

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1033 of 2015**

- Gofelal S/o Pilaram Satnami, aged about 70 years, R/o village Bhusandi, Thana Khamhariya, Civil & Revenue District Durg (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : The Police Station Khamhariya, Civil & Revenue District Durg (Chhattisgarh)

---- Respondent

For Appellant	:	Ms. Sareena Khan, Advocate.
For Respondent/State	:	Shri Vaibhav Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma
Judgment on Board by Pritinker Diwaker, J

06/07/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 28.01.2010 passed by the Additional Sessions Judge, Bemetara, District Durg, in Sessions Trial No. 37/2009 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs.100, in default of payment of fine amount to further undergo R.I. for one month.

02. As per prosecution case, the accused/appellant had two sons namely Banshilal and Mohan and at the time of incident Mohan was in jail in connection with murder of his brother Banshilal. Deceased Sonbai was wife of Mohan, and as her husband (Mohan) had killed Banshi, the accused/appellant was keeping grudge against her and on the date of incident i.e. 20.07.2009 at about 10.00 am he

committed murder of the deceased by causing several injuries to her by an axe. On 20.07.2009 at about 11.30 am, mere intimation Ex.P/1 was recorded at the instance of Pardesi Das (PW/1) - Kotwar and immediately thereafter at 11.45 am FIR Ex.P/2 was registered against the accused/appellant under Section 302 IPC. Inquest on the body of deceased was conducted on 20.07.2009 vide Ex.P/23 and the dead-body was sent for postmortem examination which was conducted by Dr. R.P. Sharma (PW/3) vide report Ex. P/2 opining the cause of death of deceased to be asphyxia due to cutting of throat with neck and death was homicidal in nature. According to the prosecution, the incident was witnessed by Gautarhin Bai (PW/10), daughter of deceased aged about 16 years. After filing of charge sheet, the trial Court framed the charge under Section 302 IPC against the accused/appellant.

03. In order to prove the complicity of accused/appellant in the crime in question, the prosecution has examined 15 witnesses. Statement of accused/appellant under Section 313 Cr.P.C. was also recorded in which he abjured his guilt and pleaded innocence and false implication in the case.

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

05. Counsel for the accused/appellant submits that:

(i) sole eye-witness to the incident Gautarhin Bai (PW/10) is wholly unreliable witness as in the Court she has stated that her mother was killed not only by accused/appellant but also by Sati Bai, Dukalhin Bai & Nutan Bai. She has further deposed in para 6 of her cross-examination that the accused/appellant was carrying

club in his hand and not an axe. However, if the nature of injuries sustained by the deceased are seen, it is apparent that the injuries were caused by sharp edged weapon.

(ii) That the accused/appellant is in jail since 20.07.2009 and thereby he has completed about eight years of jail sentence.

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

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

08. Gautarhin Bai (PW/10) is daughter of the deceased and sole eye-witness to the incident. She has stated that on the fateful day, while she along with her mother was going to the house of Kotwar to inform him about the theft of their paddy, wheat & chickpeas, on the way they met accused/appellant and Sati Bai. Accused/appellant was carrying club in his hand, whereas her aunt Sati Bai was holding axe. Appellant gave a club blow to her mother which was saved by her by bending herself. Thereafter, Sati Bai caught hold of hairs of her mother and threw her down. When she (this witness) tried to intervene in the matter, Sati Bai also caught hold of her hairs. She has further stated that on being called by the accused/appellant, her aunt Dukalhin Bai & Nutan Bai armed with sickle and axe came on the spot. Sati Bai gave axe blow on the neck of deceased, whereas Dukalhin Bai & Nutan Bai gave sickle blow on the hand of deceased and accused/appellant gave axe blow to the deceased as a result of which the deceased died instantaneously. She has also stated that she narrated the entire

incident to the village Kotwar and Patel. In para 6 of her cross-examination, she has stated that there was no dispute between the family members. She has also stated that Sati Bai, Dukalhin Bai, Shivkumari and Nutan Bai were carrying sickle and axe, whereas the accused/appellant was having club in his hand and not axe. She has further stated that she disclosed all these facts to police and if the same are not recorded in her police statement, she could not tell reason. It is relevant to note that though this witness has not been confronted with her diary statement, however, in her diary statement she has made allegation only against the accused/appellant saying that it is the accused/appellant who caused axe injuries to the deceased, and she has nowhere disclosed the names of other assailants Sati Bai, Dukalhin Bai, Shivkumari and Nutan Bai in her diary statement. Thus, the very statement of this witness becomes doubtful.

09. Pardesi Das (PW/1) is the village Kotwar who after receiving the information has lodged merg intimation Ex.P/1 and FIR Ex.P/2. Ugesh Das (PW/2) turned hostile. Dr. R.P. Sharma (PW/3) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-2 noticing following injuries:-

- (i) Incised wound of 14cm x 10cm x 10cm placed across the neck cutting all structure of neck including muscle, trachea, esophagus vessels of neck and cervical vertebra.
- (ii) Incised wound of 8 cm x 4 x 2 cm over left side of chest.
- (iii) Incised wound of 4 x 2 x 3 cm over right jaw.
- (iv) Incised wound of 6 x 4 x 6 cm over back side of neck.
- (v) Incised wound of 3 x 2 x 2 cm below injury No. 4.
- (vi) Incised wound of 3 x 2 x 2 cm below injury No.5.
- (vii) Incised wound of 3 x 2 x 2 over left side of neck.

- (viii) Incised wound of 5 x 3 x 3 cm over left hand.
- (ix) Incised wound of 4 x 2 x 2 cm over surface of left hand.
- (x) Lacerated wound of 5 x 3 x 3 cm over chin.
- (xi) Lacerated wound of 5 x 2 x 1 cm over left side of head.

The cause of death has been opined to be asphyxia due to cutting of throat and neck and death was homicidal in nature.

10. Doua Ram (PW/4), Anchori Yadav (PW/5), N. P. Sonwale (PW/6), Makhan (PW/7), Sanjay Patil (PW/8) and Mohan Das (PW/14) are hearsay and formal witnesses. R. Ramkumar (PW/9) helped in the investigation. Gorelal (PW/11) turned hostile. Kumar Singh (PW/12) is witness to seizure memo Ex.P/6, P/21 and P/22. Shankar Lal (PW/13) is witness to inquest Ex.P/23 and seizure memo Ex.P/21. C.B. Pradhan (PW/15) is the Investigating Officer who has duly supported the prosecution case. Though on the memorandum (Ex.P/5) of the accused/appellant axe was seized vide Ex.P/6, however, there is no FSL report on record.

11. Close scrutiny of the evidence makes it clear that the entire prosecution case hinges upon sole testimony of eye-witness Gautarhin Bai (PW/10), however, if the entire statement of this witness is considered, the same does not appear to be trustworthy and reliable. According to diary statement, it is the accused/appellant who committed murder of the deceased by causing axe injuries to her, however, while deposing in the Court she states that her mother was killed by Sati Bai, Dukalhin Bai, Nutan Bai and the accused/appellant as well. Likewise, in para 6 of her cross-examination, she has stated that accused/appellant was armed with club and not axe, however, if the postmortem report (Ex.P/2) of the deceased is seen wherein as many as 11 injuries

were noticed on her body out of which, 9 were incised wounds, it is apparent that the autopsy surgeon has opined that the injuries present on the body of deceased have been caused by hard and sharp object. Thus, the version of this witness in respect of attack on the deceased by accused/appellant is absolutely doubtful as there is material contradiction in respect of the weapon said to have been used by the accused/appellant in the assault, which makes her testimony unnatural and unreliable. It is settled position that if the conduct of witness is so unnatural and is not in accord with acceptable human behaviour allowing of variations, then his testimony becomes questionable and is likely to be discarded. Therefore, we are of the opinion that it will not be safe for this Court to uphold the findings recorded by the trial Court convicting the appellant under Section 302 IPC on the basis of testimony of aforesaid witness.

As regards the recovery of alleged weapon of offence i.e. axe at the instance of accused/appellant, unfortunately report of FSL was not produced before the Court and even no explanation has been furnished as to why the FSL report has not been obtained and produced before the Court although it was necessary to ascertain as to whether said axe was actually used in commission of offence or not and as to whether the blood found on it was human blood and that too of the blood group of the deceased. Non-production of the FSL report in the Court by the prosecution is fatal as in the absence thereof it is difficult to reach to the conclusion that seized wooden log has been used in commission of offence. Thus, no presumption could be drawn that the accused/appellant was the guilty of murder of the deceased.

12. Thus, considering the evidence adduced on behalf of the

prosecution, we are of the view that there is no conclusive piece of evidence establishing the guilt of the accused/appellant in the commission of offence beyond reasonable doubt and the benefit, of course, has to go to the accused/appellant.

13. Accordingly, the appeal is allowed, judgment impugned is hereby set aside and the accused/appellant stands acquitted of the charge levelled against him. The appellant is reported to be in jail. He be set at liberty forthwith if not required in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge