

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 42 of 2001**

- Satau Ram S/o Kushalram, aged about 41 years, R/o Village Bharada, P.S. Gurur, District Durg, Chhattisgarh.

**---- Appellant****Versus**

- The State Of C.G. Through : P.S. Gurur, District Durg, Chhattisgarh.

**---- Respondent**

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| For Appellant | : | Shri Adil Minhaj, Advocate. |
| For State     | : | Ms K. Tripati Rao, P.L.     |

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**Hon'ble Shri Justice Gautam Chourdiya****Judgment On Board****10/07/2018**

1. This appeal arises out of the judgment of conviction and order of sentence dated 24-11-2000 passed by learned Additional Sessions Judge, Balod, District Durg, C.G. in Sessions Trial No. 150/2000 convicting the accused/appellant under Section 307 of Indian Penal code (for short 'IPC') and sentencing him to undergo R.I. for five years.
2. As per prosecution case, on 16.10.1999, first wife of the appellant/accused (PW-1) Kumari Bai lodged FIR (Ex.P-1)

against appellant/accused, alleging, *inter alia*, that on 15.10.1999 second wife of the accused/appellant Baby Bai asked him for treatment of her son and on account of the said issue, the dispute arose between appellant and Baby Bai. On the same day, at about 11:00 P.M., when appellant was having meal, again the dispute arose between Baby Bai and accused/appellant and then suddenly appellant/accused took an Axe and assaulted Baby Bai on her neck, hand and other parts of the body. The incident was witnessed by Kumari Bai (PW-1) and Domeshwari Bai (PW-4) who is the daughter of Kumari Bai (PW-1), Dharamu Ram (PW-3) Son of accused/appellant and Johadhara Bai (PW-5) mother-in-law of the victim. After the incident, Baby Bai was sent for medical examination and the examination report was prepared by (PW-9) Dr. Smt. A. Tripathi, vide Ex.-P/16 wherein the Doctor noticed the following injuries on the body of injured- Baby Bai:

- i) Incised wound in size of 3 x ½ inch x bone deep over head on right side behind the right ear;
- ii) incised wound in size of 2.5 x 1/2 inch x bone deep below the injury no.1;
- iii) Incised wound in size of ¼ x ¼ x 1/3 inch behind the neck;
- iv) incised wound in size of 1/3 x ¼ x ¼ inch below injury no.3;

- v) Left 2<sup>nd</sup> finger cut off between joint and 1/3 of 2<sup>nd</sup> phalynx;
- vi) Left fore-finger cut on 3/4th part of medio-lateral side between Anximal and 2<sup>nd</sup> phalynx;

3. In pursuance of the memorandum (Ex.P-9) of the accused/appellant, Axe was seized vide seizure memo (Ex.P-10) and the same was examined by Dr. Smt. A. Tripathi, (PW-9). She opined that the injuries found on the body of Baby Bai could be caused by Axe. Forensic and Serologist report confirmed that blood found on Axe, inner- wear (*Baniyan*) and other articles is human blood.
4. After completion of investigation, charge sheet was filed against appellant/accused. The trial Court framed the charge against appellant/accused under Section 307 IPC and after conclusion of the trial, the trial Court sentenced the accused as mentioned in para 1 of this judgment.
5. So as to hold the accused person guilty, the prosecution has examined 9 witnesses. Statement of 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. In defence no witnesses have been examined by the appellant/accused.
6. The trial Court after hearing counsel for the parties and

considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant.

7. Counsel for the appellant submits as under:-

(i) there is no eyewitness supporting the prosecution case.

(ii) none of the witness had seen the appellant/accused assaulting Baby Bai.

(iii) alleged article (Axe) seized from accused/appellant was not produced before the Court nor exhibited as an article and did not contain blood.

(iv) there is no material available on record to convict the appellant/accused. The impugned judgment suffers from material illegality and deserves to be set aside.

8. On the other hand, counsel for the respondent/State supports the judgment of conviction and sentence of trial Court and submitted that there is no explanation from accused/appellant, however, human blood was found on the axe seized from accused/appellant and Dr. Smt. A. Tripathi, (PW-9) also confirmed that injury found on neck and other parts of the body of Babay Bai could be caused by Axe.

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

10. (PW-2) Baby Bai in her examination in chief stated that she was sleeping in the room and accused/appellant assaulted her as a result she became unconscious. In her cross-examination, she admitted that at around 7:00 P.M., when she was sleeping in her room where there was no electricity suddenly someone assaulted her as a result she became unconscious and after 7 days of incident, she gained consciousness and the police came to the hospital and asked her about the incident where she admitted that she was assaulted by one person but she has no knowledge about the name of that person, therefore, she has not supported the prosecution case.

11. (PW-1) Kumari Bai, (PW-3) Dharamu Ram, (PW-4) Kumari Domeswari & (PW-5) Johdhara Bai are declared hostile and not supporting the prosecution case.

12. As per FIR (Ex. P-1), the dispute arose between Baby Bai and accused/appellant, but the same is not proved by any prosecution witness. Though the incident occurred in presence of (PW-1) Kumari Bai, (PW-4) Ku Domeswari, (PW-5) Jodhara Bai, they have not supported the prosecution case.

13. Now the case is based only on the circumstantial evidence, memorandum (Ex.P-9) and seizure memo (Ex.P-10).

Independent witnesses of (Ex.P-9 & Ex.P-10) Purushotaam and Lochan were also not examined by prosecution and only I.O. (PW-7) J.S. Saghu in his deposition in Para-3 mentioning this thing that seized Axe based on memorandum of accused/appellant (Ex. P-9) Axe was seized, as per seizure memo (Ex.P-10) and as per (Ex.P-11) one inner-wear was seized from accused/appellant. In his cross examination (PW-7) J.S. Saghu, I.O. admitted that according to (Ex.P-10) Axe was seized from *Varandha (Agan)*. *Varandha* is an open place of the house of accused/appellant and in that place (PW-1) Kumari Bai, (PW-5) Johdar Bai and other persons were living. So discovery has no meaning if likewise place *Varandah*, Axe is seized from accused/appellant's home. Independent witnesses are also not examined by prosecution. Regarding seizure memo, memorandum and that article (Axe) were not produced before the Court and not exhibited in this regard, it is to be seen that the discovery of axe at the instance of accused from open place of *Varandha* has no substance for the sake of arguments, we accept the memorandum and seizure as piece of evidence. Only the human blood found on that articles i.e. Axe and inner-wear but that cannot be produced before the Court. There is no evidence of blood group found on the axe. In the matter of **Manish Dixit and**

**others Vs. State of Rajasthan**, reported in **AIR 2001 SC 93**, the Supreme Court held that “Blood Stains noted by Forensic Science Laboratory on motor cycle seized by police pursuant to information received from accused during his interrogation-Blood stain found to be of “O” group which was also blood group of deceased-Such circumstance not decisive enough by itself to point involvement of accused in offences, in absence of other evidence” & in the matter of **Kansa Behera Vs. State of Orissa**, reported in **AIR 1987 SC 1507**, the Supreme Court held that “Recovery of Blood stained clothes from accused - Report of Serologist that clothes were stained with human blood but blood group not indicated - Dimensions of blood-stains on clothes also not given in report - Evidence of blood group is only conclusive to connect blood-stains with accused - No reliance could be placed on the circumstance.”

14. In view of law laid down by the Supreme Court in the aforesaid decision and on the basis of axe seized from accused/appellant and human blood found on the axe is not safe for appellant's conviction under Section 307 of IPC.
15. Thus, for the foregoing reasons, this Court is of the opinion that the prosecution has failed to prove its case beyond reasonable doubt and it is the accused/appellant

who is entitled to benefit of doubt.

16. In the result, the appeal is hereby allowed. Judgment impugned is set aside and the accused/appellant is acquitted of the charge levelled against him. As the appellant is already on bail, no order to set him free is necessary and the bail bonds so furnished stand discharged.

Sd/-

Gautam Chourdiya  
Judge

Akhil