

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 700 of 2013

- Dinesh Satnami, S/o Late Uttam Satnami, aged about 23 years, R/o Kayaghat, near Muktidham, Raigarh, P.S. Raigarh, Civil & Revenue District Raigarh (Chhattisgarh).

---- Appellant

Versus

- State of Chhattisgarh Through- Police Station Kotwali, Raigarh, District- Raigarh (Chhattisgarh).

---- Respondent

For Appellant	: Mr. A. P. Sharma, Advocate.
For Respondent/State	: Mr. Ashok Swarnakar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Hon'ble Shri Justice Gautam Chourdiya
Order on Board

Per R. C.S. Samant, J.
14/07/2018

1. This criminal appeal has been preferred against the judgment dated 29.04.2013 in Sessions Trial No. 161/2011, passed by the Second Additional Judge, Raigarh, convicting the appellant under Section 302 read with Section 34 of IPC and sentencing him to undergo life imprisonment and to pay fine of Rs. 2000/-, with default stipulations.
2. Brief facts of the case are that on 08.08.2011 at about 3.00 P.M. at Muktidham Kayaghat a quarrel took place between the deceased- Pradeep Chauhan with this appellant-Dinesh Satnami and one juvenile delinquent- Ballu @ Shyam Satnami. During this

altercation, this appellant by using a garden scissors stabbed the deceased in his abdomen and caused him grievous injuries. Prakash Das (PW-7) was informed by the deceased that he was stabbed by this appellant. Thereafter, the deceased was admitted in the hospital where he died on 12.08.2011. Merg Intimation (ExP/13) was recorded on 12.08.2011. During Merg inquiry, the doctor conducted postmortem and has opined in his report vide ExP/25 that the death of the deceased was homicidal. Earlier one FIR was lodged vide Ex.P/29 under Section 307/34 of IPC and after death of the deceased the offence was registered under Section 302/34 of IPC. After completion of investigation charge-sheet was filed before the concerned Court.

3. The trial Court charged the appellant under Section 302 read with Section 34 of IPC, in which he denied the charge and prayed for trial. After completion of prosecution evidence, the appellant was examined under Section 313 of Cr.P.C. in which he denied all the uncircumstantial evidence against him and pleaded innocence and false implication. No witness was examined in defence. After completion of trial, impugned judgment has been passed in which the appellant convicted and sentenced as aforesaid.
4. It is submitted by the counsel for the appellant that totally erroneous judgment has been passed by the trial Court without there being any evidence proving involvement of the appellant in the crime in question beyond reasonable doubt. It is clearly a case where there is no eyewitness and the finding of conviction has been recorded only on the basis of oral dying declaration allegedly made by deceased before the Prakash Das (PW-7) who

is not a reliable witness as he was declared hostile regarding part of the statement given by him. Similarly other eyewitness Ravi Yadav (PW.5), Munchu @ Virend Satnami (PW.-6), Ramjane Bharadwaj (PW.8) have also not supported the prosecution case, hence under these circumstance, the conviction held against this appellant is bad in law and he may be acquitted of the charge.

5. Learned State counsel opposed the submissions made and the ground raised in the appeal. It is submitted that the prosecution has proved its case beyond reasonable doubt and there is no infirmity in the impugned judgment.
6. Heard and perused the record.
7. The deceased- Pradeep Chauhan died after five days of the incident. Death is not disputed. The case of the prosecution was based on the diary statements of eyewitnesses, however, when the so-called eyewitnesses namely- Ravi Yadav (PW.5), Munchu @ Virend Satnami (PW.-6) & Prakash Das (PW-7) were examined before the Court, all of them have not given statement about witnessing the incident in which appellant assaulted the deceased with garden scissors and therefore, to that extent they have been declared hostile by the prosecution. Prakash Das(PW-7) has made one additional statement that the deceased before dying, informed him that he was stabbed by this appellant whereas the statement under Section 161 of Cr.P.C. given by him vide Ex.P-19 does not disclose about the oral dying declaration given by the deceased before this witness. Hence, the oral dying declaration before this witness appears to be nothing but an afterthought which cannot be regarded as material evidence

against the appellant, whereas he has not supported the earlier statement before the police during investigation. Hence, Prakash Das (PW-7) could not have been regarded as reliable witness.

8. On perusal of the impugned judgment, it appears that the learned Sessions Court placed reliance on the statement of oral dying declaration given by the deceased before Prakash Das (PW-7) which could not have been relied upon. Apart from that, there is no other evidence present on record to show that appellant was present at the spot and had assaulted the deceased with a garden scissors and caused him fatal injury which led to his death. Hence, the conviction of appellant recorded at by the trial Court being erroneous needs to be interfered with.
9. After due consideration of material available on record, we are of the considered opinion, that this appeal deserves to be allowed and the appellant is entitled to be acquitted of the charge under Section 302 of IPC.
10. The appellant reported to be in jail, therefore, he is directed to be set free forthwith, if not required to be detained in connection with any other offence.

Sd/-

(R.C. S. Samant)
Judge

Sd/-

(Gautam Chourdiya)
Judge