

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 164 of 2012**

1. Sanat Ram Nagwanshi S/o Vishnu Ram Nagwansi, aged about 51 years, occupation – Agriculturist, Kukurgaon (Kataibhala) Police Station Bagbahar, District Jashpur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through District Magistrate, Jashpur District Jashpur CG

---- Respondent

For Appellants:	Shri Mahendra Kumar Chouhan, Advocate
Respondent/State:	Shri Vaibhav Goverdhan, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice I.S. Uboweja****Judgment on Board by Pritinker Diwaker, J****30/09/2015**

This appeal has been filed against the judgment of conviction and order of sentence dated 21.10.2011 passed by the Additional Sessions Judge Jashpur (camp at Kunkuri), in Sessions Trial No. 42/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 200, plus default stipulations.

2. Name of the deceased in this case is Kandri Bai who was the wife of the accused/appellant. It is alleged that the accused/appellant herein and his wife were residing in the house along with their second son Sanjay and daughter-in-law Kusum Bai (PW-10) whereas the other son of the accused/appellant namely Vijay (PW-1) and daughter-in-law Vinita Bai (PW-2) were residing separately in a nearby house. According to the case of the prosecution, on 26.3.2010 when Vijay returned from his workplace, his wife Vinita Bai told him that the accused/appellant being under the influence of liquor had assaulted

the deceased by hand and fist and as her condition became serious, village doctor namely Manoj was called who advised for shifting the victim to a better hospital but before that she died. FIR Ex. P-1 was lodged on 27.3.2010 at 8.15 pm by Vijay (PW-1) – the son of accused and the deceased, for the offence under Section 302 IPC followed by merg Ex. P-6 registered on the same day at 8.20 pm. After inquest, postmortem examination on the body of the deceased was conducted by Dr. A.S. Thakur (PW-9) who gave his report Ex. P-5 stating that he noticed lacerated wounds and abrasions on forehead and in the periphery of eyes and the cause of death was coma as a result of head injury and the death was homicidal in nature. After completion of investigation, charge sheet was filed for the offence under Section 302 IPC and then the charge was also framed under the same Section.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 14 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned above.

5. Counsel for the accused/appellant submits that it is a case of no evidence as none of the witnesses examined by the prosecution has stated against the accused/appellant. He submits that the accused/appellant was not the only inmate of the house but his son Sanjay and daughter-in-law Vinita also used to live along with him and therefore it cannot be said with certainty that it is the accused/appellant who has committed the murder of his wife.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on

due appreciation of the evidence on record and there is no infirmity in the same.

7. Vijay Kumar (PW-1) – the son of the deceased and the accused has stated that on the fateful day after he returned from his workplace, his mother was found in an unconscious state. Thereupon, he called the village doctor who on seeing the condition of the deceased advised to shift her to a better hospital but in the meanwhile she died. According to this witness, in the house of the accused/appellant, his brother Sanjay and sister-in-law Vinita were also residing whereas he used to live separately but just nearby. Vinita Bai (PW-2) – the daughter-in-law of the accused and the deceased has stated that she was not aware as to how the incident resulting in the death of her mother-in-law took place. Sajan Sai (PW-3) has stated that he was called up by Vijay, but he did not go to his house. Loherin Bai (PW-4) – the neighbour of the deceased has stated that she came to know about the incident through Kusum Bai (PW-10) after it had taken place and thus she is a hearsay witness. Nanhuram (PW-5) and Nahar Sai (PW-6) are the witnesses to inquest but they have not stated anything specific against the accused/appellant. Jairam Chandra (PW-8) is the Patwari who prepared spot map Ex. P-3 and *Panchnama* Ex. P-4. Dr. A.S. Thakur (PW-9) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-5 stating that he noticed abrasions and lacerated wound on her forehead and in the periphery of eyes and the cause of death was coma as a result of head injury and the death was homicidal in nature. Kusum Bai (PW-10) is the daughter-in-law of the accused and the deceased who though has stated in the examination-in-chief that as the deceased did not cook food, the accused/appellant had pressed her leg but in the cross-examination she has retorted from her stand and stated that she did not see the incident from her

own eyes. Manoj Kumar Yadav (PW-12) is the witness who first attended the deceased and as she was unconscious, he advised for taking her to hospital. Lahru Ram Bhagat (PW-14) is the investigating officer who has duly supported the case of the prosecution.

8. We have closely seen the entire material available on record but there is not even a single evidence on the basis of which it could be said that it is the accused/appellant who has committed the murder of the deceased. Record reveals that in the house in question apart from the accused and deceased, their son and daughter-in-law were also residing and keeping in view this aspect of the matter also the accused/appellant cannot be held guilty for the death of his wife. Further, though the blood stained clothes of the deceased and the accused were seized but there is no FSL report on record. Thus in a way, it is a case of no evidence against the accused/appellant and the Court below has been fully unjustified in holding the accused/appellant guilty.

9. Appeal is thus allowed. Judgment impugned is hereby set aside. Accused/appellant is acquitted of the charge levelled against him. As he is still in jail, let he be set free forthwith if not required in any other case.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(I.S.Uboweja)

Judge