

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 621 OF 2015

Brijlal Sao S/o Sarfi Lal Sao, aged about 25 years, R/o Village Sakda, Patelpara, Police Station Khadgawan, District Koriya (CG).

... Appellant

Versus

State of Chhattisgarh through Station House Officer, Police Station Khadgawan, District Koriya (CG).

... Respondent

For Appellant	:	Shri Akhil Agrawal, Advocate.
For Respondent/State	:	Shri Rahul Tamaskar and Smt. Madhunisha Singh, Panel Lawyers.

Hon'ble Shri Pritinker Diwaker

Hon'ble Shri P. Sam Koshy, JJ

Judgment on Board

Per, P.Diwaker, J.

25.11.2017

1. This appeal arises out of the judgment of conviction and order of sentence dated 13.03.2015 passed by the IInd Additional Sessions Judge Manendragarh, District Koriya in Sessions Trial No.57/2014 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.5000/- with default stipulation.
2. In the present case, name of the deceased is Chhotelal, Grandfather of the accused-appellant. It is undisputed that the house of the appellant-Brijlal was just opposite to the house of informant Mohan Lal, PW-8 and in between two houses, there is a common courtyard. Further case of the prosecution is that, on

account of old dispute on 25.01.2014 at about 5 PM, the accused appellant committed murder of deceased Chhotelal by causing him several Axe injuries. Dehati Merg was recorded at the instance of PW-8, Mohan Lal and immediately thereafter Merg Intimation, Ex. P/19 was also recorded on 26.01.2014 at the instance informant Mohan Lal. Thereafter, FIR (Ex.P/20) was registered at 22:30 PM against the appellant under Section 302 of IPC. Inquest over the dead body was prepared vide Ex.P/1 on 26.01.2014. The dead body was sent for postmortem, which was conducted on 27.01.2014 by PW-12, Dr.S. Kujur, vide Ex.P/17-A, who noticed abrasion over right forehead and right eye; presence of lacerated wound over the left bizygomatic arch from anterior border of left ear to carpal surface of bizygomatic arch, fracture on bizygomatic arch, huge blood flowed over the wound and cheek, contusion on left temporal bone and depressed just above the left ear. The doctor also found that few brain materials were protruded, fracture on right bizygomatic arch, and has opined the cause of death to be hemorrhage shock due to severe head injury and that the death was homicidal in nature. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the appellant.

3. So as to hold the accused/appellant guilty, the prosecution examined 13 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.
5. Counsel for the appellant submits as under:
 - (i) That, all the important prosecution witnesses have turned hostile,
 - (ii) That, there is no legally admissible evidence against the appellant connecting him with the crime in question.
6. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.
7. Heard counsel for the respective parties and perused the material on record.
8. PW-1, Heera Singh, neighbor of the accused appellant as well as deceased, has turned hostile. He is also witness of inquest. PW-2, Jamuna Prasad and PW-3, Balbir, have also turned hostile. PW-4, Nemsingh, is a witness to memorandum and seizure Ex. P/7. PW-5, Shrawan Kumar is a village Kotwar and is also witness to memorandum and seizure. PW-6, Sadan Singh, have declared hostile. PW-7, Mangal Prasad Rajwade is a Patwari, who has prepared the spot map vide Ex.P/10. PW-8, Mohan Lal, is the informant, who has turned hostile. PW-9, Dukhni Bai, has also turned hostile. PW-10, Samhar Lal Porte, is a police Constable, who has assisted in the investigation. PW-11, R.Tigga, is

Investigating Officer. PW-12 is Dr. S. Kujur, who has conducted postmortem of the dead body of the deceased and opined the cause of death to be hemorrhage shock due to severe head injury and that the death was homicidal in nature. PW-13, Ramendra Singh is Sub Inspector who has assisted in major part of the investigation.

9. A close scrutiny of evidence makes it clear that there is no legally admissible evidence showing involvement of the accused-appellant in commission of offence. All the important eyewitnesses of the case have turned hostile. Though, on the memorandum of accused-appellant vide Ex. P/6, seizure of Axe has been made vide Ex. P/7, however, it is of no consequence for the reasons that the prosecution has failed to prove that this article had any nexus with the crime in question. Neither there is report from FSL to show that it contained blood nor is there any report from serologist that the blood found on it was of human being and that too of the group of the deceased. Though the witnesses to the memorandum and seizure have supported the prosecution case, but that alone is not sufficient to draw an adverse inference against the appellant, particularly when the case rests solely upon this circumstantial evidence and in such a case, it had to be proved to the hilt leaving no room for any doubt consistent with the innocence of the appellant. However, that has not been done in this case. More so, though the dead body has been found inside the house, but present is not the case of house murder as admittedly in the house in

question apart from the appellant and the deceased, other family members were also residing.

10. Thus, considering the overall facts and circumstances of the case, the nature and quality of evidence adduced by the prosecution where most of the prosecution witnesses have turned hostile, we are of the opinion that the prosecution has failed to prove guilt of the appellant to the hilt so as to exclude the possibility of any person other than the appellant being the perpetrator of the crime beyond the shadow of all reasonable doubt. This being the position, the benefit of doubt must be credited to the appellant and he deserves to be acquitted of the charge leveled against him.
11. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charge under Section 302 of IPC by giving him benefit of doubt. The appellant is in jail. He be released forthwith, if not required in any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(P.Sam Koshy)
Judge