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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 56 of 2006

- Mohd.Shakil Khan, S/o Gaffur Khan, aged about 25 years, R/o Village Navapara Durga Chowk, Balodabazar, Police Station-Baloda Bazar, Distt. Raipur (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station - Baloda Bazar, Distt. Raipur (CG)

---- Respondent

For Appellant

Shri YC Sharma, Advocate.

For Respondent/State

Shri Neeraj Mehta, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice R.C.S. Samant

Judgment On Board By Justice Pritinker Diwaker

02/11/2016

This appeal arises out of the judgment of conviction and order of sentence dated 27.12.2005 passed by the First Additional Sessions Judge, Baloda Bazar in ST No.180/2005 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.500/- with default stipulation.

02. As per the prosecution case, on 10.2.2005 at about 10.30 pm there was some quarrel between the appellant and the deceased namely Kishore Kumar Manglani near *Sharab Bhatti* (liquor shop) and it is

alleged that the appellant caused injury on the neck of the deceased by liquor bottle. Injured Kishore Manglani was immediately taken to Govt. Hospital, Baloda Bazar where he was attended by PW-9 Dr. RS Tiwari and considering his nature of injuries, he was referred to Medical College, Raipur, however, there he succumbed to his injuries. In the meanwhile, immediately after the incident at 11.15 pm FIR (Ex.P/1) was lodged by PW-1 Abid Khan against the appellant under Section 307 of IPC. After death of the deceased, based on information given by ward boy Shyamlal, merg intimation Ex.P/16 was recorded on 11.2.2005. Inquest (unexhibited) was performed on the body of the deceased and thereafter, the body was sent for postmortem which was conducted by PW-13 Dr. Shivnarayan Manjhi vide Ex.P/21 on 11.2.2005. The autopsy surgeon noticed five injuries on neck, left arm and right elbow and in his opinion, the cause of death was shock and hemorrhage as a result of neck injury. After investigation, charge sheet was filed against the appellant and the trial Court framed charge under Section 302 of IPC against him.

03. So as to hold the accused/appellant guilty, the prosecution examined 15 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him 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, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellants submits as under:

- that all the four eyewitness to the incident i.e. PW-1 Abid Khan, PW-2 Sharif Khan, PW-3 Dhaniram Sahu and PW-7 Rajesh Sahu have not supported the prosecution case and have been declared hostile.
- the other piece of evidence against the appellant is his disclosure statement (Ex.P/5), based on which T-shirt and baniyan were seized vide Ex.P/6, which were subsequently found to be stained with blood as per FSL report (unexhibited), but in absence of serological report confirming the origin of blood, blood group etc., the said circumstance loses its significance and as such, cannot be taken as an incriminating circumstance against the appellant.
- in fact, there is no legally admissible evidence which can be made basis of conviction of the appellant.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Abid Khan, PW-2 Sharif Khan, PW-3 Dhaniram Sahu and PW-7 Rajesh Sahu, eyewitness to the incident, have not supported the prosecution case and have been declared hostile. Though as per

statement of PW-1 and PW-2, presence of the appellant at the place of occurrence has been established but merely on that basis it cannot be held that it is the appellant who caused injuries to the deceased.

09. PW-4 Arjun Das and PW-5 Ajay Kumar Sharma are witnesses to seizure Ex.P/10 whereby clothes of the deceased were seized. PW-6 Babulal is a witness to seizure Ex.P/3 whereby certain articles from the place of occurrence were seized. PW-8 Chandrapal Manglani, brother of the deceased, is a hearsay witness. PW-9 Dr. RS Tiwari, Assistant Surgeon, attended the deceased Kishore Kumar when he was brought to Govt. Hospital, Baloda Bazar in injured condition, noticed incised wound on left side of neck caused by sharp edged weapon and then referred him to Medical College, Raipur. PW-10 Tejpal Dubey, Patwari, prepared spot map Ex.P/2. PW-11 Gopinath Sand conducted major part of investigation. PW-12 GS Sahu and PW-15 Bhushan Lal Sahu helped in the investigation. PW-14 Rajesh Parwani, witness of inquest, has merely proved receipt of notice of inquest Ex.P/23. PW-13 Dr. Shivnarayan Manjhi conducted postmortem on the body of the deceased on 11.2.2005 vide Ex.P/21 and noticed following injuries:

- (i) surgically stitched wound on left side of neck,
- (ii) reddish colour contusion on left arm lower 1/3rd part,
- (iii) contusion present same as injury No.(ii),
- (iv) red colour contusion on right elbow anterior aspect,
- (v) red colour contusion on right arm 2 cm above from elbow joint.

All injuries show red colour ecchymosis underneath skin. In his opinion, the cause of death was shock and hemorrhage as a result of

neck injury.

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10. As per FSL report (unexhibited), in Article F & G i.e. T-shirt and vest of the appellant, bloodstains were found. However, there is no serological report to prove that the said blood was human blood or group of the same.

11. Close scrutiny of the evidence makes it clear that eyewitnesses to the incident namely PW-1 Abid Khan, who was lodger of FIR, PW-2 Sharif Khan, PW-3 Dhaniram Sahu and PW-7 Rajesh Sahu, have not supported the prosecution case and have been declared hostile. Though based on the memorandum of the appellant Ex.P/5, his T-shirt and vest were seized (Ex.P/6) and the same were found to be stained with blood as per FSL report (unexhibited), however, there is no serological report to establish that the blood found on these articles was human blood and further, it was of the blood group of the deceased. True it is that the death of the deceased was as a result of injury sustained by him on his neck but the prosecution has failed to prove by leading any cogent and reliable evidence that it was the appellant who caused that injury to the deceased. Thus, considering the nature and quality of evidence adduced by the prosecution, we are of the firm view that the prosecution has not been successful in proving the guilt of the appellant beyond the shadow of reasonable doubt. This being the position, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt.

12. In the result, the appeal is allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charge under

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Section 302 of IPC by giving him benefit doubt. He is reported to be on bail, therefore, his bail bonds stand discharged and he need not surrender.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(R.C.S. Samant)

Judge

Khan