

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CORAM: Hon'ble Shri Justice Pritinker Diwaker**

**Hon'ble Shri Justice R.C.S. Samant**

**CRA No.1068 of 2007**

Ratan Verma

-----Appellant

**Versus**

State of Chhattisgarh

-----Respondent

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**JUDGMENT FOR CONSIDERATION**

**JUDGE**

12/01/2017

**Hon'ble Shri Justice Pritinker Diwaker**

**JUDGE**

12/01/2017

**Post for Judgment on**

**13/01/2017**

**JUDGE**

12/01/2017

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Judgment reserved on: 16/12/2016****Judgment delivered on: /01/2017****CRA No. 1068 of 2007**

- Ratan Verma, S/o. Dinu Verma, Aged about 55 years, Labourer, R/o Murumkhadan, Supela, Bhilai, District Durg (C.G.) ---- **Appellant**

**Versus**

- State Of Chhattisgarh Through P.S. Khairagarh, Distt. Rajnandgaon

**---- Respondent**

For the Appellant : Shri Kishore Bhaduri, Advocate.  
 For the State/Respondent : Shri Adil Minhaj, Panel Lawyer.

**Hon'ble Shri Justice Pritinker Diwaker****Hon'ble Shri Justice R.C.S. Samant****C A V JUDGMENT****Per R.C.S. Samant, J****13/01/2017**

1. This appeal arises out of the judgment of conviction and order of sentence dated 06.10.2007 passed by the Additional Sessions Judge, Khairagarh in S.T. No.40/2007, whereby appellant was convicted under Section 302 of IPC and was sentenced to undergo imprisonment for life, pay a fine of Rs.1000/- with default stipulation.
2. The case of the prosecution, in brief, is this that one unnumbered F.I.R. Ex.P/1 was lodged by Sato Bai PW/1, on 14.09.2006 at 6.30 a.m. stating that deceased Dinu Verma was father of the complainant

her eight sisters and one brother, who is the appellant. All sisters were married. Only Saroj Bai PW/2 resided with deceased and was taking care of him. For this reason, deceased transferred some land to Saroj Bai PW/2 by registered sale-deed. Appellant came to know of this transfer of property and was enraged, who tried to find and assault Saroj Bai PW/2 twice, but both the times he assaulted the wrong person.

3. Later on, on the date of incident on 13.09.2006 at about 12:00 a.m. in the afternoon, deceased was brought in injured condition by Roop Ram PW/19, Tiku and Bhimram PW/10 to his residence and it was informed by them to Sato Bai PW/1 that deceased was assaulted by appellant Ratan before the shop of Chandrashekhar PW/9 and has fled from the spot. Deceased was taken to a doctor, who declared him dead. One unnumbered merg Ex.P/16 was recorded by P.S. Khairagarh in the morning on 14.09.2006 at 6:00 a.m. and on the same day, at 6:30 a.m. unnumbered FIR Ex.P/1 was lodged by Sato Bai PW/1. On the basis of which numbered merg intimation Ex.P/11 and numbered FIR Ex.P/18 were recorded in P.S. Khairagarh.
4. Inquest was conducted vide Ex.P/7, postmortem examination of dead body of deceased was conducted by Dr. P.S. Parihar PW/6 in which, he reported vide Ex.P/10 that the deceased suffered fracture of ribs and injuries on his vital organs, lungs and liver leading to internal hemorrhage, which led to syncope and resulted in his death. In rest of the investigation, a sale-deed, one agreement and mutation papers were seized from possession of Saroj Bai PW/2 vide Ex.P/2. Spot

map Ex.P/3 was prepared by Revenue Officer. One scooter was seized from the possession of appellant vide Ex.P/4, one spot map Ex.P/21 was prepared by investigating officer. Statement of witnesses were recorded under Section 161 of Cr.P.C. On completion of investigation, appellant was charge-sheeted.

5. Appellant was charged under Section 302 of IPC. Appellant denied the charges and demanded for trial. Prosecution has examined 19 witnesses. On examination under Section 313 of Cr.P.C., appellant denied all the circumstances against him in prosecution evidence and pleaded innocence. It was stated that Saroj Bai PW/2 got the land transferred in her name from her father by practicing fraud on him, due to which deceased was worried and while going on a bicycle, he fell down and got injured which has resulted in his death. No witness was examined in defence. Impugned judgment was passed by the trial Court convicting and sentencing the appellant.
6. The grounds in this appeal are these, that prosecution has failed to prove its case beyond reasonable doubt. The trial Court has failed to appreciate the evidence of witnesses and especially the evidence of Dr. P.S. Parihar PW/6, who has admitted that the injuries in lung and liver of deceased could have been caused by fall from bicycle. The finding of conviction is based on the statement of Saroj Bai PW/2 or Sato Bai PW/1, who had not been eyewitnesses. On the contrary, Kusudas PW/3 supports the defence version. On these grounds, it is prayed that the conviction against the appellant be set aside.

7. It is submitted on behalf of the appellant, that this is a case of no eyewitness, other witnesses Sato Bai PW/1 and Saroj Bai PW/2, are interested witnesses, who have interest to oust the appellant from inheriting the property of his father. There is no eyewitness of incident and no circumstances have been proved, which could have been made the ground of conviction. For these reasons, the conviction against the appellant is baseless, erroneous and against the law.
8. We have heard learned counsel for the parties at length and also perused the material on record.
9. It is not in dispute that deceased Dinu Ram transferred some land in favour of Saroj Bai PW/2 and that has been a reason for grievance of appellant. Satobai PW/1 has stated that on the date of incident, Nakul PW/16 informed that appellant has committed murder of deceased in front of the shop of Chandrashekhar PW/9 and has fled from the spot. At the same time, Nakul PW/16, Bhimram PW/10, Diku and Roopram PW/19 brought the dead body of the deceased to her residence. Thereafter this witness lodged the unnumbered merg Ex.P/16 and unnumbered FIR Ex.P/1. In cross examination, there is no other statement to form any other opinion. It is very clear that this witness was informed by one Nakul PW/16 and her statement is hearsay.
10. Saroj Bai PW/2 stated, that on the date of incident, appellant came to the door of her house and threatened to kill and beat her, hence, she went to the residence of his mother. Appellant came there as well and threatened to kill his mother. Later on, she came to the residence of

her mother and saw the dead body of her father, she was told by Sato Bai PW/1, her mother and villagers that it was appellant, who has done to death the deceased by assaulting him with fists and throwing the deceased on a bench. She is not a witness to the incident, when deceased was assaulted and injured which resulted in his death. Her information is through Satobai PW/1, her mother and other villagers only.

11. Kusudas PW/3 saw the body of deceased and he was told by Ramwati Wife of deceased that it was appellant who has killed the deceased. In cross examination, he has admitted that on the date of incident, deceased had been to Khairagarh on bicycle for paying the electric bill, he has admitted that Saroj bai PW/2 had got transferred in her name 3 acres of land from deceased fraudulently, due to which deceased was quite worried. He has further admitted that deceased was riding his bicycle near Village-Chichola who fell down from the bicycle and got injuries on his chest, after that with much difficulty, he came to the shop of Chandrasheker PW/9, where he narrated this witness and others about fraudulent transfer of land, his fall from bicycle and the injury caused. Further he has also admitted that appellant was not in the village on that day. This is a total contradictory statement in cross examination and opposed to the prosecution version of this case. Even then prosecution has not opted to re-examination and clarify the statement given by this witness, neither any question was put by the Court to clarify the position of this witness. Hence, the statement in his cross-examination stands

unrebutted.

12. Krishna Kumar Verma PW/4 is a hostile witness, Sudhir Singh PW/5 and Jagdish PW/8 are witnesses of inquest. Yashwant Markam PW/7 Patwari has prepared the spot map Ex.P/3.

13. Chandrashekar PW/9 is a key witness, because according to the statement of Satobai PW/1 and others, deceased was assaulted by appellant in front of the shop of this witness. He has not supported the prosecution and declared hostile. Bhimram PW/10 is one of the person, who brought deceased in the dead condition to his residence. He has not supported the case in any manner and declared hostile. Shishupal PW/13 is hostile witness, who has not supported the prosecution. Tikeshwar Prasad Verma PW/14 is another witness, who brought the deceased in injured condition to his place of residence, he has stated that he found Dinuram lying in front of the shop of Chandrashekhar PW/9 and helped to take him to his home. Later on, he came to know about his death. He was declared hostile as he has not supported the prosecution in any manner. Similarly Roopram PW/19 is another witness, who helped to bring deceased to his residence, he is also a hostile witness and has not supported the prosecution case.

14. According to Satobai PW/1, it was Nakul Ram PW/18, who informed her about the incident. Nakul Ram P/W18 has stated that on the date of incident, deceased had gone for payment of electric bill, later on, he went to meet Satobai PW/1 on her call. He has stated that he never

informed Satobai PW/1 and her mother about the death of deceased or the manner in which the death of deceased was caused. Further stated, that he did not see appellant on the date of incident. The statement of this witness has not been challenged by the prosecution.

15. On perusal of the statement of witnesses, who are cited as eyewitness or witness having knowledge of the incident, it is very clear, that apart from Satobai PW/1 and Saroj Bai PW/2 none other witness have stated that it was appellant, who assaulted the deceased and caused him injuries fatal in nature. On the contrary, the admission in the statement of Kusu Das PW/3, that deceased while riding his bicycle fell down and got injured, which has to be accounted for as not challenged by the prosecution and not questioned by the trial Court itself. None of the informants of Satobai PW/1 and Saroj Bai PW/2 have supported the prosecution about giving such information to these witnesses. Hence, looking to the circumstance in prosecution evidence, the only thing made out is this, that statement of Satobai PW/1 and Saroj Bai PW/2 can be considered only as allegation against appellant.

16. Dr. P.S. Parihar PW/6 conducted the postmortem of deceased Dinuram vide Ex.P/10 and reported that deceased had a fracture on his ribs and injuries on his right lung and liver, which resulted in hemorrhage leading to syncope and thereafter death. It has not been opined in his report that the death of deceased was homicidal death. It has been admitted in his cross examination, that injuries caused to the deceased could have been caused by fall from bicycle, supports the

version of defence.

17. There is no eyewitness of this incident, appellant could not have been convicted only on the basis of allegation made by his sister Sato Bai PW/1 and Saroj Bai PW/2. Prosecution story lacked the support of eyewitness and apart from that no investigation was conducted to stand the case against the appellant on the basis of circumstantial evidence. Hence, under these circumstances there had been possibilities of two views, although, due to the reasons that deceased has transferred some land in favour of his daughter which was caused annoyance to the appellant, it may be doubted that appellant may have been the culprit, but this doubt cannot be taken as proof to form the basis of conviction. Hence, for these reasons, it was a fit case in which appellant should have been given benefit of doubt.

18. In view of the above discussions, conviction of the appellant under Section 302 IPC is not sustainable. Hence, this appeal is allowed. The impugned judgment of conviction and order of sentence passed by the trial Court is hereby set aside. The appellant is acquitted of the charge framed against him. The appellant is on bail. He need not surrender. His bail bonds shall remain operative for a period of six months in terms of Section 437-A Cr. P.C.

Sd/-  
**(Pritinker Diwaker)**  
JUDGE

Sd/-  
**(R.C.S. Samant)**  
JUDGE