

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 844 of 2010**

- Tahsildar Singh @ Pawan Singh S/o Jagat Bahadur Singh, aged about 40 years, R/o Vill. Khairjhiti, P.S.-Marwahi, Distt.-Bilaspur, C.G.

**---- Appellant**

**Versus**

- State Of Chhattisgarh through the Police Station – Marwahi, Distt. Bilaspur (CG)

**---- Respondent**

---

For Appellant : Shri Manoj Paranjpe, Shri Vaibhav Goverdhan & Shri Ashok Soni, Advocates.

For Respondent/State : Shri Neeraj Mehta, P.L.

---

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

**Judgment On Board By Justice Pritinker Diwaker**

**07/11/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 15.11.2010 passed by the Additional Sessions Judge (FTC), Pendra Road, Distt. Bilaspur in S.T.No.55/2009 convicting the accused/appellant under Section 302 or 302/149 of IPC and sentencing him to undergo imprisonment for life and pay a fine of Rs.100/- with default stipulation.

02. As per prosecution case, prior to the present incident the accused/appellant Tahsildar had caused injuries to Laxminarayan (PW-4), brother of deceased Tulsinarayan. It is alleged that in the said case

Tulsinarayan was one of the important witnesses and to prevent him from giving evidence in the Court, in the night intervening 28/29.7.2008 the appellant with the help of four other accused persons committed his murder and his dead body was found on the road on 29.7.2008. After receiving information PW-4 Laxminarayan lodged dehati nalishi (Ex.P/5) on 29.7.2008 at 12.45 pm. Immediately thereafter unnumbered merg (Ex.P/6) was registered and thereafter FIR (Ex.P/21) was also registered under Section 302 of IPC against the appellant and four other accused persons. Soon thereafter numbered merg Ex.P/22 was registered. Inquest over the dead body was conducted vide Ex.P/1 on 29.7.2008 and the body was thereafter sent for postmortem which was conducted on the same day by PW-6 Dr. Krishna Kumar Dhruv vide Ex.P/9, who noticed lacerated wound on chin, ear torn, abrasion over chest & leg, fracture of 4<sup>th</sup>, 5<sup>th</sup> & 6<sup>th</sup> rib and liver crushed. In his opinion, the cause of death was coma due to hemorrhage and rupture of liver and that the death was accidental in nature. On 20.5.2009 the accused/appellant surrendered before the learned Magistrate whereas the other accused persons are absconding. On 22.5.2009 memorandum of the accused/appellant was recorded vide Ex.P/13, however, nothing could be seized in pursuance thereof. After completion of investigation, the trial Court framed charge under Section 302, 302/149 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 14 witnesses. Statement of the accused 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. In defence, he examined two witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Learned counsel for the appellant submits as under:

(i) that the sole eyewitness to the incident PW-14 Nanku Ram has not supported the prosecution case and has been declared hostile.

(ii) that other piece of evidence against the appellant is the so-called evidence of last seen by PW-1 Shyambai, PW-3 Ram Vishnu and PW-5 Satyanarayan, however, these witnesses are not, in fact, witnesses of last seen and merely saw some of the accused persons sitting on the culvert and the deceased passing through that culvert. Even otherwise, the evidence of last seen itself being a weak type of evidence cannot be made the basis of conviction of the appellant.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellants is strictly in accordance with law and as such, there is no scope for any interference in the judgment impugned by this Court.

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

08. PW-1 Shyambai has stated that she knew the appellant and other absconded accused persons also. She states that there was a previous incident of quarrel between the two groups and on the date of

incident when she was returning from her field, near the culvert she saw the accused/appellant, Sani, Satish Thakur and Arun Thakur sitting on the culvert and then she came to know subsequently that Tulsinarayan has been murdered and she saw his dead body.

09. PW-3 Ram Vishnu @ Vishnu has stated that at about 5 pm he saw four persons sitting on the culvert including one Arun and his driver. He has further stated that he, however, had not seen any incident and on the next morning he saw dead body of the deceased lying near the road. At this stage, this witness was declared hostile. PW-5 Satyanarayan, brother of the deceased, is also a witness of last seen. He has stated that a criminal case was going on against the appellant and a day prior to the incident the appellant and his friends had threatened his brother for making any statement in the Court. He states that he saw the dead body of the deceased lying on the road, and eyewitnesses Ramvishnu, Karim and Nanku informed him that they had seen the appellant and other accused persons causing injuries to the deceased. PW-14 Nanku Ram has though stated that he saw 4-5 persons committing marpeet in the market with someone but could not see the assailants. This witness was declared hostile.

10. PW-2 Vishnuprasad, Village Kotwar, is a formal witness. PW-4 Laxminarayan lodged the FIR and merged intimation. PW-6 Dr. Krishna Kumar Dhruv conducted postmortem on the body of the deceased on 29.7.2008 vide Ex.P/9 and found lacerated wound on chin, ear torn, abrasion over chest & leg, fracture of 4<sup>th</sup>, 5<sup>th</sup> & 6<sup>th</sup> rib and liver crushed. In his opinion, the cause of death was coma due to hemorrhage and rupture of liver and that the death was accidental in nature. He has

stated that in reply to the query raised by the police regarding nature of death he had subsequently opined that death of Tulsinarayan could be homicidal. PW-7 Vinod Kumar, PW-8 Ashok and PW-9 Bihari Singh have turned hostile. PW-10 Narsingh Ram conducted part of investigation whereas PW-11 JP Shrivastava is the investigating officer. PW-12 Mahesh Prasad Gupta is a witness to inquest and memorandum of the appellant. PW-13 Ram Snehi Gupta is a witness of threatening extended by the appellant to the deceased.

11. DW-1 Sitaram has stated that the deceased had an accidental death, the deceased was having affair with PW-1 and had spoiled the lives of several girls. DW-2 Rajkumar has stated that on the date of incident the appellant was hospitalized.

12. Close scrutiny of the evidence makes it clear that there is absolutely no legally admissible evidence, direct or circumstantial, on record, to establish complicity of the appellant in the crime in question. As regards the so-called eyewitness PW-14 Nanku Ram Gupta, he has merely stated that on the date of incident he saw some 4-5 persons committing marpeet in the market but could not see the assailant and therefore, was declared hostile. As such, he cannot be said to be an eyewitness to the incident.

So far as the evidence of last seen is concerned, the prosecution has cited three witnesses namely PW-1 Shyambai, PW-3 Ram Vishnu and PW-5 Satyanarayan on this point. However, from perusal of their statements it is seen that their evidence on the point of last seen is not conclusive. They have stated that on the date of incident they had seen some of the accused persons sitting on the culvert and at that time the

deceased was passing through that culvert. Moreover, according PW-5 Satyanarayan, he was informed by eyewitnesses Ramvishnu (PW-3), Karim and Nanku (PW-14) that it is the appellant and other co-accused who caused injuries to the deceased whereas PW-3 & PW-14 have not stated so in their statements and have been declared hostile and said Karim has not been examined by the prosecution. Though it has come in the evidence of the prosecution witnesses that the appellant and the deceased had inimical relation and as such, he had the motive to commit his murder but in absence of any legally admissible and cogent evidence establishing involvement of the appellant in the crime in question, merely on the basis of availability of motive with the appellant he cannot be convicted for an offence under Section 302 of IPC.

13. On the basis of aforesaid discussions, we are of the considered opinion that the prosecution has not been successful in proving the guilty of the appellant beyond all reasonable doubt based on the evidence adduced by it. Being so, the appellant is entitled to be acquitted of the charge by giving him benefit of doubt.

14. In the result, the appeal is 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/

**(Arvind Singh Chandel)**  
**Judge**