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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 203 of 2006

1. Bhagwan Das, aged about 56 years, son of Shri Jhurairam;
2. Smt. Rajkaliya Bai, aged about 51 years, wife of Shri Bhagwan Das;

Both are resident of village Basantpur, Police Station Basantpur,
District Surguja (C.G.)

---- Appellants

Versus

- State Of Chhattisgarh, Through : The Police Station Basantpur, District Surguja (C.G.)

---- Respondent

For Appellants.	:	Shri Neha Verma, Advocate.
For Respondent.	:	Shri Arvind Dubey, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board By

Pritinker Diwaker, J

28/09/2016

This appeal arises out of the judgment of conviction and order of sentence dated 30.01.2006 passed by I Additional Sessions Judge (FTC), Ramanujganj, District Surguja (C.G.) in S.T. No.43/2005 convicting the accused/appellant No.1-Bhagwan Das under Section 302 IPC and accused/appellant No.2-Rajkaliya Bai under Section 302/34 IPC & sentencing them to undergo imprisonment for life with fine of Rs.1000/- each, plus default stipulations.

02. As per prosecution case, on 05.10.2004 deceased Ram Kumar,



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son-in-law of appellant had gone to appellants' house to take his wife. It is alleged that there in the house of appellants, some quarrel took place between them in which accused/appellants caused two injuries on the head of deceased Ram Kumar by wooden log. As soon as the information of the incident was received by Raj Kumar (PW/1)-brother of deceased, he along with Jagdhari (PW/3), Shiv Kumar (PW/4) and Ramnarayan Singh (PW/12) had gone to place of occurrence where they found Ram Kumar lying on the floor in injured condition. Further case of the prosecution is that injured Ram Kumar told all these persons that he was assaulted by the accused/appellants. Raj Kumar (PW/1)-brother of deceased lodged FIR (Ex.P/2) on 06.10.2004 at 2.30 am, on the basis of which, offence under Section 307/34 IPC was registered against the accused/appellants. Injured Ram Kumar was medically examined on 06.10.2004 by Dr. R.B. Prajapati (PW/14) vide Ex.P/22 and found following injuries:-

- (i) Lacerated wound of 8cm x 1cm x ½ cm over head in right parietal region.
- (ii) Lacerated wound of 2cm x ½ cm x ½ cm over head in right side of forehead.

During treatment injured Ram Kumar succumbed to his injuries in the hospital and thereafter dehati merg (Ex.P/1) and merg intimation (Ex.P/19) were recorded. Inquest on the body of deceased was prepared vide Ex.P/6 and body was sent for postmortem to Community Health Center, Wadrof Nagar. Postmortem examination on the body of deceased was conducted 07.10.2004 by Dr R.B. Prajapati (PW/14) who gave his report Ex.P/23 and found following injuries:-

- (i) Stitched and dressed lacerated wound of 8cm x 1cm x ½ cm over head on right parietal region.

- (ii) Stitched and dressed lacerated wound of 2cm x ½ cm x ½ cm over forehead in right side.
- (iii) There was fracture of right parietal bone and right temporal bone.

The Doctor has opined that the injuries were caused by hard and blunt object and cause of death was brain hemorrhage and brain injuries resulting from skull fractures.

03. On completion of investigation, charge sheet for the offence punishable under Section 302/34 IPC was filed against the accused/appellants and accordingly the charge was framed against them by the trial Court.

04. So as to hold the accused/appellants guilty, the prosecution examined as many as 14 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 convicted and sentenced them as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellants submits as under:

- (i) that only piece of evidence against the accused/appellants is so-called oral dying declaration made by the deceased before Raj Kumar (PW/1), Jagdhari (PW/3), Shiv Kumar (PW/4) and Ramnarayan Singh (PW/12). It has been argued that all the witnesses are shaky witnesses and, therefore, it will not be safe to uphold the conviction of the accused/appellants on their statements;



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(ii) that as per the autopsy surgeon, considering the nature of injuries sustained by the deceased, he may not be in a position to speak as he was unconscious;

(iii) that prosecution has not been able to make it clear as to who and by which weapon the injuries have been caused to deceased;

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that the 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. Raj Kumar (PW/1) is brother of deceased. He has stated that on the date of incident his brother deceased Ram Kumar had gone to the appellants' house to take his wife but his father-in-law had sent his daughter to village Bartori and on this point some quarrel took place between them. He has also stated that he was informed by Shyam Sunder and Jagdhari that deceased Ram Kumar is lying there in in-laws' house, thereafter, he along with Shyam Sunder and Jagdhari immediately went there where he found his brother Ram Kumar lying on floor with full of blood. This witness also went on to state that he along with others brought the deceased to his house then the deceased informed him that he was assaulted by his in-laws. He has further stated that thereafter he lodged the FIR (Ex.P/2) and during treatment his brother Ram Kumar breath his last in the hospital. This witness in cross-examination has stated that he had not seen any incident and when he brought the deceased, he was not talking. When this witness was

confronted from his FIR (Ex.P/2) wherein he has stated that deceased was unconscious and was not talking, he stated in the Court that he has not made any such statement. While improving in the Court he has stated that on being asked by the villagers the deceased informed them that he was assaulted by the accused/appellants by wooden log. This witness further went on to state that on the date of incident the deceased had consumed liquor and that his wife was residing with the accused/appellants (parents) since last seven months. He has further stated that there was no enmity between the deceased and his father-in-law Bhagwandas (A-1). If the case diary statement (Ex.D/1) of this witness is seen, which has been duly confronted, it is apparent that in the said statement he has not given any reference of oral dying declaration made by the deceased.

