed the charge against the accused/appellant u/s 302 IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 13 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 accused/appellant submits as under:

(i) That all the important witnesses examined by the prosecution have turned hostile and not stated anything against the accused/appellant.

(ii) That the accused/appellant has been convicted solely on the basis of circumstantial evidence but nature of such evidence is not as such to hold him guilty for commission of murder of the deceased.

(iii) That main piece of evidence relied upon by the Court below is that just before the incident in the night the accused/appellant had a quarrel with the deceased.

(iv) That the other piece of evidence is the FSL report showing the presence of blood on the clothes and plubming tool but in the absence of serological report such evidence cannot be used for convicting the accused/appellant.

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 are strictly 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. Important witnesses examined by the prosecution namely Smt. Ghasan Bai (PW-1), Ku. Poornima Lahri (PW-2), Smt. Rajkumari (PW-3) and Smt. Sati Bai (PW-4) have not supported the case of the prosecution and have been declared hostile. Phool Singh Yadav (PW-5) is the witness to seizure of plain and blood stained soil and broken bangles made under Ex. P-8 and that of a urn, pair of plastic *chappals* made under Ex. P-9. He is also the witness to memorandum of the accused/appellant Ex. P-10 and seizure of plumbing tool and his pant made under Ex. P-11 and P-12. Gokul Gendre (PW-6) - the brother of the deceased has not supported the case of the prosecution and has been declared hostile. Tuleshwar Banjare (PW-7) - the son of the accused has not stated anything specific against the accused. Dipak Tiwari (PW-10) is the Patwari who prepared spot map Ex. P-14. J.D. Diwan (PW-12) is the investigating officer who has duly supported the case of the prosecution. Dr. Ullhas Gonnade (PW-13) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-20 stating that he noticed number of lacerated injuries on her body including the linear fracture on vital part like skull and the cause of death was hemorrhagic shock as a result of head injury.

9. Having thus closely examined the evidence of the witnesses and other material collected by the prosecution, this Court could not lay hands even on a single legally admissible piece of evidence speaking against the accused/appellant. Though son of the deceased (PW-7) has stated that the accused/appellant used to quarrel with the deceased and even on the previous night of the incident there was a quarrel between them yet that itself is not sufficient to hold that it is he who committed the murder of the

deceased. Further, though the report of the Forensic Science Laboratory Ex. P-22 shows the presence of blood on the seized articles like plumbing tool and the clothes of the accused, in the absence of serological report demonstrating the origin of blood or whether it was a blood of the blood group of the deceased, the accused cannot be held guilty for commission of murder of his wife. No doubt the circumstances under which the incident had taken place raises a suspicion but it is a settled legal position that suspicion howsoever strong it is, cannot be made a basis for holding one guilty. Thus in the considered opinion of this Court, the prosecution has not been able to prove its case beyond reasonable doubt and being so the benefit of such lacuna has to go to the accused. Findings recorded by the Court below being not based on due appreciation of the evidence, cannot be allowed to stand and therefore are hereby set aside.

10. In the result, the appeal is allowed, judgment impugned is set aside and the accused/appellant is acquitted of the charge levelled against him. Accused/appellant is in jail and therefore he is directed to be set free forthwith, if not required in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge