

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 677 of 2012

- Gautam Satnami S/o Mannu Satnami Aged About 28 Years R/o Village Dhourabhata, P.S. Dongargaon , Distt. Rajnandgaon C.G.

---Appellant

Versus

- State Of C.G. S/o Through - Sho., P.S. Dongargaon, Distt. Rajnandgaon C.G.

---- Respondent

For Appellant	: Shri Arun Shukla, Advocate
For Respondent/State	: Shri Ravindra Agrawal, P.L.

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

Judgement on Board

Per Pritinker Diwaker,J.

19/07/2017

This appeal arises out of judgment and order dated 28.07.2012 passed by Sessions Judge, Rajnandgaon, in S.T. No. 27/2011 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 5,000/- plus default stipulation.

2. As per prosecution case, there was some old enmity between appellant Gautam Satnami and deceased Dumman @ Surjit Bhattacharya. It is said that in the night of 13th January 2011, deceased Dumman @ Surjit Bhattacharya and Girish Satnami were consuming liquor in the house of the deceased. At that time, accused/appellant

Gautam and acquitted accused Dwarika also reached there and they also consumed liquor. It is stated that some dispute cropped up between the appellant and deceased and the appellant threatened the deceased for dire consequences. Further case of the prosecution is that on 14.01.2011, accused/appellant reached the house of deceased carrying axe and caused number of injuries on his head resulting in instantaneous death of the deceased. On 15th January 2011, dead body of the deceased was first seen by Komal Deshlahre (PW-8) who lodged the merg intimation Ex.P-9 at 1.10 p.m. and thereafter dehati nalishi Ex.P-10 was registered on the same day at about 2.00 p.m. Inquest (Ex.P-3) was prepared and body was sent for postmortem examination which was conducted by Dr. Kiran Chandekar (PW-10) vide Ex.P-13 who opined that the cause of death was shock due to excessive haemorrhage. On the same day FIR Ex.P-18 was registered against unknown person under Section 302 IPC. During investigation on 16.01.11, memorandum of the accused/appellant Ex.P-6 was recorded based on which seizure Ex.P-4 of axe and 677d clothes of the appellant were made. On the memorandum of acquitted accused Ex.P-7, seizure P-5 was effected and axe and clothes were recovered. From the spot vide Ex.P-11 license of the appellant was seized. After filing of the charge sheet the trial judge has framed charge against the present appellant and the acquitted accused Dwarika under Section 302 in alternative 302/34 IPC against them.

3. In order to establish the guilt of the accused persons, prosecution has examined 16 witnesses. Statements of the accused persons were also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case. This apart one defence witness has also

been⁶⁷⁷ examined by the accused persons.

4. After hearing the parties, the trial Court by judgment impugned, has acquitted the co-accused Dwarika of the offence by granting him benefit of doubt but has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

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5. Contention of counsel for the appellants is that

i) the accused/appellant has been convicted solely on the basis of circumstantial evidence but the nature of circumstantial evidence is not as such which can be made basis for conviction.

ii) the statement of Raja Ram (PW-4) who, on the date of incident, allegedly saw the accused/appellant near the house of deceased is not reliable and trustworthy.

iii) though on the memorandum of appellant Ex.P-6 seizure Ex.P-4 was effected and axe and clothes of the appellant were recovered but the seizure witnesses namely Manna Lal (PW-6) and Girish Satnami (PW-12) have not supported the prosecution case.

iv) from the spot license of the accused/appellant is said to have been seized but the possibility that the police had kept the license in the house of deceased cannot be ruled out.

v) though the FSL report is positive in respect of the axe seized from the appellant but in the serological report, group and origin of blood has not been determined.

6. On the other hand, supporting the impugned judgment it has⁶⁷⁷

been argued by the State counsel that

i) present is a case where the chain of circumstantial evidence has been duly proved by the prosecution.

ii) Raja Ram (PW-4) is a trustworthy witness and it is he who saw the accused/appellant near the house of the deceased.

iii) on the memorandum of the accused/appellant Ex.P-6, seizure of axe and clothes was made vide (Ex.P-4) and though the memorandum witnesses have not supported the prosecution case but they have admitted the signature on the relevant document.

iv) the investigating officer has duly supported the prosecution case.

v) from the spot license of the appellant was seized vide Ex.P-11 and no explanation has been offered by the accused/appellant in his statement under Section 313 Cr.P.C as to how the license has been found in the house of the deceased.

