

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 907 of 2007

1. Bau alias Bhushan S/o Itwari Ram Barle, Caste Satnami, aged 27 years.
2. Pritam S/o Hansram, Caste Satnami, aged 23 years.
Both resident of village Chhote-Barejhar, P.S. Dhumka, District Rajnandgaon.

---- Appellants

Versus

- State Of Chhattisgarh Through : Police Station, Dhumka, District Rajnandgaon.

---- Respondent

For Appellants.	:	Shri Suryakant Mishra, Advocate.
For Respondent/State	:	Shri Vaibhav Goverdhan, P.L.

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

Judgment On Board

By Pritinker Diwaker, J

16/12/2016

This appeal arises out of the judgment of conviction and order of sentence dated 12.09.2007 passed by the Sessions Judge, Rajnandgaon (C.G.) in S.T. No.56/2007 convicting the accused/appellants under Section 302/34 IPC and sentencing them to undergo imprisonment for life with fine of Rs.10,000/- each, plus default stipulations.

02. In the present case name of the deceased is Bharatlal. It is alleged that deceased Bharatlal was having previous animosity with

accused/appellant No.1 - Bau @ Bhushan and on 11.02.2007 at about 6.30 pm when deceased Bharatlal was returning along with Narottamlal (PW/3) on their bicycles, accused persons came there on motorcycle, stopped and pulled the bicycle of deceased. Seeing the accused persons, Narottamlal (PW/3) fled away from the spot, however, after some time he came back to a place where he had left the deceased and found him lying in injured condition. Intimation of the incident was given to the villagers, in turn Sarpanch passed on the said information to Shatrughan (PW/2) – brother of deceased at whose instance FIR (Ex.P/3) was registered on 11.02.2007 at 11.00 pm against unknown person under Section 302/34 IPC. Thereafter, inquest on the body of deceased was prepared on 12.02.2007 vide Ex.P/18. Body of deceased was sent for postmortem to District Hospital, Rajnandgaon where Dr. C.S. Mahobe (PW/09) conducted postmortem on the body of deceased on 12.02.2007 and gave his report Ex.P/25 opining the cause of death to be hemorrhagic shock due to injuries on vital parts i.e. heart and lungs and mode of death was homicidal in nature.

03. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the appellants, however, while framing the charge the trial Court has framed the charge against appellants and one Ganpat under Section 302 or 302/34 IPC.

04. So as to hold the accused/appellants guilty, the prosecution examined as many as 11 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted co-accused Ganpat of the charge under Section 302/34 IPC but convicted and sentenced the appellants as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellants submits:

- that the appellants have been convicted solely on the basis of statement of Narottamlal (PW/3), however, taking his entire statement as it is, it is apparent that this witness has not seen the actual occurrence. Even the Court statement of Narottamlal (PW/3) is contrary to that of his diary statement (Ex.D/1) as while deposing in the Court he has improved a lot;
- though on the memorandum of appellants Ex.P/8 and Ex.P/12 certain articles have been seized but in absence of chemical examination report, the recovery loses its significance.

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

08. We have heard learned counsel for the parties and perused the material available on record.

09. Basant Kumar (PW/1) is a witness to seizure memo Ex.P/1 by which black colour Hero Honda Splendor motorcycle was seized. However, he has not supported the prosecution case and turned hostile. Shatrughan (PW/2) - brother of deceased, is the lodged of F.I.R. (Ex.P/3). He is also a witness to spot map prepared vide Ex.P/4.

10. Narottamlal (PW/3) is the star prosecution witness. He has stated that on the date of incident he along with deceased Bharatlal had gone to the market for selling fish. After selling fishes, when they were returning on their respective bicycles, on the way the accused persons came on the motorcycle, appellant No.1-Bau @ Bhushan pulled bicycle of deceased as a result of which he fell down. After seeing this, he (this witness) under fear left the said place. After some time, when he saw the accused persons leaving the said place, he came back to the place where he had left the Bharatlal and found him lying in the injured condition on the road. This witness went on to state that deceased was not in a position to talk. He tried to stop the motorcycle which was going from there but it did not stop, thereafter, information through villagers was given to the Sarpanch. In cross-examination when this witness was confronted from his diary statement, he stated that bicycle of deceased was pulled by appellant No.1-Bau as a result of which he fell down.

11. Santram (PW/4) has turned hostile. Shivnandan (PW/5) has stated that earlier there was some quarrel between accused/appellant No.1 and deceased. Shatrughan Singh (PW/6) witness to memorandum (Ex.P/8 and P/12) of accused/appellants and seizure

thereto Ex.P/9 and P/13 has turned hostile. It is relevant to note that there is no report of the chemical examiner to substantiate prosecution case. Vishnu Ram Nishad (PW/7) is Sarpanch and witness to inquest (Ex.P/18), seizure (Ex.P/19) and arrest memos (Ex.P/21, P/22 and P/23). Gyanchand Sahu (PW/8) is Patwari who prepared spot map vide Ex.P/24.

12. Dr. C.S. Mahobe (PW/9) conducted the postmortem on the body of deceased vide Ex.P/25 and found following injuries:

- (i) Incised wound of 3.5 cm x 2 ½ cm on chest in elliptical shape.
- (ii) Incised wound of 1 ½ cm x 1 cm x 1 cm just 2 cm above the umbilical.
- (iii) Incised wound of 3 cm x 1 ½ cm x ½ cm on middle of chin.

The Doctor has opined that the cause of death of deceased was hemorrhagic shock due to injuries on vital parts i.e. heart and lungs and mode of death was homicidal in nature.

13. M.R. Bhagat (PW/11) is Investigating Officer who has duly supported the prosecution case.

14. Close scrutiny of the evidence makes it clear that but for the statement of Narottamlal (PW/3) there is no legally admissible evidence on record against the accused/appellants to connect them with the crime in question. Narottamlal (PW/3) has stated that when he along with deceased was returning on their respective bicycles after selling fishes, accused/appellant No.1-Bau @ Bhushan pulled the bicycle of deceased as a result of which he fell down, and upon seeing

this, he left the place as he was under fear. It has also come in his evidence that after some time when Narottamlal (PW/3) saw the accused/appellants leaving the place, he reached the place from where he had left the deceased and saw him lying in the injured condition on the road. From the evidence of this witness, it can safely be inferred that he has not seen the actual occurrence and for the first time in the Court he merely states that accused/appellant No.1-Bau @ Bhushan pulled the bicycle of the deceased, however, in his diary statement he does not say so. This witness has not stated anything specific against the accused/appellants which may render this Court to hold them guilty. Even accepting the court statement of this witness as it is, merely on the basis of said evidence, it will not be safe for this Court to uphold the conviction of the appellants. In-fact, there is no eye-witness account of the incident. The evidence of Narottamlal (PW/3) does not inspire confidence of this Court and cannot be made basis for conviction of the appellants.

15. The other piece of evidence against the accused/appellants is seizure made under Ex.P/9 & P/13 by which certain articles have been seized but in absence of FSL and serological reports, seizures are of no consequence and, therefore, it cannot be made basis for convicting the accused/appellants especially when there is no other credible and clinching evidence connecting them with the commission of crime. Taking the cumulative effect of the evidence adduced by the prosecution, we are of the view that the trial Court has erred in law in convicting the accused/appellants under Section 302/34 IPC.

16. Thus considering the evidence collected by the prosecution, this Court is of the opinion that conviction of the accused/appellants under Section 302/34 IPC is not based on due appreciation of the evidence available on record and that being so they are entitled for benefit of doubt. Consequently, the judgment impugned convicting the accused/appellants under Section 302/34 IPC is set aside and they are hereby acquitted of the charge levelled against them. The appellants are on bail, their bail bonds stand discharged.

17. Appeal is thus allowed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(R.C.S. Samant)
JUDGE