

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 305 of 2013**

(Arising out of judgment/order dated 07.03.2013 in Sessions Trial No.433/2011 of the learned 2nd Additional Sessions Judge, Ambikapur)

- Jasvir Singh Khatri @ Golu, son of Suresh Khatri, aged about 20 years, R/o Kedarpur, in front of Music College, Ambikapur, District Surguja (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Gandhinagar, District Surguja (CG)

---- Respondent

And**CRA No. 405 Of 2013**

- Smt. Sujata Jaiswal wife of Late Umeshchandra Jaiswal, aged about 30 years, resident of Village-Sargawan, Police Station-Gandhi Nagar, District Surguja (C.G.)

---- Appellant

Vs

- State Of Chhattisgarh Through the Station House Officer, Police Station-Gandhi Nagar, District-Surguja C.G.

---- Respondent

For Appellants	:	Shri Ashok Dixit and Shri H.S.Patel, Advocates
For Respondent/State	:	Shri Avinash Mishra, Panel Lawyer

**Hon'ble Shri Pritinker Diwaker &
Hon'ble Shri Sanjay Agrawal, JJ**

Judgment on Board

23.03.2018

Per Sanjay Agrawal, J.

1. These appeals have been preferred by the appellants under Section

374 (2) of the Code of Criminal Procedure, 1973, against the common judgment dated 07.03.2013 passed by the learned 2nd Additional Sessions Judge, Ambikapur, Dist. Surguja (C.G.) in Sessions Trial No.433/2011 whereby they have been convicted and sentenced as under:

Conviction	Sentence
Under Section 302/34 of the Indian Penal Code (for short 'the IPC')	Life imprisonment and fine amount of Rs.500/- and, in default of payment of fine amount, further Rigorous Imprisonment for 15 days each.
Under Section 201/34 IPC	Rigorous imprisonment for five years with fine of Rs.500/- and, in default of payment of fine amount, further RI for 15 days each.
Sentences have been directed to run concurrently.	

2. Since both these appeals arise out of the common judgment, therefore, they are being decided by this common judgment.
3. Briefly stated, the case of prosecution is that on 06.08.2011, the appellants Smt. Sujata Jaiswal and Jasvir Singh Khatri as also one Shashi Sawra have killed the deceased Umeshchandra (husband of appellant Smt. Sujata Jaiswal), when he was sleeping at day time in house. At the relevant time, the appellant Jasvir Singh had thrown over him the grinding stone forcibly on the back side of his head and also given a blow by spade on his head. After killing him, they hidden the dead body in a plastic drum and in the night the appellants took the dead body near the High School and disposed of the same in the pit. It is alleged by the prosecution that during course of training in computer education, both deceased's wife Smt. Sujata Jaiswal and appellant Jasvir Singh were in love affair with each other, which led to

the commission of alleged crime.

4. Based upon the aforesaid incident, an unnumbered intimation (Ex.P.1) was lodged by one Krishna Kumar Singh (P.W.1), Up-Sarpanch of village Sargawan on 09.08.2011 at 11.35 AM mentioning therein that during investigation owing to missing report (Ex.P.39C), purported to have been lodged orally by deceased's wife on 07.08.2011, he saw the dead body of Umeshchandra Jaiswal near the High School, which was covered with a turf of grass and fallen leaves. Inquest of the dead body was sent for autopsy to Ambikapur District Hospital where Dr. Sanjay Singh (P.W.10) has conducted post-mortem examination on the dead body and submitted its report (Ex.P.27) on 09.08.2011 by opining that cause of death is due to coma owing to head injury. After the autopsy, a numbered merged intimation was recorded vide Ex.P.28 and F.I.R. was also registered on 09.08.2011 (Ex.P.29) by the Station House Officer, Gandhi Nagar, District Surguja (C.G.) under Section 302 and 201 IPC against the unknown persons. Disclosure statement (Ex.P.11) of the appellant Smt. Sujata Jaiswal led to recovery of grinding stone and cloths vide seizure memo (Ex.P.12), while T. Shirt and spade were seized vide Ex.P.5 on the basis of disclosure statement (Ex.P.4) of the appellant Jasvir Singh.
5. After usual investigation of the matter as such, the offence punishable under Section 302, 201 & 120-B read with Section 34 IPC was registered against the appellants and one Shashi Sawra by the concerned Station House Officer, who submitted its final report before the Chief Judicial Magistrate, Ambikapur, District Surguja (C.G.). The matter was thereafter committed to the 2nd Additional Sessions

Judge, Ambikapur, District Surguja (C.G.) for its trial.

6. After finding the prima facie materials available on record, charges under Section 302/34 and 201/34 IPC have been framed against the appellants who have pleaded not guilty in connection with the aforesaid charges, as framed, and claimed to be tried.
7. In order to bring home the guilt of the appellants/accused persons, the prosecution has examined as many as 11 witnesses, while 3 witnesses have been examined by the appellants in their defence.
8. After considering the evidence led by the prosecution, the trial Court, vide its impugned judgment, has convicted the appellants and sentenced them as aforesaid while acquitting the co-accused Shashi Sawra of the charges framed against.
9. Being aggrieved, the appellants have preferred these appeals. Shri Ashok Dixit and Shri H.S.Patel, learned counsel for the respective appellants submit that the judgment under appeal is apparently contrary to law as the same has been passed without considering the same in its proper perspective. They submit further that there is no eyewitness in the matter and based on weak piece of evidence adduced by the prosecution, the trial Court ought not to have convicted the appellants as such. They, therefore, submit that the judgment impugned be set aside and the appellants be acquitted of the charges so framed against them.
10. On the other hand, Shri Avinash K. Mishra, learned Panel Lawyer for the State has supported the impugned judgment by submitting, inter alia, that the impugned judgment has been passed upon due and proper appreciation of the evidence led by the parties, and therefore,

does not require to be interfered.

11. We have heard learned counsel for the parties and perused the entire record carefully.
12. Anurag Jaiswal (P.W.2) is the son of deceased Umeshchandra Jaiswal, who has stated in his evidence that he came to know about the murder of his father from others. This witness is, thus, a hearsay witness and has not stated anything against the appellants. Similar is the statement of deceased's father Banshidhar Jaiswal (P.W.7). Likewise, Durgesh Jaiswal (P.W.8), who is the brother of the deceased, has also not stated anything against the appellants. The statements of these witnesses are general in nature as they have not supported the prosecution case.
13. Gayaram Singh (P.W.3) is the Patwari and has prepared the spot map (najri naksha) vide Ex.P.9 and thus is a formal witness. Shakuntala (P.W.4) is the neighbour of the deceased and has turned hostile without supporting the prosecution case. Krishna Kumar Singh (P.W.1), Up-Sarpanch of village Sargawan, is said to have lodged the merger intimation but has turned hostile without supporting the prosecution case. S.K.Singh (P.W.5) is a Scientific Officer, who has visited the place of incident and supported the prosecution case. Shivpratap Singh (P.W.6) is a Constable, who brought the dead body to the Hospital at Ambikapur for post-mortem examination. He is also the witness of Supurdnama (Ex.P.20), by which, the dead body was handed over to one Durgesh Jaiswal, brother of the deceased. H.S. Tomar (P.W.9) and N.K.Dubey (Ex.P.11) are the investigating officers and have assisted the prosecution case. Dr. Sanjay Singh (P.W.10) has conducted the post-mortem examination of the dead body of

deceased Umeshchandra and noticed one lacerated wound of 6 x 2 cm x bone deep over occipital region. He submitted its report (Ex.P.27) by opining that the cause of death was due to coma owing to head injury and has thus assisted the prosecution case.

14. The defence witnesses, namely, Ramesh Singh (D.W.1), Tribhuwan Kumar (D.W.2) and Mathura Prasad Sanwra (D.W.3) have been examined only for the purpose of ascertaining the age of the accused Shashi Sawar, who has already been acquitted by the trial Court. The evidence of these witnesses are thus formal in so far as the commission of the alleged crime is concerned.
15. A close scrutiny of the entire evidence of the prosecution would show unequivocally that there is no eyewitness in the matter. On perusal of the entire evidence adduced by the prosecution witnesses, it is evident that none of them have either supported the prosecution case and turned hostile or stated anything against the appellants with regard to the commission of alleged crime so as to attribute the appellants in relation to the commission of alleged crime. Further, there is no F.S.L. report to show its nexus with the crime in question. Even the close relatives of the deceased, namely, Anurag Jaiswal (P.W.2), Banshidhar Jaiswal (P.W.7) and Durgesh Jaiswal (P.W.8) have not stated anything against the appellants. In fact, there is no cogent and reliable evidence on record establishing involvement of the appellant in crime in question. Therefore, the findings recorded by the trial Court convicting the appellants in relation to the offence punishable under Section 302/34 and 201/34 are liable to be set aside.
16. Consequently, the appeal is allowed and the impugned judgment

convicting the appellants in relation to the offence punishable under Section 302/34 and 201/34 IPC is hereby set aside. The appellants are acquitted of the aforesaid charges. The appellants shall be set at liberty at once forthwith, if not required in any other case.

Sd/-
(**Pritinker Diwaker**)
JUDGE

Sd/-
(**Sanjay Agrawal**)
JUDGE