

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 339 of 2013

- Bhikham Rathiya S/o Bichiram Rathiya, aged about 26 years R/o Village Bijkote , P.S. Bhoopdevpur , Distt. Raigarh (C.G.)

---- Appellant (In Jail)

Versus

- State Of Chhattisgarh S/o Through - The Station Incharge , P.O. Bhoopdevpur , Distt. Raigarh (C.G.)

---- Respondent

For Appellant	:	Shri Sameer Oraon, Advocate.
For Respondent No.	:	Shri Adil Minhaj, Panel Lawyer.

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

Judgement

Per P. Diwaker, J

18/04/2017

1. This appeal arises out of the judgment of conviction and order of sentence dated 2.3.2013 passed by the Sessions Judge, Raigarh in S.T. No.5/2010 convicting the accused/appellant under Sections 302 & 201 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life and fine of Rs.10,000/- & R.I. for 3 years and fine of Rs.2,000/- with usual default clauses, respectively.
2. As per case of the prosecution, on 1.8.2009 the accused/appellant had committed the murder of the deceased and in order to destroy the evidence available against him and to make the public believe that the deceased has committed suicide, he had taken the body of deceased with the help of acquitted accused persons to the railway track, laid the same

on the railway track and the body of deceased was run over by the train and his body was cut into two pieces. It is the further case of the prosecution that the railway driver of the train which ran over the dead body informed the Station Master of Bhupdevpur that a dead body is lying in between Robertson and Bhupdevpur Railway Station and in turn, the Station Master informed the police station by written report (Ex.P-53). Merg Intimation (Ex.P-32) was recorded on 2.8.2009 at 10.45 p.m. Inquest on the dead body was conducted on 2.8.2009 vide Ex.P-1. Dead body was sent for post-mortem examination which was conducted on 3.8.2009 by Dr. Rajesh Kumar Singh (PW-4) vide Ex.P-6 and noticed anti mortem injuries on the body of deceased. He opined that cause of death was coma due to brain injury and the death was homicidal in nature. Memorandum statements of accused persons were recorded on 8.8.2009 vide Ex.P-3, P-6 & P-8 and based on which one club, bicycle, axe, lungi, safari pant, shirt stained with substance like mud & blood, one white colour lungi, vest stained with mud and black colour underwear stained with mud were seized vide seizure memos of Ex.P-4, P-5, P-6, P-7 & P-9. Seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur but report of FSL has not been obtained and filed with the charge sheet. On 8.8.2009 itself diary statement of Ratanlal (PW-8) was recorded vide Ex.P-8 in which he has stated that on 1.8.2009 at about 7.00 p.m. he saw the accused/appellant assaulting the deceased by stick and when the deceased had fallen down, the accused/appellant rushed to his house, came back with axe and caused injuries to the deceased by that axe.

3. On completion of investigation, charge sheet for the offence punishable under Sections 302, 201, 34 of the IPC was filed against the accused persons, however, the trial Court while framing the charges has framed

the charges under Section 302 & 201, in alternate 201/34 IPC against them. The prosecution in order to bring home the charges levelled against the accused persons had examined 13 witnesses in all. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.

4. After hearing counsel for the parties and considering the material available on record, the trial Court while acquitting accused Mehttar Rathiya & Ramlal Rathiya by the impugned judgment, convicted and sentenced the accused/appellants in the manner as described above.
5. Learned counsel for the accused/appellants submits that ;-
 - the prosecution case rests on the testimony of Ratanlal (PW-8) but since he is not a witness of sterling worth, the conviction could not have been based on the testimony of this witness. According to the prosecution, this witness had seen the appellant assaulting the deceased, but he remained silent and did not narrate the said fact to the police or any one in the village till the accused persons were arrested. No explanation has been offered by the prosecution as to why he remained silent about the occurrence for so many days. In these circumstances, the trial Court ought not to have relied upon the evidence of this witness for holding the appellant guilty of committing murder of the deceased.
 - Incident had taken place in the dark night and considering the inconsistencies in the evidence of Ratanlal (PW-8), it cannot be said that he has actually witnessed the incident.
 - though certain articles including alleged weapon of offence i.e. axe, were recovered on the basis of disclosure statement of the appellant, but in absence of report of FSL or Serologist opining that human blood was detected on the axe or any other articles seized from possession

of the appellant, it cannot be said that the same were used in commission of crime.

- the trial Court has committed an error in convicting the appellant when on the same set of evidence the other accused persons were acquitted by the trial Court.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
7. We have carefully considered the evidence, materials on record and the rival contentions and gone through the judgment of the trial Court.
8. Niranjana Lal (PW-1) is the witness of inquest (Ex.P-1), memorandum statements (Ex.P-3, P-6 & P-8), seizure memos (Ex.P-5, P-9), panchnama (Ex.P-10), arrest memos (Ex.P-11, P-12 & P-13). However, this witness did not support the prosecution case and turned hostile.
9. Ram Prasad (PW-2) is the witness of panchnama Ex.P-10.
10. Sharad Kumar (PW-3) did not support the prosecution case and turned hostile.
11. Dr. Rajesh Kumar Singh (PW-4) is the person who conducted post-mortem examination on the body of deceased. He has opined that the death was caused due to coma as a result of brain injuries, it was homicidal in nature, the injuries were caused by hard & blunt object and all the injuries were ante mortem in nature with the exception of stomach injury. He has further opined that the injuries noticed by him may come as a result of attempt to suicide or due to the train running over the body.
12. Pitambar (PW-5) is the Kotwar in whose presence one lungi, underwear & shirt were seized from the railway track of Jaampali vide seizure memo of Ex.P-8. Trilochan Nayak (PW-6) is the witness of Inquest (Ex.P-1).

