

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 968 of 2013**

- Devi Lal Gond S/o Baldev Ram Gond Aged About 22 Years R/o. Village Handi Tola, P.S. Ambagarh Chowki, Distt. Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Ambagarh Chowki, Distt. Rajnandgaon, Chhattisgarh

---- Respondent

For Appellant
For Respondent /State

Mr. KK Singh, Advocate
Mr. Arvind Dubey, Panel Lawyer

**DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &
Hon'ble Mr. Justice Ram Prasanna Sharma**

Order On Board By**Prashant Kumar Mishra, J.****20/1/2018**

1. Heard.
2. Challenge in this appeal is to the judgment of conviction and sentence of life imprisonment with fine of Rs.5000/- rendered by the trial Court against the appellant for committing offence under Section 302 of IPC.
3. In the incident, which allegedly took place on 6.12.2012 at 6:00 p.m., the appellant has committed murder of deceased Mohabti Bai by causing injuries over her by means of axe. PW-8

Sukhwantin Bai, Sarpanch of the Village, lodged the FIR- Ex.P/9 at about 7:40 p.m. stating that the father of the appellant PW-1 Baldev Ram informed her that his son Devi Lal Gond has committed murder of deceased Mohbati Bai. Sukhwantin Bai immediately went to the place of the incident and saw the dead body of deceased Mohbati Bai having injuries over her neck.

4. The prosecution case rested on the memorandum statement of the appellant vide Ex.P/4, consequent recovery of the axe vide Ex.P/5 and the eye-witness account of PW-1 Baldev Ram together with the statement of PW-8 Sukhwantin Bai, who lodged the FIR. The other witnesses examined by the prosecution are the witnesses of memorandum, seizure and *Panchnama*. The trial Court has convicted the appellant on the basis of seizure of axe & pant of the appellant and the FSL/Serologist report finding human blood on these two articles. The trial Court has also drawn support and corroboration from the prompt FIR lodged by PW-8 Sukhwantin Bai.
5. We have learned counsel for the parties at length and perused the record.
6. The prosecution would originally rest its case on the eye-witness account rendered by PW-1 Baldev Ram. However, this witness has turned hostile and not supported the case of the prosecution either in the examination-in-chief or during cross-examination, therefore, the prosecution may not draw any assistance from his statement. PW-8 Sukhwantin Bai is not an

eye-witness to the incident. She derived information about the involvement of the appellant in committing murder of the deceased through PW-1 Baldev Ram. However, when PW-1 Baldev Ram himself has turned hostile and stated that he has not seen the occurrence, the evidence of PW-8 Sukhwantin Bai would also not support the prosecution.

7. The germane issue now to be considered is whether the conviction of the appellant can be maintained only on the evidence of seizure of axe & clothes and the FSL report.
8. The only witness examined by the prosecution to prove the memorandum statement and the seizure memo is PW-4 Ramkhilawan, however, this witness has turned hostile. He has flatly denied that the appellant has disclosed to the Police about concealment of the axe in his house and similarly, denied the seizure of axe in his presence.
9. PW-9 Likhan is also a witness in the seizure memo, however, when this witness turned hostile, he was not confronted with his signatures over Ex.P/5 and P/13, therefore, his statement on the aspect of the seizure is insignificant. It is also not permissible to read his statement as witness to the seizure memo because the prosecution has not asked any leading question to him after he turned hostile.
10. The Investigating Officer would state that he has affected seizure in the presence of the witnesses, therefore, it may be treated that the seizure of axe has been proved because PW-4 Ramkhilawan is not denying his signature over the seizure

memo, but at the same time, it is required to be seen as to whether a conviction can rest solely on seizure of the weapon used in the offence without there being any corroboration. Some corroboration is available in the nature of evidence of FSL report, however in that report also, only the axe was found to be containing human blood and the pant of the appellant was not found to be carrying human blood as the blood stains were not found sufficient or it was disintegrated denying the opportunity of any serological examination.

11. Be that as it may, when the prosecution has come forward with any eye-witness account and the same having failed as the witness has not supported the prosecution, the conviction cannot be made only the basis of seizure of weapon (See: **Vijay Thakur Vs. State of Himachal Pradesh, 2014 AIR SCW 5625**).
12. For the foregoing, the appeal is allowed and the conviction and sentence imposed on the appellant under Section 302 of the IPC is hereby set-aside and he is acquitted of the said charge. The appellant is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)