

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 811 of 2007

- Dharam Singh Gond S/o Shri Keertan @ Kartik Ram Gond, R/o Hathbihra, P.S. Bagbahra, Distt. Mahasamund (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh Through: P.S. Bagbahra, Distt. Mahasamund (C.G.)

---- Respondent

For Appellant	: Shri U.R.Khosle, Advocate
For Respondent /State	: Shri Adil Minhaj, P.L.

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

Judgement on Board by P.Diwaker J.

16/12/2016

This appeal arises out of judgment and order dated 10.08.2007 passed by the Sessions Judge, Mahasamund in S.T. No. 30/2007 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000/- plus default stipulation.

2. As per the prosecution case, on 18.01.2007, FIR Ex.P-1 was lodged at 5.30 p.m. by Bhagat Ram (PW-1) alleging that he has four sons and a daughter and on the date of incident, he had sent his elder

son Jewanlal (deceased) to bring eucalyptus oil from the house of Jeevrakhan and thereafter he went to the jungle to cut wood and when he returned home from the jungle he saw his mother sitting outside and weeping. When he asked her as to why she was weeping she told him that Jeevan is injured and is lying in a pool of blood on the way towards the house of Dharam Singh. Thereafter she brought him home, made him drink water and after a while he died. He has stated that he had suspicion that on account of his old family dispute the accused/appellant might have killed his son. Based on this information, FIR was registered against the accused/appellant for the offence punishable under Section 302 IPC. Immediately thereafter at about 8.30 p.m., mere intimation Ex.P-11 was recorded and inquest Ex.P-9 was prepared. Body was sent for postmortem examination which was conducted by Dr. R.K.Kuruwanshi (PW-13) vide Ex.P-18 and according to him cause of death was hypovolemic and neurogenic shock due to grievous head injury. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed.

3. In support of its case, prosecution has examined 13 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure 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 falsely implicated in the case solely on the basis of suspicion raised by Bhagat Ram (PW-1) and thereafter recovery of club Ex.P-7 based on the memorandum of accused/appellant Ex.P-6, there is no evidence against the appellant but yet he has been convicted.

ii) the seizure of club is of no consequence as there is no report of chemical examiner that the club in question contained human blood.

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. Bhagat Ram (PW-1) father of the deceased at whose instance FIR was registered, has stated that he found his son in injured condition lying on the road and on suspicion he lodged the report against the accused/appellant. Mukta Bai (PW-2) grand mother of the deceased has not stated anything against the accused/appellant. Jugesar (PW-3) a formal witness, has not stated anything against the accused/appellant. Narayan (PW-4), Chaitram (PW-5) and Jaldhar (PW-6) have also not stated anything against the accused/appellant. Haldhar (PW-7) has not stated anything against the accused/appellant. He is also a witness to memorandum Ex.P-6 and P-7. Jeevrakhan

(PW-8) has not supported the prosecution case and has been declared hostile. Uderam Netam (PW-9) is the patwari who prepared spot map (Ex.P-5). Mahesh Sinha (PW-11) is the Investigating Officer who has done the investigation. Lalit Sahu (PW-12) had done initial part of investigation and registered FIR. Dr. R.K.Kuruwanshi (PW-13) conducted postmortem examination on the body of the deceased and according to him cause of death was hypovolemic and neurogenic shock due to grievous head injury.

9. Close scrutiny of the evidence makes it clear that there is absolutely no legally admissible evidence against the appellant showing his involvement in the commission of offence. The appellant has been convicted solely on the basis of recovery of club on his memorandum Ex.P-7 & P-7. It is a settled position of law that merely on the basis of memorandum of the accused and recovery of the weapon of offence, he cannot be held guilty unless there is any cogent reliable evidence showing his involvement in the commission of the offence which includes FSL and serological report as well. In the present case, even the witnesses to memorandum and seizure have also not supported the case of the prosecution. Thus in the facts and circumstances of the case, we are of the opinion that the trial Court has erred in law in convicting the appellant on the basis of memorandum and recovery of club from his possession. Further the prosecution has not been successful in proving the involvement of the accused/appellant in the crime in question on the basis of cogent and reliable evidence. Being so, the appellant is entitled to be acquitted of the charge under Section 302 IPC.

10. Accordingly, the appeal is allowed. Conviction of the accused/appellant under Section 302 IPC is set aside and he is acquitted of the said charge. He is on bail therefore his bail bonds shall continue for a period of six months from today in view of Section 437-A of Cr.P.C.

Sd/-
Pritinker Diwaker
Judge

Sd/-
R.C.S.Samant
Judge