

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 499 of 2012**

- Jagdish Bariha son of Ratiram, aged about 36 years, R/o Limgaon, P.S. Saraipali, District Mahasamund (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through – The Police Station, Saraipali, District Mahasamund (C.G.)

---- Respondent

For Appellant : Shri Hemant Gupta, Advocate.
For Respondent/State : Shri Anil Pillai, Dy. A.G.

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

Judgment On Board**11/12/2018****Per Manindra Mohan Shrivastava, J**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 03.01.2012 passed by learned II Additional Session Judge, Mahasamund (C.G.), in S.T.No. 40/2010 by which the appellant has been held guilty for commission of offence and sentenced as described below:-

Conviction	Sentence
Under Section 302 of Indian Penal Code	Life imprisonment and fine of Rs.1,000/-, in default of payment of fine amount to further undergo R.I. for two months.
Under Section 201 of Indian Penal Code	R.I. for two years and fine of Rs.500/-, in default of payment of fine amount, to further undergo R.I. for one month.

02. Prosecution story, as unfolded from the impugned judgment and the record of the case, is that one Manmohan Tiwari went missing and later on, his dead body was found in an open place. Dehati FIR in Ex.P/1 was registered, followed by numbered FIR in Ex.P/19 in police station by Chitranjan Choudhari (PW/1), brother of the deceased. In the Dehati FIR (Ex.P/1) and numbered FIR (Ex.P/19), it was stated that the brother of informant went missing and, later on, his dead body was found in the field and number of injuries on the head and neck were noticed. Suspicion was raised that the appellant must have committed the offence because of a money dispute. Inquest over the dead body was prepared vide Ex.P/3 in the presence of the witnesses. Dead body was sent for postmortem examination, Dr. Amrutlal Rodlehar (PW/11) conducted postmortem, prepared a report in Ex.P/9 and found that the deceased had sustained as many as six injuries, out of which there were three incised wounds on the head and two other incised wounds on his neck. Right temporal, parietal, occipital bone and cervical bone were also found fractured. According to the opinion of Doctor, the cause of death was shock as a result of excessive bleeding on account of multiple injuries caused on vital parts of the body, which according to him, was homicidal in nature. The police, then held further investigation which resulted in filing of charge sheet against the appellant. Charges were framed against the appellant by the trial Court alleging commission of offence under Sections 302 or 302/34 and 201 IPC that it was the appellant who murdered Manmohan Choudhari. Appellant abjured guilt and was, therefore, put to trial. In order to prove its case, the prosecution examined as many as 11

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 stated that he has not committed the murder and has been falsely implicated in the crime.

03. The learned trial Court, however, relying mainly on the circumstantial evidence of motive, exhortation and recovery of an axe allegedly used in the commission of offence, held the appellant guilty for commission of offence under Sections 302 and 201 IPC and sentenced as described above.

04. Learned counsel for the appellant argued that the prosecution has failed to prove its case beyond reasonable doubt that it is the appellant who in all probability, must have killed the deceased because none of the circumstantial evidence are of such nature as to warrant that the appellant is involved. He would further argue that the evidence of motive is not established because the prosecution witnesses have not stated coherently in this regard. As far as the evidence of exhortation is concerned, it is said to be an incident of few days before, which was neither reported in police station nor disclosed to anybody else by Hruday Ram (PW/9). It is also submitted that as far as axe is concerned, recovery of it does not carry any incriminating value because no human blood was found and mere presence of blood is not sufficient to prove that it is that axe which was used in assaulting the deceased. Therefore, the entire case of the prosecution is highly doubtful and it would not be safe to convict the appellant on such shaky evidence.

05. On the other hand, learned counsel for the State argued that there is unimpeachable evidence of exhortation stated by Hruday Ram (PW/9) that only couple of days before the date of incident the appellant had threatened the deceased that he would kill him. He would also submit that evidence has also come that the deceased was having illicit relation with the wife of appellant and also that about 15 days before the incident of the present case, appellant's wife committed suicide. The axe recovered from the appellant is found to be stained with blood, therefore, it was for the appellant to explain the circumstance as to how blood was found thereon and failure to explain provides an additional link pointing towards his guilt.

06. We have heard the rival submissions made by learned counsel for the parties and perused the records of the Court below.

07. As far as the motive part is concerned, we find that in the FIR (Ex.P/1), Chitranjan Choudhari (PW/1), brother of the deceased, has stated that he suspected the appellant because there existed some money dispute. However, in his evidence before the Court, he comes out with a different story of there being a background of illicit relation between the wife of appellant and deceased Manmohan. He tried to explain by stating that after having lodged the FIR, he came to know from Vishnu (PW/11) and Puran Das (PW/4) regarding there being a quarrel amongst female members on this very allegation.

08. Puran Das (PW/4) has stated in his evidence that Dhanmoti (appellant's wife) was scolded by her mother-in-law on the allegation that she was having illicit relation with deceased Manmohan due to

which, Dhanmoti committed suicide by consuming poison. He has also stated that deceased Manmohan used to visit the house of appellant frequently, however, on both the aspect, there is omission elicited from his diary statement. In cross-examination, this witness has been confronted with his diary statement (Ex.D-4), wherein the aforesaid two facts are omitted and do not find place. The other witness Vishnu (PW/11) has turned hostile and not supported the prosecution story.

09. Khemram (PW/2) has stated that appellant Jagdish disclosed that deceased Manmohan had illicit relation with his wife, therefore, his wife committed suicide and that Jagdish declared in front of Puran Das (PW/4) and Vishnu (PW/11) that he would kill Manmohan. But then, as we have seen, Puran Das and Vishnu's evidence in this regard are not reliable.

10. The other evidence that the appellant had threatened Manmohan that he would kill him, has been stated by Hruday Ram (PW/9). According to him, three days before the date of incident, the appellant had threatened Manmohan that he will kill him. He, in his cross-examination, states that he did not disclose this fact to anybody nor lodged any report. Even if we accept that few days before the incident there was a threat given by the appellant, there has to be some other clinching incriminating evidence to involve the appellant in the alleged commission of offence. The only other evidence brought by the prosecution is so called recovery of an axe. The FSL report only talks of blood and does not even say that the axe was stained with human blood, much less that of the group and origin of the deceased.

11. The aforesaid piece of shaky evidence, in our considered opinion, could not form basis to convict the appellant for the alleged commission of offence when entire case of the prosecution is based only on circumstantial evidence. On the aforesaid evidence, it would not be safe to convict the appellant.

12. We, accordingly, are inclined to give the appellant benefit of doubt and acquit him of the charges levelled against him. Resultantly, the impugned judgment of conviction and sentence cannot be sustained and the same is set aside. The appellant is reported to be in jail, he be set at liberty forthwith, if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge