CGHC010298902017 026:CGHC:35729-DB

SAIFAN KHAN Digitally signed by SAIFAN KHAN

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1249 of 2017

[Arising out of judgment dated 27.03.2017, passed in Sessions Trial No.14/2016 (State of Chhattisgarh v. Pandu Ram Netam) by the Addl. Judge to the Court of 1st Addl. Sessions Judge, Rajnandgaon (CG)]

Pandu Ram Netam S/o Mansing, aged about 48 years R/o Village-Jhijhari, O.P. Chichola, District Rajnandgaon, (Chhattisgarh)

... **Appellant**

(On Bail)

Versus

State of Chhattisgarh, through Station House Officer Police Station Chhuriya, O.P. Chichola, District Rajnandgaon (Chhattisgarh)

... **Respondent**

[Cause-title taken from Case Information System (CIS)]

For Appellant : Ms. K. Tripti Rao, Advocate
For Respondent : Mr. HAPS Bhatia, Panel Lawyer

Division Bench

Hon'ble Mr. Justice Sanjay K. Agrawal, and
Hon'ble Mr. Justice Radhkishan Agrawal

Judgment on Board
(12.08.2026)

Sanjay K. Agrawal, J

(1) Invoking criminal appellate jurisdiction of this Court, the sole appellant herein has preferred this criminal appeal under Section 374(2) of Cr.P.C., calling in question the legality, validity and

correctness of the impugned judgment of conviction and order of sentence dated 27.03.2017, passed in Sessions Trial No.14/2016 (State of Chhattisgarh v. Pandu Ram Netam) by the Addl. Judge to the Court of 1st Addl. Sessions Judge, Rajnandgaon (CG), whereby he has been convicted for offence under Section 302 of IPC and sentenced to undergo imprisonment for life with fine of Rs.1,000/- and, in default of payment of fine amount, sentenced to undergo additional rigorous imprisonment for 01 year.

(2) The case of the prosecution, in short, is that on 09.02.2016, at about 10:30 AM, at Lal Matia Forest (jungle area) of Village Jhinjari, which comes within the ambit of Police Outpost Chichola, District-Rajnandagaon (CG), the accused-appellant assaulted his second wife, namely, Devkunwar @ Devki (hereinafter referred to as the "deceased") by means of axe, due to which, she suffered grievous injuries and died and, thereby, the appellant is said to have committed the aforesaid offence.

(3) It is further case of the prosecution that when the matter was reported to the police by initially dehati merg (Ex.P/4) and dehati nalisi (Ex.P/4A) were recorded and, thereafter, merg intimation (Ex.P/29) and FIR (Ex.P/27) were registered and wheels of investigation started running, in which, summons under Section 175 of CrPC were sent vide Ex.P/01 and inquest proceedings were conducted vide Ex.P/02. Nazari Naksha and Spot panchnama were also prepared vide Ex.P/07 & Ex.P/08 respectively. The dead-body of

the deceased was sent for postmortem examination, which was conducted by Dr. S. Choudhary (PW-10) and, as per PM report (Ex.P/25), cause of death of the deceased is cut on vital part of the body (neck) and nature of death is homicidal. The appellant-accused was arrested vide Ex.P/14 and his memorandum statement was recorded vide Ex.P/11. Pursuant to the memorandum statement of the appellant, axe (weapon of the offence) was seized vide Ex.P/12. Certain other articles were also seized vide Ex.P/06 & Ex.P/13. Thereafter, the seized articles were sent for chemical examination and as per FSL report (Ex.P/33) it has been opined that stains of disintegrated blood were found on the axe and shirt seized from the appellant. After statements of witnesses were recorded and due investigation, the police filed charge-sheet against the appellant in the competent criminal court having jurisdiction and, thereafter, the case was committed to the Court of Sessions for hearing and trial in accordance with law, in which the appellant/accused abjured his guilt and entered into defence by stating that he is innocent and has been falsely implicated.

(4) The prosecution in order to prove its case examined as many as 14 witnesses and exhibited 33 documents apart from Article-A/3 to A/5, whereas the appellant-accused in support of his defence though not examined any witness but exhibited 01 document.

(5) The learned trial Court after appreciating the oral and documentary evidence available on record, proceeded to convict the

appellant for offence under Section 302 of IPC and sentenced him as mentioned herein-above, against which this appeal has been preferred by the appellant-accused questioning the impugned judgment of conviction and order of sentence.

(6) Ms. K. Tripti Rao, learned counsel appearing for the appellant submits that the learned trial Court is unjustified in convicting the appellant for offence under Section 302 of IPC, as the prosecution has failed to prove the offence beyond reasonable doubt. She vehemently argued that so far as the extra-judicial confession made by the appellant before Tilak Ram Sahu (PW-02) is concerned, the same has been made while the appellant was in police custody, therefore, it is hit by Section 26 of the Indian Evidence Act, 1872 (for short the "IE Act") and same cannot be relied upon. Even though, from the possession of the appellant, weapon of the offence i.e. axe and shirt have been seized and, in the FSL report (Ex.P/33), stains of blood were found on it, but same is also of no use to the prosecution for the reasons that: (i) witnesses to the said seizure and memorandum, namely, Harichand Gond (PW-04) and Baliram (PW-06) have turned hostile and have not supported the case of the prosecution; (ii) the said seizure has been made in the Police Station and (iii) there is no evidence available on record to show that the said axe has been used by the appellant in commission of the offence in question. Learned counsel also argued that reliance placed by the learned trial Court under Section 106 of the IE Act is also bad and

illegal under the facts and circumstances of the present case. Hence, the present appeal deserves to be allowed and the appellant is liable to be acquitted of the said charges on the basis of benefit of doubt.

(7) *Per-contra*, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. In view of the statements of prosecution witnesses coupled with other material available on record, the learned trial Court has rightly convicted the appellant for offence under Sections Section 302 of IPC. Thus, the present appeal deserves to be dismissed.

(8) We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

(9) The first and foremost question is as to whether the death of the deceased was homicidal in nature, which the learned trial Court has recorded in affirmative by taking into consideration the postmortem report (Ex.P/25), wherein it has been opined that cause of death of the deceased is cut on the vital part of the body (i.e. neck) and nature of death is homicidal, which is duly proved by the statement of Dr. S Choudhary (PW-10). Accordingly, taking into consideration the postmortem report (Ex.P/25) and the statement of Dr. S Choudhary (PW-10), who has conducted the postmortem of the

dead-body of the deceased, we are of the considered opinion that the death of the deceased is homicidal in nature, as the same is correct finding of fact based on evidence and same is neither perverse nor contrary to the record. We hereby affirm the said finding.

(10) Now, the next question for consideration would be whether the appellant herein is the author of the crime or not, which the learned trial Court has answered in affirmative on the basis of following circumstances: **(i)** extra-judicial confession made by the appellant to Tilak Ram Sahu (PW-02); **(ii)** from the appellant, weapon of the offence i.e. axe and shirt have been seized, in which, as per FSL report (Ex.P/33) stains of blood were found and (iii) Section 106 of the IE Act invoked by the trial Court. We will consider each of the above-mentioned circumstances one by one.

Extra-judicial confession:

(11) The first circumstance that has been relied upon by the learned trial Court is that the appellant has made extra-judicial confession before Tilak Ram Sahu (PW-02). However, it is apparent from the statement of Tilak Ram Sahu (PW-02) that the appellant has made said extra-judicial confession while he was in police custody, as Tilak Ram Sahu (PW-02) has clearly stated that he is Ex-Sarpanch of the village and he was called by the police officials and, thereafter, when he reached to the police station, he saw that the appellant admitted his guilt of killing his wife and, when he enquired from the

appellant, he further admitted that he assaulted his wife by means of axe, due to which, she suffered grievous injuries and died. However, by virtue of Section 26 of the IE Act, the confession made by the accused (appellant herein) while in police custody would not be proved against him. Even otherwise, it is trite that the statements made in police custody are considered to be unreliable unless they have been subjected to cross-examination or judicial scrutiny (See: **Sehr v. State of Karnataka**[1]). Accordingly, this piece of evidence cannot be relied upon to hold the appellant guilty of the offence in question. We hereby hold accordingly.

Recovery of axe & shirt from the appellant:

(12) The next piece of evidence that has been relied upon by the trial Court is that from the possession of the appellant, axe and shirt have been seized and, in which, as per FSL report (Ex.P/33) stains of blood were found. However, witnesses to the said seizure and memorandum statement of the appellant, namely, Harichand Gond (PW-04) and Baliram (PW-06) have not supported the case of the prosecution and, indeed, turned hostile. Harichand Gond (PW-04) has clearly stated that the axe has been seized in the police station when he reached to the police station. Further, in Para-06 of his cross-examination, he has clearly admitted that he has not seen the appellant taking out the axe from the place where it is said to have been seized from the possession of the appellant. He further

1 (2010) 7 SCC 263

admitted that he has not seen the axe on the place of incident i.e. Lal Matia Forest (jungle area). Even he also admitted that vide Ex.P/12 no axe has been seized from the place where it is said to have been recovered i.e. Saaja Tree leafs situated in Lal Matia Forest (jungle area). Similar is the statements made by Baliram (PW-06). Accordingly, both the witnesses have clearly turned hostile and have not supported the case of the prosecution and, even otherwise, the axe has been seized in the police station and same has not been recovered from the spot or the place allegedly mentioned in seizure memo (Ex.P/12) and the recovery memo is also allegedly said to have been prepared in the police station, therefore, the recovery aforesaid will lose its sanctity as held by the Supreme Court in the matter of **Varun Choudhary v. State of Rajasthan**[2]. Moreover, there is no evidence available on record to show that it is the appellant herein who has used the said axe in commission of the offence in question and, on this count also, the recovery aforesaid it not a reliable piece of evidence in the present case (**See**: **Mustkeem alias Sirajudeen vs. State of Rajasthan**[3]. Accordingly, for the aforesaid reasons, the recovery of said axe and shirt is of no help to the prosecution. We hereby hold accordingly.

Section 106 of the IE Act:

(13) Lastly, learned trial Court invoked Section 106 of the IE Act to

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2 (2011) 12 SCC 545

3 (2011) 11 SCC 724

hold the appellant guilty for the offence in question. However, the finding recorded by the learned trial Court in this regard is totally misplaced, as the learned trial Court did not record a finding that since the appellant and the deceased both were living together in one house, the burden lies on the appellant to prove as to how and in what circumstance the deceased died, which he failed to do so. Indeed, in the present case, the dead-body of the deceased was found lying in Lal Matia Forest (jungle area) and not in the house of the appellant and, therefore, it is not a case where Section 106 of IE Act could have been invoked by the learned trial Court, as presumption only cannot be drawn unless the prosecution has proved the case against the appellant to attract Section 106 of the IE Act. Consequently, learned trial Court has committed grave legal error while invoking Section 106 of the IE Act to hold the appellant guilty for the offence and same is liable to be and is hereby set aside. We hereby hold accordingly.

(14) In view of foregoing analysis, we are unable to hold that the prosecution has been able to prove its case beyond all reasonable doubt and, in absence of which, the learned trial Court is unjustified in convicting the appellant for offences under Sections 302 of IPC being the author of the crime in question in light of the findings culled out in the impugned judgment and same are liable to be set aside.

(15) Accordingly, we hereby set aside the conviction so recorded and the sentence so awarded by the trial Court to the appellant vide the impugned judgment dated 27.03.2017. The appellant is acquitted of the charge under Section 302 of the IPC on the basis of benefit of doubt. The appellant is reported to be on bail, therefore, he need not to surrender. However, his bail bond shall remain in force for a further period of six months in view of the provision contained in Section 437-A of the CrPC.

(16) This criminal appeal is **allowed.**

(17) Let a certified copy of this judgment alongwith the original record be transmitted to the trial Court concerned for necessary information and action, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Radhakishan Agrawal)
Judge

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