

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1254 of 2017

1. Kursam Ayatu, S/o Irpa, Aged About 33 Years R/o Karkapara, Dugoli, Police Station Toynar, District Bijapur Chhattisgarh.
2. Kudiya Sannu S/o Samlu Muriya, Aged About 33 Years R/o Karkapara, Dugoli, Police Station Toynar, District Bijapur Chhattisgarh.
3. Telam Bojja S/o Telam Bega, Aged About 53 Years R/o Karkapara, Dugoli, Police Station Toynar, District Bijapur, Chhattisgarh

---- Appellants

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Toynar, District Bijapur Chhattisgarh.

---- Respondent

For Appellants	:	Dr. Kumaresh Tiwari, Advocate.
For Respondent	:	Mr. A.K. Mishra, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Gautam Chourdiya

Judgement

Per P. Diwaker, J

01/08/2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 5.9.2016 passed by the Additional Sessions Judge (FTC), South Bastar Dantewada in S.T. No.27/2013 whereby the learned Additional Sessions Judge has convicted the accused/appellants for the offences punishable under Sections 302 & 201 of the Indian Penal Code (henceforth 'the IPC') and sentenced each of them to undergo RI for Life & RI for 3 years respectively.
2. In the present case name of deceased is Lakmu Kudiya. Name of first

wife of deceased is Muri Kudiya (PW-5), whereas name of his second wife is Shanti (PW-1).

3. Facts of the case, in brief, are that the deceased was habitual drunkard & gambler. Relatives of PW-5 Muri Kudiya (first wife of deceased), in particularly accused/appellant No.3-Telam, were very much angry and annoyed due to second marriage performed by accused/appellant because after the second marriage, the deceased used to abuse and beat his first wife. On account of this, the accused persons started keeping grudge against the deceased. On the fateful day, being called by accused/appellant No.3, the deceased along with other accused persons had gone to his house to consume country-made liquor (laanda), but when he did not return home till afternoon, his wife and daughter went in search of him to the house of accused No.3 where she found the deceased lying in drunken condition. The deceased told him that he will come afterwards. However, the deceased did not return home whole night and next morning his body was found lying beside the road. At the instance of PW-5 Muri Kudiya, FIR (Ex.P-23) was lodged on 16.11.2012 at 11 am against the accused/appellant for the offence punishable under Section 302 & 201 of IPC. Immediately thereafter at 12.10 a.m. mereg intimation (Ex.P-24) was registered at the instance of Muri Kudiya (PW-5) vide Ex.P-24. Inquest over the body was prepared vide Ex.P-26. Dead body was sent for post-mortem examination which was conducted by the doctor who noticed following injuries;-

- Lacerated wound at ear of 6x7cm x bone deep, fracture of left temporal bone.
- Abrasion below left side of mandible of 3x2x2cm in size.
- Contusion over left side of chest along with fracture of left side 4th & 5th ribs.

- Lacerated wound at the right side of face of 3x2x0.5cm in size.

The autopsy surgeon has opined vide Ex.P-31 that cause of death was syncope and the death was homicidal in nature. On the basis of memorandum statement (Ex.P-9) of accused/appellant No.1, one axe was seized vide seizure memo Ex.P-10. Accused/appellant No.3 also made disclosure statement of Ex.P-11 which led to recovery of one big bamboo basket was recovered vide seizure memo of Ex.P-12. It is alleged that this big basket has been used for shifting the body of deceased. Seized articles were sent for chemical examination to the FSL and as per report of FSL (Ex.P-33), but for the big basket & plain soil seized from the spot, blood has been found on all the articles. After completion of investigation, charge sheet was filed against the accused/appellants and accordingly, the charges under Sections 302, 201, 34 IPC were framed against them by the trial Judge.

4. So as to hold the accused/appellants guilty, the prosecution has examined 18 witnesses. After recording of the evidence for the prosecution was over, the accused/appellants were examined under Section 313 of Cr.P.C. regarding the incriminating materials found in the evidence adduced on the side of prosecution. They denied such evidence to be false and once again reiterated their stand that they are not guilty of any offence.
5. After hearing counsel for the respective parties and considering the material available on record, the trial Court by the impugned judgement, convicted and sentenced them as described above.
6. Learned counsel for the appellants in both the appeals submits that:
 - conviction of the appellants is substantially based on the circumstantial evidence and in the cases of circumstantial evidence the prosecution is required to prove that the entire chain of

circumstances is complete but in the present case the quality of evidence is not as such on which basis it can be said that chain of circumstances is complete.

- all the material witnesses including PW-5, first wife of deceased, have not supported the prosecution case and turned hostile and thus, there is absolutely no evidence connecting the appellants from the murder of deceased.
- though on the memorandum of accused/appellants certain articles including axe were seized and the FSL report is also positive yet in the absence of serological report, such seizure loses its evidentiary value.

7. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellants under Sections 302, 201, 34 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 learned counsel for the parties and perused the material available on record.
9. Telam Lakhmu (PW-1), Ramlal (PW-2), Sukhram (PW-3), Kudiya Sannu (PW-4), Smt. Muri (PW-5), first wife of deceased, Jaymati (PW-6), Prakash (PW-7), Aarki Beja (PW-8), Raju Kudiya (PW-10), Shanti Bai (PW-11), Kudiya Mangu (PW-12), Telam Budhu (PW-13), Lakhmaram (PW-14) have not supported the prosecution case and turned hostile.
10. Ramesh Kumar Maani (PW-15) is the Patwari who prepared the spot map Ex.P-22. Maan Singh Rathiya (PW-16) is the investigating officer who has duly supported the prosecution case.
11. Close scrutiny of the evidence available on record makes it clear that the circumstances i.e. last seen & recovery of bloodstained articles at the

instance of accused/appellants, relied upon by the prosecution to connect accused/appellants with the crime in question have not been established by the prosecution beyond reasonable doubt. So far as the circumstance of last seen is concerned, Muri Kudiya (PW-5) is stated to have seen deceased in the house of accused/appellant No.3 at about 3 in the afternoon of 15.11.2012, but in the Court this witness has turned hostile on the point of last seen evidence and on being cross-examined by the prosecution she has denied having seen the deceased in the house of accused/appellant No.3. In absence of corroboration from PW-5, the prosecution story qua last seen evidence stands demolished. Apart from the statement of PW-5, there is no evidence to show that deceased was present in the house of accused/appellant No.3. Furthermore, the last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. Even in such a case, the court should look for some corroboration. In the present case, the evidence was of the deceased and the accused persons being seen in the house of accused/appellant No.3 at around 3 in the afternoon of 15.11.2012 and the dead body of deceased being found lying beside the road in the morning of 16.11.2012 at 6 am. Thus, the time lag between the time at which PW-5 allegedly saw the deceased in the house of accused No.3 and when the body of deceased was found on the next day is considerably long. So, the possibility of other persons coming in between is very much there and therefore, it is very much difficult, if not impossible, to conclude that it is the accused persons who are responsible for the homicidal death of the deceased.

So far as the recovery of bloodstained articles including axe, at the

instance of accused/appellants is concerned, Raju Kudiya (PW-10) & Lakshmu Ram Kudiya (PW-14) are the witnesses of memorandum statements of accused/appellants and seizure memos by which certain articles were seized at the instance of accused/appellants, however, they have not supported the prosecution and turned hostile. Both these witnesses have stated that the accused persons did not make any disclosure statement in their presence and that nothing was recovered, in their presence, at the instance of accused persons pursuant to their disclosure statement. According to PW-10, the police had obtained his signature on blank papers, whereas according to PW-14, he had signed all the documents in the police station. In such situation, the recoveries based on disclosure statement of accused/appellants do not inspire confidence and it is not safe and proper to hold that the circumstance of recovery of articles was established by the prosecution beyond the shadow of reasonable doubt

As regards the presence of blood on the articles allegedly seized at the instance of accused/appellants, there is no serological report that the group of blood, which was found on the articles seized at the instance of accused/appellants and blood group of the deceased was same. Therefore, the presence of blood on the articles seized at the instance of accused/appellants is also of no help to the prosecution and this cannot connect the complicity of accused/appellants with the crime.

12. Likewise, there is nothing on record to show that after the death of the deceased the accused/appellants had in any manner caused disappearance of evidence of the offence with intent to screen themselves from legal punishment and being so their conviction under Section 201 IPC is also not sustainable in the eye of law and they are entitled for acquittal of this offence also.

13. Thus, taking into consideration the cumulative effect of evidence available on record, this Court is of the opinion that the prosecution has not been able to prove its case beyond reasonable doubt and being so, the benefit has to go to accused/appellants. Finding of the trial Court against the accused/appellants is not in conformity with the evidence led by the prosecution and therefore the impugned judgment is liable to be set aside.

14. Accordingly, the appeal is allowed. Conviction and sentence of the appellants under Sections 302 & 201 IPC are hereby set aside and they are acquitted of those charges by extending them benefit of doubt. The appellants are reported to be in jail. They be set at liberty forthwith if not required to be detained in connection with any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge

roshan/-