

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Cr.M.P. 540 of 2013

State of Chhattisgarh, Through the Station House Officer, P.S. Gariyaband,
 District Gariyaband, Chhattisgarh

---- Appellant

Versus

Bodhiram Bhunjiya @ Bodhi Singh, S/o Tihar Singh Bhunjiya, Aged about 22
 years, R/o village Piparchhedi, P.S. Gariyaband, District Gariyaband,
 Chhattisgarh.

---- Respondent

For Appellant : Shri Vinod Deshmukh, Deputy Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board

Per Navin Sinha, Chief Justice

13/01/2016

1. The present application has been filed for leave to appeal against the acquittal under Section 302 IPC ordered in Sessions Trial No. 24 of 2012 by the Additional Sessions Judge, Gariyaband dated 14.8.2012.
2. Learned Counsel for the State submits that the Respondent was the son of the deceased-Tahir Singh who was clubbed to death by the former with a piece of burning wood. Even if the prosecution witnesses went hostile and the forensic report also did not support the allegations, nonetheless if the statements under Section 161 CrPC recorded soon after the occurrence had given a different version pointing towards the guilt of the accused, and those statements were proved by the evidence of the Investigating Officer as having been made to him by the witnesses,

conviction can be maintained on basis of the same relying on (2011) 11 SCC 111 (Rameshbhai Mohanbhai Koli v. State of Gujarat).

3. We have considered the submissions on behalf of the State in assailing the acquittal.

4. The death was homicidal in nature is proved by the postmortem report. Hiraundi Bai (PW-6) wife of the deceased, an eyewitness and mother of Respondent did not support the prosecution case and turned hostile. PW-1, Udai Ram was a hearsay witness. Bhagwat Kanwar (PW-2) another son of the deceased denied any knowledge how death had occurred and also denied having given any different version to the police which was also the case with PW-6. PW-3, Avan Vishwakarma also turned hostile. Dayalu Ram (PW-4) was also a hearsay witness and denied his police statement. Rajni Bai (PW-5), sister of Hiraundi Bai (PW-6) was also a hearsay witness. PW-7, Gendlal Diwan denied that any seizure was made in his presence. PW-14, J.L.Dhruv, the Investigating Officer deposed that he had seized burnt wood with blood stains on it marked Exhibit P-12 as also shirt of the Respondent with blood stains on it, marked Exhibit P-13 alongwith sample of blood stained earth. The FSL report was not produced by the prosecution. The Trial Court therefore gave benefit of doubt.

5. The submission on behalf of the State that conviction can be maintained on the deposition of the Investigating Officer relying on Ramesh Bhai Mohan Bhai Koli (supra) is not acceptable as a general proposition. It came to be made in the peculiar facts of the case where the weapon of offence was recovered by the police officer on the confession of the accused from a place not visible to others except one who had hidden it. The weapon of offence contained blood on it confirmed in the Serologist report. It was a case of circumstantial evidence. It was held that the evidence of a hostile witness also does not get completely obliterated and that part of the evidence which finds corroboration from other evidence can be relied upon

to convict. The conclusions are to be noticed at paragraph 31 of the order relying on the FSL report.

6. In the present case, the prosecution witnesses went hostile in Court and denied their police statement. The Investigating Officer merely stated that he had recorded the statements correctly as made by the witnesses. It will not suffice to sustain conviction unless the witnesses were again confronted after having put specific questions to the Investigating Officer with regard to the earlier statement by the witnesses and the reply of the Investigating Officer. This procedure required under Section 145 of the Evidence Act has not been followed in the present case and there is nothing to suggest that after the Investigating Officer confirmed that he had recorded the police statement of the witnesses correctly, the relevant part was again confronted to the prosecution witnesses to suggest that they were lying in the Court. A reference may appropriately be made to the law in this regard as discussed in (2015) 9 SCC 588 (V.K.Mishra v. State of Uttarakhand) observing at paragraph 19 as follows:

"19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part

of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction."

7. We therefore find no reason to grant leave to appeal. The application is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE