

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 245 of 2014

- Panik Ram Rathia S/o. Shadhram Rathia, Aged About 56 Years, R/o.Village Pordi, P.S. Gharghoda, Civil and Revenue District Raigarh C.G., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, P.S. Gharghoda, Civil and Revenue District Raigarh C.G., Chhattisgarh

-----Respondent

For Appellant	: Shri Anurag Verma, Advocate
For Respondent/State	: Shri Wasim Miyan, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy &
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

Per Shri P. Sam Koshy, J

18/08/2018

1. Appellant in the present appeal stands convicted for the offence punishable under Section 302 of the IPC by judgment dated 05-02-2013 passed in ST No.126/2011 decided by the Second Additional Sessions Judge Raigarh, C.G.
2. The case against the present appellant is this, that on the night of 29-04-2011 at about 1.00 a.m. the appellant while he was sleeping with his wife in the courtyard he said to have got up and assaulted the wife through a marble stone on her head causing grievous injuries to which his wife the deceased Ghiyaribai succumbed. Next day morning, i.e, 30-04-2011 merg intimation was given to the

police by PW-1 – the son of the deceased as well as appellant, Mahendra Kumar Rathiya, on the same day FIR was also lodged. The appellant was mentioned as accused in the said FIR and after investigation charge sheet was filed. The present appellant was prosecuted for the offence under Section 302 of the IPC. In the course of trial the prosecution examined as many as 12 witnesses. There was no witness examined on behalf of the defence except for the statement recorded under Section 313 of the Cr.P.C. of the appellant wherein the appellant made total denial and pleaded not guilty and false implication.

3. After conclusion of the evidence the trial Court found the appellant to be guilty of having committed the offence considering the circumstantial facts which were brought on record and convicted the appellant for the offence under Section 302 of the IPC and imposed the sentence of life imprisonment with fine of Rs.3000/- with default stipulation.
4. Learned counsel for the appellant assailing the said impugned judgment submits that the present appellant has been wrongly convicted in the said case, inasmuch as there had been no evidence brought by the prosecution on record to conclusively prove that it was the present appellant who had assaulted the deceased. It was also contention of learned counsel for the appellant that there were sufficient material produced before the Court by the prosecution witnesses establishing the fact that the appellant was not present in the house on the said night and that he had gone out to a different village on the said date.

5. Further contention of learned counsel for the appellant was that apart from the appellant there were also other inmates present in the house on the said night, the possibility of them being involved in the assault could not be ruled out and the prosecution has not investigated on that angle. Further, it had been the contention of learned counsel for the appellant that almost all the prosecution witnesses examined have not supported the case of the prosecution and have turned hostile and even in their cross-examination they have further not supported the case of prosecution. Hence, for all these reasons it is prayed that the appellant may be acquitted of the charges setting aside the judgment of conviction passed by the trial Court.
6. Per contra, learned counsel for the State opposing the appellant's submission submits that there was a chain of circumstances produced by the prosecution before the trial Court and taking the complete chain of circumstances from the evidence which was adduced by the prosecution the trial Court has rightly reached to a conclusion that charges leveled against the appellant stand conclusively proved beyond reasonable doubt. According to the State counsel, it is a case where the admitted position is that the appellant was present in the house on the time of the incident and that he on the fateful night had gone along with his wife (the deceased) for sleep and at midnight hearing the cry from the deceased the other witnesses saw the appellant standing nearby the deceased and the deceased had suffered grievous injuries on her head. That with these facts, the counsel for the State submits

that this sufficiently establishes the involvement of the appellant in commission of the offence and prays for dismissal of the appeal.

7. Having heard the contentions put-forth by either sides and on perusal of the evidence of 12 witness who have been examined, primarily it is Mahendra Kumar Rathiya (PW-1) and Vrindavati Rathiya (PW-2) who were the main witnesses on behalf of the prosecution, who, according to the prosecution were eye-witness or had reached the spot immediately after the incident, both these witnesses have turned hostile and have not supported the case of prosecution, though, the prosecutor while examining the said witnesses had been able to abstract the conditions in the statement recorded under Section 161 of the Cr.P.C., but the same witnesses thereafter, further have categorically denied the statements which they had made under Section 161 of the Cr.P.C., thereby reliability and credibility of these witnesses becomes doubtful in as much as these witnesses become unreliable witnesses on account of conflicting statements that they had made. Further, what also cannot be lost cite of is the fact that both these witnesses Mahendra Kumar Rathiya (PW-1) and Vrindavati Rathiya (PW-2) are husband and wife and are son and daughter-in-law of the appellant and the deceased staying in the same house where the incident took place and both were also present in the house on the night of incident. Both these witnesses also had easy access to the place of incident and to add with, both these witnesses have also stated that present appellant, the father of Mahendra Kumar Rathiya (PW-1) and father-in-law of Vrindavati Rathiya (PW-2) was not present in the house on

the fateful day and that being so the persons who were available in the said house were these two witnesses and the possibility of them having committed the offence therefore also cannot be ruled out. Undisputedly, the witnesses examined on behalf of the prosecution were the witnesses to the circumstances prevailing and the foremost circumstance which was brought by the prosecution was the presence of the appellant at the place of incident, however, to this circumstance the two main witnesses have turned hostile and have stated that the accused/present appellant was not present in the house. There was no other evidence produced by the prosecution to either controvert the statement of Mahendra Kumar Rathiya (PW-1) and Vrindavati Rathiya (PW-2) or to prove it that the present appellant was present at the place on the night of the incident. Thus, the circumstance which was brought by the prosecution becomes itself doubtful and thereby the entire chain of circumstances breaks. Unless the chain of circumstances is complete and the chain of circumstances leads us to a logical conclusion that the incident could not have been committed by any other person but the accused, the case of the prosecution cannot be said to be proved beyond reasonable doubt.

8. In the instant case, there are sufficient lapses in the prosecution case to conclusively hold that the present appellant alone was present at the place of incident at the relevant time and that there could be no one else who could make the assault on the deceased, moreover, there were other inmates also present in the house on the said night coupled with the fact that two main witnesses

themselves have suggested that the present appellant was not in the village in the said night, but had gone out. For all these facts and circumstances, we are of the opinion that the case of prosecution does not conclusively prove that the present appellant alone has committed the offence so as to hold the present appellant guilty of having committed murder of his wife on the night of 29-04-2011. The impugned judgment dated 05-02-2013 therefore suffers with the aforesaid infirmities and is not sustainable.

9. Resultantly, the appeal filed by the appellant deserves to be and is accordingly allowed. Conviction and sentence awarded by the trial Court is hereby set aside. The accused/appellant is acquitted from the charges under Section 302 of the IPC. The appellant is reported to be in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-

(P. Sam Koshy)
Judge

Sd/-

(R.C.S. Samant)
Judge