10. Shyam Sunder (PW/2) turned hostile. Jagdhari (PW/3) is another witness before whom alleged dying declaration was made by the deceased. This witness has stated that when he reached the place of occurrence, he found deceased lying in the injured condition and was not in a position to talk despite efforts being made to talk to him. The injured was brought to house of Raj Kumar (PW/1) and on being swayed the deceased started speaking a bit and told that he was assaulted by his in-laws. This witness also went on to state that neither he is aware as to by which weapon the deceased was assaulted nor this was told by the deceased. He has further stated that deceased used to consume excessive liquor. Earlier also deceased was beaten by the police as after consuming excessive liquor he was creating nuisance. This witness has clarified that after consuming liquor deceased always used



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to create nuisance in the village and on account of this habit his wife also used to remain tense and left him. This witness has further stated that wife of the deceased had left him about three months back and on this point he was annoyed with his in-laws. He has further stated that deceased had not disclosed anything at the place of occurrence despite being swayed. This witness, in para 11, has admitted that after consuming liquor deceased used to quarrel and anyone used to beat him and possibility of his being beaten on the date of incident by some other person cannot be ruled out. This witness has further admitted the fact that possibility of naming the accused/appellants to be the assailant as he was annoyed with his in-laws cannot be ruled out.

11. Shiv Kumar (PW/4) is elder brother of deceased. He has stated that he was informed by Jagdhari (PW/3) about the deceased lying near the house of Ram Vilas but he did not go to see him, however, his brother Raj Kumar (PW/1) had gone to place of occurrence. He has stated that after deceased being brought to the house of his brother, he informed that he was assaulted by the accused/appellants. He has however stated that the deceased was not having sufficient strength to speak as he was full of blood. While improving in the Court, he has stated that even in the police station deceased informed the police that he was assaulted by the accused/appellants.

12. Yogendra Pratap Singh (PW/5) is a Patwari who prepared spot map vide Ex.P/4. Karam Sai (PW/6) has turned hostile. Ram Vilas (PW/7) has stated that he too had gone to the place of occurrence along with brother of deceased and found him in the injured condition. He states that deceased was alive but was semi-unconscious and was not

in a position to talk. This witness, in para 6, has reiterated that deceased was unconscious and did not speak anything in his presence.

13. Nandu (PW/8) is witness to inquest (Ex.P/8). Ramchandu (PW/9) had also attended the deceased when he was brought to the house of his brother. This witness has stated that deceased was not in a position to talk and was unconscious. Mangal Sai (PW/10) is Head Constable who helped in the investigation. Raj Kumari (PW/11) has turned hostile. Ramnarayan Singh (PW/12) is also a witness before whom alleged oral dying declaration was made by the deceased. He has stated that when he reached the place of occurrence, deceased was almost unconscious and somehow he informed him that he was assaulted by his father-in-law. He has further stated that deceased was in the habit of consuming liquor every day and during festival he was consuming excessive liquor.

14. Dr. R.B. Prajapati (PW/14) conducted the postmortem on the body of deceased vide Ex.P/23 and opined that the cause of death of deceased was brain hemorrhage and brain injuries resulting from skull fractures.

15. Close scrutiny of the evidence available on record makes it clear that the entire prosecution story is rest on the oral dying declaration made by the deceased before Raj Kumar (PW/1), Jagdhari (PW/3), Shiv Kumar (PW/4) and Ramnarayan Singh (PW/12). However, if the statements of these witnesses are minutely seen, it comes to the forefront that the deceased was almost unconscious and was not in a position to speak. Raj Kumar (PW/1) in para 1, Jagdhari (PW/3) in para 2, Shiv Kumar (PW/4) in para 2 and Ramnarayan Singh (PW/12) in para



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2 have stated that deceased informed them that he was assaulted by his in-laws, whereas according to Ram Vilas (PW/7) and Ramchandu (PW/9), deceased was not in a position to talk and he was unconscious. There is contradiction in the statements of these witnesses and do not inspire confidence of this Court. That apart, prosecution has utterly failed to establish as to out of the two appellants who caused injuries to deceased. As per FIR (Ex.P/2), deceased was unconscious and there is no mention of oral dying declaration made by him in it. Likewise, in the dehati merg (Ex.P/1) there is no whisper of any oral dying declaration made by deceased before any of the witnesses. Raj Kumar (PW/1) is a witness, who attended the deceased first, has stated that deceased had made oral dying declaration naming the accused/appellants to be the assailant but it is nowhere mentioned in his diary statements (Ex.D/1) that deceased had made dying declaration before him. There is no credible, clinching and reliable evidence on record to bring home their guilt beyond shadow of reasonable doubt. Taking the cumulative effect of the evidence adduced by the prosecution, we are of the view that the trial Court while convicting and sentencing the accused/appellants has not considered the evidence of prosecution witnesses in its true perspective and thereby erred in law in convicting them under Section 302 and 302/34 IPC and, therefore, they are entitled to be acquitted of the said charge by extending them benefit of doubt.

16. In the result, the appeal succeeds and the impugned judgment of conviction and order of sentence is hereby set aside. The appellants are acquitted of the charge levelled against them by extending them benefit of doubt. The appellants are on bail, therefore their bail bonds shall



continue for a period of six months from today in view of provisions of
Section 437-A of Cr.P.C.

Sd/-
Pritinker Diwaker
Judge

Sd/-

(C.B. Bajpai,
JUDGE

Vijay