

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1024 of 2013

- Ashok Mehar S/o . Late Sonau Mehar Aged About 32 Years
- Dheeraj Mehar S/o .Late Sonau Mehar Aged About 26 Years

Both R/o. Vill. Jondhara, Chowki Pachpedi, P.S. Masturi, Civil And Rev.
Distt. Bilaspur C.G.

---- Appellants

Versus

- State Of C.G., through Police Station Masturi, Bilaspur District
Bilaspur (CG)

---- Respondent

For Appellants	: Ms. Sangeeta Mishra, Advocate
For Respondent/State	: Shri Adil Minhaj, P.L.

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

Judgement on Board by Pritinker Diwaker,J.

01/05/2018

This appeal arises out of judgment and order dated 05.10.2013 passed by the Second Additional Sessions Judge, Bilaspur in S.T. No. 198/2012 convicting the accused/appellant No.2 under Sections 302 and 201 of IPC and sentencing him to undergo imprisonment for life with fine of Rs. 5,000/- u/s. 302 and to undergo RI for four years with fine of Rs. 1,000/- u/s. 201 and convicting appellant No.1 under Section 201 IPC and sentencing him to undergo RI for four years with fine of Rs. 1,000 plus default stipulations.

2. As per prosecution case, deceased Anil Kumar and his family

members used to work as labourers in the brick kiln and accused No.2 Dheeraj was a broker. It is said that accused Dheeraj had given Rs. 30,000/- advance to Anil Kumar on the promise that he and his family members would work as labourer wherever required. Despite request being made by accused Dheeraj to work deceased Anil Kumar neither was ready to work in the kiln nor had returned the advance amount taken from accused Dheeraj. Further case of the prosecution is that about 10-15 days prior to the incident there was some quarrel between accused Dheeraj and Anil Kumar over working at the brick kiln and he was threatened for life by accused Dheeraj. On 24.10.2012 unnumbered merg Ex.P-22 was lodged at 8.30 a.m. by accused Ashok Kumar informing the police that dead body of some unknown person is lying in his lavatory and it appears that the said person has died after consuming some poisonous substance. Based on this merg intimation at 8.30 a.m. unnumbered FIR Ex. P-27 was registered under Section 302 IPC against unknown person and unnumbered merg Ex.P-17 was recorded on the same day at 11.40 a.m. Inquest EX.P-24 was prepared and body was sent for postmortem examination which was conducted by Dr.A.K.Sanyal (PW-5) vide Ex.P-11 and according to him, cause of death was shock and hemorrhage due to head injury and death was homicidal in nature. Numbered FIR Ex.P-28 was registered on 25.10.12 against unknown person under Section 302 IPC. On 26.10.2012 memorandum of accused/appellant Dheeraj was recorded vide Ex.P-8 and seizure of adjuster (being used in tractor) was made and as per FSL report Ex.P-29 blood was found on the said article however there is no serological report confirming the blood group or origin of the blood. After filing of charge sheet, the trial judge has framed charge against the accused persons under Section 302/34

and 201 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 15 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has acquitted the accused/appellant No.1 of the charges under Section 302 IPC but has convicted him under Section 201 IPC whereas appellant No.2 has been convicted under Sections 302 and 201 IPC and has sentenced them as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is as under :

- i) that the two eyewitnesses to the incident Ram Gopal Patel (PW-3) and Ram Bilas Kewat (PW-4) have not supported the prosecution case and have been declared hostile.
- ii) the main piece of evidence relied upon by the trial court against the accused/appellants are the statements of Chandrika Bai (PW-8), Anita Vishwakarma (PW-10) and Anjali Vishwakarma (PW-11) however these witnesses have only stated that there was previous enmity between the deceased and the accused but merely on the statements of these witnesses the appellants cannot be convicted.
- ii) Though on the memorandum of the accused/appellant one adjuster was seized and the FSL report Ex.P-29 is positive but the said

seizure is not of any consequence as there is no serological report proving the blood group and origin of the blood.

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

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

8. Ram Gopal Patel (PW-3) and Ram Bilas Kewat (PW-4) have not stated anything against the appellant and have turned hostile. Chandrika Bai Prasad (PW-8) mother of the deceased has stated that accused/appellants and Ram Gopal on an earlier occasion had come to her house and threatened the entire family of dire consequences. She has stated that Rs. 30,000/- was given by the accused/appellant No.2 to her husband and about 15 days prior to the incident there was dispute between her son and accused Dheeraj over payment of the said money. Anita Vishkarma (PW-10) and Anjali Vishwakarma (PW-11) are the sisters of the deceased who had made almost similar statement as has been made by PW-8. They have stated that about 15 days prior to the date of incident there was dispute between the appellant No.2 Dheeraj and deceased over making of payment of Rs. 30,000/-. Santosh Kumar Ratre (PW-1) brother of the deceased is a witness to seizure of certain articles, has turned hostile. Premlal (PW-2) is a witness to memorandum and seizure has also turned hostile. Dr.A.K.Sanyal (PW-5) has conducted the postmortem examination on the body of deceased vide Ex.P-12 and according to him, cause of death was shock and hemorrhage due to head injury and death was homicidal in nature. Ravishankar Pandey (PW-7) is the patwari who

prepared spot map. Mithilesh Soni (PW-9), Mohan Murli (PW-12) and Shashi Bhushan Patel (PW-13) have assisted in the investigation. R. P. Tiwari (PW-14) is the Investigating Officer who has done the investigation. S.R.Gupta (PW-15) is the head constable who has done part of the investigation.

9. Close scrutiny of the evidence makes it clear that but for the memorandum of accused/appellant Dheeraj based on which seizure Ex.P-8 of adjuster was made, there is no other legally admissible evidence against the accused persons. Though in the FSL report Ex.P-29 blood has been found on the said seized article but there is no serological report proving the blood group and origin of the blood. The impotrant witnesses of prosecution Ram Gopal Patel (PW-3) and Ram Bilas Kewat (PW-4) have turned hostile. Merely on the basis of statements of Chandrika Bai Prasad (PW-8), Anita Vishkarma (PW-10) and Anjali Vishwakarma (PW-11) mother and sisters of the deceased who have stated that there was some dispute between the accused/appellant Dheeraj and deceased Anil Kumar, prior to the incident, it will not be safe for us to convict the appellants for any of the offence as has been held by the trial court. It is a settled position of law that merely on the basis of memorandum of the accused and seizure effected in pursuance thereof the accused cannot be held guilty. In the present case, even the witnesses to memorandum and seizure have not supported the case of the prosecution.

10. Considering the facts and circumstances of the case and the entire evidence as adduced by the prosecution, we are of the view that the prosecution has failed to establish its case beyond reasonable doubt against the appellants and they are entitled to get the benefit of

doubt.

11. Accordingly, the judgment of the trial Court convicting and sentencing the accused/appellants under Section 302, 201 IPC are set aside, by giving them the benefit of doubt. The accused/appellant No.2 Dheeraj is reported to be in jail. He be set at liberty forthwith unless required to be in custody in connection with any other case. Appellant No.1 Ashok Mehar is on bail. No further order is required.

12. In the result, appeal is allowed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge