

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 235 of 2016**

1. Jangam Sadvali son of Jangam Chinni, aged about 27 years
 2. Jangam Chinni son of Jangam Ramaiya, aged about 62 years
- Both R/o village Kotur, PS Tarlaguda, District Bijapur, CG

---- Appellants**Versus**

1. State of Chhattisgarh through PS Tarlaguda, District Bijapur, CG

---- Respondent

For Appellant	:	Shri S.P. Sahu, Advocate
For Respondent/State	:	Shri Ravindra Agrawal and Smt. Smitha Ghai, PLs

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice A.S. Chandel

Judgment on Board by Pritinker Diwaker, J**14/11/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 22.12.2015 passed by Additional Sessions Judge (FTC) South Bastar, Dantewada in Sessions Trial No. 16/2010 convicting the accused/appellants under Section 302/34 IPC and sentencing each of them to undergo imprisonment for life.

2. Name of the deceased in this case is Prabhawati who was wife of accused/appellant Jangam Sadvali and daughter-in-law of accused/appellant Jangam Chinni. As is revealed by the prosecution story, deceased suspected her husband (accused/appellant Jangam Sadvali) of having illicit relation with some girl and for that there used to be quarrel between them. On 24.01.2009 also there was some dispute between the two and in furtherance thereof the

deceased was done away with by accused/appellant Jangam Sadvali causing injury with axe on her vital parts. On 25.1.2009 accused/appellant Jangam Chinni went to the house of village Kotwar (PW-1) and informed him that his son had killed the deceased and the dead-body was lying in his house. Immediately after coming to know of the incident, FIR Ex. P-1 was lodged by PW-1 followed by *merg* Ex. P-2. After drawing inquest Ex. P-1, the dead-body was sent for postmortem examination which was conducted by Dr. D.P. Singh. It is relevant to note here that the doctor conducting postmortem has not been examined as he was not traceable on the given address. Postmortem report also remained unproved. Only the requisition memo attached with the postmortem Ex. P-12 has been proved. On 26.1.2009 memorandum of accused Jangam Sadvali Ex. P-3 was recorded based on which seizure of axe under Ex. P-5 was made. Memorandum of accused Jangam Chinni Ex. P-4 was also recorded on the same day based on which seizure of towel was made under Ex. P-6. As per the FSL report Ex. P-14 human blood was found on the axe and towel so seized but the serological report is not on record. Village Kotwar (PW-1) is also the witness of so-called extra-judicial confession made by accused Jangam Chinni but he has not supported the case of prosecution and has been declared hostile. After investigation, charge-sheet was filed by the police under Section 302/34 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellants in the crime in question, the prosecution has examined 05 witnesses. Statements of the accused/appellants under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded

innocence and false implication in the case.

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

5. Counsel for the accused/appellants submits as under:

(i) That there is no eyewitness to the incident and the entire case of the prosecution is based on the circumstantial evidence.

(ii) That the circumstances relied upon do not form the complete chain and therefore they cannot be made the basis for conviction.

(iii) That even the postmortem report has not been proved by the prosecution and therefore, the factum of death being homicidal in nature is also doubtful.

(iv) That though as per the FSL report Ex. P-14, axe and towel seized by the police contained blood but as there is no serological report on record to prove its origin, such seizure has no value in the eye of law.

6. On the other hand, counsel for the State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellants under Section 302/34 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same.

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

8. Jangam Ramaiya (PW-1) is the village Kotwar who lodged the report Ex. P-1. He is also the witness to memorandum, seizure and inquest but has not supported the case of the prosecution and has

been declared hostile. Smt. Durgam Malakka (PW-2) - the neighbour of the accused/appellants has also not supported the case of the prosecution and has been declared hostile. Sanmukh Rao (PW-3) has stated that marriage of the deceased who happened to be his sister-in-law was solemnized with Sangam Sadvali (accused/appellant No.1 herein) in the year 2005 and after marriage she lived with him in his house. According to this witness, in the year 2009 he was telephonically informed by one Bhagtu Samaiya (PW-4) about the deceased being killed by the accused/appellants herein and they were taken by the villagers to the police station. On receiving this information when this witness along with other villagers went to the house of accused/appellant Jangam Sadvali, deceased was found lying in supine condition with injury on her neck, cheek caused with the help of sharp edged weapon. On enquiry being made from the villagers, he came to know about the quarrel between the accused/appellants and the deceased and in the same night they killed her by inflicting injuries with axe. In cross-examination, this witness however admits that he did not see the incident and made the statement about the killing of the deceased by the accused/appellants on the basis of information provided to him by the villagers. Arvind Minj (PW-5) is the investigating officer who has supported the case of the prosecution.

9. We have taken note of the entire evidence collected by the prosecution and so also the judgment under challenge. There is no eyewitness to the incident and the conviction of the accused/appellants hinges only on circumstantial evidence but unfortunately even the circumstances pressed into service are too

fragile and fragmented in nature to be made a basis for holding them guilty for committing murder of the deceased. Though the incident is said to have taken place in the house of the accused/appellants but the prosecution has not been able to prove that at the relevant time they were present there. It has not even put a single question to them to this effect in their statements recorded under Section 313 of the Code of Criminal Procedure. Further, the factum of death being homicidal in nature has also not been proved by the prosecution as the doctor conducting postmortem examination on the body of the deceased has not been examined to prove the report given by him. It is only the requisition memo sent for conducting the postmortem with which report Ex. P-12 is attached has been proved. Even the witness (PW-1) who lodged the report Ex. P-1 has not supported the case of the prosecution and has been declared hostile. Of course, on the memorandum of the accused/appellants an axe and a towel has been seized which as per the FSL report Ex. P-14 were stained with blood, but as the serological report is not on record to prove the origin of the said blood or that it was of the blood group of the deceased, such seizure is of no value in the eye of law - (**Kansa Behera Vs. State of Orissa, AIR 1987 SC 1507**). It is a settled legal position that in a case of circumstantial evidence one thing has to be remembered that the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. In other words, there must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all

human probability the act must have been done by the accused - **Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210**. Here in this case, the circumstances relied upon by the prosecution if given a composite look, as already noted, do not lead to the conclusion that it is the accused/appellants who eliminated the deceased and being so the benefit of doubt must go to them.

10. In view of the aforesaid factual discussion made in the light of guidelines of the Apex Court, the impugned conclusion drawn by the Court below does not appear to be in conformity with the evidence of the witnesses and therefore it is liable to be set aside. Accordingly, the appeal is allowed, judgment impugned is set aside and the accused/appellants are acquitted of the charge levelled against them. Accused/appellants who are behind the bars since 26.1.2009, be set free forthwith if not wanted in any other case.

11. Appeal allowed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(A.S. Chandel)
Judge