

**(2018) 08 CHH CK 0048**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal (CRA) No. 62 Of 2015

Pusai Ram

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Aug. 1, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 302
- Code Of Criminal Procedure, 1973 - Section 313

**Hon'ble Judges:** Pritinker Diwaker, J; Gautam Chourdiya, J

**Bench:** Division Bench

**Advocate:** V.K. Pandey, Ravindra Agrawal

**Final Decision:** Allowed

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**Judgement**

Pritinker Diwaker, J

1. This appeal has been filed against the judgment of conviction and order of sentence dated 28.11.2014 passed by the Sessions Judge, Sarguja

(Ambikapur) in Sessions Trial No. 346/2013 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for

life with fine of Rs. 500/-, plus default stipulation.

2. Name of the deceased in the present case is Suman Bai - wife of the accused/appellant. Case of the prosecution in brief is that in the intervening

night of 23/24.9.2013 the accused/appellant committed the murder of Suman Bai with the help of axe. All this is said to have happened in the house of

Kailash - one of the sons of the deceased and the accused. Merg Ex.P-1 and FIR Ex. P-2 were recorded against the accused/appellant on 24.9.2013

at the instance of Kailash (PW-1). After completing inquest proceedings vide Ex. P-9, the body of the deceased was sent for postmortem examination which was conducted by Dr. K.P. Vishwakarma (PW-10) who gave his report Ex. P-18. After completion of investigation, challan was laid by the police under Section 302 IPC followed by framing of charge accordingly.

3. To hold the accused/appellant guilty the prosecution has examined 10 witnesses in support of its case. Statement of the accused/appellant has also been recorded under Section 313 of the Code of Criminal Procedure in which he denied the allegations made against him 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 detailed in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits as under:

(i) That there is no eyewitness to the incident and the conviction of the accused/appellant is based on the circumstantial evidence though none of the circumstances relied upon by the prosecution directly connects him with the crime in question. Even the chain of circumstances is not complete.

(ii) That body of the deceased was found in the house of Kailash (PW-1) but there is no evidence that the accused/appellant was residing therein, and on the contrary the evidence reflects that he was residing with his another son Shriram (PW-5) whose house was 2-3 Kms. away from the place where the incident is said to have taken place.

(iii) That considering the fact that the accused/appellant was not seen in the house of Kailash (PW-1) where the incident is alleged to have occurred, it cannot be presumed that it is he who committed the murder of the deceased and for that the house murder theory would not apply in the case.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the Court below has been justified in recording the conviction on the basis of material available on record and there is no infirmity or illegality in the same.

7. Heard counsel for the parties and perused the material on record.

8. Kailash Singh (PW-1) - son of the accused and the deceased in whose house the incident is said to have taken place, has stated that on the ill-fated

night he along with his wife and child was sleeping in one room whereas his mother (deceased) was sleeping in another one. The accused/appellant,

according to this witness, was sleeping in the house of his brother (PW-5). In the morning when his wife went to the room of the deceased, she saw

her lying dead and then on coming to know about this he too went there and saw the dead-body of his mother with axe stuck in her head and the blood

was all around. Though this witness has subsequently been declared hostile yet in paragraph No. 8 of his deposition he has reiterated that before the

incident also the deceased used to live with him and the accused with PW-5. He has categorically denied that two days before the occurrence, the

accused had come to live with him. Smt. Shanti (PW-2) - wife of PW-1 has also stated almost the same thing as her husband has stated. Deceased

and the accused, according to her, stayed in the house of PW-1 and PW- 5 respectively. Shriram (PW-5) - another son of the accused and the

deceased has stated that he and his brother lived separately and that accused used to stay in his house whereas the deceased stayed in the house of

PW-1. He has further stated that his mother sometimes visited his house but never spent night therein. This witness too has turned hostile at this stage

but has categorically denied that in last two days prior to the incident, the accused had gone to live in the house of PW-1. Navin Kumar Shrivastava

(PW-3) is the Patwari who prepared spot map Ex. P-7. Ram Roop Singh (PW-4) and Mayadas Panika (PW-6) have not supported the case of the

prosecution and have been declared hostile. Sagar Sai (PW-7) has also stated that the accused and the deceased were living separately and that the

deceased lived in the house of PW-1 whereas the accused used to live for 04 days in the house of PW-1 and another 04 days in the house of PW-5.

Relations between deceased and the accused, according to this witness, were normal barring some altercation under the influence of liquor on certain

occasions. Ramnandan (PW-8) - a hearsay witness has been declared hostile. Nirmal Prasad Rajwade (PW-9) is the investigating officer who has

duly supported the case of the prosecution. Dr. K.P. Vishwakarma (PW-10) is the witness who conducted postmortem examination on the body of

the deceased and gave his report Ex. P- 18 stating that an axe was stuck on the right side of temporal and parietal region of head and after its removal

9 cm deep wound was noticed. Cause of her death has been opined to be cardio respiratory arrest due to head injury, and the death was homicidal in nature.

10. Close examination of the material available on record goes to show that body of the deceased was found in the house of PW-1 where he stayed with his wife and son. Undisputedly, the accused/appellant was living with his another son (PW-5). Though PW-5 has stated that his mother (deceased) sometimes used to come to his house yet he has clarified that she never stayed there in the night. Likewise, PW-7 has stated that four days a week the deceased lived with PW-1 and for another four days with PW-5. Even if the statement of PW-7 is taken to be correct for a moment, it cannot be presumed that on the fateful day she was not in the house of PW-1 where the accused was not staying. Even the axe seized under Ex. P-15 is of no help to the case of the prosecution as there is nothing to show that any blood was present on it. Thus in these circumstances when the prosecution has not been able to establish that on the date of incident the accused and the deceased were in the same house, the house murder theory would not come into play. Leave aside the eyewitness, even the circumstances under which the incident has taken place do not connect the accused/appellant with the crime in question. Almost all the material witnesses have not lent support to the case of the prosecution and have chosen to turn hostile. Prosecution has thus utterly failed to prove its case beyond all reasonable doubts.

11. Accordingly, appeal is allowed, judgment impugned is set aside and the accused/appellant is acquitted of the charge levelled against him. As the appellant is in jail, he is directed to be set free forthwith if not required in any other case.