

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 175 of 2007**

- Latif Khan @ Guddu Khan S/o Vajid Khan, aged about 25 years, R/o Rajendra Nagar, Police Station - Civil Lines, District - Bilaspur (C.G.)

---- Appellant**Versus**

- State Of Chhattisgarh, Through : Police Station - Sarkanda, District Bilaspur

---- Respondent

For Appellant.	:	Shri F.S. Khare, Advocate.
For Respondent.	:	Shri Adil Minhaj, P.L.

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

Judgment On Board**By Pritinker Diwaker, J****25/01/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 19.02.2007 passed by Additional Sessions Judge and Special Judge (Narcotics), Bilaspur in S.T. No.51/2006 convicting the accused/appellant under Section 302 IPC & sentencing him to undergo imprisonment for life with fine of Rs.100/-, plus default stipulations.

02. In the present case name of the deceased is Jai Kumar Lahre and he was Auto Rickshaw driver. On 21.11.2005 deceased left his house in auto rickshaw and had gone to Uslapur railway station along with Raja @ Ashfaq Khan (PW/4), accused/appellant Latif Khan @ Guddu Khan, Nanchu Banjare, Umesh Mishra (PW/10) and Raviraj @ Kaju Shrivastava (PW/9). It is said that from Uslapur they all went to village

Ghutku and then to Kholipara in the house of Umabai (PW/1) where they consumed liquor in her house till evening. While they were consuming liquor, the train signalled its departure for Bilaspur and at that time deceased and his friends rushed to catch the train. Nanchu Banjare, Umesh Mishra (PW/10), Raviraj @ Kaju Shrivastava (PW/9) boarded the train whereas Raja @ Ashfaq Khan (PW/4), deceased Jai Kumar Lahre and accused/appellant Latif @ Guddu Khan could not catch it. Thereafter, Raja @ Ashfaq Khan went back to Ghutku and stayed in the house of Uma Bai (PW/1) but deceased and accused/appellant proceeded for Uslapur on foot. Further case of the prosecution is that while deceased and the accused/appellant were returning, on the way they had some quarrel and it is alleged that the accused/appellant committed murder of the deceased by causing injury on his head by stone, which has been seized from the spot vide Ex.P/21. When deceased did not return, his father inquired from the accused/appellant and Raja @ Ashfaq Khan (PW/4), in turn, they informed him that deceased had gone to his maternal uncle's house. When despite search Gopal Lahre (PW/3) - father of the deceased could not get whereabouts of the deceased, on 27.11.2005 he lodged a missing report and in the same night one dead body was found near the railway track which was identified to be that of the deceased. Merg intimation (Ex.P/7) was recorded on 28.11.2005 by Gopal Lahre (PW/3). From the spot, blue colour full shirt, one shoe of Gold Star, blue colour cap of the deceased were seized and one full shirt and one blue colour slipper allegedly belonging to the appellant were also seized vide Ex.P/3. Inquest on the dead body was prepared vide

Ex.P/2 and body was sent for postmortem to CIMS, Bilaspur vide Ex.P/16 where Dr. V.K. Manwani (PW/7) conducted postmortem on the body of deceased and gave his report vide Ex.P/11 opining the cause of death of deceased to be coma due to head injury.

03. On 30.11.2005 F.I.R. was registered against the accused/appellant under Section 302 IPC. On 01.12.2005 memorandum of the accused/appellant was recorded vide Ex.P/20, based on which one stone was seized vide Ex.P/21.

04. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the accused/appellant and accordingly the charge was framed against him by the trial Court.

05. So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

06. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced him as mentioned in para-1 of this judgment. Hence, this appeal.

07. Learned counsel for the appellant submits :-

(i) that there is no legally admissible evidence against the accused/appellant showing his involvement in the commission of crime but yet he has been convicted;

(ii) that the so called seizure of stone made under Ex.P/21 cannot be

used against the accused/appellant as the seizure has been effected from an open place where dead body was lying;

(iii) that even the statement of Gopal Lahre (PW/3) in relation to last seen is not reliable and cannot be made basis for convicting the accused/appellant because ultimately in group the deceased had gone to village Ghutku and consumed liquor.

08. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

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

10. Uma Bai (PW/1) has stated that 3-4 months prior to recording of her evidence, appellant and deceased along with Raja (PW/4) and Anju came to her house to have liquor but as the liquor was not available with her, they went to one betel shop and purchased cigarettes. She, however, has expressed her ignorance as to where they went thereafter. She has further stated that about 10 minutes after missing the train scheduled at 7.30 pm from station, Raja Khan (PW/4) came back to her house saying that he has missed the train and after dinner he slept in her house. This witness also went on to state that in the early morning PW/4-Raja Khan had gone to Bilaspur. This witness was subsequently declared hostile.

