

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 828 of 2012****Reserved on 25.01.2018****Pronounced on 16.02.2018**

[Arising out of judgment/order dated 30.07.2012 in Sessions Trial No.105/2011 of the learned Sessions Judge Surguja (Ambikapur)]

- Patar Sai, age 36 years s/o Galba Korva, Occupation agriculturist/labour, r/o village Kurdeg, Pahadpara, P.S. Bagicha, Distt. Jashpur (C.G.)

---- Appellant**Versus**

- State Of C.G. Through – District Magistrate, Sarguja (C.G.)

---- Respondent

For Appellant	:	Shri Aman Kesharwani, Advocate
For Respondent/State	:	Shri Rahul Tamaskar, P.L.

**Hon'ble Shri Pritinker Diwaker &
Hon'ble Shri Sanjay Agrawal, JJ**

C. A. V. Judgment**Per Sanjay Agrawal, J.**

1. This criminal appeal has been preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C. in short) against the judgment dated 30.07.2012 passed by the Sessions Judge, Surguja (Ambikapur), in Sessions Trial No. 105/2011 whereby the appellant has been convicted for having committed an offence punishable under Section 302 of the Indian Penal Code (for brevity, the IPC) and sentenced him to life imprisonment with fine amount of Rs.2,000/- and, in default of payment of fine amount, he has to undergo additional rigorous imprisonment for six months.

2. Briefly stated, case of the prosecution is that on 21.07.2010 at 8.00 am, the deceased Nanki Bai, daughter-in-law of the complainant Smt. Sukhmania, has come to her (complainant's) house at Bijli Chatan Pahad, Bagdoli from her village Jabla, P.S. Bagicha of District Jashpur as she was beaten by her husband Patar Sai, the appellant/accused. It is alleged that at about 12.00 noon, appellant/accused has come to his mother's house after searching his wife Nanki Bai. Upon his arrival, his mother Smt. Sukhmania asked him as to why he used to beat his wife, he then replied that his wife Naki Bai used to consume liquor after stealing and selling the rice kept in the house and even by selling the rice obtained from the Government. Further prosecution story is that the complainant's son Patar Sai, owing to the alleged act of his wife, has given a blow by wooden stick (danda) on her head, near the ear and also on her back side, as a result of which, she fell down and was weeping and blood was oozing from her left ear and then became unconscious and thereafter she has expired.
3. Based upon the aforesaid incident, Dehati Nalishi (Ex.P.1) was lodged by the complainant Smt. Sukhmania, mother of the accused/appellant, on 23.07.2010 at 10.45 am and thereafter, the F.I.R. (Ex.P.1A) was registered on the same date at 15:20 hours (03.20 pm) against Patar Sai under Section 302 of IPC. The alleged weapon, i.e., wooden stick (danda), was recovered from the spot vide seizure memo (Ex.P.10) on 23.07.2010 at the instance of the complainant. Inquest was conducted on the body of the deceased vide Ex.P.9 on 23.07.2010. After inquest, the dead body of the deceased was sent for autopsy to Community Health Center, Sitapur

where Dr. S.N.Paikra (P.W.3) conducted post-mortem examination on the body of deceased and opined by submitting its report vide Ex.P.4 that death is homicidal in nature which was caused due to haemorrhagic shock as a result of head injury.

4. After investigating the matter, the offence punishable under Section 302 of IPC has been registered against the appellant by the concerned Station House Officer, who submitted its final report before the Judicial Magistrate First Class, Sitapur, District Surguja and the matter was thereafter committed to the District and Sessions Judge, Surguja.
5. After considering the prima facie materials available on record, charge under Section 302 of IPC has been framed against the appellant on 14.07.2011. The appellant pleaded not guilty in connection with the aforesaid crime, as framed, and claimed to be tried.
6. In order to prove the guilt of the appellant, the prosecution examined as many as 7 witnesses while none was examined by the appellant in his defence.
7. After considering the evidence led by the prosecution, the trial Court, vide its impugned judgment, has convicted the appellant and sentenced him as aforesaid. Hence, this appeal.
8. Being aggrieved, the appellant has preferred this appeal. Shri Aman Kesharwani, learned counsel for the appellant submits that the judgment under appeal as passed by the trial Court is apparently contrary to law as the same has been passed without considering the evidence in its proper perspective. He submits that none of the

prosecution witnesses, much less, the eye-witnesses of the alleged crime have supported the prosecution. He submits further that the alleged seized weapon (danda) was not recovered from him, therefore, the judgment impugned as passed by the trial Court convicting the appellant in relation to the crime in question is perverse in the eye of law and deserves to be set aside.

9. On the other hand, Shri Rahul Tamaskar, learned counsel for the State supported the impugned judgment by submitting that it has been passed upon due consideration of the statement of Smt. Sukhmania (P.W.1) along with other documentary evidence, and therefore, does not require to be interfered.
10. We have heard learned counsel for the parties and perused the entire record carefully.
11. Sukhmania (P.W.1) is the mother of the appellant Patar Sai, who is stated to have lodged the F.I.R., has turned hostile. In her examination-in-chief, she has stated that her son resides in village Jabla of District Jashpur and has five children, who live with her at village Bagdoli. She has stated that her daughter-in-law used to consume liquor after committing theft of rice and selling the same, due to which, her son threatened his wife owing to her alleged conduct. She has further stated that because of threat by her son, her daughter-in-law left the house and came to her house where while entering the house dashed with the door and fell down. She has further stated that at that time she was alone at home and tried to wake her up but she did not get up and has expired. This witness has further stated that upon queries being raised by the Police, she informed that her daughter-in-law has expired due to fall as such.

This witness has thus turned hostile and has not supported the prosecution case.

12. Ku. Lalita (P.W.4), daughter of the appellant Patar Sai has stated in her statement that her mother Nanki Bai has died in her grandmother's (Nani) house at 4.00 pm and at that time she was in her hostel. She has stated further that her grandmother informed her regarding death of her mother while coming to the hostel. This witness has thus turned hostile and not supported the prosecution case. Likewise, the appellant's another daughter, namely, Anita (P.W.5) has also stated in the same line and has turned hostile without supporting the prosecution case.

13. Subeshwar Badhai (P.W.6) is the witness of seizure memo (Ex.P.10), by which, weapon of offence, i.e., wooden stick (danda), was recovered from the spot where dead body of Nanki Bai was lying. He has further stated that nothing was recovered in his presence except the alleged wooden stick. Jayasinder Das (P.W.2) is the formal witness. C.S. Netam (P.W.7) is the Investigating Officer, who has investigated the matter after receiving the information regarding the alleged incident. Dr. S.N. Paikra (P.W.3), who has conducted the post-mortem on the dead body of the deceased, has opined vide its report (Ex.P.4) that the alleged death is homicidal in nature and has caused due to haemorrhagic shock, as a result of alleged injury.

14. Upon close scrutiny of the entire evidence adduced by the prosecution, it is evident that none of the prosecution witnesses, much less, the eye-witnesses have supported the prosecution case. All the eye-witnesses to the incident are the close relatives of the appellant Patar Sai and have turned hostile. Even the alleged used

weapon, wooden stick (danda), was not recovered from him, as evidenced from seizure memo (Ex.P.10), which shows that it was recovered from the spot and that too at the behest of the complainant Smt. Sukhmania. In absence of any cogent and reliable evidence, as observed herein above, it is difficult to hold the appellant guilty in connection with the crime in question and that he is the author of the crime.

15. Unfortunately, it is a case where the criminal will remain unpunished because all the eye-witnesses, who are close relatives of the appellant, have turned hostile. In the facts and circumstances of the case, we are helpless and have been left with no other option but to acquit the appellant of the aforesaid charge.
16. Consequently, the appeal is allowed and the impugned judgment convicting the appellant under Section 302 of IPC and awarding jail sentence as such deserves to be and is hereby set aside. The appellant is acquitted of the aforesaid charge. He shall be set at liberty forthwith, if not required in any other case.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE