

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 220 of 2010**

• State of Chhattisgarh

---- Appellant

Versus

1. Punnu @ Praveen s/o. Rajhabadhur age 21 years r/o. Teen Darshan mandir Jagriti Chouk, Camp -1 Chhawani, Dist. Durg (CG).
2. Mutri Raju @ Manmohan mandavi s/po. Nagorav Mandav, aged about 28 years r/o. Behind Teen Darshan mandir Campa No.1, PS Chhawani, Distt. Durg (CG).
3. Banti @ Prem Mandavi s/o. Shri Nagorav Mandavi, aged about 20 years r/o. In front of Jalebi Chowk, Qtr No. 137, Tataline, Camp No.1, PS Chhawani, Distt. Durg (CG).

---- Respondents

For Appellant/State Mr. Wasim Miyan, Panel Lawyer
 For respondents None

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

Judgment on Board**Per Ram Prasanna Sharma, J****21-2-2018**

1. Challenge in this acquittal appeal is to the judgment dated 4-3-2003 passed by 6th Additional Sessions Judge, Session Division Durg (CG) in Session Trial No. 164 of 2002 wherein the trial Court acquitted all the three respondents for charge of commission of murder of one Udayveer Singh on 20-2-2002 at 8.15 pm near the office of Papusa Transport Camp No.1, Road No.18, Chhawnee, Bhilai, District Durg (CG).

2. In the present case, name of the deceased is Udayveer Singh. It is alleged that all the three respondents were possessing sword, knife and “*gupti*” and assaulted Udayveer Singh by the said weapons. Deceased sustained 15 injuries on his body and succumbed to the injuries on the spot. The matter was reported to Police Station Chhawani Bhilai. After completion of investigation, charge-sheet was filed and after completion of trial, the trial Court acquitted the respondents as mentioned above.

3. Learned counsel for the State submits as under:

- i) The evidence of PW/11 Nanka @ Chandrashekhar goes to show that the deceased was last seen in the company of respondent Banti @ Prem Mandavi but the trial Court failed to appreciate his evidence in its true and correct perspective.
- ii) The seizure of weapons from the respondents was proved but the trial Court committed error by holding that the injuries sustained by the deceased could not be caused by the seized weapons which is contrary to the opinion of the medical expert.
- iii) Circumstances proved against the respondents point unerringly towards their guilt and they ought to have been convicted.

4. We have heard learned counsel for the State and perused the material on record.
5. To substantiate the charge, prosecution has examined as many as 11 witnesses.
6. PW/2 Dr. P. Akhtar Hussain conducted autopsy of the deceased on 21-2-2002 at District Hospital, Durg and found as many as 15 injuries on his body and opined that the death of the deceased is caused due to hemorrhage and neurological shock due to injuries to the internal parts of the body. As per his opinion death is homicidal in nature and duration is 10 to 20 hours since examination. Version of the medical expert is unshaken during cross examination and there is no other expert's opinion contrary to that, therefore, the same is reliable and on the basis of medical report and opinion we are of the view that death of the deceased is homicidal in nature.
7. PW/1 Anwar Hussain is cited as an eye-witness but he did not support the version of the prosecution. As per version of this witness he was sitting near office of Papusa transport at about 8.30 pm and heard noise that Chunnu is killed and when he reached to the spot he found Chunnu lying on the ground in a pool of blood. This witness was subjected to leading questions by the prosecution but nothing could be elicited in favour of the prosecution.
8. PW/8 Danu @ Daneshwar is other witness cited by the prosecution as an eye-witness but he is also not supporting the case of prosecution. As per version of this witness, after taking meals he came out of his house at 9 pm and saw crowd near the office of Papusa transport and when he reached there, he found Chunnu lying

on the ground in injured condition and then he informed the matter to Jagatveer who is brother of the deceased. He further deposed that the deceased was taken to hospital at Sector No.9, Bhilai, where he was declared brought dead. This witness was also subjected to leading questions by the prosecution, but nothing could be elicited in favour of the prosecution.

9. Ganesh Rao PW/10 is also cited as an eye-witness who recorded FIR as per Ex.P/13, but this witness is also not supporting the version of prosecution. As per version of this witness he heard some noise near the office of Papusa transport and when he reached there he found the deceased lying in a pool of blood. He clearly stated that he has not seen anyone assaulting the deceased and this witness has also been subjected to incisive leading questions, but nothing could be elicited in favour of the prosecution.
10. PW/7 Jagatveer Singh is brother of the deceased and he deposed that Dahu @ Daneshwar (PW/8) came to his house at about 8.15 pm and informed him that his brother Chunnu @ Udaywar Singh is lying near the office of Papusa transport in injured condition. This witness took the deceased to hospital where the deceased was declared brought dead. PW/11 Nankub @ Chandrashekhar is cited as witness of last seen. He deposed that at about 8 pm he saw respondent Banti @ Prem Mandavi talking with the deceased and thereafter one Ram Kumar informed him that some one has been inflicted with knife injury but when he reached near the office of Papusa transport no one was present there.

11. Now the point for consideration is whether the version of this witness can be treated as last seen and whether the version of this witness is sufficient to bring home the guilt.
12. It is settled principles of law that last seen theory comes into play when the time gap between last seen and the time of death is too small that possibility of third person coming in between is ruled out. Place of incident is near office of Papusa Transport and the area is commercial one. In such area people move here and there frequently and since the time of incident is alleged to be 8.00 pm, it can be easily inferred that mobility of people in the said area was sufficient and number of people were present in the area. In such place if two persons are present and thereafter no one was found after the incident, the theory of last seen will not come into play. This witness has not seen the respondent Banti @ Prem Mandavi with any arm, therefore, the version of this witness is not incriminating piece of evidence against respondent Banti @ Prem Mandavi. Rest of the witnesses cited by the prosecution have assisted in prosecution after the incident and they are not real witnesses of the incident.
13. True it is that on the basis of discovery statement, one sword was seized from respondent No. Punnu @ Pravin and one "*gupti*" was seized from Mutri Raju and blood was found in sword as per FSL report (Ex.P/29) but there is no serological report regarding origin of the blood and group of the blood. No blood was found in the "*gupti*" alleged to have been seized from respondent Mutri Raju. When human blood is not found in the said weapon, seizure is not incriminating piece of evidence to say that said weapon was used in

the commission of offence and any injury is caused by the said weapons. Again, one full-pant was seized from respondent Punnu @ Pravin and one full pant and one full shirt were seized from respondent Mutri Raju and blood was found in the same, but it is not ascertained as to whether it is human blood. In absence of report regarding human blood, seizure of clothes is also not incriminating circumstance against the respondents. As there is no incriminating circumstance, verdict of the trial Court cannot be termed as perverse or based on irrelevant or extraneous substance.

14. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)

Raju