

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 993 of 2012**

- Dandul @ Parsan S/o Rambhagat Yadav, Aged About 21 Years, Occupation Labourer, R/o Kudumkela, P.S. Gharghoda, District Raigarh Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through - P.S. Ghardhoda , Distt. Raigarh C.G. , Chhattisgarh

---- Respondent

For Appellant	None
For Respondent/State	Mr. Avinash K. Mishra, Panel Lawyer

DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Ram Prasanna Sharma****Order On Board By****Prashant Kumar Mishra, J.****20/1/2018**

1. The appellant has been convicted for committing murder of deceased Radhe Yadav, the real brother of accused No.2 Panditram Yadav, who has also been convicted by the impugned judgment, but has not preferred any appeal.

2. The incident occurred on 5.3.2011 at about 11:30 am. According to the prosecution, the accused persons inflicted injuries over the parietal and mandible region of the deceased by means of club. The motive for commission of murder is the subsisting land dispute between the deceased and accused No.2. Since eye-witness PW-9 Dhansingh has turned hostile, the appellant's conviction is based on circumstantial evidence in the nature of seizure of club and the statements of PW-2 Suresh Yadav ; PW-5 Dr. Ashishan Kumar Minj, Medical Officer, who conducted the postmortem; I.O. as well as PW-10 Shahid Ram, who is the witness to the *Panchnama*, dead body inquest and memorandum statement of the appellant and consequent seizure of club.
3. In the absence of learned counsel for the appellant, we have heard learned counsel for the State at length and perused the record.
4. The FIR was lodged by PW-2 Suresh Yadav, who is the son of deceased Radhe Yadav. In the FIR, he would state that PW-4 Baundela and PW-8 Aatmaram have informed him that the accused persons have committed murder of his father. Thus, in the FIR as also in the statement under Section 161 of Cr.PC, he would project PW-4 Baundela and PW-8 Aatmaram as the persons, who have seen the occurrence.
5. If we read the Court statement of PW-4 Baundela, he himself has not stated anything which may be construed as the ocular version of the incident. Similarly, PW-8 Aatmaram has not

stated anything to attribute commission of offence by the accused persons. The case diary statement of this witness is not exhibited. PW-9 Dhansingh has surfaced after 11 days of the incident as the person, who is an eye-witness. However, in his deposition, he would not support the prosecution and has refused to have given any statement to the Police regarding witnessing the incident as mentioned in his case diary statement -Ex.P/21.

6. The above discussion of the oral testimony of the witnesses would clearly depict that the oral statements of the witnesses would not support the prosecution, therefore, the other evidence to be seen is the seizure of club and the FSL report. The FSL report available at page 89 of the paper book is not exhibited, however, a perusal of the report would demonstrate that the club articles 'C' and 'E' recovered from both the accused persons were not found to carry blood stains.
7. Mere recovery of club would, therefore, not come to the prosecution's support, as a conviction merely on the basis of seizure of club, which was not found to contain blood stains, is not permissible in law.
8. The learned trial Court has not appreciated the statements of the prosecution witnesses in its proper perspective. The entire evidence has to be read as a whole and not in isolation. On a careful reading and analysis of the evidence available on record, as discussed above, we are not satisfied with the findings of guilt recorded by the trial Court.

9. For the foregoing, the appeal is allowed and the conviction and sentence imposed on appellant **Dandul @ Parsan** under Section 302 of the IPC is hereby set-aside and he is acquitted of the said charge. The appellant is to be set at liberty forthwith unless to be required in connection with any other case.

Sd/-

Sd/-

Judge

Judge

(Prashant Kumar Mishra)

(Ram Prasanna Sharma)

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