

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.671 of 2012**

Lalu Ram Sahu S/o Brijlal Sahu Aged About 53 Years R/o Village Parsuli, P.S. Gurur, Distt. Balod C.G. , Chhattisgarh

---- Appellant

Versus

State Of C.G. S/o Through - Sho., P.S. Gurur , Distt. Balod C.G., Chhattisgarh

---- Respondent

For Appellant:	Shri Badshah Prasad Singh, Advocate.
For Respondent/State:	Shri Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal
Judgment on Board

Per Pritinker Diwaker, Judge

20/03/2018

1. This Appeal arises out of the impugned judgment and order dated 18.05.2012 passed by the Additional Sessions Judge, Balod, District Durg (CG) in Sessions Trial No.8/2012 convicting the accused/Appellant for the offence punishable under Section 449/302 IPC and sentencing him to life imprisonment and fine of Rs.100/- on each count with usual default stipulations.

2. In the present case, name of the deceased is Smt Surekha Bai, the daughter-in-law of the accused/Appellant. On 09.12.2011, at about 5.00 p.m, there was an altercation between the Appellant and the deceased and thereafter, the accused/Appellant chased the deceased carrying axe in his hand. It is alleged that the deceased entered the house of her neighbour Chumman Das (PW-2) and it is said that the accused/Appellant also entered the said house and killed the deceased by causing several injuries resulting in

her instantaneous death. On 09.12.2011, at 7.00 p.m, *dehati nalishi* (Ex.P-2) was recorded at the instance of Shobhit (PW-1), husband of the deceased and son of the Appellant. Immediately thereafter, at 7.20 p.m, merg intimation (Ex.P-1) and First Information Report (Ex.P-19) was also registered by Shobhit (PW-1) against the Appellant under Section 302 IPC. Inquest on the dead body of the deceased was prepared on 10.12.2011 vide Ex.P-4 and the body was sent for postmortem, which was conducted on 10.12.2011 vide Ex.P-22 by Dr. Tushar Kant (PW-8) and according to him, cause of death was asphyxia due to hemorrhagic shock on account of deep chopped wound cutting the artery, veins, trachea, esophagus and cervical bone and he further opined that the death was homicidal in nature. On 10.12.2011 itself, memorandum of the accused/Appellant (Ex.P-7) was recorded on the basis of which, seizure of axe was effected (Ex.P-8). However, there was no FSL and serological report on record. After filing the charge sheet, the trial Judge has framed the charge against the Appellant under Section 449/302 IPC.

3. In order to establish the guilt of the accused/Appellant, prosecution has examined 9 witnesses. Statement of the accused/Appellant was recorded under Section 313 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 the judgment impugned, has convicted and sentenced the accused/Appellant as mentioned in paragraph-1 of the judgment. Hence, the present Appeal.

5. Learned Counsel for the Appellant submits that present is a case of no evidence, but yet the Appellant has been convicted. He further submits that the Appellant has been convicted solely on the basis of his memorandum (Ex.P-7) and the seizure of axe (Ex.P-8). It has been argued that in absence of FSL and serological report, the seizure of weapon is of no consequence.

6. On the other hand, supporting the impugned judgment, it has been

argued by learned State Counsel that the conviction of the Appellant is in accordance with law and there is no infirmity in the same.

7. We have heard learned Counsel for the parties and perused the material available on record.

8. Shobhit (PW-1) is the husband of the deceased and is the son of the Appellant. He is the informant as also the witness of inquest, has not fully supported the case of the prosecution. Chumman Das (PW-2) is a person in whose house, the Appellant is said to have killed the deceased. He is also a witness of memorandum (Ex.P-7) and seizure (Ex.P-8), has not supported the case of the prosecution. Dev Singh (PW-3), who is also a witness of memorandum (Ex.P-7) and seizure (Ex.P-8), has supported the case of the prosecution. Fuleshwari Bai (PW-4) has not supported the case of the prosecution and has turned hostile. Umashankar Sahu (PW-5) is the Patwari who prepared the sport map (Ex.P-15). Kuleshwar Yadav (PW-6) and Yugal Kishore (PW-7) have assisted in the investigation. Dr. Tushant Kant (PW-8) is the Autopsy Surgeon, who performed postmortem on the body of the deceased and found the following injuries on the body of the deceased :

1. chopped wound at the root of upper neck cutting the muscles, arteries, veins and partially trachea, esophagus and cervical bone,
2. incised wound on the right side of back in the middle of scapular region measuring 3"x"x1/2 inches,
3. Incised wound over lateral side of middle of upper arm on right side,
4. chopped wound measuring 2"x1/2"s1/2" cms cutting the pinna of right ear,
5. fracture of temporal and zygomatic process of skull.

According to him, cause of death was asphyxia due to hemorrhagic shock on

account of deep chopped wound cutting the artery, veins, trachea, esophagus and cervical bone and he further opined that the death was homicidal in nature. Lallan Singh (PW-9) is the Investigating Officer.

9. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence available on record against the Appellant showing his involvement in the commission of offence. Even if the entire evidence adduced by the prosecution is taken as it is, it does not make out any case against the Appellant showing his complicity in the commission of the offence. Though on the memorandum (Ex.P-7) of the accused/Appellant, seizure of axe (Ex.P-8) was effected, but in absence of FSL and Serological report, the said seizure does not support the prosecution in any manner. The most important witness of the prosecution was Fuleshwari Bai (PW-4), but unfortunately, she has not supported the case of the prosecution and has been declared hostile.

10. Taking the entire evidence as it is, we are of the considered view that the trial Court was not justified in convicting the Appellant on the basis of weak evidence available on record.

11. Accordingly, the appeal is allowed. Judgment impugned convicting and sentencing the accused/appellant as above is set aside. Appellant is acquitted of the charge leveled against him. He is reported to be in jail. He be set free forthwith if not required in any other case.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE