

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 410 of 2010

1. Anand Goutam

---- Appellant (in jail)

Versus

1. State Of Chhattisgarh

---- Respondent

For Appellant	:	Mr. Y. C. Sharma, Advocate
For Respondent/State	:	Mr. Rama Kant Pandey, Panel Lawyer

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgement on Board by T.P.Sharma, J.

23/04/2015

Challenge in this appeal is to the judgment of conviction and order of sentence dated 15.04.2010 passed in Sessions Trial No.226/2009 by the Sessions Judge, Raipur, whereby and whereunder the trial Court, after holding the appellant guilty for causing homicidal death amounting to murder of Ravi Goutam, convicted the appellant under Section 302 of the I.P.C. and sentenced him to imprisonment for life with fine of Rs.500/- and in default of payment of fine amount to undergo additional RI for two months.

2. Conviction is impugned on the ground that without there being any iota of evidence, the Court below convicted and sentenced the appellant and thereby committed the illegality.

3. As per case of the prosecution, on fateful day of 28.09.2009 at about 6.00 am, the appellant assaulted Ravi Goutan by a weapon like battle axe and caused his death. Thereafter, the appellant threw the dead body near the railway track. Dead body was seen by P.W.1 Deepak Vishwas, who informed the Police Station Khamtarai and lodged merg intimation vide Ex.P.1.

4. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P. 2, inquest over the dead body was prepared vide Ex.P. 3. Spot map was prepared vide Ex.P.14. Bloodstained and plain soils were recovered from the spot vide Ex.P.4. Dehati Nalishi was recorded vide Ex.P.11. F.I.R. was recorded vide Ex.P.15. Dead body was sent for autopsy to Ambedkar Hospital, Raipur. P.W.4 Dr. Shivnarayan Manjhi conducted autopsy vide Ex.P.9 and found following injuries:

1. Incised wound over neck just below occipital region of 6 x 1.5 x 5.5 cm. Extending from 3 cm. Back to left mastoid to right side line.
2. Incised wound over nape of neck of 6 x 1 x 5 cm below to injury No.1.
3. Incised wound over back of neck of 05 x 1 x 05 cm below to injury No.2.
4. Incised wound over right side neck slight posteriorly of 5 x 1 x 4 cm

deep.

5. Incised wound on neck just below injury No.3 of 5 x 1 x 4.5 cm. Transversely.

Mode of death was haemorrhage and shock and death was homicidal death.

5. During the course of investigation, appellant was taken into custody. He made disclosure statement of *Rapi* i.e., battle axe vide Ex.P.5. Same was recovered at his instance vide Ex.P.6. Bloodstained cloths of the appellant was seized vide Ex.P.7. Sealed cloths of deceased were seized vide Ex.P.12. Seized articles were sent for chemical examination vide Ex.P.13. Presence of blood upon battle axe and cloths of the appellant was confirmed vide Ex.P.16.

6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

7. After completion of investigation, charge sheet was filed before the Court of J.M.F.C., Raipur, who in turn committed the case to the Court of Sessions, Raipur.

8. In order to prove the guilt of the appellant, prosecution examined as many as 07 witnesses. Accused person was examined under Section 313 of the Code wherein he denied the circumstances appearing against and innocence and false implication in crime in question was claimed. Defence has examined one Rakesh

Goutam as D.W.1, who has deposed that the appellant is innocent person.

9. After providing an opportunity of hearing to the parties, learned Sessions Judge convicted and sentenced the appellant as aforementioned.

10. We have heard learned counsel for the parties and perused the record of trial Court including judgment impugned.

11. Mr. Y.C. Sharma, learned counsel for the appellant, vehemently argued that conviction of the appellant is substantially based on the evidence of P.W.5 Satya Prakash Jain. As per his evidence, appellant has made extra judicial confession before him, but, his evidence is contrary to the medical evidence and the evidence of other witnesses. He has not deposed that appellant has made extra judicial confession that he has killed deceased. He has deposed that the appellant told him that on account of quarrel, he pushed deceased near railway line, which is contrary to the medical evidence. Therefore, only evidence of P.W.5 by itself is not sufficient conviction of the appellant.

12. On the other hand, Mr. Rama Kant Pandey, learned counsel for the State, opposed the appeal while submitting that evidence of P.W.5 Satya Prakash Jain relating to extra judicial confession made by the appellant is voluntary confession and is sufficient for conviction of the appellant.

13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the

present case, homicidal death as a result of fatal injuries found over the body of deceased – Ravi Goutam has not been substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of P.W.1 Deepak Vishwas, P.W. 2 Ramesh Jain, P.W.3 Shiv Kumar, merg intimidation Ex.P.1, Dehati Nalishi Ex.P.11, P.W.4 Dr. Shivnarayana Manjhi and autopsy report Ex.P. 9. Death of deceased was homicidal in nature.

14. As regard complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of P.W.5 Satyaprakash Jain. As per his evidence, appellant is his employee, who came to his house along with his father and made statement that on account of quarrel with deceased – Ravi Goutam in the night, he pushed him near railway line and after dead body was found near railway line, he directed the appellant to go to Police Station. In para 3 of his cross-examination, he has admitted that the appellant along with his father came to him, father of the appellant told that quarrel had taken place between the appellant and deceased whereas appellant did not speak anything. As per medical evidence of P.W.4 Dr. Shivnarayan Manjhi and autopsy report Ex.P.9, as many as five incised wounds of considerable size have been noticed by the Doctor upon the neck of deceased, which could not be caused by pushing or by falling. Autopsy report Ex.P.9 and the evidence of P.W.4 Dr. Shivnarayana Manjhi clearly revealed that somebody has caused as many as five injuries by sharp edged weapon. Causing injuries by weapon could not be considered but those injuries have been caused by pushing the person or by falling him. Even

otherwise, in para 3 of cross-examination, P.W.5 Satya Prakash Jain has deviated from his original evidence and has deposed that appellant did not speak anything and only father of the appellant informed him that some quarrel had taken place between the appellant and deceased. The aforesaid evidence of P.W.5 is not sufficient for drawing definite conclusion that the appellant is author of the crime. Even otherwise, initially in the merg intimation, name of the person has been mentioned as not known, thereafter after striking out the same, the name of the appellant has been mentioned.

15. While convicting the appellant under Section 302 of the I.P.C., the trial Court has not considered the insufficiency evidence of P.W.5 Satya Prakash Jain and evidence of other witnesses and thereby committed illegality.

16. Consequently, appeal deserves to be and is hereby allowed. Conviction of the appellant under Section 302 of the I.P.C. and the sentence awarded thereunder are liable to be and are hereby set aside. He is acquitted of the charge under Section 302 of the I.P.C. He shall be released forthwith, if not required in any other case.

(T.P.Sharma)
JUDGE

(I.S. Uboweja)
JUDGE