

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.97 of 2014**

Jeevan Ram, S/o Mohit Ram, aged about 45 years, resident of Village Ramtirath, Police Station Ramanujnagar, Revenue District Surajpur, Civil District Surajpur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Ramanujnagar, Revenue District Surajpur and Civil District Surajpur, Chhattisgarh

--- Respondent

For Appellant	:	Shri Ravi Maheshwari, Advocate
For Respondent	:	Shri Amit Singh, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

31.7.2019

- The instant appeal has been preferred against the judgment dated 26.11.2013 passed by the Additional Sessions Judge, Surajpur, District Surguja in Sessions Trial No.323 of 2012, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304 of the Indian Penal Code	Simple Imprisonment for 10 years and fine of Rs.100/- with default stipulation

- Facts, in brief, are that name of the deceased in this case is Geeta. Appellant is father of deceased Geeta. The Appellant was residing with his wife Safiyano (PW2) and their children. Dilbandhu (PW1) is brother of the Appellant. On 24.7.2012, Dilbandhu (PW1) lodged a report in police station that when he heard shouts, he went to the house of the Appellant. He saw that the Appellant had killed her daughter Geeta by cutting her neck with a *hansiya*. He saw that

the Appellant was standing there keeping the *hansiya* in his hand. When he reached the place of incident, the Appellant fled from there. On the basis of the said information, morgue intimation (Ex.P1) and First Information Report (Ex.P2) were registered. Post mortem examination over the dead body of Geeta was conducted by Dr. R.S. Singh (PW8). His report is Ex.P9 in which he opined that nature of the death was homicidal. During the course of investigation, on the basis of memorandum statement (Ex.P4) of the Appellant, *hansiya* was seized vide Ex.P5. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 302 of the Indian Penal Code. Charge was framed against him under Section 302 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 11 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded false implication. No witness has been examined in his defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court convicted the Appellant under Section 304 of the Indian Penal Code and sentenced him as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the Trial Court has wrongly convicted the Appellant. There is no evidence on record against the Appellant to convict him. There is nothing on record on the basis of which it could be established that murder of Geeta was committed by the Appellant.

6. Learned Counsel appearing for the State opposes the above submission and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Dilbandhu (PW1), who gave the morgue intimation and lodged the FIR, has stated that on the date of incident, the Appellant had suffered an attack. Members of the family of the Appellant were running here and there. He reached to the house of the Appellant. At that time, deceased Geeta was lying down. After declaration of this witness as hostile, he has admitted the fact that Safiyano (PW2), wife of the Appellant had told him that the Appellant had caught Geeta and probably he was going to commit her murder. She asked him to save Geeta. On this, he went to the house of the Appellant. The above statement of this witness has not been rebutted during his cross-examination.
9. Safiyano (Pw2), wife of the Appellant has only stated that the Appellant had suffered an attack of madness. All the persons were running here an there due to which her daughter Geeta fell down and died. This witness has also been declared hostile.
10. Rajbahadur (PW3) and Babulal (PW4) are the witnesses before whom police had recorded memorandum statement of the Appellant and on the basis of the memorandum statement, had seized a torch from the Appellant. This witness has not supported the above facts and has been declared hostile.
11. Dhaneshwari (PW5) is sister of the deceased. She has also not supported the case of the prosecution and has been declared

hostile.

12. Malti (PW6), who is a relative of the Appellant, has deposed that when she heard shouts from the house of the Appellant, she went to his house. At that time, Geeta was lying dead and the children of the Appellant told her that the Appellant had killed Geeta by cutting her neck.
13. Tirath Prasad (PW7), Nawalsai (PW9) and Unsai (PW10) have also not supported the case of the prosecution and have been declared hostile.
14. Dr. R.S. Singh (PW8) conducted post mortem examination over the dead body of Geeta. Post mortem report is Ex.P9. As per Ex.P9 and the statement of this witness, half of the neck on right side and breathing nerve were cut. The injury was caused by a sharp object. As opined by this witness, cause of death was shock and nature of death was homicidal.
15. Inspector D.R. Tandon (PW11) was Investigating Officer of the offence in question. During the course of investigation, he recorded morgue intimation (Ex.P1) and First Information Report (Ex.P2). He also prepared inquest (Ex.P8). He also prepared spot-map (Ex.P3). From the spot, he seized plain soil and blood stained soil vide Ex.P6. This witness has also deposed that on the basis of memorandum statement (Ex.P4) of the Appellant, vide Ex.P5, he seized a blood stained *hansiya* and a torch from the Appellant. He also recorded statements of witnesses.
16. On a minute examination of the evidence available on record, it is clear that deceased Geeta was daughter of the Appellant. Her death occurred in the house of the Appellant. As reported and

opined by Dr. R.S. Singh (PW8), who conducted post mortem examination over her dead body, her death took place due to cut of her neck and the death was homicidal in nature. Though none of the witnesses has stated that they witnessed the Appellant killing the deceased and all have been declared hostile, Dilbandhu (PW1), brother of the Appellant, in his statement in paragraph 6, has categorically stated that Safiyano (PW2), wife of the Appellant had come to him and told that the Appellant had caught Geeta and was going to kill her. This witness went to the house of the Appellant where he saw that Geeta was lying dead. The above statement of this witness has not been rebutted during his cross-examination. Apart from this, Malti (PW6) has categorically stated that she heard shouts from the house of the Appellant and went there. At that time, she saw that Geeta was lying dead and the children of the Appellant told her that the Appellant had cut the neck of Geeta. The above statement of this witness has also not been rebutted during her cross-examination. Thus, from the above statements of Dilbandhu (PW1) and Malti (PW6), it is clear that Geeta was killed by the Appellant himself. Therefore, the Trial Court has rightly convicted the Appellant. The sentence imposed upon him is also just and proper.

17. Consequently, the appeal is dismissed.
18. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge