

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 800 of 2009

- Vijay Sahish S/o. Medulal, Aged about 32 years, r/o. village Thurpa, PS. Shivrinarayan, District Janjgir-Champa (CG)
- Rikkey @ Bhupendra S/o Suman Kesharwani R/o Gidhauri PS Bilaigarh, District Raipur (CG)

---- Appellants

Versus

- State Of Chhattisgarh, through Police Station Kasdol, District Raipur (CG)

---- Respondent

For Appellants	: Shri Vivek Sharma, Advocate
For Respondent/State	: Shri Adil Mlnhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgement on Board by Pritinker Diwaker, J.

20/11/2017

This appeal arises out of judgment and order dated 26.10.09 passed by the Second Additional Sessions Judge, Baloda Bazar in S.T. No. 26/2009 convicting the accused/appellants under Sections 395, 396 and 302 of IPC and sentencing each of them to undergo imprisonment for life and to pay fine of Rs. 100/- on each count with default stipulations.

2. As per prosecution case, on 25.03.08, some employees of the Forest department including that of deceased Kartik Ram were on patrolling duty and at about 12.00 in the mid night it is alleged that some people entered the forest area riding a motorcycle and Mahindra

pick-up van for committing theft of logs of teak wood. It is said that the forest employees had put the barriers to stop the vehicle but the driver of the pickup van ran over the deceased Kartik Ram who was standing near the barrier as a result of which he died. Thereafter accused persons ran away from the spot. Merg intimation Ex.P-25 was recorded at 3.15 a.m. on 26.3.08 by one Rajkumar (PW-1) Forest Guard. Immediately thereafter at 3.20 a.m. FIR Ex.P-1 was lodged against unknown persons under Section 302/34 IPC. Inquest on the body of deceased was prepared vide Ex.P-20 and body was sent for postmortem examination which was conducted by Dr. R.S. Joshi (PW-15) and according to him cause of death was shock and haemorrhage due to head injuries and fracture of ribs and right scapula. On the basis of memorandum of accused/appellant No.2 Ricky @ Bhupendra seizure of wooden logs vide Ex.P-7 were given effect to which were kept in the granary (*kothar*) covered with paddy of one Sarju Ram however he had not been examined. Vide Ex.P-19, the damaged vehicle was seized from the shop of Chhotu @ Ravindra Singh however no registration particulars of the vehicle has been filed by the prosecution to prove the ownership of the vehicle. After investigation, charge sheet was filed against the accused/appellants No.1,2,3,5 and 6 namely Vijay Sahish, Rickey @ Bhupendra, Satish Patel, Yugal Kishore and Rajnikant @ Gappu under Sections 395, 396 and 302 IPC whereas accused/appellant No.4 Ravishankar @ Ravi under Section 395 PC and accordingly charges were framed.

3. In support of its case, prosecution has examined 19 witnesses. Statement of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the

charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has acquitted appellants 3,4,5 and 6 namely Satish Patel, Ravishankar @ Ravi, Yugal Kishore and Rajnikant @ Gappu of all the offences whereas convicted and sentenced the present appellants as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellants is that

- i) all the important witnesses of the incident have not supported the prosecution case and have been declared hostile.
- ii) that no test identification parade of the accused persons have been conducted.
- iii) that ownership of the vehicle have also not been proved by the prosecution.
- iv) that there is no evidence on record as to who was driving the vehicle or who were the persons sitting in the vehicle.
- v) that even if the entire prosecution case is taken as it is, no offence is made out against the accused/appellants.

6. On the other hand State counsel supports the impugned judgment and submits that the conviction of the appellants is 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. Rajkumar(PW-1) is the informant and the eyewitness to the incident has not supported the prosecution case and has been declared hostile. Firat Ram (PW-2) is also eyewitness to the incident, has turned

hostile. Ram Dayal Chouhan (PW-3) is a witness to memorandum Ex.P-6 has turned hostile. Saheb lal (PW-4) is also eyewitness to the incident has turned hostile. D.K.Sahu (PW-5) is a Forest Ranger who on 25.03.08 received the information about the incident on telephone has not deposed anything against the accused persons. Jaspal Singh Gond (PW-6), Ratan Singh (PW-7), Janak Ram (PW-8), Kheekh Ram (PW-9) and Bhojram (PW-10) are the eyewitnesses to the incident have turned hostile. Makhan Singh (PW-11) is a witness to seizure of register (Ex.P-8) has not stated anything specific against the appellants. Kholbehra (PW-13) is a mechanic who had repaired the vehicle. Salim Khan (PW-14) did the denting and painting of the said vehicle after it got damaged. Dr.R. S. Joshi (PW-15) is the doctor who conducted postmortem examination on the body of deceased Kartik Ram and has opined that cause of death was shock and haemorrhage due to head injuries and fracture of ribs and right scapula. R.S.Rajput (PW-16) is the ASI who assisted in the investigation. Vishnu Prasad Nishad (PW-17) is the Head Constable who has also assisted in the investigation. B.R.Mandavi (PW-18) is the Investigating Officer who has duly supported the prosecution case. Ravindra Singh (PW-19) is the ASI who has done part of the investigation.

9. Close scrutiny of the evidence makes it clear that there is absolutely no legally admissible evidence against the appellants showing their involvement in the commission of offence. No test identification parade has been conducted by the prosecution and likewise it has completely failed to prove as to who was driving the vehicle and who is the owner of the vehicle. Moreover, all the important witnesses to the incident have turned hostile.

10. Thus in the facts and circumstances of the case, we are of the opinion that the prosecution has not been successful in proving the involvement of the accused/appellants in the crime in question on the basis of cogent and reliable evidence. Being so, the appellants are entitled to be acquitted of the charge under Sections 395,396 and 302 IPC.

11. Accordingly, the appeal is allowed. Conviction of the accused/appellants under Sections 395, 396 and 302 IPC are set aside and they are acquitted of the said charges. Appellants are on bail and therefore no further order is required.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Arvind Singh Chandel)
Judge