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vi) that as per FSL report, blood has been found on the axe and clothes of the appellant and as per serological report Ex.P-22, in the full shirt of the appellant human blood was found. He submits that even though the blood group has not been proved but once the human blood has been found on the weapon of offence, it was the duty of the appellant to offer explanation in his 313 Cr.P.C. statement but he has failed to offer any such explanation.

vii) that from the axe seized at the instance of the appellant, human hair has been found and from the spot also bunch of hair was seized by the prosecution and as per FSL report the said hair was of human head origin and was similar in morphological and microscopical

characteristic⁶⁷⁷ however no definite opinion has been given regarding their origin from one and the same person. State counsel submits that this is an additional piece of evidence against the appellant connecting him with the murder of the deceased.

7. Heard counsel for the parties and perused the material on record.

8. Rajaram (PW-4) has stated that on the date of incident, at about 10.00 p.m. when he was returning to his village after attending some cultural competition of Ramayan, on the way he saw accused/appellant near the house of deceased carrying axe in his hand. He has stated that at that time lights were on in the house of deceased. In cross examination no question has been put to this witness to make his evidence untrustworthy and doubtful. . Though Manna Lal PW-6 and Girish Satnami PW-12 have not supported the memorandum of the appellant Ex.P-6 but they have admitted their signatures on these documents. Khuman Sahu (PW-5) is a witness to memorandum and seizure of axe from the appellant has supported the prosecution case. Jhumuk Lal (PW-11) has not supported the prosecution case and has been declared hostile. Dr. Kiran Dhandekar (PW-10) is the autopsy surgeon and noticed following injuries on the body of the deceased :

i) Injury over face extending from left eye to left mandible (incised wound 14 cm. x 3 cm.) and brain matter came out from the wound.

ii) injury over middle and ring finger

iii) injury over left side of shoulder joint (3 cm. x 2 cm.)

iv) injury over right side of chest (lacerated wound 2 cm. x 2 cm.)

v) injury over left ear

vi) injury over right eye and left eye ball burst due to trauma and deep fracture of skull.

According to him, cause of death was shock due to excessive hemorrhage. Awadh Ram Sahu (PW-15) is the Investigating Officer who has duly supported the prosecution case.

9. Close scrutiny of the evidence makes it clear that on account of old enmity, on 14.01.2011 it is the accused/appellant who committed the murder of Dumman @ Surjit Bhattacharya. After committing his murder when the appellant was coming out from the house of deceased he was spotted by Rajaram (PW-4) who has duly supported the prosecution case and we have no reason to disbelieve his statement. Apart from this, on the memorandum of accused/appellant Ex.P-6 dated 16.01.2011 seizure (Ex.P-4) of axe and clothes was made from his bedroom which were stained with blood and likewise from the spot vide Ex.P-11 license of the accused/appellant had been seized. As per FSL report Ex.P-22, human blood has been found on the axe and clothes of the appellant. This apart, the axe seized at the instance of accused/appellant had some hair stuck to it which was found similar in morphological and microscopical characteristic of the hair seized from the spot. Yet another piece of evidence against the accused/appellant is the seizure of his driving license Ex.P-11 from the house of the deceased for which also no explanation under Section 313 Cr.P.C. has been offered by the accused/appellant.

10. In view of above, this Court is of the considered opinion that the prosecution has successfully proved the guilt of the appellant on the basis of circumstantial evidence beyond all reasonable doubt and being so the finding recorded by the trial court convicting and sentencing the

accused/appellant under Section 302 IPC for committing the murder of Dumman @ Surjit Bhattacharya cannot be faulted with. In the result the appeal fails and is accordingly dismissed.

11. Appellant is reported to be in jail and therefore no order in respect of arrest etc. is necessary.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge