

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 870 of 2012

- Rikhi Ram Saura S/o Ramratan Saura Aged About 26 Years R/o Village Gaurkheda, Thana - Mahasamund, Distt. - Mahasamund C.G.

---- Appellant

Versus

- State Of C.G. Through PS Mahasamund, Distt. Mahasamund C.G.

---- Respondent

For Appellant	: Shri Kalyan Kalamkar, Advocate
For Respondent/State	: Smt. Madhunisha Singh, P.L.

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

Judgement on Board

Per P.Diwaker, J.

11/07/2017

This appeal has been preferred against the judgment and order dated 23.11.2005 passed by the Second Additional & Sessions Judge, Mahasamund in Sessions Trial No. 69/2007 convicting the accused/appellant under Sections 450 and 302 IPC and sentencing him to undergo RI for three years and imprisonment for life with fine of Rs. 500/- and Rs. 1,000/- respectively.

2. As per the prosecution case, deceased Sukalu Ram was having illicit relation with the wife of accused/appellant as a result of which on 19.11.04 at 9.30 a.m. accused/appellant committed his murder by causing injuries on his head with an iron rod. On 19.11.04, itself at 10.30 a.m. FIR Ex.P-9 was lodged by Maanu PW-4, father of the deceased. Unnumbered merg intimation Ex.P-5 was registered and

thereafter numbered merged Ex.P-4 was also recorded. Inquest Ex.P-8 was prepared and body of the deceased was sent for postmortem examination vide Ex.P-19 which was conducted by Dr. V.K.Dhruv (PW-10) and according to him, cause of death was due to shock and hemorrhage as a result of head injury and death was homicidal in nature. On the basis of memorandum of accused/appellant Ex.P-13 seizure Ex.P-12 was effected and one iron rod was recovered and as per FSL report Ex.P-16, blood was found on the iron rod but it has not been mentioned that it contained human blood. However there is no serological report on record. After investigation, charge sheet was filed on 08.02.05 against the accused/appellant under Sections 452,307 and 302 IPC and accordingly charges were framed.

3. So as to prove the guilt of the accused/appellant, prosecution has examined 12 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which, he denied the charge levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, learned trial Court has convicted and sentenced the accused/appellant as mentioned in para-1. Hence the present appeal.

5. Contention of Shri Kalamkar, counsel for the appellant is that

- i) the important witness of the case Maanu (PW-4) father of the deceased has not supported the prosecution case and has been declared hostile.
- ii) the other piece of evidence against the appellant is the statement

of Ramesh (PW-5) who allegedly saw the accused/appellant fleeing away from the spot after committing the murder of the deceased. However in para 4 of his cross-examination this witness has stated that whatever he could hear from the villagers on that basis he disclosed before the court and thus he is a hearsay witness.

iii) On the memorandum of the accused/appellant Ex.P-13 seizure Ex.P-12 was effected and one iron rod was recovered however in the un-exhibited FSL it is nowhere stated that the iron rod contains human blood and there is no serological report.

iii) the appellant is in jail since 20.11.2004 and therefore he be set free forthwith.

6. On the other hand, supporting the impugned judgment, it has been argued by the State counsel that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

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

8. Maanu (PW-4) father of the deceased has stated that he was informed by one village boy named Ramesh that his brother is lying drenched in blood. Thereafter this witness has turned hostile. Ramesh (PW-5) has stated that he has not seen the appellant committing murder but saw him fleeing away from the spot. In cross examination he however stated that whatever he is disclosing it is only on the basis of what he could hear from the villagers. Dr.V.K.Dhruv (PW-10) conducted postmortem examination on the body of the deceased vide Ex.P-19 and according to him, cause of death was due

to shock and hemorrhage as a result of head injury and death was homicidal in nature. C.S.Thakur (PW-8) is the Investigating Officer who has duly supported the prosecution case. Girdhari Lal Chandrakar (PW-1) had done MLC of the deceased and noticed one injury on the head of the deceased. Narayan Lal (PW-6) and Santosh (PW-9) are the witnesses to memorandum of accused/appellant Ex.P-13 by which seizure Ex.P-12 of iron rod was made, have been declared hostile.

9. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence showing the involvement of the appellant in the commission of offence. The trial judge has convicted the appellant mainly on the basis of statement of Ramesh (PW-5) who saw the accused/appellant fleeing away from the spot. Maanu (PW-4) father of the deceased has not supported the prosecution case. Though on the memorandum of accused/appellant iron rod was seized however it has not been mentioned that it contained human blood and therefore the said evidence cannot be used against the appellant.

10. Taking the cumulative effect of the evidence we are of the view that the evidence collected by the prosecution is very weak and it would not be safe for this Court to convict the accused/appellant on the basis of such evidence alone. On the basis of memorandum of appellant Ex. P-13 seizure Ex.P-12 of iron rod was made however there is no FSL or Serological report that the blood found on the seized article contained human blood. Thus the prosecution has failed to establish the guilt of the accused/appellant beyond reasonable doubt and therefore benefit of doubt has to be extended to him.

11. Consequently, the appeal is allowed. Impugned judgment

convicting and sentencing the accused/appellant as mentioned above is set aside. He is acquitted of the charges levelled against him. Accused/appellant is reported to be in jail. The appellant be set at liberty forthwith unless required to be in custody in connection with any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge