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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.402 of 2014

Judgment Reserved on : 9.11.2017

Judgment Delivered on : 16.1.2018

Lokesh alias Nutan Yadav, son of Shri Puneet Ram Yadav, aged 24 years, resident of Sinchai Colony, Kududand, Police Station Civil Lines, Bilaspur, Chhattisgarh, Civil and Revenue District Bilaspur

---- Appellant

versus

State of Chhattisgarh through Police Station Civil Lines, Bilaspur, District Bilaspur

--- Respondent

For Appellant	:	Smt. Kiran Jain, Advocate
For Respondent/State	:	Shri Ravindra Agrawal, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

Per Arvind Singh Chandel, J.

1. This appeal is directed against the judgment dated 21.3.2014 passed in Sessions Trial No.10 of 2012 by the 3rd Additional Judge to the Court of 1st Additional Sessions Judge, Bilaspur convicting the accused/Appellant under Section 302 of the Indian Penal Code and sentencing him with imprisonment for life and fine of Rs.1,000/- with default stipulation.
2. Case of the prosecution, in brief, is that on 7.11.2011, Ashish Singh (PW1), brother of deceased Bauva alias Manish lodged First Information Report (Ex.P1) in Police Station Civil Lines, Bilaspur to the effect that his brother Bauva, who had left home with his friends Pradeep (PW10) and the accused/Appellant on a motorcycle in the

evening of 6.11.2011, did not return in the night. On 7.11.2011 at about 6:00 a.m., Uttam Kashyap (PW5) came to his house and informed his father that Bauva was sleeping in the school premises and blood was oozing out from his head. Having heard this, he and his father went to the spot and saw that Bauva was lying down there in injured condition. An offence under Section 307 of the Indian Penal Code was registered against unknown person. Injured Bauva was taken to CIMS Hospital, Bilaspur for treatment. Looking to his critical condition, he was referred to Apollo Hospital, Bilaspur from where he was referred to Dr. B.R. Ambedkar Hospital, Raipur where he died on 11.11.2011. Unnumbered Morgue Intimation was registered at Police Station Maudahapara, Raipur. Numbered Morgue Intimation (Ex.P14) was registered at Police Station Civil Lines, Bilaspur. Post mortem was conducted by Dr. Raj Kumar Singh (PW12) on 12.11.2011. He gave his report (Ex.P13). He found that the deceased died due to cardio-respiratory failure as a result of head injury and its complications. During investigation, on 8.11.2011, memorandum statement (Ex.P7) of the Appellant was recorded and vide Ex.P10 a motorcycle and cash of Rs.1,900/- were seized. A piece of brick stained with blood was also seized vide Ex.P9. Clothes of the Appellant were seized vide Ex.P8. Some more pieces of bricks were seized from the spot vide Ex.P6. Seized articles were sent to the Forensic Science Laboratory for chemical examination vide Ex.P19, but no report of FSL is available on the record. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 302 of the Indian Penal Code. Charge was framed against him under Section 302 of the Indian Penal Code.

3. To rope in the Appellant, the prosecution examined as many as 19 witnesses. Statement of the Appellant was also recorded under Section 313 Cr.P.C. in which he denied the guilt and claimed trial. No defence witness has been examined.
4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that the whole prosecution story is based on a circumstantial evidence, i.e., last seen theory, but the prosecution has utterly failed to prove its case beyond shadow of doubt that it was none else than the Appellant who committed murder of the deceased. The conviction is substantially based on the evidence of Pradeep (PW10), who himself was first arrested as perpetrator of crime in question. However, for the reasons best known to the prosecution, he was released by the police and on the basis of his statement, the Appellant has been made accused of the crime in question and, therefore, the evidence of Pradeep (PW10) is not trustworthy and does not inspire confidence and is not safe to base the conviction of the Appellant. It was further argued that as per the statement of Pradeep (PW10), the deceased was heavily drunk and was not in a position to sit on the motorcycle. Therefore, the statement of Pradeep that first he was dropped although his house fell after the house of the deceased is not acceptable. It was further argued that no motive has been proved. Reliance has been placed on **(2011) 11 SCC 754 (S.K. Yusuf v. State of West Bengal)** and **2017 (2) CGLJ 31 (SC) (Pawan alias Rajendra Singh v. State of**

Haryana).

6. Per contra, Learned Counsel appearing for the State supported the impugned judgment and submitted that the same does not warrant any interference by this Court. He further submitted that the evidence of Pradeep (PW10) is reliable.
7. We have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment minutely.
8. Ashish Singh (PW1), brother of the deceased has deposed that on 6.11.2011, the deceased along with Pradeep (PW10) and the Appellant had gone to Village Lakhram. At about 8:00 p.m., on being talked with the deceased, he told him that they were in the house of sister of the Appellant at Village Lakhram. He has further stated that next day, in the morning, Uttam Kashyap (PW5) informed his father that deceased Manish was lying down near the school and he had suffered injury on the head. Then he along with his father went to the spot. They saw that the deceased was lying down in injured condition. They took him to the hospital immediately. After two days, they took him to Dr. B.R.Ambedkar Hospital, Raipur. The deceased died there during treatment.
9. Uttam Kashyap (PW5) has supported the above statement of Ashish Singh (PW1) and deposed that on 7.11.2011, when he was going to take milk, he saw that the deceased was lying down in the school in injured condition and he was bleeding from the head. He went to the house of the deceased and told him about the incident. Father of the deceased, elder brother of the deceased and

neighbour of the deceased came with him to the spot and they took the injured (deceased) to the hospital.

10. Umesh Singh (PW2), father of the deceased, Nirmala (PW3), mother of the deceased and Bhurelal Ghore (PW4) have also supported the statement of Uttam Kashyap (PW5) and stated that on receiving the information from Uttam Kashyap, they went to the spot and took the injured (deceased) to the hospital.
11. Sagar (PW6) has stated that he had gone to the hospital in the morning on receiving the information about the incident and had seen there the deceased in injured condition.
12. Dr. Sunil Sharma (PW16), who first examined the deceased at Apollo Hospital, Bilaspur, has deposed that there were no action in the legs, hands and eyebrow of the deceased. Blood pressure of the deceased was lower than the normal level. Oxygen level was very low in his body. There were many injuries on the head of the deceased. His report is Ex.P15.
13. Dr. Mukul Shrivastava (PW9) is the witness who did C.T. Scan of the deceased on 7.11.2011. His report is Ex.P12. He has deposed that in the C.T. Scan, he had found (i) fracture in the roof of left orbit and left zygomatic arch, (ii) haemorrhagic contusion involving both fronto temporal lobe and left parietal lobe, (iii) SDH on left, (iv) subfalcine herniation to right and (v) hypodense area involving pons.
14. Dr. Raj Kumar Singh (PW12) has given post mortem examination report (Ex.P13). During the post mortem examination, he found

the following injuries:

“(1) Contusion abrasion on right lower occipital region 4 x 1 cm, lower mid occipital region 3.5 x 3 cm. Right parietal eminence region 3 cm diameter,

(2) Surgically stitched lacerated wound on right parietal 2.5 cm x gaps on opening 1.5 cm x whole scalp deep,

(3) Surgically stitched lacerated wound on midfrontal region transverse 2 x 1.5 cm x whole scalp deep,

(4) Surgically stitched lacerated wound from left frontal eminence to left parietal eminence 13 cm then curves downwards for 9 cm & curves forwards for 6 cm x whole scalp deep,

(5) Surgically stitched wound from just above umbilicus & from midline going towards left transversely 10 cm. On opening gaps 1.5 cm. Skull bone from missing bone area present size 7 x 4.5 cm.

(6) Contused lacerated wound just below left eye transverse 2 x 1 cm x 0.5 cm.

(7) Contusion abrasion on left upper eyelid transverse 4 x 0.5 cm.

(8) Multiple contusions abrasions on left frontal region 5 x 4 cm area

(9) Contused lacerated wound on left ear 1.5 x 1 cm x 0.5 cm.”

The doctor has opined that the deceased died due to cardio-respiratory failure as a result of head injury and its complications.

