NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.193 of 2014

Kartikram Manjhwar S/o Chamar Sai Manjhwar, aged about ….years R/o village Mudhunara Rajgamar Balco Nagar, District Korba Civil and Revenue District Korba (CG).

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, Out Post Rajgamar, Police Station Balco Nagar, District Korba (CG).

---- Respondent

For Appellant : Shri Amit Kumar Singh Chauhan, Advocate.
For respondent/State : Shri Mazid Ali, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy &

Hon'ble Shri Justice R.C.S. Samant, JJ

Judgment on Board

Per, R.C.S. Samant, J

18.08.2018

1. This appeal is preferred against the judgment dated 26.10.2013 passed in Sessions Trial No. 84/2012 by the Additional Sessions Judge (FTC) Korba, convicting the appellant under Sections 302 IPC and sentencing him with life imprisonment and fine of Rs.500/- with default stipulation.

2. The facts of the case in brief is that, the deceased Indira Bai was wife of the present appellant. They both resided at village Madhunara. On 18.03.2008 the dead body of the deceased was found inside the house. Merg intimation was recorded on the same day. On the basis of the merg, FIR, Ex. P/18 was recorded on 11.07.2008. It was found in the investigation that the deceased and the appellant had a quarrel soon before the incident. It was also found in the investigation that the appellant had absconded after the incident and his whereabouts were

not known. It is alleged that the appellant had made extra judicial confession before his son namely Shyamlal, PW-2 that it was he (Appellant) who has caused death of the deceased. In the postmortem examination, the death of the deceased was found to be homicidal.

3. After completion of investigation, the appellant was charged for the offence under Sections 302 IPC to which he denied and prayed for trial.

4. In all 11 witnesses were examined on behalf of the prosecution side whereas, no witness was examined on behalf of defence. The appellant was examined under Section 313 CrPC in which he denied the incriminating evidence against him and pleaded innocence and false implication in the case. The learned Additional Sessions Judge, after completion of trial vide the impugned judgment, finding the appellant to be guilty of having committed the offence under Sections 302 IPC, convicted and sentenced him for the period as reflected in paragraph 1 of this judgment.

5. Learned counsel for the appellant assailing the impugned judgment of conviction submits that on the fateful day the appellant was not present at the place of incident as he had been out to earn livelihood. None of the witnesses or circumstantial evidence and extra judicial confession have supported the prosecution case and even then the trial court has recorded findings against the appellant which is erroneous and without there being any support of reliable evidence of the prosecution. The appellant has explained about his conduct of being absent for about 4 and ½ years after the incident because he had been out to earn livelihood. Hence the judgment of conviction passed against the

appellant is without any basis and the appellant deserves to be acquitted.

6. Per contra, the State counsel opposes the grounds raised in the appeal and the submissions made in this respect. It is submitted that the prosecution has established its case beyond all reasonable doubts. It is clearly established that the death of the deceased was homicidal in nature and unexplained conduct of the appellant about his absence in the village and his absconding from the police for about 4 and ½ years clearly connects him with the commission of the offence in this case. Therefore, the appeal deserves to be dismissed.

7. We have heard the counsel for the parties and gone through the records of the trial court.

8. It is not disputed that the deceased died homicidal death. Subsequent to merg intimation, the dead body of the deceased was examined on 19.03.2008 by the witnesses of Naksa Panchnama vide Ex. P/2. The dead body of the deceased was found in decomposed condition. No opinion with regard to cause of death of the deceased was given by the witnesses to this Panchnama. The postmortem of the deceased was conducted on the same day by Dr.ML Bhariya, PW-10, who has opined in his report Ex. P/15 that cause of death was due to hemorrhagic shock, from which there had been excessive loss of blood and the death was homicidal in nature. Ribs of both side of chest were found fractured and the injuries were caused by hard and blunt object.

9. The statement of Dr. ML Bhariya, PW-10, has remained unchallenged.

10. Now the question is whether the appellant was the person who has

caused death of the deceased which needs examination. It also needs to be examined whether the finding of conviction of the trial court is supported with evidence of prosecution beyond all reasonable doubts.

11. The case of the prosecution totally rests on the circumstantial evidence. According to the investigation, there had been a witness stating that soon before the expected time of incident there had been a quarrel between the deceased and her Husband i.e. the appellant, but those witnesses Malik Ram, PW-1 and Bedram, PW-3 have not supported the prosecution case and have been declared hostile by the prosecution. Although there is some admission by PW-1, Malik Ram, in examination by the prosecution, but in cross examination he has stated that the accused appellant was out of village to earn livelihood on the date of incident. Hence he is not a reliable witness, whereas, PW-3, Bedram has not made any admission in favour of the prosecution.

12. Another witness of extra judicial confession was Shyamlal, PW-2. He has not supported the case of the prosecution in his examination in chief. After declaring hostile, he has been examined by the prosecutor and he has admitted that he has recorded the parts of statement and Ex. P/5 in which he has stated about extra judicial confession, but the whole statement of extra judicial confession has not been brought on the deposition by the prosecution and subsequently in the cross examination by the defence he has again denied about his making submission of extra judicial confession. Hence this witness as well is not a reliable witness.

13. Rest of the witnesses examined by the prosecution are related to the

investigation procedure which need no consideration.

14. Thus, it is clear that none of the witnesses relevant to prove the circumstances in this case implicating the appellant in commission of offence have supported the case of the prosecution. After a close scrutiny of evidence and the material placed on record, we are of the considered view that the judgment of conviction passed by the trial court suffers from infirmity, as there had been no evidence by the prosecution beyond all reasonable doubts, to hold that it was only the appellant who has caused death of the deceased in this case.

15. Accordingly, the appeal is allowed and the conviction of the appellant for the offences under Sections 302 IPC stands set aside. The appellant is reported to be in jail. He be released forthwith if not required in any other case.

Sd/-
(P. Sam Koshy)
Judge

Sd/-
(R.C.S. Samant)
Judge

inder