11. Raja Bhaskar (PW/2) witness to inquest (Ex.P/2), seizure (Ex.P/3 & P/4), spot map (Ex.P/5) and identification of dead body (Ex.P/6) has not stated anything specific against the appellant.

12. Gopal Lahre (PW/3) - father of the deceased has stated that on 21.11.2005 at about 5.00 pm deceased left the house along with appellant and Raja Khan (PW/4) for village Ghutku and since then his son did not return. He has further stated that on the next day when he inquired from the accused persons, they abused him and then he was informed by accused/appellant and Raja Khan (PW/4) that deceased had gone to the house of his maternal uncle. This witness inquired from his brother-in-law and other relatives about the deceased but he did not receive any information about his son from them, thereafter, he lodged the missing report. This witness went on to state that he had gone to search his son towards Uslapur from track side and during search he came to know from herdsman that one dead body is lying in between Uslapur and village Lokhadi. When he reached there the dead body was identified by him to be that of his son. This witness also went on to state that near dead body he found one slipper and shoe, the slipper was of the appellant. Thereafter, merger intimation (Ex.P/7) was lodged by him. This witness has also stated that on account of previous enmity the appellant has killed his son.

13. Ashfaque Hussain @ Raja Khan (PW/4) who had accompanied the appellant and the deceased to go to Ghutku has been declared hostile. Ram Prasad (PW/6) is a witness to inquest (Ex.P/2), seizure (Ex.P/3 & P/4) and spot map (Ex.P/5).

14. Dr. V.K. Manwani (PW/7) conducted the postmortem on the body of deceased vide Ex.P/11 and found following injuries/symptoms:-

- (i) Whole body decomposed, foul smelling, maggots present in multiple phases all over the body. Whole body became

skeleton except back of skull and both lower limbs below the knee region. Three fingers of left upper limb, all organs of trachea and abdominal cavity eaten by wild animals. Thoracic and abdominal cavity were empty. Skull bones, teeth, maxilla, mandible can be seen.

- (ii) One compound fracture of 4.2 cm length from right frontal to left frontal region horizontally situated. Injury was grievous in nature. It was antemortem in nature.

The autopsy surgeon opined that the cause of death was coma due to head injury.

15. Raviraj @ Kaju Shrivastava (PW/9) and Umesh Mishra (PW/10) had accompanied the appellant and deceased to village Ghutku. They have not stated anything specific against the appellant.

16. S.B. Singh Rana (PW/11) is Investigating Officer who has duly supported the prosecution case. Mohd. Shams (PW/12) is witness to memorandum (Ex.P/20) of the appellant and seizure thereof made under Ex.P/21.

17. Having gone through the material available on record and the evidence of the witnesses with great circumspection it becomes apparent that on 21.11.2005 the accused and the deceased accompanied by other 3-4 persons, proceeded for Ghutku for taking liquor and after reaching there they went to the house of Uma Bai (PW/1) and asked her to manage liquor for them but she expressed her inability to do so. Record further shows that on refusal by PW/1 all of them returned to Ghutku railway station where some got train and some could not, and ultimately after five days the dead body was found near the railway track. Though the prosecution has branded PW/3 - the father of the deceased to be the witness of last seen but this Court finds it difficult to agree with the same because after leaving Bilaspur they went

to the house of Uma Bai (PW/1) and being so he cannot take the place of witness of last seen. Even PW/4 who had throughout been in the company of the accused and the deceased, through turned hostile, has stated in his evidence that the deceased had succeeded in catching the train towards Bilaspur and being so the stand of the prosecution that the deceased and the accused were walking on account of missing the train gets falsified and the possibility of deceased falling off the train along petrified railway track and sustaining head injury cannot be ruled out. As far as slipper of the accused being identified by the father of deceased is concerned, it is not of much value to the case of the prosecution because being a stranger to the accused he cannot be supposed to know as to what the accused was wearing at the relevant time. Moreover, no proper identification of the said slipper had been carried out by the prosecution. In addition to this, the presence of blood on the stone cannot be connected to the commission of crime by the accused/appellant because there is no serological report on record on the basis of which it could be said that the said blood was of the blood group of deceased. To sum up, this Court is of the considered opinion that the prosecution has not led enough evidence to prove the complicity of the accused in the crime in question and for that the benefit of doubt has to go to the accused. So also the Court below has fallen in a serious error in appreciating the evidence of the witnesses and in holding the accused guilty for murdering the deceased. Sorry to say that the finding so recorded do not get established on the touchstone of legally admissible evidence.

18. In view of what has been discussed above, the findings recorded

by the Court below cannot be sustained in the eye of law and are liable to be set aside. The appeal is thus allowed, judgment impugned is set aside and the accused/appellant stands acquitted of the charge levelled against him. Appellant being already on bail does not require any order to be set free. Bonds executed by him stand discharged.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(R.C.S. Samant)
JUDGE