13. Faguram (PW-7) is the witness of memorandums and seizure memos.

However this witness has also not supported the prosecution case and as such declared hostile.

14. Ratanlal (PW-8) is sole eyewitness of the incident, but he has not supported the prosecution case in its entirety and turned hostile. This witness has stated in evidence that he has a small grocery shop in village Bijkot. On the fateful day at about 7.00 p.m. when he was in his shop, he saw that the accused/appellant and the deceased were quarrelling and thereafter he had gone to his house. He has further stated that at that time accused was holding stick and he was assaulting the deceased. He has further stated that he has not seen as to on which part of the body deceased sustained injuries. Next day the body of deceased was found lying near the railway crossing. In the cross-examination this witness has though admitted that the deceased fell down on account of assaults by accused/appellant, but denied having seen the accused thereafter going to his house and coming back with axe. He has further stated that he is not aware of the fact that accused/appellant dragged the deceased towards bushes. He has also denied that he had witnessed the entire incident and due to fear he went to his house. On being confronted with his diary statement, this witness has stated that he has not informed the police that the accused had chased the deceased. He has further stated that while deposing to the police he had informed that the accused was holding club and if this fact is not mentioned in his statement, he could not tell the reasons. He has further stated that on the date of incident he went to his house at 7 p.m. after closing the shop. He has further admitted that there was complete dark at the time of incident.

15. Dayaram (PW-9) has been examined by the prosecution to prove the motive. This witness has stated that the deceased was his brother and he

has been murdered by the accused persons on account of a land related dispute.

16. Navchandra Patel (PW-10) is the Patwari who prepared the spot map of Ex.P-19.
17. Neelabai (PW-11) is the wife of the deceased and she has not stated anything specific against the accused/appellant.
18. Tekamlal (PW-12) is the witness of inquest (Ex.P-1) and map (Ex.P-22).
19. Suresh Bhagat (PW-13) is the Investigating Officer who has duly supported the prosecution case.
20. In the present case the trial Judge relying on some portion of the testimony of hostile eyewitness Ratanlal (PW-8), wherein he has stated that a day prior to the recovery of body of deceased from the railway track, he saw the accused/appellant assaulting the deceased by stick, coupled with the medical evidence according to which cause of death of deceased was coma due to brain injury caused by hard and blunt object, held that it is the accused/appellant who committed murder of the deceased. However, on careful scrutiny of evidence available on record, particularly of Ratanlal (PW-8), makes it clear that any of the portion of his testimony is not sufficient to record a conclusion that the accused/appellant is the author of crime in question. From perusal of the evidence of Ratanlal (PW-8) it is clear that even after coming to know about the homicidal death of deceased on 2.8.2009, this witness remained silent for so many days and did not disclose the fact to anyone that he saw the accused/appellant assaulting the deceased by stick or axe. Conduct of this witness in not telling anyone about the occurrence till the arrest and recording of memorandum statement of accused/appellant on 8.8.2009 was not natural and contrary to the ordinary human nature which creates an impression that he had not witnessed the incident. Most importantly

this witness did not offer any explanation for his silence for such a long period in regard to the fact which was in his knowledge and which would make all the difference in the case. There is yet another reason for disbelieving the aforesaid part of the testimony of PW-8. As per diary statement (Ex.P-18) of PW-18, the accused/appellant gave blow of axe on his head as a result of which he fell down and thereafter the accused dragged him to near bushes and hid his body. However, the prosecution did not collect any blood stained earth from the place where the accused/appellant is alleged to have opened the attack and inflicted injuries on the deceased. This also affects the veracity of the version of this witness.

True it is that the autopsy surgeon has given the report (Ex.P-17) that the injuries found on the body of deceased were ante mortem in nature, but this witness has admitted in his cross-examination that such injuries may be possible if a person attempts suicide or a train runs over the body and as such, the possibility of deceased committing suicide by jumping in front of a running train or suffering accident by any running train on the said railway track, cannot be ruled out.

As far as the recoveries made at the instance of accused/appellant including the alleged weapons of offence i.e. axe & stick, are concerned, though the seized articles were sent for chemical examination to the Forensic Science Laboratory but the charge sheet has been filed without securing report from the FSL or Serologist. There is nothing on record to prove that the articles seized from the possession of accused/appellant were stained with human blood much less of the blood group of the deceased. Thus, the prosecution has not been in a position to prove that the aforesaid articles were used in commission of crime in question.

As regards the conviction of accused/appellant under Section 201

IPC, when the evidence of Ratanlal (PW-8) regarding the main incident relating to the assault on the deceased is disbelieved, conviction of the accused/appellant under Section 201 IPC on the basis of the same evidence cannot be sustained and therefore, he is also entitled to acquittal under Section 201 IPC.

21. For the foregoing reasons, we are of the opinion that complicity of the appellant in the crime in question has not been established by the prosecution beyond reasonable doubt and consequently he is entitled to be acquitted of the charges under Section 302 & 201 IPC by extending him benefit of doubt
22. In the result, the appeal is allowed. Conviction and sentence of the appellant under Sections 302 & 201 of the IPC are hereby set aside and he is acquitted of those charges by extending him benefit of doubt. The appellant is in custody. He be set-free forthwith if not required to be detained in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

roshan/-