

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1057 of 2007

1. Purendra Kumar Chandravanshi, aged about 28 years, S/o Dhal Singh, R/o Kandul, P.S. Arjunda, Tahsil - Gunderdehi, Distt. Durg (CG)
2. Rakesh, aged about 30 years, S/o Gyanchand, R/o Sector-6, Street-Avenue C, Qrt. No.-7/1, Bhilai, Distt.-Durg (CG)

---- Appellants

Versus

- State Of Chhattisgarh, through Police Station Bhilainagar, Distt. Durg.

---- Respondent

For Appellants	:	Shri Anupam Jha, Advocate
For Respondent	:	Shri Rahul Tamaskar, Panel Lawyer

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

Judgement

Per P. Diwaker, J

10/02/2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 26.10.2007 passed by the Sessions Judge, Durg in S.T. No.221/06 convicting the accused/appellants under Sections 302/34 of the Indian Penal Code (for short 'the IPC') and sentencing them to undergo R.I. for Life & fine of Rs.500/- plus default stipulations.
2. In the present case, name of deceased is Ranjan Mohanti.
3. As per prosecution case, the deceased used to stay in the house of Budhram (PW-11) even in his absence and on 29.5.2006 said Budhram had gone to his work place i.e. Bhilai Steel Plant and the deceased was in his house. It is further case of the prosecution that having come to know

that the deceased is lying dead in his house, Budhram informed PW-9 Sanjay, brother of deceased. Merg Intimation (Ex.P-12) was lodged at the instance of Budhram (PW-11). On 30.5.2006 FIR (Ex.P-20) was registered against unknown person under Section 302 IPC. One bloodstained broken tooth, brick in broken condition & pieces of bricks, dried blood of deceased, cuff of sleeve of shirt stained with blood etc. were seized from the spot vide seizure memo of Ex.P-1. Inquest (Ex.P-14) was prepared on the body of deceased on 30.5.2006. Body was sent for post-mortem examination which was conducted by Dr. P. Balkishore (PW-5) vide Ex.P-5 and he noticed following injuries on the body of deceased;-

- Contusion on both arms of 6x5cm & 5x4cm respectively.
- Lacerated wound on the left eyebrow of 2½ x ½ x ½ cm and just below this injury there is a contusion of 6x4cm size with compound fracture of maxilla bone.
- lacerated wound on the right ear at paratoid region of 2x 1½ x muscle deep.
- lacerated wound at the left side of skull on parietal region of 4 x 2 x 1½ cm.
- contusion of 6 x 5½ cm at the back side of skull.
- Compound fracture of nasal bone with contusion
- lacerated wound of 4x3cm size on chin from which one tooth of lower jaw was coming out and compound fracture in lower jaw.
- Compound fracture in the middle of maxilla bone and loosening of six tooth of upper jaw.
- Swelling in the size of 6x5cm at the left paratoid temporal region.

In the opinion of autopsy surgeon, the mode of death was shock and haemorrhage as a result of injuries over the face & head. During investigation, the accused/appellants were interrogated and

accused/appellant No.1 made disclosure statement of Ex.P-8 on 31.5.2006 based on which one white colour shirt having stains like blood and torn lower cuff of left sleeves & pocket; one jeans having stains like blood below the knee and one ragzine bag were seized vide seizure memo of Ex.P-9. Similarly, on the basis of disclosure statement made by accused/appellant No.2, one full sleeves white-black checks shirt, full pant and Yamaha Motorcycle bearing registration number CG07-LC-5590 were seized vide seizure memo of Ex.P-11. Seized articles were sent for chemical examination to the Forensic Science Laboratory from where report of Ex.P-24 was received confirming presence of human blood on all the articles except on the scratching of wall (Article-C). As per report of Serologist (Ex.P-25), blood scrapping, cuff of shirt sleeve, shirts, full pants & underwear were stained with human blood. Blood noticed on Item No.12 (Kamize) was of 'O' group, whereas Item Nos.11 & 13 (cuff of sleeve & pant of accused / appellant No.1) were stained with 'B' group blood. Items No.10, 16, 17, 18 are not sufficient for test, whereas result of Items Nos.14 & 15 is inconclusive and Item No.9 is disintegrated. Statements of witnesses under Section 161 Cr.P.C. were recorded.

4. After 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 by the trial Judge against them. The prosecution in order to bring home the charge levelled against the accused/appellants examined 11 witnesses in all. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
5. The trial Court after hearing the parties in the matter and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellants in the manner as described above.

6. Counsel for accused/appellants submits that;

- there is no direct evidence in the case as no one has seen the appellant with the deceased and the conviction of appellants has been based on circumstantial evidence i.e. recoveries on the memorandum of accused/appellant, but in absence of any other clinching evidence connecting the appellants with crime in question, the trial Court was not justified in holding them guilty for the offence like murder.
- though the articles seized at the instance of appellants are said to have been stained with human blood, but in absence of report of Serologist confirming that those stains of blood were of the blood group of the deceased, the same cannot be connected with the crime in question.
- So far as the cuff of sleeve is concerned, there is no report of FSL that the cuff of sleeve recovered from the spot was the part of the shirt of the appellant No.1 recovered from him.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

8. We have heard counsel for the parties and perused the evidence available on record.

9. Jagdish Giri (PW-1) is the witness of seizure memo (Ex.P-1) by which certain articles were recovered from the spot. Ramkumar (PW-2) is the person who took the dead body to the hospital for post-mortem examination. Nand Kumar Chaturvedi (PW-3) is the Patwari who prepared the spot map of Ex.P-4. Ramkumar Gupta (PW-4) is the witness of seizure memo (Ex.P-1) but he did not support the

prosecution and turned hostile. Dr. P. Balkishore (PW-5) is the person who conducted post-mortem examination over the body of deceased and noticed the injuries as described above. Ramsugreev Yadav (PW-7) is the witness of memorandums (Ex.P-8 & P-10) and seizure memos (Ex.P-9 & P-11), however, he did not support the prosecution and as such declared hostile. K.C. Das (PW-8) is the police person who recorded the merg intimation Ex.P-12. Sanjay Kumar Mohanti (PW-9), brother of deceased, has though supported the prosecution case in the examination-in-chief but in the cross-examination he has stated that he came to know from the boy of locality that on the fateful day the deceased and accused/appellants were together consuming liquor at the house of Budhram Netam (PW-11). Ramesh Yadav (PW-10) is the witness of memorandum statements of accused/appellants (Ex.P-8 & P-10), seizure memos (Ex.P-9 & P-11). Budhram Netam (PW-11) is the person at whose instance merg intimation was lodged. Sachin Dev Shukla (PW-12) is the Investigating Officer and he has duly supported the prosecution case.

10. Close scrutiny of evidence available on record makes it clear that there is no legally admissible evidence connecting the accused/appellants with the crime in question. Main circumstance relied upon by the trial Court for convicting the accused/appellants is the recovery of certain articles pursuant to their disclosure statements which were found to be stained with human blood in the report of FSL. In the serological report also only the presence of human blood was confirmed on the articles seized from the spot and at the instance of the accused/appellants, but it was not found to be of the blood group of the deceased. Since none of the articles was shown to have human blood on it of the group of the deceased, the accused/appellants cannot be said to be connected with

the crime in question on the basis of recovery alone. True it is that a shirt having torn left cuff, similar to the cuff sleeve recovered from the spot, was seized from the possession of accused/appellant No.1, but there is no report of the expert to prove that said torn cuff of sleeve fits in the torn portion of shirt seized from accused/appellant No.1 or the fabric of both are same, so that it may be held that it is a part of this shirt itself. Thus, there is no evidence to connect the shirt seized from accused/appellant No.1 with the torn cuff sleeve of shirt recovered from the spot vide Ex.P-1. Therefore, this circumstance by itself does not implicate the accused/appellants in the crime.

As far as the fact that the deceased was last seen alive in the company of accused/appellants is concerned, there is no positive evidence regarding presence of deceased and accused/appellants together on the spot at the crucial point of time. No doubt, it has come in the statement of PW-9 Sanjay Kumar Mohanti, brother of deceased, that on the date of incident the accused/appellants & the deceased had together consumed liquor in the house of Budhram (PW-11), but in Para-9 of the cross-examination this witness has admitted that he was informed about the said fact by the boy of vicinity and being so, he is not the witness of last seen rather a hear-say witness. Since the author of this information was not examined by the prosecution, the information gathered by this witness from the boy of locality was purely hearsay evidence and could not be legally relied upon.

This apart, it has come in the evidence of Budhram (PW-11) that the deceased was the person of notorious tendency, he was living in his house forcibly and being scared of deceased, he was living in his sister's house in the same building. In these circumstance, this Court feels that the deceased having himself been a man of notorious

mindset the possibility of someone else killing him cannot be ruled out.

11. In view of the above discussion, we are of the view that the circumstantial evidence adduced by the prosecution to connect the accused/appellants with the murder of deceased do not stand up to the standard prescribed by the Apex Court and the same can not be relied upon to connect the accused/appellants with the murder of the deceased and consequently they are entitled to be acquitted of the charge of murder by extending them benefit of doubt. The judgment of the trial Court after placing reliance on the above circumstantial evidence convicting the accused/appellants cannot be sustained and the same is liable to be set aside.
12. In the result, the appeal of accused/appellants is allowed. The judgment of conviction and sentence passed by the trial Court is set aside and the accused/appellants are acquitted of the charge under Section 302/34 IPC by extending them benefit of doubt. Appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(RCS Samant)
Judge

roshan/-