

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL No 586/2002****Reserved on 5-12-2018****Delivered on 7-12-2018**

(Arising out of judgment of conviction and order of sentence dated 3-5-2002 passed by 1st Additional Sessions Judge, Jagdalpur, Distt. Bastar (CG) in ST No. 16/2002)

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Santosh alias Chhotu alias Raja Dutta aged about 18 years, S/o. Shri Ranjit Kumar Dutta, resident of Dharampura No. 1, Jagdalpur Distt. Bastar (CG)

Appellant

VERSUS

State of Chhattisgarh through PS Jagdalpur, Distt. Bastar (CG)

Respondent

 For Appellant : Shri Avinash K. Mishra, Adv.
 For Respondent : Shri Ashok Swarnkar, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV JUDGMENT**

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 3-5-2002 passed by 1st Additional Sessions Judge, Jagdalpur, Distt. Bastar (CG) in ST No. 16/2002 whereby and whereunder he convicted and sentenced the appellant as under:-

Conviction under Section	Sentence	Fine sentence
304 part 1, IPC	RI for 5 years	Rs. 1,000/-, in default of payment of fine RI for 6 months

2. This is admitted by appellant that P.W. 1 Banguram, P.W. 2 Rambhabai, are the parents of deceased Goverdhan alias Nadagu.

3. In brief the prosecution case is that on 14-11-2001 deceased,

appellant, Damu, Jeevan, Guddu, Rupan, Saleem etc. were gambling by playing cards near the Banyan tree at Dharampura. A dispute arose between deceased and appellant on account of money transaction. Appellant caused injury on the head of deceased by club. Other persons admitted deceased in Maharani hospital at Jagdalpur. After some time, brother of the appellant co-accused Sadhan Kumar reached there and asked to get him discharged. Thereafter the deceased was taken back to his house. On 16-11-2001 about 2.30 pm he succumbed to his head injury. P.W. 1 Banguram intimated to police station Jagdalpur where merg intimation was lodged. After completion of the investigation a charge sheet was filed against the appellant and co-accused Sadhan Kumar under the charges punishable under Section 302, 120-B, 34 of the Indian Penal Code (in brevity 'IPC'). The trial Court framed charge against the appellant under Section 302, IPC, and against co-accused Sadhan Kumar under Section 201 of the IPC. They abjured the charges and faced trial. To bring home the charges prosecution examined as many as 13 witnesses. He did not examine any witness in his defence. After conclusion of the trial, trial Court acquitted the co-accused Sadhan Kumar from the charge punishable under Section 201, IPC, however convicted and sentenced the appellant as aforesaid.

4. Being aggrieved from aforesaid conviction and sentence, the appellant has preferred this criminal appeal.

5. Shri Avinash K. Mishra, counsel for the appellant submits that the appellant has been falsely implicated, Trial Court has not appreciated the evidence in proper perspective. Therefore, the impugned judgment of conviction and order of sentence being bad in

law may be set aside and he may be acquitted of the aforesaid charge.

6. On the other hand, Shri Ashok Swarnkar, Panel Lawyer appearing for the State supported the impugned judgment and submitted that the trial Court has rightly convicted and sentenced the appellant. No interference is called for by this Court. Hence the appeal may be dismissed.

7. As per the bed head tickets Ex. P-24 P.W. 9 Dr. Pradeep Pandey had examined the deceased and found one lacerated wound size 6 cm x 2 cm on parietal region.

8. There is no such evidence on record on the strength of which it can be said that Ex. P-24 is not admissible. Thus this Court believes on Ex. P-24.

9. As per the post mortem report Ex. P-23, P.W. 8 Dr. R. B. P. Gupta had conducted the autopsy. He found that one stitched wound was present on right parietal area which was 6 cm long, on opening the wound he found fracture on right parietal bone. He opined that cause of death was coma due to head injury. Injury was ante mortem.

10. There is no such evidence on record on the strength of which it can be said that Ex. P-23 is not believable. Thus this Court believes on Ex. P-23.

11. P.W. 1 Banguram says in para 3 of his statement given on oath that deceased had told him that appellant had caused injury to him.

12. P.W. 2 Rambhabai says in para 5 of her statement given on oath that this is true that Vinay, Saleem, Jeevan had told that appellant had caused injury on head of deceased.

13. P.W. 3 Roopan Kumar says in para 3 that quarrel happened

between the appellant and the deceased.

14. P.W. 11 Jeevanram Yadav says in para 2 of his statement given on oath that near the banyan tree, quarrel happened between the appellant and the deceased.

15. P.W. 12 Raju who is brother of the deceased say in para 2 that appellant had caused the injury to the deceased by club. He further says in para 6 that he had seen appellant fleeing away.

16. P.W. 1 Banguram says in para 2 that deceased did not tell that with whom the quarrel happened. Moreover this is not the prosecution case that deceased had allegedly told to P.W. 1 Banguram that appellant had beaten him. Dehati merg intimation Ex. P-11 does not reveal that deceased had allegedly told P.W. 1 Banguram that appellant had caused injury on his head by club. Moreover, P.W. 2 Rambhabai says in para 5 that this is true that after taking back from the hospital deceased had stopped talking. In these circumstances, this Court disbelieves aforesaid statement of para 3 of P.W. 1 Banguram.

17. P.W. 10 Vinay Kumar Kaushal, P.W. 11 Jeeven Ram Yadav do not say in their statements given on oath that they had told to P.W. 2 Rambhabai that appellant had caused injury to deceased. Prosecution has not examined Saleem who may say that he had told P.W. 2 Rambhabai that appellant had caused injury to the deceased. Thus, prosecution does not get any help from the aforesaid statement of para 5 of Rambhabai.

18. P.W. 12 Raju says in para 4 and 6 during his cross-examination that he had not seen that appellant caused injury to the deceased. Thus, this Court disbelieves aforesaid statement of para 2 of this witness.

19. From the aforesaid statements of para 3 of P.W. 3 Rupan Kumar, Para 2 of P.W. 11 Jeevan Ram Yadav, para 6 of P.W. 12 Raju that he had seen appellant fleeing away, strong suspicion is created against the appellant but it is trite law that suspicion howsoever strong it may be, cannot take the place of proof.

20. After the appreciation of the evidence discussed herebefore this Court finds that prosecution failed to prove beyond reasonable doubt the charge punishable under Section 304 part I. Thus trial Court has committed gross illegality in convicting and sentencing the appellant as aforesaid.

21. Hence, the appeal is allowed. The impugned judgment of conviction and order of sentence are set aside. The appellant is acquitted of the charge punishable under Section 304 Part I of the IPC giving him benefit of doubt. The fine amount of Rs. 1,000/- if deposited by the appellant be refunded to him after expiration of the prescribed period for further legal remedy available to the parties.

22. The appellant is reported to be on bail. His bail and bond are cancelled subject to provisions of Section 437-A of the Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge