

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 367 of 2011

- Rahul Thakur, S/o. (late) Lalla Nai, Aged 21 years, R/o. Junapara, Police Station Baikunthpur, District Koriya (CG)

---- Appellant

Versus

- State Of Chhattisgarh, Through District Magistrate, District Koriya (CG)

---- Respondent

For Appellant	: Shri Mahendra Dubey, Advocate
For Respondent/State	: Shri Ravindra Agrawal, G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgement on Board by Pritinker Diwaker, J.

15/01/2018

This appeal arises out of judgment and order dated 14.03.2011 passed by the First Additional Sessions Judge, Baikunthpur, district Koriya in S.T. No. 82/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 5,000/- with default stipulation.

2. In the present case, name of the deceased is Anjani sister-in-law (bhabhi) of the appellant. It is not in dispute that in the house in question, apart from the appellant and the deceased there were several other members who were residing together. According to the prosecution on 10.08.10 at about 6.00 p.m. on account of some old dispute accused/appellant assaulted the deceased with axe on her

back and head as a result of which she fell down. Deceased Anjali was then taken to hospital where she was declared dead. On 10.08.10 itself at 7.00 p.m. merger intimation Ex.P-2 was recorded at the instance of Ravi Prakash. Thereafter at 7.10 p.m. FIR (EX.P-3) was registered against the appellant under Section 302 IPC. Inquest on the body of deceased was prepared vide Ex.P-5 and body was sent for postmortem examination which was conducted by Dr.D.K.Chikanjuri (PW-17) vide Ex.P-22 and according to him, cause of death was due to injury to vital organ (brain and spinal cord) and the death was homicidal in nature. While framing the charge trial judge has framed charge against the appellant under Section 302 IPC.

3. In order to establish the guilt of the accused/appellants, prosecution has examined 18 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is that

i) as per prosecution case there were four eyewitnesses to the incident namely Shivprasad Thakur (PW-1), Smt. Sunita (PW-6), Priya @ Reshma (PW-7) and Raju Thakur (PW-8) however none of them have supported the prosecution case.

ii) From the appellant his shirt was seized vide Ex.P-8 and likewise

one axe was seized vide Ex.P-9 from the brother of the appellant and though FSL Ex.P-27 is positive in respect of both the seized articles but there is no serological report confirming the blood group on the seized articles.

iii) it has been further argued that witnesses to the seizure have not supported the prosecution.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is 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. Shiv Prasad Thakur (PW-1) is a lodger of merged intimation and FIR. He was also the eyewitness to the incident, however has not supported the prosecution case and has been declared hostile. Sunita (PW-6) another eyewitness to the incident has also not supported the prosecution case and has been declared hostile. Priya @ Reshma (PW-7) daughter of the deceased aged 11 years, was also eyewitness to the incident but in the court she has categorically stated that she had not seen anyone assaulting the deceased. Raju Thakur (PW-8) cousin of the accused/appellant has also not supported the prosecution case and has been declared hostile. Farid Khan (PW-4) is the patwari who prepared spot map Ex.P-6. From the spot map it is clear that the body of the deceased was found in the courtyard and number of persons including the appellant were residing nearby to the courtyard. Ashok Kumar Thakur (PW-9) is a witness to inquest, has not stated anything against the appellant and has been declared hostile. Rajesh

Thakur (PW-10) brother of the appellant is a witness from whom the axe was seized, has turned hostile. Shiv Kumar Thakur (PW-11) husband of the deceased has not stated any thing against the appellant and has turned hostile. A. R. Manikpuri (PW-16) is the Investigating Officer has duly supported the prosecution case. Dr. D.K.Chikanjuri (PW-17) is the autopsy surgeon who conducted postmortem examination on the body of the deceased and according to him, cause of death was due to injury to vital organ (brain and spinal cord) and the death was homicidal in nature.

9. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence showing the involvement of the accused/appellant in the commission of the offence. All the four eyewitnesses i.e. PW-1,6,7 and 8 have not supported the prosecution case and have been declared hostile. FIR and merg was recorded at the instance of PW-1 but he too has turned hostile. Though in the shirt and axe, blood has been found in the FSL report but the witnesses to seizure have not supported the prosecution case and most importantly there is no serological report confirming the origin of the blood and the blood group. In view of this, FSL report cannot be considered as sufficient evidence to convict the appellant.

10. On a cumulative reading and appreciation of the entire evidence on record, we are of the considered view that the learned trial Court had not fallen in error of law or appreciation of evidence in accordance with law. The case of the prosecution, thus, suffers from proven improbabilities, infirmities, contradictions and the statement of the witnesses i.e. PW-1,6,7 & 8 are not reliable and worthy of credence.

11. Thus, the evidence adduced in this case is not sufficient to come to a conclusion that the accused is guilty of the offence against him. So, benefit of doubt will certainly go to the accused.

12. Hence we deem it appropriate to set aside the judgment of the Trial Court. Accordingly the appeal is allowed. Appellant is in jail. He be set free forthwith if not required in any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge