

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 132 of 2015

- Vijay Kumar Yadav, S/o Late Shri Ramadhin Yadav, aged about 38 years, R/o Village Kesav Nagar, P.S. Vishrampur District- Surajpur (CG)

---- Appellant

Versus

- State Of Chhattisgarh, Through Station House Officer, Vishrampur District Surajpur (CG)

---- Respondent

For Appellant	:	Shri Akhil Agarwal, Advocate
For Respondent	:	Shri Ravindra Agrawal, Government Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Choradiya

Judgement

Per P. Diwaker, J

06/07/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 21.11.2014 passed by the learned Sessions Judge, Surajpur in S.T. No.102/13 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for life & fine of Rs.5,000/-, in default of payment of fine to further undergo RI for 6 months.
2. In the present case name of the deceased is Mantu Sahu.
3. The prosecution story, in brief, is that the accused/appellant used to suspect that deceased Mantu has relations with his sister Chanda (PW-8). On 5.1.2012 said Mantu was found lying injured near the house of accused/appellant. Dhaniram & Rohit had sent information in this regard to Surendra (PW-1), brother of deceased, who reached the spot

immediately and seeing his brother lying in a pool of blood in unconscious stage, he sprinkled some water on his face and after regaining consciousness on account of sprinkling water on face of injured, he told PW-1 that he was assaulted by accused/appellant. The injured was immediately taken to the hospital, however, looking to his serious condition he was referred to Apollo Hospital, Bilaspur where he was declared brought dead by the doctors. Merg Intimation (Ex.P-14) was recorded at Police Station Sarkanda, Bilaspur on 6.1.2012, but prior to that FIR (Ex.P-1) was lodged by PW-1 at Police Station Vishrampur on 6.1.2012 based on which offence under Section 302 of the IPC was registered against the accused/appellant. Inquest (Ex.P-8) was prepared over the body of deceased on 6.1.2012. Body was sent for post-mortem examination which was conducted by Dr. R.K. Upadhyay (PW-14) and he noticed one lacerated wound on right side of forehead of the deceased, vertically placed, 8.5 cm x 2cm x 2.5cm in size. He opined that cause of death was head injury followed by coma. On the basis of memorandum statement (Ex.P-9) of accused/appellant, one club stained with substance like blood was seized vide seizure memo Ex.P-10. Statements of witnesses were recorded in the course of investigation.

4. After investigation, charge sheet against the accused/appellant was filed under Section 302 of IPC followed by framing of charge by the Court below under that section. The prosecution in order to bring home the charges levelled against the accused persons examined 16 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
5. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment convicted &

sentenced the accused/appellant in the manner as described above.

6. Learned counsel for the accused/appellants submit that there is no direct evidence against the appellant and his conviction is based on the conjecture and surmises. In absence of specific details of the assailant, merely on the basis of disclosure of name 'Vijay' by the deceased as his assailant, conviction of appellant for the offence like murder is not sustainable because there may be several persons in the locality in the name of 'Vijay'. He further submits that the appellant was arrested on suspicion on the ground that as the relations between accused and deceased were not cordial as the accused was suspecting that deceased had relations with his sister, the deceased might have been killed by the accused, but it is well settled that suspicion, howsoever strong, cannot be substituted for proof of the guilt of an accused beyond reasonable doubt. Although it is alleged that the police seized bloodstained club from the appellant, which was allegedly used in commission of offence, but the prosecution did not produce FSL report and in absence of which it cannot be said the stains found on the club seized at the instance of appellant was of human blood. Thus, this recovery itself was not sufficient to connect the appellant with the murder of deceased. The trial Court without appreciating all these facts wrongly found the appellant guilty for the aforesaid offence. Hence, he deserves to be acquitted of the charge.
7. On the other hand, learned counsel appearing for the State has supported the impugned judgment.
8. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.
9. Surendra Prasad (PW-1), brother of deceased, has stated that when he was in his shop, he was informed by Rahul & Dhaniram that his brother had a quarrel with someone and when he reached the place of

occurrence, he found his brother lying in injured condition. He noticed injury on his head. He has stated that on sprinkling some water on the face of his brother (deceased), he regained consciousness and on being asked as to who had assaulted him, the deceased disclosed that one Vijay had assaulted him. He has further stated that he immediately took the deceased to Central Hospital, Vishrampur, however, looking to the critical condition of his brother, he was referred to Apollo Hospital, Bilaspur where he was declared brought dead by the doctors. In the cross-examination this witness has admitted the suggestion that there may be so many persons in the locality named 'Vijay', he does not know the accused/appellant personally, he also does not know as to who had assaulted his brother and when he reached the spot, his brother (deceased) was not in a position to talk and only after splashing water on him, he was somewhat in a position to speak.

10. Rahul (PW-2), Mahendra (PW-3), Sanjay (PW-4), Naihato (PW-5), Raju Dewangan (PW-7), Champa (PW-8), Sunil (PW-10) have not supported the prosecution and turned hostile. Hanslal (PW-6) has not stated anything incriminating against the appellant. Ganesh Prasad (PW-11) is the witness of inquest (Ex.P-7). Bhuneshwar Rai (PW-12) is the witness of memorandum (Ex.P-9) and seizure memos (Ex.P-10 & P-11). Subodh Kumar (PW-13) is the witness of inquest (Ex.P-7).
11. Dr. R.K. Upadhyay (PW-14) is the person who conducted post-mortem examination over the body of the deceased. He has opined the cause of death to be head injury followed by coma. In the cross-examination this witness has admitted that the injury found on the body of deceased may come due to fall on a hard surface.
12. S.C. Shukla (PW-15) is the investigating officer who has duly supported the prosecution case. Subodh Kumar Singh (PW-16) did not support the

prosecution case and turned hostile.

13. Close scrutiny of the evidence available on record makes it clear that there is no positive evidence connecting the accused/appellant with the crime in question, except alleged oral dying declaration made by the deceased before Surendra (PW-1), brother of deceased, to the effect that he was assaulted by one Vijay. Merely because there is similarity in the name disclosed by the deceased and the name of appellant and that the relations between accused and deceased were strained as he used to suspect that the deceased had relations with his sister (PW-8), the accused/appellant cannot be held liable for the homicidal death of the deceased, particularly when Surendra (PW-1) himself has admitted in the cross-examination that there may be several persons in the locality named 'Vijay'. Thus, the disclosure of name 'Vijay' by the deceased as his assailant may create a great suspicion against the appellant but that itself is not sufficient to hold him guilty for the homicidal death of deceased. Law is well settled that suspicion however strong cannot take place of proof. However strong suspicion may be it cannot take the place of proof. It cannot be the basis for conviction of an accused. There is a long distance between may be true and must be true.

True it is that on the basis of memorandum of accused/appellant, seizure of club was made but in the absence of FSL report, it cannot be said that the stains found on the club seized at the instance of accused/appellant were of human blood. This apart, from perusal of the record it is clear that relations between the deceased and accused/appellant were not cordial as the accused used to suspect that deceased had relations with his sister (PW-8) and on a specific query being put to the doctor, who conducted post-mortem examination, he replied that the injury found on the head of the deceased may come due to fall on hard

surface. In such a situation, the possibility of the deceased suffering head injury due to fall on hard surface and false implication of accused/appellant on account of strained relations, can also not be ruled out.

14. On the basis of above, we are of the view that the trial Court has not appreciated the prosecution evidence correctly and hence wrongly convicted and sentenced the accused/appellant. After re-appreciation of evidence we are satisfied that the prosecution has failed to prove the case against the accused/appellant beyond all reasonable doubts and being so, the accused/appellant is entitled to get the benefit of doubt.
15. In the result, the appeal is allowed. Impugned judgment of conviction and order of sentence passed by the Court below is set aside and the accused/appellant is acquitted of the charge under Section 302 of IPC by extending him benefit of doubt. Appellant is reported to be in custody, therefore, he be released forthwith, if not required to be detained in any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Gautam Chourdiya)
Judge

roshan/-