

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 85 of 2014

- Dhaniram Yadav S/o . Dhursai Yadav Aged About 36 Years R/o. Vill. Gatapar, P.S. Chhuikhadan, Civil And Rev. Distt. Rajnandgaon C.G., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh, through the Incharge Arakshi Kendra Chhuikhadan, District Rajnandgaon (CG)

---- Respondent

For Appellant	: Shri Rakesh Pandey, Advocate
For Respondent/State	: Shri Ravindra Agrawal, G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgement on Board by Pritinker Diwaker,J.

29/01/2018

This appeal arises out of judgment and order dated 23.09.2011 passed by the Additional Sessions Judge, Khairagarh, district Rajnandgaon in S.T. No. 41/2009 convicting the accused/appellant under Sections 302 and 201 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 500/- and to undergo RI for 3 years with fine of Rs. 100/- plus default stipulation.

2. In the present case, name of the deceased is Madhav Singh. He went missing from 15.08.09 and on 18.08.09 his dead body was found in the jungle in a decomposed condition. Meanwhile, when the deceased did not return on 17.08.09 missing report Ex.P-24 was lodged by his wife Shanti Bai (PW-2). After finding the body of the deceased on 18.08.09, dehati merg Ex.P-1 was recorded at the

instance of Etwari Ram (PW-1), son of the deceased. Soon thereafter dehati merg Ex.P-13 was recorded. Inquest Ex.P-5 was prepared and body was sent for postmortem examination which was conducted by Dr. Ashok Khare (PW-11) and according to him, cause of death was head injury due to fracture of skull bone and death was homicidal in nature. On 19.08.09 FIR Ex.P-32 was registered on the basis of merg under Section 302 and 201 IPC against unknown persons. On the same day memorandum Ex.P-19 of accused/appellant was rerecorded pursuant to which seizure Ex.P-20 of stone from the spot has been made whereas no seizure was effected on the basis of memorandum of co-accused, however clothes of the acquitted co-accused were seized vide Ex.P-8. As per FSL report Ex.P-40 stone seized from the spot i.e. article d, blood has been found. Likewise, blood has been found on the clothes of the appellant and that of co-accused however there is no serological report confirming the origin of the blood or blood group. While framing the charge, trial judge has framed charge against the appellant under Sections 302 and 201 IPC whereas against acquitted accused charge was framed under Section 302 IPC.

3. The prosecution has examined 20 witnesses to prove its case. Statement 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.

4. After conclusion of the trial, the trial Court vide its judgment impugned, has acquitted co-accused Baisakhu Ram of all the offences whereas found the accused/appellant guilty of the offence as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Counsel for the appellant submits as under :

- i) that there is no eyewitness to the occurrence and the conviction of the appellant is based on circumstantial evidence but none of the circumstances from which the inference of guilt of the appellant can be drawn has been proved beyond reasonable doubt and therefore there can be no inference that it was the appellant who committed murder of the deceased.
- ii) that the trial court has erred in law in convicting the appellant solely on the basis of evidence of last seen by Thakur Ram (PW-16).
- iii) that Thakur Ram (PW-16) has categorically stated that he saw the accused persons and the deceased going one after another. It has been further argued that even otherwise dead body of the deceased has been found after three days and thus considering the time gap, evidence of last seen cannot be used against the appellant.
- iv) as per FSL report Ex. P-40 blood has been found on the stone allegedly seized on the basis of memorandum of the appellant however the said seizure has been made from the open space which was found near the dead body of the deceased and thus possibility of blood on the said stone cannot be treated as unnatural.

In the FSL report, blood has been found on the clothes of the accused persons but in absence of serological report, any seizure made by the prosecution loses its significance.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

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

8. Shanti Bai (PW-2) is the wife of the deceased who lodged the missing report Ex.P-24. She has not stated anything against the appellant and in para 5 she has stated that there is some old land dispute between her family and that of Shankar and therefore it is Shankar at whose instance the deceased has been killed. Gulab Singh (PW-3) is a witness to seizure Ex.P-12 and P-7 has not stated anything against the appellant. Arjun Singh Verma (PW-4) is a witness to memorandum of co-accused Ex.P-6 and seizure Ex.P-8. Manharan Gond (PW-6) and Ghasi Ram Kanwar (PW-7) have not stated anything against the appellant and have been declared hostile. Awadh Ram Soni (PW-8) is the patwari who prepared spot map Ex.P-16. Santosh Singh Rajput (PW-9) is a hearsay witness. Kanhaiya Gond (PW-10) is a witness to memorandum Ex.P-19 of the appellant on the basis of which seizure Ex.P-20 of stone was made has stated that it was recovered from the open place. Dr.A.K.Khare (PW-11) conducted postmortem examination on the body of deceased and according to him, cause of death was head injury due to fracture of skull bone and death was homicidal in nature. Dhaneshwar Dhruv (PW-12) is a Head constable who helped in the investigation. Tukaram (PW-14) has not stated anything specific against the appellant. Manish Kumar (PW-15) is the police constable who assisted in the investigation. Thakur Ram (PW-16) is a witness to last seen has stated that the deceased and accused/appellants came to his house about 3 days prior to the incident and thereafter they left from there one after another. He has stated that as he was busy in his work he was not aware as to where

they had gone. Sher Singh (PW-17) has not stated anything against the appellant and has been declared hostile. Shankar Singh (PW-18) is a witness to inquest Ex.P-5. Dasru Ram Ratre (PW-19) is a hearsay witness. G.C.Pati (PW-20) is the Investigating Officer who has duly supported the prosecution case.

9. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence showing the involvement of the appellant in the commission of the offence. The statement of the witness of last seen relied upon by the trial court appears to be a weak evidence because PW-16 had seen the appellant and the deceased three days prior to the incident. Moreover according to him, the accused persons and the deceased left his house one after another and at that time he was busy in his work and could not see as to where they had gone. Further, dead body of the deceased has been found in the jungle on 18.08.09 i.e. after about three days. In the case of evidence of last seen, the time gap is very important and unless the said evidence is conclusive, it is not safe for this Court to convict the accused/appellant on the basis of such evidence alone. Moreover, the witnesses have not clearly stated that they saw the accused/appellant and the deceased together. Furthermore, though on the basis of memorandum of appellant Ex. P-7 seizure Ex.P-8 of stone was made however there is no FSL or Serological report that the blood found on the seized article was of human blood. Thus, the prosecution has failed to establish the guilt of the accused/appellant beyond reasonable doubt and therefore benefit of doubt has to be extended to him.

10. Consequently, the appeal is allowed. Impugned judgment convicting and sentencing the accused/appellant as mentioned above

is set aside. He is acquitted of the charges levelled against him.
Accused/appellant is reported to be in jail. He be set free forthwith if not
required in any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge