

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1467 of 2017**

- Teej Ram son of Mular Sai Dhanuhar, aged about 35 years, R/o Village Algi Dongari Sakho, P.S. Kathgora, District-Korba (CG)

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station – Kathgora, Distt. Korba (CG)

---- Respondent

For Appellant	:	Shri Utkal Pradhan, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Sanjay Agrawal****Judgment On Board By Justice Pritinker Diwaker****09.03.2018**

This appeal arises out of the judgment of conviction and order of sentence dated 2.2.2017 passed by the Additional Judge to the Court of Additional Sessions Judge, Katghora, Distt. Korba (CG) in ST No.02/2006 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and pay a fine of Rs.5000/- with default stipulation.

02. In the present case, name of the deceased is Kendobai who died in the night intervening 1/2-9-2005. As per prosecution case, the accused/appellant Teejram was having intention to grab the agricultural land of the deceased who was residing in the village along with her

mother-in-law and two married daughters. It is said that after threat being extended by the appellant to two daughters of the deceased namely Sunita and Meenabai, they left her house and went back to their in-laws' house. In the village the deceased was residing along with her mother-in-law Sadhobai. It is said that on 1.9.2005 the deceased and her mother-in-law went to the house of one Khairwar, however, in the night deceased alone returned to her house whereas Sadhobai stayed in the night at the house of Khairwar. On the next morning when Sadhobai returned to her house, she found dead body of the deceased lying in her room. She immediately returned to Khairwar and narrated the entire incident to him. At the instance of Khairwar, merg intimation Ex.P/15 was recorded on 3.9.2005 at 7.05 am. Inquest on the dead body was conducted on 3.9.2005 vide Ex.P/17 and thereafter, the dead body was sent for postmortem which was conducted on the same day vide Ex.P/12 by PW-8 Dr. KB Sonkar. The autopsy surgeon noticed congestion of lungs, chest, windpipe, foodpipe, heart, kidney, liver, spleen; nails cynosed; abrasions on upper part of right side of neck and over left side of chest. All the injuries were antemortem in nature. In his opinion, the cause of death was asphyxia because of rupture of trachea and hyoid bone and that the nature of death was homicidal. During merg enquiry after receipt of postmortem report, FIR (Ex.P/19) was registered against the appellant and absconded accused Jhoolsai under Section 302/34 of IPC on 8.9.2005. On 9.9.2005 memorandum of the accused/appellant was recorded vide Ex.P/9, wherein he is said to have confessed that on 1.9.2005 he and absconded accused consumed liquor in the house of

Bagar (not examined) and at about 8 pm they entered the house of the deceased, found her sleeping and then he and absconded accused pressed her neck with the wooden handle of axe. At his instance, the axe was seized vide Ex.P/10. However, there is no FSL report on record. While framing charge, the trial Judge framed charge under Section 302/34 of IPC against the appellant and absconded accused Jhoolsai.

03. So as to hold the accused/appellant guilty, the prosecution examined 09 witnesses in all. Statement of the 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above. It has been informed that co-accused Jhoolsai is still absconding.

05. Counsel for the appellant submits that present is a case of no evidence, yet the appellant has been convicted just because, according to the trial Court, there was a motive with the appellant to commit such an offence. He submits that none of the prosecution witnesses has supported the prosecution case or deposed against the appellant.

06. On the other hand, supporting the impugned judgment it has been argued by State Counsel that conviction of the accused/appellant

is strictly in accordance with law and there is no scope for any interference in the findings of guilt recorded by the Court below.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Sunita, daughter of the deceased, has stated that even after marriage, she and her sister Meena were residing with the deceased and that the appellant after consuming liquor used to quarrel with them and give them threats for leaving the said house and village. In cross-examination she, however, admits that she had not seen the appellant beating the deceased and is disclosing in the Court as per information received from one Rajinder. She further states that she is not aware as to what had transpired between her mother and grand-mother.

09. PW-3 Lachhmaniya Bai, wife of Khairwar, in whose house the deceased and her mother-in-law had gone prior to the incident, too has not stated anything against the appellant and has been declared hostile. She admits that she had not seen any quarrel between the appellant and the deceased. PW-4 Balsai, PW-5 Dhansingh, PW-6 Jogender Uraon and PW-7 Semlal have turned hostile. PW-8 Dr. KB Sonkar conducted postmortem on the body of the deceased on 3.9.2005 vide Ex.P/12 and noticed congestion of lungs, chest, windpipe, foodpipe, heart, kidney, liver, spleen; nails cynosed; abrasions on upper part of right side of neck and over left side of chest. All the injuries were antemortem in nature. In his opinion, the cause of death was asphyxia because of rupture of trachea and hyoid bone and that the nature of death was homicidal. PW-9 RL Maravi, investigating

officer, has supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence on record connecting the appellant with the crime in question. All the important witnesses of the prosecution have either not supported the prosecution case and turned hostile or stated nothing specific against the appellant. Even the witness to memorandum and seizure PW-7 Samelal has not supported the prosecution case. Though it has come in the evidence of the prosecution witnesses that the appellant used to extend threat to the deceased and her daughters for leaving the village as he wanted to grab their agricultural land, but merely on the basis of availability of motive with the appellant, it would not be safe to uphold his conviction. All the circumstances i.e. motive, recovery of axe and the medical evidence, even if taken together, do not form a complete chain of circumstantial evidence which could unerringly point towards the guilt of the appellant. The recovery of axe is of no consequence because, as observed above, the witness to this recovery has not supported the prosecution case and further, there is no FSL report to show its nexus with the crime in question. The trial Court seems to have heavily relied upon the evidence of motive for holding the appellant guilty, however, in absence of any other evidence establishing involvement of the appellant in the crime in question beyond reasonable doubt, mere motive would not be sufficient to record his conviction.

11. For the reasons stated above, we are of the opinion that the trial Court was not justified in recording conviction of the appellant on the

basis of evidence adduced by the prosecution. The prosecution has failed to prove its case beyond all reasonable doubt and therefore, the appellant is entitled to be acquitted of the charge by giving him benefit of doubt.

12. In the result, the appeal is allowed. Conviction of the appellant under Section 302 of IPC and sentence imposed thereunder are hereby set aside. He is reported to be in jail, therefore, he be set free forthwith if not required to be detained in connection with any other offence.

Registry is directed to send a copy of this judgment forthwith to Central Jail, Bilaspur. After release of the appellant from jail, it would be duty of the jail authorities to intimate the Registry of this Court.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(Sanjay Agrawal)
Judge