- 15.** Ashok (PW7) and Rajeshwar (PW8) have deposed that the police had prepared spot panchnama (Ex.P4) in their presence. Plain soil and blood stained soil were seized from the place of occurrence vide Ex.P5. Blood stained pieces of bricks were seized vide Ex.P6. Both these witnesses are also the witnesses of memorandum statement (Ex.P7) made by the Appellant. These witnesses have supported the case of the prosecution and stated that memorandum statement of the Appellant was recorded in their presence and pant and jeans jacket of the Appellant which were stained with blood were seized vide Ex.P8. A piece of brick was seized from the place of occurrence vide Ex.P9 and a motorcycle bearing registration No.CG10 EK 1218 and cash of Rs.1,900/- were seized vide Ex.P10.
- 16.** Pradeep (PW10) has stated that on 6.11.2011, at about 6:00 p.m., he himself, the deceased and the Appellant had gone to the house of Raju at Village Chorphadeori on the motorcycle of the Appellant to collect money from Raju which was to be recovered from him by the deceased. Before reaching Village Chorphadeori, the deceased and the Appellant went to a shop of countrymade liquor situated in Village Lakhram and consumed liquor. Thereafter, they went to the house of Raju, but he was not found at his house. They again returned to Village Lakhram. While returning to Village Lakhram, the deceased and the Appellant again consumed liquor. Thereafter, all of them went to the house of brother-in-law (*Jija*) of the Appellant. They told him that Raju did not repay the money. The Appellant stayed at the house of his brother-in-law. He (Pradeep) and the deceased went to the house of Vibhu Bhushan and told him that Raju did not repay the money. They gave him their mobile

numbers and returned to the house of brother-in-law of the Appellant. From there, again, all of them went to the liquor shop at Village Lakhram and the Appellant and the deceased consumed liquor. Thereafter, they went to the house of Raju. They stayed there for about ½ hour. At about 10:00 – 11:00 p.m., all of them left for Bilaspur on the motorcycle. He has further stated that at that time, the deceased was drunk and was vomiting. On the way, near Gatauri, fuel (petrol) of the motorcycle got finished. They took petrol from a person. Since he (Pradeep) and the Appellant had no money with them, the Appellant took out cash of Rs.100/- from the pocket of the deceased who was lying down there. He has further stated that thereafter all of them again proceeded for Bilaspur. Since the deceased was heavily drunk, they made him sit on the motorcycle between them. He has further stated that he told 2-4 times that since the deceased was heavily drunk, he should first be left to his house, but the Appellant told that since his (Pradeep) house was far away, therefore, he would first drop him at his house and thereafter he would drop the deceased at his house. At the last, the Appellant dropped him (Pradeep) at his house and took away the deceased on his motorcycle. At that time also, he (Pradeep) had told the Appellant that the deceased was heavily drunk, therefore, he should be taken on the motorcycle very carefully.

17. Vidya Bhushan (PW11) has stated that at about 7:00 – 8:00 p.m., the deceased, the Appellant and one other person had come to his house on a motorcycle and had asked about his brother-in-law. Thereafter, they had returned.

- 18.** Budhwar Singh (PW17) has stated that at about 9:00 p.m., the deceased, the Appellant and Pradeep (PW10) had come to his house and the deceased had asked him for money. When he asked them to come on the next day, they returned.
- 19.** Constable Dharam Sai (PW13) and Assistant Sub-Inspector Ganpat (PW14) have stated that they lodged numbered Morgue Intimation (Ex.P14) on the basis of unnumbered Morgue Intimation registered at Police Station Maudahapara, Raipur.
- 20.** Inspector C.L. Singh (PW18) is the witness who investigated the offence. He has deposed that he recorded the FIR (Ex.P1), prepared spot-map (Ex.P2), made seizures vide Ex.P3, P5 and P6. On 8.11.2011, he recorded memorandum statement (Ex.P7) of the Appellant. Based on the memorandum statement of the Appellant, he seized pieces of bricks vide Ex.P9 and P10. He made seizure of clothes of the Appellant vide Ex.P8. He sent the seized articles to the Forensic Science Laboratory vide Ex.P19 and obtained acknowledgment thereof vide Ex.P20.
- 21.** On minute appreciation of the evidence available on record, it appears that on 7.11.2011, the deceased was found injured and unconscious in the school premises. On 11.11.2011, during treatment, he died in Dr. B.R. Ambedkar Hospital at Raipur. Dr. Raj Kumar Singh (PW12) has given post mortem examination report (Ex.P13). He has opined that the deceased died due to cardio-respiratory failure as a result of head injury and its complications.
- 22.** From the statements of Ashish Singh (PW1), brother of the deceased and Pradeep (PW10), it is clear that on 6.11.2011 in the

evening, Pradeep, the Appellant and the deceased had gone to Village Lakhram on the motorcycle of the Appellant. As per the statement of Vidya Bhushan (PW11), all three of them had come to his house at Village Kelhari at about 7:00 – 8:00 p.m. Thereafter, as per the statement of Budhwar Singh (PW17), all three of them had come to his house at Village Chorchadeori at about 9:00 p.m. Thereafter, all three of them had returned. As per the statement of Pradeep (PW10), finally, at about 10:30 – 11:00 p.m., they left Village Chorchadeori for Bilaspur. At Bilaspur, the Appellant first dropped Pradeep to his house and thereafter he took away the deceased on his motorcycle.

23. The whole prosecution story is based on the last seen theory as narrated by Pradeep. Pradeep has admitted in his cross-examination that the police officials had kept him at the police station for 3 days under the suspicion that he was involved in the murder of the deceased. Since Pradeep had been a suspicious, a close scrutiny of his evidence is essential.

24. As per the statement of Pradeep (PW10), at about 11:00 p.m., the Appellant dropped him to his house and thereafter he took away the deceased on his motorcycle. Thereafter, in the next morning, the deceased was found in injured condition in the school campus. As per the Court statement of Pradeep, on 6.11.2011, when all the three persons had proceeded on the motorcycle, at that time, the deceased and the Appellant went to the shop of countrymade liquor at Village Lakhram and consumed liquor. Thereafter, all of them went to the house of Budhwar Singh (PW17). Thereafter, they again went to Village Lakhram, consumed liquor and then

went to the house of Vidya Bhushan (PW11). Thereafter, they returned from there and went to Village Lakhram and again consumed liquor. In paragraph 4 of his examination-in-chief, Pradeep (PW10) has categorically stated that at about 10:00 – 11:00 p.m., while they were returning for Bilaspur, the deceased was heavily drunk and was vomiting. On the way, when they stopped for taking petrol for the motorcycle, the deceased lay down there. Pradeep has further stated in paragraph 4 that when they proceeded further since the deceased was heavily drunk, they made him sit on the motorcycle between them.

25. From the above, it reveals that the deceased was heavily drunk, he was vomiting also and there was possibility of his falling down and, therefore, he was made sit on the motorcycle between the rest two. From the statements of Pradeep (PW10), Umesh (PW2), father of the deceased and Uttam (PW5), it appears that house of the deceased fell first and then the house of Pradeep. When the deceased was heavily drunk and they had made him sit on the motorcycle between them because of possibility of his falling down and that too his house fell first before the house of Pradeep, in such circumstances, not dropping the deceased first to his house and dropping Pradeep first to his house is unnatural.
26. Ashish Singh (PW1) and Umesh (PW2), who are brother and father of the deceased, respectively have admitted that the relation between the deceased and the Appellant was cordial. As such, there appears no motive for the Appellant to commit murder of the deceased. The prosecution has brought the story that the deceased was having a sum of Rs.2,000/- out of which Rs.100/-

was spent for getting filled in petrol in the motorcycle of the Appellant and for looting the remaining sum of Rs.1,900/- from the deceased, the Appellant committed his murder. When the relationship between the Appellant and the deceased was cordial and the extent of the cordial relationship was so that both the deceased and the Appellant along with Pradeep went to the house of Raju alias Budhwar to recover the money of the deceased from him and while the to and fro visit, all of them consumed liquor thrice at Village Lakhram, in such circumstances, it appears that commission of murder of the deceased by the Appellant only for looting the remaining sum of Rs.1,900/- is doubtful.

27. Though blood stained clothes of the Appellant were seized yet there is no FSL or serological report on record. Therefore, this seizure does not support the case of the prosecution.

28. In **S.K. Yusuf case** (supra), the Supreme Court observed thus:

“21. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. (Vide *Mohd. Azad v. State of W.B.*, (2008) 15 SCC 449 and *State v. Mahender Singh Dahiya*, (2011) 3 SCC 109)”

29. On applying the above observation of the Supreme Court to the instant case, it is clear that the statement of Pradeep (PW10) is doubtful. The prosecution appears to have failed to prove any motive for the Appellant to commit murder of the deceased. Even

if the statement of Pradeep is taken at its face value, the deceased was found in injured condition in the school campus next day in the morning hours. There is no evidence on record that the Appellant was seen with the deceased at the place of occurrence or nearby the place of occurrence.

- 30.** From the foregoing, we find that the Appellant is entitled to get benefit of doubt. The prosecution has failed to prove its case beyond doubt.
- 31.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him. It is reported that he is in jail. He be set at liberty forthwith.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Arvind Singh Chandel)
JUDGE