

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 714 of 2013**

- Tularam Kumhar S/o Besahan Kumhar Aged About 27 Years
R/o Village Patharra , Chauki- Kotmi , Thana - Pendra Rev. /
Civil Distt. Bilaspur C.G.

---- Appellant**Versus**

- State Of Chhattisgarh S/o Through - Chauki Kotmi , P.S.
Pendra , Rev. / Civil Distt. Bilaspur C.G.,

---- Respondent

For Appellant	: Shri Samir Singh, Advocate
For Respondent/State	: Shri Suryakant Mishra, PL

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment on Board by Smt. Rajani Dubey, J.

13/02/2019

This appeal is directed against the impugned judgment of conviction and order of sentence dated 26.06.2013 passed by the Additional Sessions Judge, Pendra Road in Sessions Trial No. 02/2012 whereby and whereunder the appellant has been found guilty of the commission of offence as described below:

Conviction	Sentence
Section 302 IPC	Imprisonment for life and fine of Rs.

	200/- with default stipulation.
--	---------------------------------

2. As per prosecution case, on 22.10.2011, at about 7.00 p.m. in the evening, appellant/accused Tula Ram came to the house of Jagjiwan Ram and told him that “*kaam ho gaya*” (job is done) and when Jagjiwan Ram asked him, then the appellant told that he killed his father. Thereafter, Jagjiwan Ram and another villagers went to the house of appellant and saw his father lying dead. Jagjiwan lodged merged intimation Ex.P-1 and FIR was registered against the appellant under Section 302 IPC vide Ex.P-2. Inquest Ex.P-3 was prepared and dead body was sent for postmortem examination which was conducted by Dr. Dilip Paikara (PW-5) vide Ex.P-11. According to him, the cause of death was cut throat injury which was antemortem in nature. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charges were framed.

3. Prosecution in order to bring home the charges levelled against the accused/appellant, examined as many as 12 witnesses. Statement of the accused was also recorded under Section 313 Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case. In his defence, he explained that at 7.00 p.m. in the evening, when he went to the house of his father, he saw his father lying dead.

4. The trial court, by the impugned judgment convicted and sentenced the appellant in the manner as described above.

5. Counsel for the appellant submits that the learned trial court has erred in law as well as on facts in convicting the appellant and sentencing under Section 302 IPC. He submits that the trial court has not properly appreciated the statements of the witnesses on the basis of which the conviction has been held. There is material contradiction in the evidence of the prosecution witnesses and the whole finding of the learned trial court is based on unreliable and shaky evidence. Conclusion drawn and reasoning is contrary to the settled principles of law. There are vital omissions and the witnesses have contradicted each other. He submits that all the witnesses have become hostile and none of them has stated in the court that prior to the incident, the appellant was in the company of his father (deceased). The prosecution has failed to establish any motive and chain of circumstance therefore, conviction and sentence awarded to the appellant is liable to be set aside.

6. On the other hand, State counsel supports the impugned judgment and submits that the conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the same.

7. We have heard counsel for the parties and perused the judgment and records of the trial court.

8. Jagjiwan Ram (PW-1) has stated in his evidence that deceased Besahan was his uncle. On the date of incident, at about 7.00 p.m. in the evening, when he was sitting with his nephew Hari Prasad, at that time, appellant Tularam shouted that his father has been killed. When he went to the place of incident, he saw that

Besahan was lying dead. This witness has admitted his signature on the merger intimation Ex.P-1 but denied that he had lodged the FIR. He has admitted the signature in the FIR Ex.P-2 and inquest Ex.P-3. Prosecution declared this witness hostile. In his cross examination, he denied each and every suggestion of the prosecution. The Sessions Judge also put some question to this witness but he denied the extra judicial confession of accused before him and has stated that he was scared of police because the police had earlier taken him in custody for four days in another case of murder. Jogendra Singh (PW-2) has stated that when he reached his home at 10-11.00 p.m., he came to know that Besahan has been killed, he went there and saw him dead. He has admitted his signature on inquest Ex.P-3. The weapon of offence-axe was also lying near the dead body. He has admitted his signature in seizure memo Ex.P-8. Prosecution has declared this witness hostile. He has denied that the axe was seized on the memorandum of the accused. S.L.Thakur (PW-3) is the patwari who prepared spot map Ex.P-10. He has admitted his signature and seizure memo Ex.P-8 and P-9. Dr. Dilip Paikara (PW-5) is the doctor who conducted postmortem and according to him, the cause of death was cut throat injury which was on both sides of neck, antero laterally and deeply cut and death was homicidal in nature. Babulal (PW-7) admitted his signature on the inquest Ex.P-3. He has also not stated anything and that the Sarpanch has informed him about the death of Besahan. Similar statement has been given by Suresh (PW-8). Maniram Bhagat (PW-9) Head Constable had registered merger and FIR in Ex.P-14 and 15. F.J.Tigga (PW-10) is the Investigating Officer. Hari Prasad (PW-12) has stated that appellant

was shouting outside his house that someone had killed his father. Prosecution has however, declared this witness hostile and in cross-examination he denied all the suggestions.

9. Learned trial court has relied upon the judgment of Apex Court in the matter of ***Trimukh Maroti Kirkan v. State of Maharashtra*** reported in **(2006) 10 SCC 681**, wherein it has been held that, “if an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts”. Similarly, in one of the matter of this High Court (***in Cr.A. No. 587 of 2003 Smt. Jiteshwari Bai Vs. State of CG***), it has been held that in a case of circumstantial evidence, something more than mere suspicion is needed to convict a person. The law requires establishment of proof of case of the prosecution to the exclusion of all other hypothesis pointing towards the innocence of the appellant. The ingredients of such hypothesis is in the nature of availability of motive, strained relationship between the parties and other corroborative evidence, however, none of such hypothesis against the appellant is available.

10. The prosecution was required to prove that at the time of incident, accused was alone with his father and it is he who has to explain. None of the witnesses have stated that before and after the incident, they had seen the appellant going to the house of Bisahan.

Both the witnesses of memorandum and seizure have turned hostile and they have admitted in their defence that the appellant was not present in the house and he came from outside and when he entered the house, he shouted that his father has been killed and that the dead body was found in the open place. Further, it has been stated that the place is accessible to anyone. Bharat Lal (PW-4) has stated that the place where the appellant's house is situated is isolated place however, it is on the main road and there is possibility of any other person entering the house cannot be ruled out.

11. Thus, from the above discussion, as per the evidence of Jagjiwan Ram, he lodged the merged intimation Ex.P-1 and the FIR. Ex.P-2 under pressure, has not supported the prosecution case. There is no eyewitness and the conviction is based on circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person.

12. Overall scrutiny of the evidence thus makes it clear that there is no direct evidence to connect the accused with the crime in question. The law is well settled that the conviction can be based even on circumstantial evidence provided the chain of circumstantial evidence is complete, incapable of being explained by any other hypothesis except the guilt of the accused and is of a conclusive nature unerringly pointing towards the guilt of the accused. In other words, there must be a complete chain of circumstantial evidence leaving no room for any doubt as to the accused/appellant being the only perpetrator of the crime. In the light of the above discussion, we

are of the view that the prosecution has failed to establish its case beyond reasonable doubt against the appellant and, therefore, he is entitled for the benefit of doubt.

13. Consequently, the appeal is allowed. Impugned judgment convicting and sentencing the accused/appellant as mentioned above is set aside. Appellant is acquitted of the charges levelled against him. Accused/appellant is in jail, he be set free forthwith if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge