

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 47 of 2010

- The State Of Chhattisgarh, Through District Magistrate, Durg (CG)

---- Petitioner

Versus

- Toman @ Doman Singh Thakur, Aged about 23 years, S/o Siyaram Thakur, Caste Halba, R/o H.S.C.L. Colony, Station Maroda, P.S. Newai, District Durg (C.G.),

Permanent Address Village Karra, PS Charama, District Kanker CG.

---- Respondent

For Appellant/State

Mr. AS Kachhwaha, Additional Advocate
General

DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &

Hon'ble Mrs. Justice Vimla Singh Kapoor

Order On Board By

Prashant Kumar Mishra, J.

18/6/2018

1. Heard.

2. Challenge in this appeal is to the judgment of acquittal

rendered by the trial Court acquitting the accused for the offence under Section 302 of IPC for committing murder of deceased Sunil Devaar during the intervening night of 1.6.2008 and 2.6.2008.

3. The prosecution case, as projected in the charge sheet, was that PW-2 Dilip Bawri, deceased Sunil Devaar and respondent/accused Toman @ Doman Singh Thakur were together from 9 p.m. on 1.6.2008 till the early morning of 2.6.2008. During this period, PW-2 Dilip Bawri went away for answering the call of nature leaving the deceased and the accused together. When this witness i.e. PW-2 was at a distance of about 10-15 ft. from the remaining two persons, he witnessed the accused assaulting the deceased by means of iron pipe. When PW-2 tried to intervene, the accused chased him, on which, he ran away from the spot.
4. On the next morning, the dead body of Sunil Devaar was seen by Himachal Singh Thakur (PW-1), who lodged the merger intimation Ex.-P/1, on the basis of which, FIR- Ex.-P/2 was registered against unknown person. In the course of investigation, the case diary statement of PW-2 Dilip Bawri was recorded on 2.6.2008 and thereafter, the accused was arrested and his memorandum statement Ex.P/11 was recorded on the same day, which led to recovery of the iron pipe vide Ex.P/12 and the melt copper wire vide Ex.P/13, both shown to be recovered from a nearby dam. These documents have been prepared in the presence of witnesses PW-7 Ramesh Singh and

PW-8 Ghanshyam.

5. The iron pipe was sent for chemical examination but no FSL report has been produced before the trial Court. The learned trial Judge has acquitted the accused on the reasoning that PW-2 Dilip Bawri would not state before the Court that he was in the company of the accused and the deceased from 9 p.m. on 1.6.2008 till 4 a.m. on 2.6.2008, but has projected as if he went to the place of occurrence about 5-10 minutes before the incident, which happened at 4:00 a.m. on 2.6.2008.
6. Contrary to this, the basic prosecution case projected in the charge sheet, as is recorded in the case diary statement of PW-2 Dilip Bawri, was that PW-2 Dilip Bawri met the deceased at 9 p.m. on 1.6.2008 and after 10-15 minutes, the accused also joined them and all three of them were in conversation for half an hour and thereafter, they again conversed for 1-1 ½ hour near the house of deceased Sunil Devaar. Thus, it was not the prosecution case at the beginning that PW-2 Dilip Bawri reached the place of occurrence about 10-15 minutes back from 4:00 am on 2.6.2008. This witness has not been declared hostile by the prosecution, therefore, his version before the Court that he reached the spot 10-15 minutes back from the time of occurrence was contrary to the prosecution case. Moreover, the details of the offence mentioned in the FIR would say that the offence has been committed by an unknown person but in the column for the name of the accused, the respondent's name is entered. If at the time of registration of FIR, the name of the

accused was not known to PW-1 Himanchal Singh Thakur, but the FIR otherwise carries the name of the accused, then, there is a serious discrepancy in the prosecution case. The IO has tried to explain this discrepancy but the same is not worth acceptance because the remand papers available in the record of the trial Court would also reveal that when the remand was sought on 3.6.2008, it was mentioned in the remand request that the offence has been committed by an unknown person.

7. Interestingly, the case diary statement of the alleged eye-witness namely PW-2 Dilip Bawari was recorded on 2.6.2008, a day prior to submission of remand form and in his case diary statement, the name of the accused is mentioned. Therefore, once again, there is serious contradiction or discrepancy in the prosecution case as to when PW-2 Dilip Bawari has already informed the name of the accused on 2.6.2008, there was no reason why remand form did not disclose the name of the accused on 3.6.2008.
8. In addition to the above, we have also found that the documents concerning memorandum statement of the accused, seizure of iron pipe and seizure of melt copper wire vide Ex.P/11 to P/13 respectively have not been supported by PW-7 Ramesh Singh and PW-8 Ghanshyam, as both the witnesses to the documents have turned hostile.
9. For all the above stated reasons, we are in full agreement with the judgment of acquittal rendered by the trial Court. There is no perversity or any error in the judgment of the trial Court,

which would require interference by this Court in exercise of powers while hearing an acquittal appeal.

10.Ex-consequenti, the acquittal appeal fails and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Vimla Singh Kapoor)

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