

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 76 of 2001**

1. Amarlal Satnami, aged about 45 years, son of Dhansai Satnami.
2. Kanhaiya Satnami, aged about 19 years son fo Amarlal Satnami.
3. Kishan Satnami, aged about 22 years, son of Bagasram Satnami.

All are resident of village Gabhra, Police Station Chhuikhadan,
District Rajnandgaon, Chhattisgarh.

---- Appellants**Versus**

- State of Chhattisgarh Through The District Magistrate,
Rajnandgaon (C.G.)

---- Respondent

For Appellant.	-	Shri B.D. Guru, Advocate.
For Respondent	-	Shri Ashish Surana, Panel Lawyer.

Hon'bel Shri Justice Pritinker Diwaker**Judgment On Board****17/02/2016**

This appeal arises out of the judgment of conviction and order of sentence dated 11.01.2001 passed by the Additional Sessions Judge, Khairagarh, District Rajnandgaon in S.T. No.118/2000 convicting the accused/appellants under Section 304 Part-II and sentencing them to undergo R.I. for five years and pay fine of Rs.1,000/- each with default stipulations.

02. The facts of the case in brief are that on 15.05.2000 deceased Manbodh came to village Gabhara along with *Barati* for the wedding of son of Bhagwat. All the *Baratis* (family members of bridegroom) and *Gharatis* (family members of bride) consumed liquor and it is alleged

that while taking food Manbodh got up little early which was objected by family members of bride saying that all of us ought to have got up together. Further case of the prosecution is that some dispute relating to this issue cropped up between two groups wherein Manbodh was beaten by lathi by the appellants as a result of which he died. FIR was lodged on 16.05.2000 by Raruha (PW/1) against the accused/appellants 1 and 2 under Sections 302, 294 and 323 IPC. Inquest over the body of deceased was prepared on 16.05.2000 vide Ex.P/2 and dead body was sent for postmortem to Primary Health Center, Chhuikhadan where Dr. M.G. Tiwari (PW/7) conducted autopsy vide Ex.P/10 and noticed following injuries:-

- (i) Contusion of 6 cm x 2.5 cm over right maxillary area.
- (ii) Contusions of ½ cm x ½ cm to 1 cm x 2 cm over right face above the injury No.1.
- (iii) Contusion of 6 cm x ½ cm over right clavicle area.
- (iv) Contusion of 2 cm x 2 cm over sub-mandibular region in middle line.
- (v) Contusion of 3 cm x 1 cm over left loin.
- (vi) Seven contusions of 1 cm x ½ cm to 2 cm x ½ cm over right forearm.
- (vii) Contusion of 3 cm x ½ cm over left arm.
- (viii) Contusion of 2 cm x 2 cm over right side of chest.

The autopsy surgeon opined that the cause of death was vasovegal shock. After investigation, charge sheet was filed against the accused/appellants under Sections 302, 323 and 294 IPC and charges were also framed accordingly.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 09 witnesses. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in

which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the appellants of the charge of Sections 302, 323 and 294 IPC but considering the nature of evidence, accused/appellants have been convicted under Section 304-Part-II IPC and sentenced as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellants submits :-

(i) that present is a case of no evidence yet the accused/appellants have been convicted under Section 304 Part-II IPC. None of the witness has stated that they saw any of the appellants causing injury to the deceased;

(ii) that important prosecution witnesses Raruha (PW/1), Mouji Ram (PW/2) and Dharam Raj (PW/5) have not supported the prosecution case;

(iii) though the club was seized from the appellant No.1-Amarlal vide Ex.P/6 but in absence of FSL report, the seizure is of no consequence;

(iii) that as per the evidence available on record, all the persons present in the marriage had consumed liquor and there appears to be some dispute between two groups.

(iv) that considering the postmortem report and the cause of death, which has been opined as vasovegal shock, the possibility cannot not be ruled out that the deceased died because of shock only and for this no one can be held responsible.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is strictly in accordance with law and there is no infirmity in the same.

07. I have heard learned counsel for the parties and perused the material available on record.

08. Raruha (PW/1) the lodger of FIR and eye witness to the incident has not supported the prosecution case and turned hostile. He has stated that in the *Barat* they were welcomed with liquor, both the parties had consumed liquor. After about five minutes they were invited for lunch, the lunch so served was incomplete. In the meanwhile, one boy namely Pusau who was with him in the *Barat* went outside as he had some quarrel with one of the baratis. There was quarrel between Pusau and appellant Kanahiya outside. Thereafter, he heard about the scuffling, then this witness along with Mangal, Dharamraj and others rushed towards the spot and tried to reason with appellant Kanhaiya and Pusau. At the same time, appellant Amarlal hustled him and thereafter both the groups moved away, but he has nowhere stated that the accused/appellants caused any injury to deceased Manbodh. He has further stated that while dispute was going on between the appellants and one Pusau, the deceased was intervening. Thereafter deceased went near the Jaithkamb at village Gabhra but after about 10 minutes he came to know that the deceased fell down and expired. Even he has denied the contents of the FIR.

09. Moujiram (PW/2) has also not supported the prosecution case and turned hostile. Arjun Ram (PW/3) is a village Kotwar has also turned hostile. Rohit (PW/4) and Dharam Raj (PW/5) were also present at the time of occurrence and have been turned hostile. Though he (Dharam

Raj (PW/5)) proved some quarrel between two groups but has not stated that it is the accused/appellants who caused injuries to the deceased. This witness was also beaten by lathi but he states that as it was dark in the night he could not see the assailant. Baldau (PW/6) seizure witness of Ex.P/9 by which club has been seized from the appellant Kanhaiya has also turned hostile. Dr. M.G. Tiwari (PW/7) the autopsy surgeon who conducted postmortem over the body of deceased noticed as many as eight injuries vide Ex.P/10 and opined that the death of deceased was due to vasovegal shock. Sawant Ram (PW/8) is Patwari who prepared spot map vide Ex.P/10. Arvind Singh Rathore (PW/9) is a Investigating Office who has duly supported the case of prosecution.

10. Close scrutiny of the evidence makes it clear that on 15.05.2000 there was some dispute between two groups in a *Barat*, which was going to village Gabhra for the marriage of son of Bhagwat. It also appears that immediately after dispute, the deceased expired and as per postmortem report deceased sustained some injuries and cause of death was vasovegal shock. However, none of the prosecution witness has supported the prosecution case including that of Raruha (PW/1) who lodged the FIR. Some of the persons who have sustained injuries i.e. Raruha (PW/1) and Dharam Raj (PW/5) have also not supported the prosecution case and have been declared hostile. There is no evidence whatsoever adduced by the prosecution showing the involvement of the accused/appellants in commission of murder of the deceased. Though the club is alleged to have been seized from the appellants Amarlal and Kanhaiya but there is no FSL report and admittedly in the village such clubs are commonly found in every house, thus, merely on the basis of seizure of club, the accused/appellants cannot be held guilty for the

commission of the murder of deceased. Looking to the entire evidence, this Court is of the view that the prosecution has utterly failed to prove its case against the accused/appellants beyond the shadow of reasonable doubts. The trial Court while convicting and sentencing the appellants under Section 304 Part-II IPC has erred in law.

11. Appeal, as a result, is allowed and the impugned judgment is set aside. Appellants are acquitted of the charges levelled against them. The appellants are reported to be on bail, their bail bonds are discharged and they need not surrender.

Sd/-

(Pritinker Diwaker)

JUDGE