

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 260 of 2013

- Kumar Sahu S/o Sadhuram Sahu Aged About 32 Years R/o Saklor ,
Thana - Suhela , Distt. Raipur Now Baloda Bazar Bhatapara C.G. ,
Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh S/o Through - P.S. Baloda Bazar , Distt.
Raipur Now Baloda Bazar - Bhatapara C.G. , Chhattisgarh

---- Respondent

For Appellant	: Shri Samir Singh, Advocate
For Respondent /State	: Shri Avinash Mishra, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgement on Board by Pritinker Diwaker J.

22/03/2018

This appeal arises out of judgment and order dated 13.02.2013 passed by the Second Additional Sessions Judge, Baloda Bazar in S.T. No. 160/2011 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 5,000/- plus default stipulation.

2. In the present case, name of the deceased is Saraswati Bai wife of the accused/appellant. It is alleged that the appellant used to suspect his wife's chastity and had strained relations. Deceased Saraswati Bai was living in village Bitkuli and was working in the farm house of one Shraddanand Agrawal. She used to work in the farm house from morning 9.00 a.m. to evening 5.00 p.m. and the caretaker of the farm house was one Shiv Prasad. Further case of the prosecution is that at times the

appellant used to visit the deceased and on the date of incident also he dropped the deceased at the farm house on his bicycle. In the evening when the caretaker of the farm house returned, he found the dead body of the deceased, Merg intimation Ex.P-1 was lodged on 22.03.2011 at 7.30 p.m. by Vishnu Prasad Sahu (PW-1) brother of the deceased. After receiving information from Shraddhanand Agrawal (PW-2), immediately FIR Ex. P-2 was registered under Section 302 IPC against unknown person. Inquest on the dead body of the deceased Ex.P-90 was prepared and body was sent for postmortem examination which was conducted by Dr. Pramod Tiwari (PW-13) vide Ex.P-12 and according to him cause of death was shock due to multiple crush and blunt injuries over face and upper part of chest leading to pleura and pericardia hemorrhage and death was homicidal in nature. On the basis of memorandum of accused/appellant Ex.P-10 dated 23.03.2011 one club was seized vide Ex.P-6 where as vide Ex.P-7 his shirt and pant were seized and as per FSL report Ex. C-1 blood has been found on the seized articles. However there is no serological report confirming the origin of blood or the blood group. The witnesses to the memorandum Shyam lal Kurre (PW-12) and Ganeshu (PW-14) have not supported the prosecution case. After filing of charge sheet, the trial judge has framed charge against the appellant under Sections 302 IPC.

3. So as to hold the accused/appellant guilty, prosecution has examined 15 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in

paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is that the appellant has been convicted solely on the basis of his memorandum and seizure however the witnesses to the memorandum i.e. Shyam Lal Kurre (PW-12) & Ganshu (PW-14) have not supported the prosecution case. He further submits that though in the FSL report Ex.C-1 blood has been found on the seized articles i.e. club, shirt and pant however in absence of serological report said seizure is of no consequence. It has been further argued that the seizure witness namely Narendra Singh Thakur (PW-8) has also not supported the prosecution case. Lastly, it has been argued that the appellant is in jail since 24.03.2011 and therefore he be released forthwith.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Vishnu Prasad (PW-1) is brother of the deceased who after receiving information from Shiv Prasad (PW-2) had lodged merger intimation and FIR. He has not supported the prosecution case and has been declared hostile. Shiv Prasad (PW-2) is a caretaker of the farm house, has stated that deceased used to come to the farm house at 8.00 a.m. and after her arrival he used to leave. This witness has not supported the prosecution case and has been declared hostile. Sagabati (PW-3), Parasram (PW-4) and Rajmati (PW-5) have not stated anything against the appellant and have been declared hostile. Derha (PW-6) father of the deceased has stated that the relation between appellant and the deceased were cordial. Anusuiya (PW-7) has not stated anything specific and has

been declared hostile. Narendra Singh Thakur (PW-8) is the witness before whom the articles were seized from the spot. He is also a witness to Ex. P-6 and P-7 by which club, pant and shirt was seized has been declared hostile. Vijay Kumar Dehariya (PW-9) is the patwari who prepared spot map. Tekram (PW-11) is a formal witness. Shyam Lal Kurre (PW-12) and Ganeshu (PW-14) are the witnesses to memorandum Ex.P-10 have not supported the prosecution case. Dr. Pramod Tiwari (PW-13) is the autopsy surgeon who conducted postmortem examination on the body of deceased Saraswati Bai and according to him cause of death was shock due to multiple crush and blunt injuries over face and upper part of chest leading to pleura and pericardia hemorrhage and death was homicidal in nature. B.R. Mandavi (PW-15) is the Investigating Officer who has done the investigation.

In the FSL report Ex.C-1 blood has been found on the club, shirt and pant.

9. Close scrutiny of the evidence makes it clear that but for the memorandum of accused/appellant Ex.P-10 and seizure Ex.P-6 and 7 of club, shirt and pant, there is no evidence against the appellant. Even the memorandum witnesses Shyam Lal Kurre (PW-12) and Ganeshu (PW-14) and likewise seizure witness Narendra Singh Thakur (PW-8) have not supported the prosecution case. Though in the club, shirt and pant, blood has been found but there is no serological report confirming the origin of the blood and the blood group. In view of this, FSL report cannot be considered as sufficient evidence to convict the appellant.

10. On a cumulative reading and appreciation of the entire evidence on record, we are of the considered view that the prosecution has not been successful in proving the involvement of the accused/appellant in the crime in question. The case of the prosecution, thus, suffers from proven improbabilities, infirmities, contradictions

and the statement of the witnesses i.e. PW-12 & 14 are not reliable and worthy of acceptance.

11. Thus, the evidence adduced in this case is not sufficient to come to a conclusion that the accused is guilty of the offence against him. Hence we deem it appropriate to set aside the judgment of the Trial Court. Appellant is acquitted to the charge levelled against him. Accordingly the appeal is allowed. Appellant is in jail. He be set free forthwith if not required in any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge