

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 902 of 2009**

Dilip Kumar @ Chhotu, Age 21 years, S/o Shri Bhagwan Das, By Profession- Cultivator, R/o Village Devnagar, P.S. Surajpur, District Suruguja (CG).

---- Appellant**Versus**

State of Chhattisgarh, Through The Police Station, P.S. Surajpur, District Suruguja (CG)

---- Respondent

For Appellant	:Shri S.A. Ansari, Advocate
For Respondent/State	:Smt. Madhu Nisha Singh, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker,
Hon'ble Shri Justice Ram Prasanna Sharma
JUDGMENT

Per P. Diwaker, J.**04.07.2017**

This appeal arises out of the impugned judgment of conviction and order of sentence dated 22.10.2009 passed by the 1st Additional Sessions Judge, Surajpur, District Sarguja (CG) in ST No. 262/2008, convicting the appellant under Section 302 read with Section 34, 201 (Part I) read with Section 34 IPC and sentencing him for life imprisonment and fine of Rs.100/-; R.I. for 7 years and fine of Rs.100/, in default of payment of fine further undergo R.I. for 15 days and R.I.15 days respectively.

2. As per prosecution case, co-accused Santosh Kumar was having some dispute with his father Gansai over the partition of land and it is alleged that he along with the appellant committed murder of deceased- Gansai and thereafter threw his dead body in the village Well to give a different picture of the murder of his father. On 8.6.2008, co-accused Santosh Kumar himself had gone to the Police at 9.00 am and lodged Merg intimation Ex. P/18 that his father has been killed by someone. Immediately thereafter, FIR, Ex. P/19 was lodged by Santosh Kumar at 9.15 am under Section 302 IPC against an unknown person. Inquest on the dead body of the deceased was conducted on 8.6.2008 vide Ex. P/2 and the body was sent for postmortem which was conducted on 8.6.2008 by PW3- Dr. R. S. Singh, vide Ex. P/12. The Autopsy Surgeon noticed following injuries on the dead body of the deceased:

1. One incised wound present over the right side of the neck, extending for the angle of mandible mid line of the neck, clotted blood present measuring 8" x 2 ½" x 2 ¼" in size. The injury is ante mortem in nature caused by hard and sharp object. It is sufficient to cause the death.

The Autopsy Surgeon opined that the cause of death was haemorrhage due to cutting of major vessels of neck and the death was homicidal in nature.

3. On 8.6.2008, memorandum of the co-accused Santosh Kumar was recorded wherein he has stated that on account of partition dispute, he with the help of present appellant committed murder of the deceased and then threw his dead body in the village Well. Based on this memorandum, recovery of Sword was made vide Ex. P/4. On the same day, memorandum

of the appellant Dilip Kumar was also recorded, based on which, one Bamboo stick has been seized vide Ex. P/6. It is relevant to note that there is no FSL report on record confirming blood on the seized articles.

4. After filing of the charge sheet, the trial Judge has framed charges against co-accused Santosh Kumar under Sections 302, 201 (Part I) read with Section 34 IPC and Section 25 (1 B)(b) of the Arms Act, 1959, whereas, against the present appellant, Dilip Kumar charge under Section 302, 201(Part I) read with Section 34 IPC was framed by the trial Judge.

5. In order to prove its case, the prosecution examined 12 witnesses in all. Statements of accused were recorded under Section 313 Cr.P.C., in which, they denied the charges levelled against them, pleaded innocence and false implication in the crime in question.

6. By the impugned judgment, the trial Judge has convicted the co-accused under Sections 302, 201 (Part I) read with Section 34 IPC and Section 25 (1 B)(b) of the Arms Act, 1959 and the appellant under Sections 302 read with Section 34, 201(Part I) read with Section 34 IPC.

7. Co-accused Santosh Kumar had preferred Criminal Appeal No. 888/2009, however, the said appeal has been dismissed as abated vide order dated 15.2.2017 after his death. This appeal has been filed by the accused Dilip Kumar assailing his conviction.

8. Learned counsel for the appellant submits as under :

(i) that the appellant has been convicted solely on the basis of his memorandum Ex. P/5 and seizure of bamboo stick Ex. P/6;

(ii) that merely on the basis of seizure of bamboo stick, the appellant could not have been convicted as there is no other connecting evidence against him. It has been argued that even FSL report is not there to show that any blood was found on the seized bamboo stick;

(iii) that in fact present is a case of no evidence yet the appellant has been convicted.

9. Supporting the impugned judgment, it has been argued by the State Counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

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

11. PW-1, Shivbachan Singh and PW-2, Ramnarayan are the witnesses of inquest and memorandum of the accused persons, Exs. P/3 and P/5 and seizure Exs. P/4 and P/6, they have not supported the prosecution case and have been declared hostile.

12. PW3, Dr. R.S. Singh, conducted postmortem and noticed following injuries on the body of the deceased:

1. One incised wound present over the right side of the neck, extending for the angle of mandible mid line of the neck, clotted blood present measuring 8" x 2 ½" x 2 ¼" in size. The injury is ante mortem in nature caused by hard and sharp object. It is sufficient to cause the death. He opined that the cause of death was haemorrhage due to cutting of major vessels of neck and the death was homicidal in nature.

- 13.** PW-4, R.P. Thakuriya, Patwari prepared a spot map vide Ex. P/11.
- 14.** PW5- Ramlochani Bai is wife of the deceased and mother of co-accused Santosh Kumar. She has been declared hostile.
- 15.** PW6, Virendra Kumar and PW7, Shivkumar are the brothers of co-accused Santosh Kumar. They have also turned hostile.
- 16.** PW8, Anita Prabha Minj recorded FIR and Merg intimation Ex.P/18.
- 17.** PW-9, Gangawati is a relative of the deceased. She has also turned hostile.
- 18.** PW-10, Gulam Hussain is the neighbour of the deceased. He has turned hostile.
- 19.** PW-11, Guruprasad is Head Constable. He has helped in the investigation.
- 20.** PW-12, Mohd. Farhan Qureshi, is the Investigating Officer.
- 21.** A close scrutiny of the entire evidence makes it clear that but for the memorandum of the co-accused persons Exs. P/3 and P/5 and seizures Exs. P/4 and Ex. P/6 there is nothing against them. The prosecution has even not produced the FSL report to establish the fact that blood was found on the seized articles. The important witness of the prosecution i.e. PW5, Ramlochani Bai, mother of co-accused Santosh Kumar and his 2 brothers have not supported the prosecution case and have been declared hostile. We have no hesitation to hold that present is a case of no evidence, yet the appellant has been convicted for committing murder of the deceased. The

trial Court has misdirected itself while appreciating the evidence and convicting the accused/appellant.

22. Considering all the aspects of the case, the impugned judgment of conviction and order of sentence in so far as it relates to the appellant, is hereby set aside. The appeal is allowed and the appellant is acquitted of the charges levelled against him. It is reported that the appellant is on bail. His bail bond shall continue for a further period of 6 months in view of Section 437-A Cr.P.C.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge