

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 775 of 2012**

- Chaitu Ram Kenwat S/o Itwari Ram Kenwat, aged about 36 years, R/o village Risama, Police Station Anda, District Durg (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Station House Officer, Police Station - Anda, District Durg (C.G.)

---- Respondent

For Appellant : Shri Avinash Chand Sahu, Advocate.
For Respondent/State: Shri Anil Pilley, Dy. A.G..

D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava & Hon'ble Smt Justice Rajani Dubey

Judgment On Board**31.10.2018****Per Manindra Mohan Shrivastava, J**

01. This appeal is directed against the impugned judgment of conviction and order of sentence dated 29.08.2012 passed by learned Sessions Judge, Durg, District Durg (C.G.), in S.T. No.189/2011 whereby and whereunder, the appellant has been held guilty for commission of offence under Section 302 IPC and sentenced to undergo rigorous life imprisonment along with fine of Rs.500/- and in default of payment of fine,

additional S.I. for two months.

02. The prosecution case is that Tijan Bai, wife of appellant, since almost two months prior to the date of incident, had left the appellant because of her affair with one Jai Prakash Thakur (PW/1). On 25.07.2011, while deceased Tijan Bai had gone to village nistari tank for bath, it is alleged that the appellant came there and assaulted her with the help of an axe and murdered. On the same date at 11.05 AM, FIR in Ex.P/2 was registered on the information given by Jai Prakash Thakur (PW/1), wherein it was alleged that the appellant, because of enmity with his wife, assaulted her while she was taking bath in the village pond. In the postmortem report (Ex.P/20), upon autopsy conducted by Dr. Arvind Kumar Mishra (PW/8), number of injuries on vital part were found and according to him, the cause of death was shock as a result of antemortem injuries on vital part. Upon conclusion of usual investigation, the police filed charge sheet before the concerned jurisdictional Magistrate, who in turn, committed the case for trial to the Sessions Court. On the basis of material contained in the charge sheet, learned trial Court framed charge of murder against the appellant alleging that the appellant committed murder of his own wife Tijan Bai. On such allegation, the appellant was charge-sheeted for commission of offence under Section 302 of IPC. Appellant abjured guilt and was, therefore, put to trial. In order to prove its case, the

prosecution examined as many as 12 witnesses. The appellant was also examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him in the evidence led by the prosecution. Appellant denied having committed the offence and pleaded innocence. Though, the prosecution cited number of witnesses, no witness claimed to have seen the incident and the entire case of the prosecution rested on motive and presence of human blood found on the clothes worn by the appellant and recovery of axe alleged to be used in commission of offence. The learned trial Court, relying upon the prosecution evidence of motive and presence of blood on the clothes, held him guilty of commission of offence and convicted as mentioned above in para 1 of this judgment.

03. Learned counsel for the appellant would submit that totality of circumstantial evidence of motive and presence of human blood on the clothes of the appellant by itself, without anything more, is not sufficient to bring home the guilt and this at the most, could constitute a strong suspicion but then could not be made basis to convict the appellant. He would further submit that even though, the evidence has come that the deceased had left the appellant and started living together with another person, there is no evidence that the appellant, at any point of time, had sharply reacted or had anything to show that he had a strong motive to murder his

wife. The next submission is that in so far as the independent witnesses of seizure of clothes and weapon are concerned, they have not been relied upon by the learned trial Court, therefore, only on the basis of forensic report of certain amount of human blood found on the clothes allegedly recovered from the appellant, without completing the chain that it was of the group and origin of the deceased, could not be said to be sufficient to prove the appellant's guilt beyond doubt and, therefore, it is a fit case where the appellant should be given benefit of doubt.

04. On the other hand, learned counsel for the State supporting the impugned judgment of conviction and order of sentence submits that there is overwhelming evidence led by the prosecution which has remained uncontroverted that the wife of the appellant had left him and started living an adulterous life with Jai Prakash Thakur (PW/1) and that two weeks before the date of incident, the appellant had gone to bring his wife back but she refused to come along with the appellant. He would submit that this provides strong motive for the appellant to commit murder of his wife because she was living an adulterous life. He would further submit that even though, the forensic evidence of human blood found on the cloths worn by the appellant has not been proved to be that of the group and origin of the blood of the deceased, the very presence of human blood is an incriminating evidence

and the appellant having failed to explain as to how his shirt was found stained with blood, provides an additional link to complete the chain of circumstances to bring home the guilt of the appellant.

05. The only two circumstances relied upon by the trial Court to hold the appellant guilty of commission of offence are motive and presence of human blood on the clothes of the appellant. So far as axe is concerned, no forensic report could be given because the blood on the same was found to be disintegrated.

06. The evidence as has come on the record shows that the appellant's wife left him two months before the date of incident. This has been stated by number of witnesses. Jai Prakash Thakur (PW/1) has also stated that two weeks before the date of incident, the appellant had gone to his wife requesting her to come back but she refused to come along with the appellant. However, there is no evidence on record to show that either at the time when the appellant's wife left him or when the appellant had gone to request his wife to come back and upon her refusal, the appellant reacted sharply or did any overt act. We do not find that there is any evidence on record to show that during the period the appellant's wife started residing separately, there was any incident of quarrel, dispute or any kind of physical violence by the appellant over the deceased.

07. The presence of human blood on the clothes allegedly worn by the appellant without there being any clinching evidence of origin and group of blood of the deceased, is a weak kind of evidence. The two circumstantial evidence taken together are not so strong enough so as to conclude beyond reasonable doubt that it is the appellant and the appellant alone who must murdered the deceased. It could be a case of strong suspicion, but then in order to convict a person, the suspicion, howsoever strong, must ultimately be translated into truth by proof by a reasonable degree so as to reach to the conclusion that the prosecution has proved its case beyond reasonable doubt. This perhaps could be achieved by bringing a proof of the group and origin of the blood found in the clothes of the appellant, which has not been done in the present case, and the chain of circumstantial evidence appears to be broken.

08. Learned counsel for the appellant has also relied on a judgment passed by the Division Bench of this Court in the case of **Bhupesh Dewangan V. State of C.G. (CRA No.1549 of 2000)**, decided on 06.07.2015 where recovery of blood stained clothes has been treated as a weak kind of evidence incapable of drawing conclusion of guilt beyond reasonable doubt.

09. The findings recorded by the Court below thus do not appear to be based on proper appreciation of the evidence

adduced by the prosecution which cannot have affirmation from this Court. Since, the prosecution has failed on all fronts to prove its case beyond the shadow of reasonable doubt, the benefit, of course, has to go to the appellant. The appeal is thus allowed, judgment impugned is hereby set aside and the appellant stands acquitted of the charge levelled against him. The appellant is in jail, he be set at liberty forthwith if not required in any other case.

10. Appeal is thus allowed.

Sd/-

**(Manindra Mohan Shrivastava)
Judge**

Sd/-

**(Rajani Dubey)
Judge**

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