

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 177 of 2015

- Nawal Singh Netam S/o Shri Johan Singh, aged about 28 years, R/o Village-Bhaisamuda Police Station - Nagri, District - Dhamtari, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh S/o Through Police Station House Nagri, District Dhamtari (Chhattisgarh)

---- Respondent

For Appellant	:	Shri Gajendra Sahu, Advocate
For Respondent	:	Shri Rahul Tamaskar, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgement

Per P. Diwaker, J

13/08/2018

1. By this criminal appeal, the accused/appellant has challenged the legality and propriety of the judgment of conviction and order of sentence dated 7.1.2015 passed by the Sessions Judge, Dhamtari in S.T. No.29/14 by which he has been convicted for the offence punishable under Section 302 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.50/-, in default to undergo additional RI for 1 month.
2. In the present case name of deceased is Smt. Devki Bai, mother of accused/appellant.
3. The prosecution story, in brief, is that on 26.7.2014 at about 2 in the afternoon, when the deceased expressed her unhappiness over the food

cooked by Ramika, wife of accused/appellant, he got annoyed, picked up the axe lying there and committed murder of his mother. Ramika Bai informed the incident to her uncle-in-law Sohan (PW-2), who, in turn, informed Johan (PW-1), husband of deceased. At the instance of Johan (PW-1), FIR (Ex.P-2) was registered against the accused/appellant under Section 302 of IPC. Immediately thereafter Merg Intimation (Ex.P-1) was registered. Inquest (Ex.P-4) was prepared over the body of deceased and thereafter the same was sent for post-mortem examination which was conducted by Dr. Awdhesh Kumar Gaur (PW-6) vide Ex.P-13 and he noticed following injuries;-

- Incised wound at back side of neck of 6x1x3cm in size
- Incised wound at the back side of left scapular region of 9x1x6cm in size.
- Incised wound parallel to Injury No.2 i.e. just below back side of left scapular region of 9x1x6 cm in size.
- Incised wound at the left side of back of 8x3x10cm in size.

The cause of death assigned by the doctor was excessive bleeding; mode of death was shock; nature of death was homicidal and the duration of death was within 12 to 18 hours. On the basis of disclosure statement (Ex.P-11) of accused/appellant, an axe & clothes of accused were seized vide seizure memos Ex.P-9 & P-10 respectively. Seized articles were sent for chemical analysis to the FSL from where report Ex.P-19 was received and according to which, axe and clothing of the accused/appellant were found to be stained with human blood. However, there is no serological report to prove the fact that the blood found on the seized articles was of human origin or of the blood group of the deceased.

4. After completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the accused/appellant and accordingly the charge was framed by the trial Court against him. To

substantiate the charge, the prosecution has examined 06 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication. Accused/appellant examined himself as a defence witness.

5. The trial Court after hearing the parties in the matter and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellant in the manner as described above.
6. Counsel for accused/appellant submits that;
 - sole eyewitness to the incident namely Ramika Bai has not been examined by the prosecution and her non-examination is a serious lacuna in the prosecution case.
 - PW-1 & PW-2 are hear-say witnesses and therefore no reliance could be placed on their testimonies for holding the appellant guilty for the offence like murder.
 - the articles seized at the instance of appellant are said to have been stained with blood, but in absence of report of Serologist confirming that those stains of blood were of the blood group of the deceased, the same cannot be connected with the crime in question.
7. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Sections 302 of IPC are based on due appreciation of the evidence on record and there is no infirmity in the same warranting interference in exercise of appellate jurisdiction.
8. We have heard counsel for the parties and perused the impugned judgment and record of the trial Court.
9. Johan Sahu (PW-1), son of accused/appellant and husband of deceased, has stated that while in his field at around 1.30 in the afternoon of the fateful day he received information from his younger brother Sohan Netam

that his son (accused) had killed his wife with an axe. He rushed to his house and found that his wife was lying dead in a pool of blood. He has further stated that thereafter he informed the police about the incident.

10. Sohan Sahu (PW-2), uncle of accused/appellant, has stated that on coming to know from Rabika Bai, wife of accused, that accused had assaulted his mother by axe, he immediately rushed to the field to call his brother. On reaching there, he informed his elder brother Johan Singh (PW-1) that accused had killed his wife (deceased) by an axe. He has further stated that on reaching home, they found that the deceased was lying dead in a pool of blood.

11. Kanhaiyalal Netam (PW-3) is the witness of inquest (Ex.P-4), memorandum statement (Ex.P-11), seizure memos (Ex.P-9 & P-10) and arrest memo (Ex.P-12). However, this witness has not supported the prosecution and therefore he has been declared hostile.

12. Mahavir Thakur (PW-4) is the witness of inquest (Ex.P-4), seizure memos (Ex.P-8 to P-10) and arrest memo (Ex.P-12). He has duly supported the prosecution case.

13. Prem Singh Netam (PW-5) is the investigating officer who has duly supported the prosecution case.

14. Dr. Awdhesh Kumar Gau (PW-6) is the person who conducted post-mortem of the body of deceased and noticed the injuries as mentioned above. He opined that cause of death assigned by the doctor was excessive bleeding; mode of death was shock; nature of death was homicidal and the duration of death was within 12 to 18 hours. He also examined the axe produced before him on 29.7.2014 and gave his opinion vide Ex.P-20 that the injuries found on the body of deceased were possible by the said weapon.

15. Close scrutiny of the evidence available on record makes it clear that

there is no direct evidence against the accused/appellant connecting him with the crime in question and conviction of accused/appellant is mainly based on the circumstantial evidence i.e. recovery of bloodstained axe and clothing pursuant to disclosure statement made by the accused/appellant under Section 27 of the Evidence Act. Taking, however, the evidence as it stands, we are of the considered opinion that the circumstance of recovery relied upon by the prosecution and accepted by the trial Court cannot be said to be sufficient for proving the appellant's guilt or involvement in the commission of crime because the prosecution failed to obtain and produce Serological report to prove that the blood found on the articles seized at the instance of accused/appellant were of the blood group of the deceased. In such a situation, the recovery of bloodstained axe and clothes of accused/appellant are of no help to the prosecution and this cannot connect the complicity of accused with the crime. In other words, the prosecution has not been in a position to prove beyond doubt that alleged weapon of offence i.e. axe, seized at the instance of accused/appellant was used in commission of crime in question.

That apart, it appears from the FIR (Ex.P-2) that at the relevant point of time Rabika Bai was also present on the spot and it is she who informed Sohan Sahu (PW-2) that her husband (accused) had killed his mother (deceased) by axe and PW-2, in turn, informed the incident of death of the deceased to his elder brother (husband of deceased & father of accused) and thereafter the matter was reported to the police. Thus, Rabika Bai being an eyewitness was the witness to prove involvement of accused/appellant in the crime. In the charge sheet name of Rabika Bai was mentioned as prosecution witness, but she has not been examined by the prosecution. No explanation has been offered by the prosecution as

to why this crucial eyewitness of the case of murder has been dropped. It is the duty of prosecution to examine the crucial witness in the criminal case and in this case the prosecution has failed to discharge their duties. Non-examination of such a witness was a serious lacuna in the prosecution case and being so, the accused/appellant is entitled to the benefit of doubt.

16. For the foregoing reason, we are of the opinion that complicity of the appellant in the crime in question has not been established by the prosecution beyond reasonable doubt and consequently he is entitled to be acquitted of the charge of murder by extending him benefit of doubt.
17. In the result, the appeal is allowed. Conviction and sentence of the appellant under Section 302 IPC are hereby set aside and he is acquitted of that charge by extending him benefit of doubt. The appellant is reported to be in custody, therefore, he be set at liberty forthwith if not required to be detained in connection with any other offence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge

roshan/-