

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 690 of 2013

(Arising out of judgment/order dated 23.04.2013 in Sessions
Trial No. 66/2012 of the Sessions Judge, Kabirdham (Kawardha).)

Hariram Merawai, S/o. Late Jagesh Singh Merawi, Aged About 22 Years,
R/o Village Sahaspur Lohara, P.S. Bamee, Distt. Kabirdham (C.G.)

---- Appellant

Versus

State Of Chhattisgarh Through - P.S. Sahaspur Lohara, Kabirdham
(C.G.)

---- Respondent

For the Appellant : Mr. Rakesh Sahu, Advocate.
For Respondent/State : Mr. Sangharsh Pandey, Govt Advocate
and Mr. S.K. Mishra, Panal Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal,
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

Per Sanjay K. Agrawal, J.

18.11.2017

- 1) This appeal is directed against the judgment of conviction and order of sentence dated 23.04.2013 passed by the Sessions Judge, Kabirdham (Kawardha) (C.G.) in Sessions Trial No. 66/2012, whereby the appellant has been convicted for

commission of offence under Section 302 of the IPC and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 1000/- in default of payment of fine to further undergo rigorous imprisonment for six months.

- 2) Prosecution case, as unfolded during the course of argument is that the death of deceased Jagesh took place in the intervening night of 28/29.09.2012. First Information Report (Ex.P-7) was lodged by present appellant Hariram Merawi in Police Station Sahas Lohara, District Kabirdham, wherein it is stated that his father Jagesh Singh has been murdered by unknown person in his house. It is further stated that on the date of incident his sister Vimla (PW-2) and Yogesh were present in the room. In the morning at about 5.30 am, his sister Vimla (PW-2) informed him that his father has been murdered then he came to spot and saw that his father was lying dead on the cot and he informed to the other persons that some unknown persons has caused death of his father. He also found an axe at the entrance of kitchengarden and the relation of his father was cordial with everyone and action be taken on his report. Thereafter, on the same date vide Ex.P-8, merg intimation was registered and inquest on the dead body of the deceased was conducted vide Ex.P-9 on 29.09.2012. The body of the deceased was sent for postmortem. Dr. Adesh Bagde (PW-5) conducted postmortem vide Ex.P-5 in which he opined that cause of death was coma as a result of head injury and death was homicidal in nature.

- 3) The jurisdictional Police investigated the matter and submitted charge sheet against the appellant for the offence under Section 302 of the IPC. The appellant denied the guilt and pleaded innocence, thereafter, trial was conducted. The prosecution examined as many as 10 witnesses and exhibited 21 documents. The appellant was examined under Section 313 Cr.P.C. The appellant did not examine any witness in his defence. The learned Sessions Judge vide impugned judgment, convicted and sentenced the accused mainly on the ground that on the basis of memorandum statement of the accused, blood stained pant and shirt of the appellant were seized inside the house of the appellant in which human blood was found vide Ex.P-17.
- 4) Feeling aggrieved and dissatisfied with the impugned judgment of conviction and order of sentence awarded by the trial Court, this appeal under Section 374(2) of the Cr.P.C. has been filed by the accused/appellant.
- 5) Mr. Rakesh Sahu, learned counsel the appellant would submit that the prosecution has miserably failed to bring home the offence under Section 302 of the IPC against the appellant and the judgment of conviction recorded and sentence awarded is based on conjecture and surmises as there is no legally admissible evidence against the appellant. He would further submit that conviction cannot be rested merely on the basis of blood stained clothe seized from the appellant and there was no conclusive evidence to establish that the blood stained clothe

seized from the appellant were that of the deceased and whether they were of human origin, therefore, commission of offence under Section 302 of the IPC by the accused/appellant was not shown by anything on record, therefore, conviction cannot be maintained as the prosecution has failed to establish matching of blood group . On the blood stained clothe and that blood was of that of the deceased, therefore, conviction recorded is liable to be set aside. He would also submit that on the fateful day in the house of the deceased apart from the present appellant total four members were present but the appellant was picked up and has been convicted. There is no explanation about the other members who were present in the house at the time of incident and he has been falsely implicated in the case, therefore, the impugned judgment of conviction and sentence awarded is liable to be set aside.

- 6) Per Contra, Mr. Sangharsh Pandey, Govt. Advocate and Mr. Suryakant Mishra, Panal Lawyer for the State would support the impugned judgment and would submit that the prosecution has established the offence under Section 302 of the IPC beyond reasonable doubt and therefore, the appellant has rightly been convicted for the offence under Section 302 of the IPC and the appeal preferred by the appellant deserves to be dismissed.
- 7) We have heard learned counsel for the parties, considered the rival contentions made herein above and gone through the records minutely.

- 8) The question for consideration would be whether the death of the deceased was homicidal in nature and whether the death was caused by present appellant Hariram Marawi or not.
- 9) So far as the question of homicidal nature of death is concerned, this fact has not been seriously disputed by the counsel for the appellant. However, it is established from the statement of Adesh Bagde (PW-5), who has proved Ex.P-5 in which it is clearly stated that the deceased suffered six injuries on his body and the death occurred due to serious head injury and on account of head injuries he suffered coma and ultimately died. As such, it is held that the death of the deceased was homicidal in nature.
- 10) This would bring us to the next question as to whether the death was caused by the present appellant.
- 11) Tiharu (PW-1), who is brother of the deceased deposed that on the fateful day in the house of the deceased his two sons and one daughter were residing and relation of present appellant with his father was cordial. He further deposed that the present appellant has made extra judicial confession before Shankar (PW-3) on 29.09.2012 in which the appellant has admitted that he caused death of his father by Axe.
- 12) Bimla(PW-2), is the daughter of the deceased. She deposed that relation of the appellant with the deceased was quite normal and there is no dispute on any count. She has been declared hostile by the prosecution.

- 13) Shankar (PW-3), is the witness to whom the present appellant has made extra judicial confession. But in his statement, he has clearly denied that no such extra judicial confession was made before him and ultimately, he has been declared hostile and has not supported the case of the prosecution.
- 14) Someshwar Singh, (PW-4) is the village Patwari who has prepared the map of the place of incident vide Ex.P-4 and proved the same. Adesh Bagde (PW-5) is the surgeon who has conducted the postmortem of the deceased vide Ex.P-5 and query report Ex.P-6. Rashmikant Mishra (PW-6) is the investigation officer who has conducted investigation and submitted charge sheet. Son Singh (PW-7) is the seizure witness of axe who has signed Ex.P-11 but he has also been declared hostile. Likewise, Goverdhan (PW-8) is the seizure witness of axe who has also been declared hostile. Ganesh Sahu (PW-9) is the witness of memorandum Ex.P 12 and the seizure witness of the appellant's cloth vide Ex.P-10 and is also the witness of memorandum and seizure of cloth.
- 15) The Superintendent of Police, Kabirdham sent blood stained Axe Article-A and blood stained clothe of the deceased as Ex.P-15 to the Director, Forensic Science laboratory, Raipur for their chemical examination to find out as to whether in the Articles A, B, C D, E and F there is human blood or group of human blood which was duly received by Forensic Science Laboratory Raipur on 15.10.2012. The report therefrom was received on

30.11.2012 in which blood stained Axe E1 and E2 i.e. the clothes of the deceased, human blood was found but the blood group was not indicated in the Forensic Science Laboratory report vide Ex.P-17 holding that the result was found inconclusive.

- 16) It is also apparent on the face of the record that the prosecution did not take any steps to match the blood group of the deceased and the blood stains found on the axe as well as found on the blood stained cloths which ought to have been done and even the prosecution has failed to establish the blood group of the deceased to match which was found on the axe and on the clothes of the deceased as the reports were found inconclusive by the report given by FSL, Raipur vide Ex.P-17.
- 17) The Supreme Court in the matter of **Sattatiya @ Satish Rajanna Kartalla vs State of Maharashtra 2008 (3) SCC 210** has emphasized the need for establishing the link with the blood of the deceased and blood stains on the alleged clothes and the weapon. The prosecution could not explain as to how the room allegedly belonging to the appellant could be without any lock. The absence of any habitation in the room also cast serious doubt on the genuineness and bonafides of recovery of clothes. The recovery of half blade from the road side beneath the wooden board in front of Ganesh Bhuvan is also not convincing. Undisputedly, the place from where half blade is said to have been recovered is an open place and everybody had access to the site from where the blade is said to have been recovered. It

is, therefore, difficult to believe the prosecution theory regarding recovery of half blade. The credibility of evidence relating to recovery is substantially dented by the fact that even though as per the Chemical Examiners Report the blood stains found on the shirt, pant and half blade were those of human blood, the same could not be linked with the blood of the deceased.

- 18) In the instant case also the prosecution has failed to establish the link that human blood found on the axe and the clothes of the appellant were that of the deceased and as such it is a serious lacuna in the prosecution case and therefore, the conviction cannot be rested on such facts which has not been established beyond reasonable doubt. Apart from above, the prosecution has failed to establish any other circumstances to establish that it is only the present appellant who has caused the death of deceased Jagesh. Particularly when the three other persons were present in the intervening night of 28-29/09/2012, there is no explanation of that by the prosecution, even prosecution did not offer to examine the son of the deceased Yogesh in support of the prosecution case even though he was present at the relevant time in the house of the deceased. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The Court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of

course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In view of the aforesaid analysis, we are fully satisfied that the prosecution has miserably failed to bring home the offence under Section 302 of the IPC against the appellant and as such the conviction recorded and sentence awarded by the learned Sessions judge for offence under Section 302 of the IPC and sentencing for the period mentioned herein above is liable to be set aside.

- 19) As a result the instant criminal appeal is allowed and the judgment of conviction recorded and sentence awarded is hereby set aside. It is directed that the appellant be released forthwith, if not required any other case.

Sd/-

(Sanjay K. Agrawal)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE

