

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 791 of 2007

- Mohanlal Bharti @ Mohana, S/o. Gokul Satnami , Aged about 32 years, R/o. Near Masan Ghat, Village Hunda, P.S.Tikrapara, District Raipur (CG)

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station Tikrapara, District Raipur (CG)

---- Respondent

For Appellant	: Shri S.K.Dadsena, Advocate
For Respondent /State	: Shri Arvind Dubey, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement on Board by Diwaker, J.

22/12/2016

This appeal arises out of judgment and order dated 28.09.2006 passed by the Additional Sessions Judge, Raipur in S.T. No. 362/2005 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1000/- with default stipulation.

2. As per prosecution case, Chhabilal father of the deceased (Pradeep) had encroached upon some government land situate at the cremation ground and his son-in-law started construction of hut on the land in question upon which there was quarrel between the accused/appellant and the deceased (Pradeep). It is said that the accused/appellant caused number of injuries to the deceased with iron rod resulting his death. FIR (Ex.P-4) was lodged by Chhabilal on 28.05.05 at about 3.40 p.m. based on which offence under

Section 302 IPC was registered against the accused/appellant. Immediately thereafter at 3.55 p.m. mere intimation Ex.P-3 was recorded. Inquest on the body of the deceased was conducted vide Ex.P-6, body was sent for postmortem examination which was conducted vide Ex.P-1 on 28.05.05 by Dr. V.K.Dhruv (PW-1) and according to him cause of death was shock and hemorrhage due to head injury and death was homicidal in nature. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 12 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is that

i) the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is not as such which can be made basis of his conviction.

ii) on the memorandum of the accused/appellant Ex.P-9, seizure of iron rod was made vide Ex.P-11 and likewise the *gamchha* of the accused/appellant was seized vide Ex.P-10.

iii) though FSL is positive but in serological report, origin of the blood found on *gamchha* (Article D) has not been proved by the prosecution.

iv) trial court has erred in law in convicting the accused/appellant solely on the ground that the death was homicidal in nature and that the body of the deceased was found in front of the house of accused/appellant.

v) though bail was granted to the appellant by this Court on 08.08.08 but as the appellant has failed to furnish the sureties, he is still languishing in jail and the appellant has already completed the jail sentence of more than 10 years.

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

7. Heard counsel for the parties and perused the material on record.

8. Dr.V.K.Dhruv (PW-1) had conducted postmortem examination on the body of the deceased and according to him cause of death was shock and h hemorrhage due to head injury and death was homicidal in nature. Chhabilal (PW-2) father of the deceased who lodged the First Information Report has neither in the FIR nor in his statement under Section 161 Cr.P.C. has stated that the accused/appellant saw fleeing from the spot carrying a rod in his hand but while improving in the Court he has deposed so. Smt. Sevati bai (pw-3) is a hearsay witness who informed chhabilal about the incident who in turn lodged the fir. P.R.Gaikwad (PW-5) is the patwari who prepared spot map Ex.P-7. Maheswari Bai (PW-7) wife of the deceased has stated that after hearing about the incident she along with her father-in-law went to the place of occurrence and saw the deceased was lying in a pool of blood. However while improving in the court she has stated that when she reached to the place of occurrence accused/appellant was standing there carrying a rod in his hand. It is relevant to mention here that no such statement was made by her before the police wherein she has stated that she reached the place of occurrence and has categorically stated that she has not seen the appellant killing the deceased. Umed Das(PW-8) is a witness to

memorandum of accused/appellant Ex.P-9 by which seizure of clothes and iron rod Ex.P-10 and P-11 was made has duly supported the prosecution case. Narendra Kumar Sahu (PW-9) Sarpanch of the village is a witness to inquest Ex.P-6, seizure Ex.P-12 by which plain soil and blood stained soil were seized from the spot. Kanchan Das (PW-10) is the eyewitness and a child witness to the incident has not supported the prosecution case and has been declared hostile. Teekam Singh (PW-11), Police Constable helped in the investigation. Vikas Thakur (PW-12) is the Investigating Officer who has done the investigation.

9. As per FSL report Ex. P-18 blood stains were found on the *gamchha* and iron rod and as per Serological report (Ex.P-19 *gamchha* was stained with human blood, however blood group has not been proved and the sample was found to be disintegrated.

10. Close scrutiny of the evidence makes it clear that but for the seizure of *gamchha* and rod there is no other evidence against the accused/appellant showing his involvement in the commission of the offence. As per FSL report Ex.P-18 blood has been found on *gamchha* and iron rod but origin of the blood has not been proved by the prosecution in the Serological report and therefore it will not be proper for this Court to uphold the conviction of the appellant solely on the basis of this evidence.

11. Thus it can be held that since there is no direct evidence against the accused/appellant for committing the murder of the deceased and the evidence as collected by the prosecution is not strong enough to uphold his conviction and therefore, the appellant deserves to be acquitted by extending benefit of doubt. That being so, the trial Court has committed an illegality in holding him guilty under Section 302 IPC and he is entitled to be acquitted of the said charge by extending him benefit of doubt.

12. In the result the appeal is allowed. Conviction of the accused/appellant under Section 302 IPC is set aside and he is acquitted of the said charge. Despite bail being granted to the appellant on 08.08.08 he is still languishing in jail. He be set free forthwith if not required in any other case.

Registry to forward copy of this order immediately to the concerned District Judge and also to the concerned jail.

Sd/-
Pritinker Diwaker
Judge

Sd/-
R.C.S.Samant
Judge