

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 120 of 2008

- Devdhar S/o Sadhurar, aged about 27 years, resident of Village Jagdalli, P.S. Sakti, Distt. Janjgir-Champa (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through: P.S. Sakti, Distt.-Janjgir-Champa (C.G.)

---- Respondent

For Appellant	:	Shri TK Jha, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board by Justice Pritinker Diwaker

11/10/2017:

This appeal arises out of the judgment of conviction and order of sentence dated 14.1.2008 passed by the Additional Sessions Judge, Sakti, Distt. Janjgir-Champa in ST No.177/2006 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 prosecution case, on 20.8.2006 at 3.10 am FIR (Ex.P/27) was lodged by PW-11 Ramesh, injured eyewitness of the incident, alleging in it that on that night the accused/appellant Devdhar

demanding some liquor on credit from Ramprasad which was refused by him and so the appellant went back. However, after some time the appellant came to Ramprasad along with 7-8 other persons and then the appellant and his companions assaulted Ramprasad with a club. When he (Ramesh) and PW-5 Shailendra Kumar intervened in the matter they too were beaten by the accused persons. He has stated that after sustaining injury Ramprasad died on the spot itself. Based on this FIR, offence under Sections 147, 148, 149, 302, 323 of IPC was registered against the appellant and 6-7 other persons. Immediately after registration of FIR, at 3.15 am a message of intimation (Ex.P/28) was registered. An inquest over the dead body was conducted vide Ex.P/14 on 20.8.2006. Thereafter, the dead body was sent for postmortem which was conducted on the same day by PW-1 Dr. Laxmaneshwar Kumar Singh vide Ex.P/6 and noticed abrasions, lacerated wound on right parietal region and middle of top of frontal region as also on left fronto-parietal region, multiple fracture of left fronto-parietal bone, fracture of right parietal bone. In his opinion, the cause of death was shock and hemorrhage due to head injury and that the death was homicidal in nature. Clothes of the appellant were seized and likewise, a club was also seized from the spot, however, there is no FSL report on record. Charge sheet was filed against four accused including the appellant and while framing charge the trial Judge charged them under Sections 302/34 and 323/34 (on two counts) of IPC.

03. So as to hold the accused persons guilty, the prosecution examined 13 witnesses in all. Statements of the accused 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting three other accused of all the charges, convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits as under:

(i) that PW-11 Ramesh, lodger of FIR and injured eyewitness to the incident has not supported the prosecution case and has been declared hostile.

(ii) that the appellant has been convicted solely on the basis of statement of PW-5 Shailendra Kumar Singh, however, in cross-examination when a specific question was put to him whether he could identify the appellant, he mistook acquitted accused Chandrashekhar for accused/appellant Devdhar. There was no test identification parade of the appellant as he was named in the FIR but when in the Court PW-5 failed to identify the appellant, the question of his conviction does not arise.

(iii) that the incident took place in the dark and therefore, identification of the appellant as perpetrator of the crime becomes doubtful.

Reliance has been placed on the judgment of the Supreme Court in the matter of ***Nallabothu Ramulu Vs. State of A.P., (2014) 12 SCC 261.***

06. On the other hand, supporting the impugned judgment it has been

argued by the State counsel that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned for interference. He submits that present is an unfortunate case where initially PW-5 Ramesh had identified the appellant but in his cross-examination on 13.11.2007 after being recalled pursuant to application of the accused under Section 311 of Cr.P.C. he failed to identify the accused/appellant and mistook acquitted accused Chandrashekhar for accused/appellant Devdhar and further expressed ignorance about the identity of the person who beat him in the incident and even denied giving any statement to the police. However, considering the overall facts and circumstances of the case, in particular the fact that PW-5 was re-examined after four months and during this period he may have been won over, the conviction of the appellant cannot be faulted with.

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

08. PW-5 Shailendra, the main witness of the prosecution, has stated that he knows all the accused persons by face except the appellant whom he knows by name. On the date of incident the accused persons demanded liquor from the deceased on credit basis and when it was refused the appellant Devdhar caused club injury to the deceased. When he intervened, he too was beaten. He has admitted the fact that there was no source of light in the hut where the incident had taken place and that he did not know other persons by name but knew them by face. He has also admitted the fact that the incident occurred in a hut where deceased Ramprasad used to sell

liquor. He admits that as it was dark he could not see as to where the injuries were sustained by deceased Ramprasad. He has further admitted the fact that he does not know as to which of the accused present in the Court is Chandrashekhar and as there was dark he can not tell as to the clothes worn by the accused persons at that time. He has stated that he identified some of the accused persons who were handcuffed.

Cross-examination of this witness was completed on 19.7.2007. However, subsequently an application was filed on behalf of accused Devdhar, Ramprasad and Arjun under Section 311 of Cr.P.C. for summoning him again and on 13.11.2007 he was further cross-examined. When a question was put to this witness as to which of the accused present in the Court is Devdhar, in reply he touched accused Chandrashekhar calling him to be accused Devdhar. He has further stated that he is not aware as to who beat him and also denied to have made any statement before the police.

09. The other eyewitness to the incident PW-11 Ramesh Singh who lodged FIR and merged intimation has turned hostile. PW-1 Dr. Laxmaneshwar Kumar Singh conducted postmortem on the body of the deceased on 20.8.2006 vide Ex.P/6 and noticed abrasions, lacerated wound on right parietal region and middle of top of frontal region as also on left fronto-parietal region, multiple fracture of left fronto-parietal bone, fracture of right parietal bone. In his opinion, the cause of death was shock and hemorrhage due to head injury and that the death was homicidal in nature. PW-2 SR Mahilange conducted TIP in respect of three acquitted accused persons. PW-3 Krishna, witness

to inquest, spot map and seizure of articles (Ex.P/17) from the spot has turned hostile. PW-4 Pushpendra, another witness to inquest and seizure of articles (Ex.P/17) from the spot has supported the prosecution case. PW-6 Ramcharan Sahu and PW-7 Mangal Singh, Police Constables, assisted in the investigation. PW-8 Bhakulal and PW-9 Leeladhar are formal witnesses whereas PW-10 Mukund Shukla is a hearsay witness. PW-12 Dudharu Das, Kotwar, prepared the spot map. PW-13 Lalji Shukla, investigating officer, has supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence on record showing the complicity of the accused/appellant in the crime in question. One of the important prosecution witnesses i.e. PW-11 Ramesh Singh at whose instance FIR and merg intimation were lodged has turned hostile. The other important witness PW-5 Shailendra Kumar has stated that as it was dark at the place of occurrence, he could not see the assailants. On being asked by the Court to identify the appellant, he touched one acquitted accused Chandrashekhar calling him appellant Devdhar. He even denied to have given any statement to the police. This apart, no test identification parade in respect of the present appellant has been conducted by the prosecution in this case. Thus, from the evidence adduced by the prosecution, even presence of the appellant at the place of occurrence becomes doubtful. In this view of the matter, we are of the opinion that the prosecution has utterly failed to prove involvement of the appellant in the crime in question beyond reasonable doubt and being so, he is entitled to be acquitted of the charge by giving him benefit of doubt.

11. In the result, the appeal succeeds and is, accordingly, allowed. The appellant is acquitted of the charge under Section 302 of IPC by giving him benefit of 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.P. Sharma)

Judge