



2026:CGHC:15896

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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 681 of 2007**

- Deenu, son of Dumni Choudhary, aged about 47 years, Caste – Chamar, resident of Sagaratola, Samata Nagar, Gaurela, District Bilaspur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through : P.S. Gaurela, District Bilaspur (C.G.)

---- Respondent

For Appellant : Mr. Shubham Tiwari, along with Ms. Najmi Begam, appears on behalf of Mr. Yogendra Chaturvedi, Advocates.

For Respondent/State : Mr. Himanshu Yadu, P.L.

Hon'ble Smt. Justice Rajani Dubey**(C A V Judgment)**



1. This appeal arises out of the judgment of conviction and order of sentence dated 31.07.2007 passed by the Additional Sessions Judge, Pendra Road, District Bilaspur (C.G.) in Sessions Trial No.350/2006, whereby the appellant stands convicted and sentenced as under :-

CONVICTION	SENTENCE
Under Section 304 Part-I of IPC	R.I. for 10 years and to pay fine of Rs.100/-, in default of payment of fine amount, additional R.I. for 01 month.

2. Prosecution story, in brief, is that the accused who was residing at Samta Nagar, Sagaratola, Gaurela, had four sons and two daughters. The daughters were married and living in their matrimonial homes. About eight years prior to the incident, the marriages of his sons Rajesh and Prathmesh were solemnized at Birsinghpur. Their wives, namely Urmila Bai and Pratima Bai, were sisters. Pratima Bai had left Prathmesh, after which he brought Sakun Bai as his wife. It is further alleged that Rajesh's wife, Urmila Bai, had committed suicide by hanging, in connection with which Rajesh was arrested and later released from jail. Thereafter, Rajesh developed a habit of excessive drinking and, under the influence of alcohol, used to abuse and assault family members, break household utensils, and burn clothes. On



one occasion, he assaulted his mother, due to which she left for her parental home on a Sunday. On 05.06.2006, the accused, along with his sons Prathmesh, Mukesh, Rakesh, and Rajesh, and Prathmesh's wife Sakun Bai, were present in the house. At about 4:45 PM, the accused sent Rakesh to bring rice, and Rajesh sent Mukesh to bring liquor, while Prathmesh had gone to the field. At that time, only the accused, Rajesh, and Sakun Bai were present in the house. It is alleged that when Sakun Bai was washing utensils and went inside the house to keep them, Rajesh caught hold of her hand with an evil intention and attempted to drag her towards the bed. When she raised an alarm and tried to escape, Rajesh, who had partially undressed himself, attempted to pull her clothes. Upon her resistance, he slapped her twice. The accused, Dinu (father of Rajesh), witnessed the incident and tried to intervene and pacify Rajesh. However, Rajesh allegedly attacked his father as well. Thereupon, in a fit of anger, the accused assaulted Rajesh with a wooden washing paddle (mogariya), causing a head injury. Rajesh fell down on the spot and died. Thereafter, the incident was reported by Prathmesh, son of the accused, at Police Station Gaurela, on the basis of which FIR being Crime No.113/2006 (Ex. P-1) and merg



intimation (Ex. P-2) were registered under Section 302 IPC. During investigation, inquest proceedings (Ex. P-16) were conducted, and the dead body was sent for post-mortem examination to Primary Health Center, Gourela vide Ex. P-17, where post-mortem on the body of deceased was conducted by Dr. S.S. Painkra (PW-5) and gave his report under Ex.P-9 opining the cause of death of deceased to be coma with hemorrhagic shock due to severe injury and the death was homicidal in nature.

3. During investigation, the memorandum statement (Ex.P-14) of the accused was recorded, pursuant to which a wooden washing bat (mogariya) and blood-stained clothes were seized from his house vide Ex. P-13. Blood-stained and plain soil were also seized from the spot vide Ex. P-15. The weapon was examined by the doctor, who opined that the injuries sustained by the deceased could be caused by the said weapon and that death was possible by it and gave his report vide Ex. P-10. The blood stains on the seized clothes were also found to be of human origin, and chemical examination was advised vide Ex. P-5. Spot map and spot panchnama were prepared vide Ex. P-3 and P-4, & statements of witnesses including Prathmesh, Mukesh, Rakesh, Sakun Bai, Sushila Bai, Mohammad Shafiq, Gopal



Prasad, Revati Prasad, and Shiv Prasad were recorded.

4. After completion of usual investigation, charge-sheet was filed before the jurisdictional Magistrate, from where the case was committed to the Sessions Court for trial.
5. After filing of the charge sheet, the learned Trial Court framed charges against the accused/appellant under Section 302 of IPC, to which he abjured his guilt and pleaded for trial.
6. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined in the case.
7. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.
8. Learned counsel for the appellant submits that the learned Trial Court has committed error in law as well as in facts in convicting and sentencing the accused/appellant for the offence. The learned Trial Court has not taken into



consideration the fact that all the prosecution witnesses turned hostile and have not supported the case of the prosecution but the learned Trial Court ignoring material aspects of the matter has convicted the accused/appellant, which is not sustainable in the eye of law. Learned counsel for the appellant further submits that the finding of the learned Trial Court is based on conjecture and surmises as there is no witness to support the prosecution case. There is no direct evidence on record to connect the accused/appellant with the crime in question. Learned counsel also submits that even if the death of deceased is presumed to be homicidal but it is apparent from the finding recorded by the learned trial Court that the deceased, who was under intoxicated condition, with evil intention caught hold of hands of Sakun Bai and attempted to drag her towards the bed, which was intervened and tried to pacify deceased Rajesh. However, deceased Rajesh allegedly attacked the accused as well. Thereupon, in a fit of anger, the accused assaulted deceased Rajesh with a wooden washing paddle (mogariya), causing a head injury and deceased fell down on the spot and died under influence of liquor. As such, the the appellant has right to his private defence under Section 100 of IPC and no offence under



Section 304 IPC is made out against him. So, the impugned judgment of conviction and order of sentence is liable to be set aside.

9. On the other hand, learned State counsel supported the impugned judgment of conviction and submits that the learned trial Court has rightly appreciated oral and documentary evidence and has rightly convicted the appellant. So, the appeal being without any merit is liable to be dismissed.
10. I have heard learned counsel for the parties and perused the material available on record.
11. It is apparent from the record of the learned trial Court that the learned trial Court framed charge under Section 302 of the IPC against the accused/appellant and after appreciation of oral and documentary evidence, the learned trial Court convicted the accused/appellant under Section 304 Part I of the IPC.
12. With respect to the homicidal death of deceased, the prosecution has examined Dr. N.S. Painkra (PW-5), who conducted postmortem of deceased and gave his report under Ex.P-9 and opined the cause of death of deceased to be coma with hemorrhagic shock due to severe injury and the death was homicidal in nature.



13. From the testimony of doctor (PW-5), it is evident that the antemortem injuries over the body of deceased were found which led to his death, however, it was suggested by defence that could the deceased's death have resulted from striking the doorframe and the doctor, in para 8 of his evidence, admitted that if the height of door is low and someone runs with his head bent, the impact of the crossbar could have caused the injuries described in postmortem report, but it is clear from the report of doctor that he found as many as 07 antemortem injuries on the body of deceased, therefore, it has been found proved that the death of deceased was homicidal in nature.
14. Prathmesh (PW-1) is the son of accused and brother of deceased. He has stated that at the time of incident he had gone to answer the call of nature and thereafter went to graze the cattle & when he came to house, he saw that his brother deceased Rajesh was lying in veranda with head and jaw injuries and the blood was oozing from the injuries. He has also stated that he did not ask from his wife and his wife also did not tell him about the incident. He has also stated that he lodged the report of incident vide Ex.P-1, based on which merger was recorded vide Ex.P-2. Patwari had also prepared spot map vide Ex.P-3 and spot



panchanama (Ex.P-4). This witness has admitted his signature on 'A to A' part but has not stated against the appellant. The prosecution declared this witness hostile then he admitted this suggestion that his wife had told him that deceased Rajesh had caught hold of her hands and was dragging her but he denied this suggestion that the accused assaulted the deceased by wooden washing paddle when he (accused) saw the deceased holding the hand of his (this witness) wife and dragging her. This witness has denied 'A to A' part of his police statement (Ex.P-5) and report (Ex.P-1) and admitted this suggestion of defence that his wife had told him that deceased Rajesh fell face down in the courtyard after hitting his head on the doorframe and died.

15. Mukesh (PW-2) and Rakesh (PW-3), son of accused and brothers of deceased, have also not supported the prosecution case. The prosecution declared them hostile and cross-examined them but they denied all suggestions of the prosecution and their police statement (Ex.P-6 and P-7).
16. Shakun Bai (PW-4) is the daughter-in-law (Bahu) of accused and sister-in-law (Bhabhi) of deceased. She has stated that on the date of incident at around 6.00 PM, when she was sitting in the house, deceased Rajesh came drinking alcohol then she went inside to wash utensil. At that



time, deceased Rajesh caught hold of her hands. She freed herself and ran outside to call her father-in-law (Accused). Thereafter, deceased Rajesh slipped and fell face down after hitting his head on the doorframe. She called the accused and when he came and turned deceased Ramesh over, they saw that he had died already. The prosecution declared this witness hostile and cross-examined her but she denied all suggestion of prosecution.

17. Sushila (PW-6) is the wife of accused and mother of deceased Rajesh. She has stated that at the time of incident, she was at her parental home. No one informed her anything at her parental home. The prosecution declared this witness hostile and cross-examined her but she denied all suggestion of prosecution.
18. Safiq (PW-8) and Shiv Prasad Rohani (PW-10), the independent witnesses, have also not supported the prosecution case.
19. Close scrutiny of the evidence of all the prosecution witnesses makes it clear that none of the witnesses have supported the case of the prosecution. All material witnesses, including Prathmesh (PW-1), Mukesh (PW-2), Rakesh (PW-3) and sole eye-witness Shakun Bai (PW-4), have turned hostile and not supported the prosecution case.



On the contrary, their consistent stand including the sole eye witness (PW-4) before the learned Trial Court was that the deceased sustained injuries after slipping and striking his head against the doorframe. Furthermore, though a wooden washing paddle (mogariya) has been seized from the possession of the accused, however, the same loses its evidentiary value in absence of any supporting forensic evidence, as no FSL report has been brought on record by the prosecution.

20. In this regard, the settled legal position, as laid down by the Hon'ble Apex Court in **Balwan Singh vs. State of Chhattisgarh** reported in **(2019) 7 SCC 78**, is that where the FSL report is not produced by the prosecution for the reason best know to it, the alleged seizure of incriminating articles becomes doubtful and cannot be relied upon. In the present case, non-production of the FSL report renders the alleged recovery of crime i.e. wooden washing paddle inconsequential.
21. In the present case, it is not in dispute that the incident occurred inside the house where the accused was residing along with several other family members. Thus, the premises cannot be said to be in the exclusive possession of the accused so as to attract a strict presumption under



Section 106 of the Evidence Act. Where multiple persons have access to and are residing in the same house, the burden cannot be shifted solely upon the accused to explain the occurrence. In such circumstances, the prosecution is required to first establish foundational facts pointing towards the exclusive involvement of the accused. In absence of such cogent evidence, no adverse inference can be drawn against the accused merely on the basis of Section 106 of the Evidence Act.

22. In view of the aforesaid analysis, in the present case, it is clear that the prosecution has failed to establish the charge against the accused beyond reasonable doubt. The testimony of the sole eye-witness (PW-4) having been discredited, denial of her police statement and all other witnesses having turned hostile, coupled with absence of reliable corroborative evidence, creates serious doubt in the prosecution case. Consequently, the accused/appellant is entitled to the benefit of doubt and deserves to be acquitted of the charge.
23. Accordingly, this appeal filed by the accused appellant is **allowed** and the impugned judgment of conviction and order of sentence dated 31.07.2007 passed by the learned Additional Sessions Judge, Pendra Road, District Bilaspur



(C.G.) are set aside and the accused appellant is acquitted of the charge levelled against him by extending benefit of doubt.

24. The appellant is already on bail. Keeping in view the provisions of Section 437-A Cr.P.C. (new section 481 of the B.N.S.S.), the appellant is directed to forthwith furnish a personal bond in terms of Form No.45 prescribed in the Code of Criminal Procedure of sum of Rs.25,000/- with one surety in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment for grant of leave, the aforesaid appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.
25. Let a copy of this judgment and the original record be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-

(Rajani Dubey)
JUDGE