

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 587 of 2010

1. Radeshyam Mehar S/o Ramkrishna Mehar Aged About 21 Years R/o Village - Paterapali, Thana - Saraypali, Distt. Mahasamund Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through The District Magistrate, Mahasamund Distt. Mahasamund Chhattisgarh

---- Respondent

And

CRA No. 615 Of 2010

1. Gajju @ Khir Sagar Sahu S/o Dhanurjai Sahu, R/o Village Kapudih, Present R/o Village Paterapali, P.S. Saraipali, Distt.-Mahasamund (Cg)

---- Appellant

Vs

1. State Of Chhattisgarh Through P.S. Saraipali, Distt.-Mahasamund (Cg)

---- Respondent

For appellants:	Smt. Indira Tripathi, Smt. Smiti Jha & Shri B.P. Sharma, Advocates for the appellants.
For Respondent	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

JUDGEMENT

09/09/2015

1. As the above criminal appeals arise out of the common judgment dated 4.8.2010 passed by the Sessions Judge, Mahasamund in Sessions Trial No.80/2009, they are being disposed of by this common judgment.
2. Appellants have been convicted under Section 302/34 of the Indian Penal Code (for short "the IPC") and each of them has been sentenced to undergo R.I. for life & fine of Rs.5,000/-, in default to undergo S.I. for 1 year.

3. It is alleged that on 19.9.2009 at about 7.00 a.m. accused/ appellant- Radheshyam Mehar came to the house of Ravilal Barik (PW-2), father of deceased, and informed him that some unknown person had killed his son Khemraj Barik and his dead body is lying in the field of Loknath Barik. Based on the information given by Ravilal Barik (PW-2), merg intimation (Ex.P-2) was recorded on 19.9.2009 and on the same day, FIR (Ex.P-3) was also registered against unknown persons. It has been mentioned in the merg that on the previous night at about 8.00 p.m., the deceased was called by accused/appellant Gajju. Inquest was prepared on 19.9.2009 vide Ex.P-4 and thereafter dead body was sent for autopsy to the Community Health Centre, Saraipali, District Mahasamund where Dr. Amrit Rohledar (PW-1) conducted autopsy vide Ex.P-1 and noticed multiple injuries and about ten stab wounds on the body of deceased. As per his opinion, cause of death was shock due to excessive bleeding. During the course of investigating, disclosure statement of accused/appellant Gajju was recorded on 21.9.2009 vide Ex.P-6 based on which one shirt and one knife were seized vide seizure memos of Ex.P-7 & P-8. On 22.9.2009 disclosure statement of accused/appellant Radheshyam Mehar was recorded vide Ex.P-9 and based on which seizure of his clothing was made vide Ex.P-10. Seized articles were sent for chemical examination to the FSL but there is no report of FSL on record. Shoes of accused/appellant Gajju alleged to have been seized from the spot vide Ex.P-12. Identification memo of shoe was prepared by the police vide Ex.P-11 in which the shoes were identified as that of accused/appellant Gajju by Gajju himself, Ravilal (father of deceased) & Dhanurjay Sahu (father of Gajju). This document was allegedly prepared in presence of two witnesses namely Loknath Pradhan (not examined) & Laxman Pradhan (PW-3). After completion of investigation, charge sheet was filed against accused persons under Section 302/34 of the IPC and accordingly the charge was framed by the

trial Court.

4. In order to hold accused/appellants guilty, the prosecution had examined 08 witnesses in all. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence & false implication.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, convicted & sentenced them as mentioned in para-2 of this judgment.
6. Learned counsel for the accused/appellants submits that:
 - (i) accused/appellants have been convicted solely on the basis of seizure made pursuant to their disclosure statements, however, seizure has no value because there is no FSL report on record.
 - (ii) other piece of evidence which has been considered by the trial Court against the appellants is alleged seizure of shoe of accused/appellant Gajju vide Ex.P-12, but the identification memo (Ex.P-11) of that shoe was prepared by the police and thus it cannot be used against the appellants.
 - (iii) other circumstance to connect accused/appellants with crime in question is that on the previous night of incident, appellant-Gajju thrice made call on the phone of deceased but this evidence is not admissible as per Section 65B of the Evidence Act.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. We have heard learned counsel for the parties and perused the material available on record.

9. Dr. Amrit Lal Rohledar (PW-1) has conducted post mortem on the body of deceased vide Ex.P-1 and noticed following injuries:-

- Three stab wounds of 2x1.5x10 cm with bleeding on left side of stomach.
- Two stab wounds of 2x5x10 cm with bleeding on left side of stomach.
- Five stab wounds of 2x5x10 cm with bleeding on the frontal part of stomach.
- 15x10x2cm cut wound on scrotum, right testicle was out from scrotum, penis is partially cut.
- Whole body was mixed with blood & mud.

He has opined that cause of death was extensive injury to the vital organs and the death was homicidal in nature.

10. Ravilal Barik (PW-2) is father of deceased. He has stated that on 18.9.2009 at about 8.00 p.m. his son Khemraj had left the house by saying that accused Gajju is calling him. His son did not return house in the night. On the next morning, Radheshyam Mehar came and informed him that somebody had killed his son and badly damaged his scrotum, testicles & penis by causing severe injuries on his body which is lying in the agricultural field of Loknath Barik. On hearing this, he along with other villagers reached the spot and saw his son lying in dead condition, his testicles were badly cut and injury marks on various parts of the body were present. He came to know from the villagers that on the previous night some dispute took place between his son and appellant Gajju and it is the accused persons who have killed his son. He has further stated that FIR (P-3), inquest (Ex.P-4) and notice (Ex.P-5) bear his signatures. This witness has further stated that at the instance of accused Gajju, a knife & shirt were seized vide Ex.P-7 & P-8 respectively. On the basis of disclosure statement of accused Radheshyam (Ex.P-9), clothing were seized vide Ex.P-10. He has also stated that though he has signed Ex.P-11 but he does not remember as to what was mentioned in the same. In the cross-

examination this witness has stated that accused Gajju and the deceased were good friends and they have other friends also. He has admitted the fact that the deceased had left the house all alone.

11. Laxman (PW-3) is the witness of seizure memo of Ex.P-12 by which shoe of accused/appellant Gajju was seized. He is also witness of seizure memo of Ex.P-13 by which a red colour handkerchief was seized from the spot.
12. Shesh Dev (PW-4) is another witness of seizure memo of Ex.P-13. He is also the witnesses of recovery of bloodstained and plain soil from the spot vide Ex.P-14. This witness has admitted his signature over the disclosure statement (Ex.P-6) of accused/appellant Gajju and seizure memo of Ex.P-7.
13. Suresh Kumar Samant (PW-5) is the Patwari who prepared the spot map (Ex.P-15). Dolamani Sidar (PW-6) is the Constable who helped in the investigation. Vinod Mandavi (PW-7) is the investigating officer and has duly supported the prosecution case. Anil Verma (PW-8) is the Nodal Officer of Reliance Communication, Raipur and he has proved Article-1 which is call details showing that calls from phone number 930362441 were made to phone number 9302145425.
14. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence against the accused/appellants on which basis they can be held guilty for committing murder of the deceased. According to statement of Ravilal Barik (PW-2), father of deceased, after receiving call of accused/appellant Gajju, his son left the house at about 8.00 p.m., thereafter he did not return in the night and on the next day, his dead body was recovered, but in absence of any evidence corroborating version of this witness, that is to say, the deceased was last time seen alive in the company of accused/appellants by anyone, it is difficult to convict the accused/appellants only on the basis of testimony of the father of deceased. This apart, the prosecution has not proved the document containing call details of telephone of accused/appellants i.e. Article-1, in

the manner as required under Section 65B of the Evidence Act.

15. So far as the recoveries made at the instance of accused/appellants including the alleged weapon of offence i.e. knife, are concerned, though the seized articles were sent for chemical examination to the Forensic Science Laboratory but the charge sheet has been filed without securing report from the FSL. Even identification memo (Ex.P-12) prepared in respect of shoe of accused/ appellant No.1 allegedly seized from the spot, was prepared by the police not by the Executive Magistrate and therefore the same is also of no help to the prosecution. In these circumstances, we have no hesitation in saying that the prosecution has utterly failed to discharge burden lies on it of establishing a close link between discovery of material object and its use in the commission of offence by accused/appellants.
16. Considering the nature and quality of evidence adduced by the prosecution, we are of the opinion that the prosecution has failed to prove involvement of accused/appellants in the crime in question beyond reasonable doubt and they are definitely entitled to be acquitted of the charge by extending them benefit of doubt.
17. In the result, the appeals are allowed. Conviction and sentence of accused/appellants under Section 302/34 of the IPC are hereby set aside and they are acquitted of that charge by extending them benefit of doubt. They are reported to be in custody, therefore, they be released forthwith if not required to be detained in connection with any other offence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-