

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 383 of 2013

- Meri Tirkey W/o Anil Tirkey Aged About 48 Years, Occupation House Wife, R/o Village Rauni, Police Chowki Pandarapath, PS Bagicha Distt. Jashpur C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through Distt. Magistrate, Jashpur Distt. Jashpur C.G.

---- Respondent

For Appellant	:	Ms. Pragya Pandey, Advocate.
For Respondent/State	:	Mr. Vikas Shrivastava, P.L.

Hon'ble Shri Gautam Chourdiya, J

Order On Board

13/02/2020

This appeal has been filed by the Legal Aid Counsel Shri Ashok Kumar Mishra. However, despite repeated calls, none appears for the appellant today. On 12.5.2018 also none appeared for the appellant. Secretary, High Court Legal Services Committee had issued notice to Shri Ashok Kumar Mishra, Advocate, to explain as to why he remained absent on 12.5.2018 when the matter was fixed for hearing before the Court. Thereafter, on 14.7.2018, also none appeared for the appellant.

02. In these circumstances, this Court is left with no other option but to appoint another empaneled counsel of the High Court Legal Services Committee.

03. Ms. Pragya Pandey, empaneled counsel of the High Court Legal Services Committee, present in the Court, on being asked is ready to argue the matter. Hence, Secretary, High Court Legal Services Committee, is directed to issue authorization letter in favour of Ms. Pragya Pandey, Advocate.

04. This appeal arises out of judgment of conviction and order of sentence dated 31st December, 2012 passed by Additional Sessions Judge, Jashpur (CG) in ST No.86/2012 whereby the appellant has been convicted under Section 304 Part-I and sentenced to undergo RI for seven years and pay a fine of Rs.100/-, in default thereof to suffer additional RI for one month.

05. Brief facts necessary for adjudication of this appeal are that the appellant after the death of her husband Nikodin Lakda was living with Anil Tirki (deceased) in his house as his wife and that the deceased used to have quarrel with the appellant after consuming liquor. On the date of incident i.e. 4.5.2012 in the night Anil Tirki having quarreled with the appellant slept and thereafter, the appellant assaulted him with axe on his head resulting in his instantaneous death. Merg intimation Ex.P/1 was lodged by Anand Prakash (PW-1) at Police Chowki-Pandrapath and thereafter, FIR (Ex.P/21) was registered at P.S. Bagicha, Distt. Jashpur under Section 302 of IPC against the appellant on 5.5.2012. During investigation, spot map Ex.P/3 was prepared. On the memorandum Ex.P/4 of the accused/appellant, one bloodstained axe was recovered from her house vide Ex.P/5. Plain & bloodstained soil from the place of occurrence were seized vide Ex.P/10. Wearing apparels of the deceased were seized under Ex.P/15. Inquest over the

dead body of the deceased was prepared vide Ex.P/9. Thereafter, the dead body was sent for postmortem which was conducted by Dr. Mithlesh Minj (PW-10) vide Ex.P/17 who noticed following injuries on his person:

1. lacerated wound, 10 cm x 3 cm x 1 cm in size present behind right ear upward to downward direction,
2. lacerated wound, 5 cm x 2 cm x .5 cm present in forehead 4 cm above the right eye horizontally,
3. lacerated wound 5 cm x 2 cm x .5cm in size present 5 cm back of the right ear in occipital region upward to downward direction.

In his opinion, the cause of death was hemorrhagic shock due to head injury, the nature of death was homicidal and time of death was within 24 hours prior to postmortem examination.

06. The seized articles were sent for chemical examination to FSL and as per FSL report (Ex.P/20) blood was found on Articles A, C, D, E & F i.e. bloodstained soil seized from spot, axe seized from accused and clothes of the deceased respectively. After completing usual investigation, charge sheet was filed against the accused/appellant Section 302 of IPC followed by framing of charge accordingly by the trial Court which was abjured by her and she prayed for trial.

07. So as to hold the accused guilty, the prosecution examined as many as 16 witnesses. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which she denied the circumstances appearing against her in the prosecution case, pleaded innocence and

false implication. In defence, she stated that on the date of incident i.e. 4.5.2012 she had gone to the house of her son Sudhir in the evening and returned to her house on 5.5.2012 in the morning.

08. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para-4 of this judgment.

09. Learned counsel for the appellant submits that there is no specific evidence, direct or indirect, to prove that at the time of incident the appellant was present in the house where the incident took place. As per FSL report (Ex.P/20) though blood was found on the axe allegedly seized from the accused, but there is no serological report confirming the group and origin of blood to connect the appellant with the crime in question. Therefore, conviction of the appellant under Section 304 Part-I of IPC by the trial Court is unsustainable and the appellant deserves to be acquitted of the said charge.

10. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellant, which needs no interference by this Court.

11. Heard counsel for the respective parties and perused the material on record.

12. As per PW-10 Dr. Mithilesh Minj, who conducted postmortem on the body of the deceased vide postmortem report of Ex.P/17 he

noticed lacerated wound of size 10 cm x 3 cm x 1 cm behind right ear upward to downward direction, lacerated wound of size 5 cm x 2 cm x .5 cm in forehead 4 cm above the right eye horizontally, and lacerated wound of size 5 cm x 2 cm x .5cm present 5 cm back of the right ear in occipital region upward to downward direction. In his opinion, the cause of death was hemorrhagic shock due to head injury, the nature of death was homicidal and time of death was within 24 hours prior to postmortem examination. As per inquest report Ex.P/9 it is also proved that such injuries were noticed on the person of the deceased. Therefore, the prosecution has proved this fact that the deceased died due to injuries found on his person and the death was homicidal in nature.

13. In this case, the appellant and the deceased used to quarrel after consuming *Hadiya* (home made liquor) frequently as stated by PW-5 Mahangu. PW-6 Budhram has also proved this fact that the appellant and the deceased were not having good relations and they used to quarrel after consuming liquor. At the time of incident when PW-5 Mahangu reached the house of the appellant he found Anil Tirki (deceased) lying there in injured condition and at that time the accused/appellant was sleeping near the door. PW-6 Budhram has also stated that after coming to know about the incident when he reached the place of occurrence, he found the deceased lying there dead and the appellant was sleeping in the verandah. Thereafter, information about the incident was given to the police and he told the villagers not to let the appellant run away from there.

14. From the evidence of PW-5 Mahangu and PW-6 Budhram,

independent witnesses, it is proved that the place of incident is the house of the deceased where the appellant and the deceased were living together and just after the incident, the appellant was found sleeping in the said house. There is no explanation given by the appellant as to how the incident took place. Rather in her statement under Section 313 of CrPC she has taken a plea of alibi by stating that on the date of incident i.e. 4.5.2012 she had gone to the house of her son Sudhir in the evening and returned to her house on 5.5.2012 in the morning. PW-7 Sudhir Lakda states in para-3 that on 4th May, 2012 the appellant was at his house and left his house at 6 am. However, PW-5 Mahangu and PW-6 Budhram both have stated that when they reached the house of the appellant, she was sleeping there and the deceased was found lying dead in the house.

15. Further, on the memorandum Ex.P/4 of the accused/appellant, one bloodstained axe was recovered from her house vide Ex.P/5 and as per FSL report (Ex.P/20), blood was found on it. PW-2 Sushila Ekka has duly proved the said memorandum and seizure. This witness has also proved the spot map Ex.P/6 and arrest memo Ex.P/8. PW-2 also states in para-3 that when the appellant was asked about the incident, she did not disclose anything and kept mum. No explanation has been offered by the accused/appellant in her statement under Section 313 of CrPC as to how blood was found on the axe seized from her house. True it is that in this case, there is no serological report confirming the group and origin of the blood, however, considering the consistent evidence of PW-5 Mahangu, PW-6 Budhram proving presence of the accused/appellant in the house in question where the incident took place, seizure of axe from her house which was found to be stained

with blood as per FSL report, it being a case of house murder the appellant was obliged to offer satisfactory explanation as to how the incident took place as the same was within her special knowledge but instead she has taken a false plea of alibi. Further, it has come in the evidence of the prosecution witnesses (PW-5 & PW-6) that there used to be quarrel between the appellant and the deceased frequently after consuming liquor. As per postmortem report, corresponding injuries were found on the body of the deceased which has been duly proved by PW-10 Dr. Mithilesh Minj. In these circumstances, non-production of serological report cannot be said to be fatal to the prosecution. In view of the aforesaid circumstantial evidence, the trial Court was fully justified in convicting and sentencing the appellant under Section 304 Part-I of IPC.

16. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. Since the appellant has already been released from jail after completing the entire sentence imposed upon her by the trial Court, there is no need to pass any order regarding her arrest/surrender etc.

Sd/

(Gautam Chourdiya)
Judge