

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 541 of 2013**

- Jokhan S/o Sundar Harijan, aged about 67 years, R/o village Babhani, P.S. - Raghunath Nagar, Post & Tah.- Raghunath Nagar, District (Rev.) - Balarampur Ramanujganj & District - (Civil) Surguja (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : D.M. - Balarampur - Ramanujganj, District (Rev.) - Balarampur - Ramanujganj & District - (Civil) Surguja (C.G.)

---- Respondent

For Appellant : Shri Vineet Kumar Pandey, Adv.
For Respondent/State: Shri Vikas Shrivastava, P.L.

D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava
&
Hon'ble Smt Justice Rajani Dubey

Judgment On Board**18.03.2019****Per Manindra Mohan Shrivastava, J**

01. This appeal is directed against the impugned judgment of conviction and order of sentence dated 23.03.2013 passed by Additional Sessions Judge, Ramanujganj, District Balrampur-Ramanujganj (C.G.), in Sessions Trial No.186/2011 whereby and whereunder, the appellant has been held guilty

of commission of offence under Section 302 IPC and sentenced as described below:-

Conviction	Sentence
Section 302 IPC	Life Imprisonment with fine of Rs.500/- (In default, 3 months R.I.)

02. According to the prosecution story, as unfolded from the impugned judgment and the records of the case, is that the appellant was receiving treatment from deceased Jabarsai Gond and it is said that the appellant, having not been benefited from the treatment and the deceased repeatedly playing witchcraft without any effect on appellant's illness, the appellant axed the deceased. FIR in Ex.P/1 was lodged by Ramjit (PW/1). The dead body was sent for postmortem and in the postmortem, conducted by Dr. A.K. Vishwakarma (PW/6), the dead body was found having sustained compressed lacerated wounds on the face and head. The cause of death was stated to be excessive bleeding as a result of injuries and was opined to be homicidal in nature. On the basis of FIR (Ex.P/1), the appellant being suspect, was arrested, taken into custody and it is the case of the prosecution that at the instance of the appellant, an axe was recovered from his house. The said axe, in FSL report, was found to be stained with blood. With that much of incriminating material, the police filed charge sheet and prosecution was launched against the appellant on the allegation of commission of murder of Jabarsai Gond, which

led to trial culminating in impugned judgment of conviction and order of sentence.

03. The short and pointed submission of learned counsel for the appellant is that the conviction of the appellant is founded on the so called last seen evidence of Ramjit (PW/1), motive and recovery of an axe said to be stained with blood. Elaborating his submission, he argued that as far as the last seen evidence is concerned, the same is not at all reliable, because the last seen witness PW/1 had lodged report in which he did not make any such statement of having seen the deceased going along with the appellant. Even in diary statement, this fact was not stated, as has been elicited in the cross-examination of this witness. Therefore, the last seen evidence is a complete improvement. The axe allegedly recovered from the possession of the appellant, though, said to be stained with blood, there is no serologist report that it was human blood and further that the axe which was recovered from the spot was not even sent for FSL examination, therefore, the prosecution case, it is argued, could not travel beyond a suspicion so as to translate into truth to bring home guilt.

04. On the other hand, learned State counsel would argue that even though, in the FIR (Ex.P/1) and diary statement, last seen is not there, the witness Ramjit (PW/1), who is the nephew of the deceased, has reliably stated and there is no

reason as to why he would falsely implicate the appellant. According to him, the appellant had come to his house and had taken Jabarsai along with him for doing some witchcraft to treat ailing appellant. He would next argue that even if the blood stains found on the axe recovered from the house of the appellant is not stated to be human blood, even then, the appellant is required to explain as to how it was stained with blood. The motive that the deceased was treating the appellant, which remained unsuccessful, brings home the guilt of the appellant as third clinching circumstantial evidence to complete the chain.

05. We have heard learned counsel for the parties, perused the impugned judgment and also gone through the material on record.

06. The prosecution case is based on circumstantial evidence of the following nature.

- i. The appellant was receiving treatment from the deceased.
- ii. The appellant had gone to the house of the deceased and taken him along with him.
- iii. Axe recovered from the house was found to be stained with blood which remained unexplained.

07. As far as last seen evidence is concerned, Ramjit (PW/1) states that at about 6.00 in the evening, the appellant had come to the house and had taken his uncle Jabarsai for doing

witchcraft for treatment and, thereafter, his uncle did not come back in the night. But, then we find that in FIR (Ex.P/1), which is said to be lodged by this very witness, there is no mention of the fact that the deceased had gone along with the appellant. Not only this, in the diary statement of this witness also, this fact was not stated, which is elicited in his cross-examination. Therefore, last seen evidence becomes extremely doubtful. There is no reason as to why this fact could not be disclosed in the FIR and diary statement, if according to this witness, he had seen the deceased going along with the appellant.

08. The evidence of deceased treating the appellant, per se, cannot be said to be an incriminating circumstance. We do not find that any of the witnesses of the prosecution has seen any incident of quarrel or dispute between the appellant and the deceased to prove that the manner in which the deceased was treating the appellant had resulted in some kind of serious dispute, quarrel or fight which could possibly be a motive to murder the deceased.

09. The evidence of axe said to be recovered from the possession of the appellant found stained with blood, in the peculiar circumstances of the present case, by itself cannot be said to be an incriminating evidence of a clinching nature so as to rest conviction on it. Firstly, even according to the prosecution, from the place where the dead body was found,

an axe and a club both were seized. But, we find that these articles which are often used for as weapon were not sent for FSL report. The axe said to be recovered from the house of the appellant, though, stated to be stained with blood, there is not even a report that it is a human blood. On such a weak circumstantial evidence, conviction cannot be sustained.

10. In view of above discussion, our irresistible conclusion is that the prosecution has failed to prove its case beyond reasonable doubt and the chain of circumstances are not complete to point towards the guilt of the appellant so as to warrant an inference by this Court that in all probability, it is the appellant and the appellant alone, who must have killed the deceased. The appellant is accordingly entitled for benefit of doubt.

11. The appeal is accordingly allowed. Impugned judgment of conviction and order of sentence is set aside and he is acquitted of the charge levelled against him by the trial Court by extending him benefit of doubt. The appellant is reported to be in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge