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HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 266 of 2017

- State Of Chhattisgarh Through S.H.O., P.S. Kartala, District Korba, Chhattisgarh

---- Petitioner

Versus

- Shambhunath Nayak, S/o Rathiya Nayak, Aged About 36 Years, R/o Mayakut, P.S. Mayakut, District Kendur Jhov (Orissa), Presently R/o Of Gurma, P.S. Kartala, Tahsil Kartala, District Korba, Chhattisgarh

---- Respondent

For Appellant	Shri Arvind Dubey, PL
For Respondent	None

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

02/04/2018

1. This appeal is preferred against the judgment dated 28.07.2011 passed by the Sessions Judge, Korba in Sessions Trial No.119/2010, wherein the said Court acquitted the respondent for commission of offence under Section 302 of IPC for committing murder of one Teejram on 22.08.2010 at 1 am at M.A.P.L. Camp, Gurma, Police Station Kartala, District Korba.

2. It is alleged by the prosecution that there was some family dispute between the deceased and the respondent and on account of said dispute, the respondent assaulted the deceased by one iron rod. The deceased was admitted to hospital at Dharamjaigarh and then was shifted to Raigarh and Raipur for treatment, wherein he succumbed to the injuries.

3. Learned State counsel submits as under:-

I. The prosecution has adduced ample evidence regarding commission of offence by the respondent in the nature of extra judicial confession, oral dying declaration and eye witness account to the incident, but the trial Court erred in not looking to the evidence in its proper perspective. Corroborating piece of evidence is overlooked by the trial Court and the trial Court came to a wrong conclusion. The trial Court misappreciated the evidence and, therefore, the finding recorded by the trial Court is erroneous.

II. To substantiate the charge, the prosecution has examined as many as 20 witnesses. PW-1 Radhika deposed that Raja Babu and Raju Ghatak informed her that her father was killed, but from the evidence of this witness, it is not clear that whether these persons have actually seen the evidence or not. The statement of this witness is vague regarding the informer of the incident. She admitted in her cross examination that she has not seen the evidence and it is not known to her as to who assaulted the deceased. PW-2 Shivcharan deposed

on the same line and stated that he has been informed about the incident by Raja Babu and Raju Ghatak. This witness has also not seen the evidence and her version is based on hearsay evidence of Raja Babu and Raju Ghatak. PW-4 Sumila Bai deposed that someone informed her that her father-in-law was assaulted by the respondent, but it is not clear from her statement as to who really informed her about the incident. The statement of this witness is vague regarding informer of the incident and the same is not incriminating piece of evidence against the respondent. PW-5 Raju Ghatak deposed that one supervisor informed Amin that he assaulted Teejram. From the evidence of this witness, it is not established that the respondent is the person who assaulted the deceased. PW-7 Devmati deposed before the trial Court that she heard about the incident and someone informed that the deceased was killed by the respondent, but she gathered this information at Police Station. She is not clear as to who really assaulted the deceased. She admitted in her cross examination that she is stating only the hearsay version of the incident. PW-8 Amrawati, who is the wife of the deceased, deposed that her husband made declaration that the respondent assaulted the deceased, but she admitted in her cross examination that this version was not stated to Police while her statement was recorded under Section 161 of CrPC. She further admitted that her statement is recorded after one month of the incident. Any statement, which is exaggerated

version, can be looked into only when some plausible explanation is given for not stating the same before the the Investigating Officer at the first instance. The exaggeration made by this witness is without explanation and, therefore, it is not safe to act on the statement of this witness. PW-9 Akshansu Choudhary deposed that the respondent made extra judicial confession before one Amin that he killed the deceased, but the same is not mentioned by him before the Police while his statement was recorded under Section 161 of CrPC. This witness has also not explained as to why he has not stated regarding the incident before the Police Authorities. In absence of any explanation, it would not be safe to act on the statement of this witness. PW-10 Mohd. Amin is a hearsay witness and he simply stated that someone informed that the respondent assaulted the deceased. PW-11 Kewal Singh is a hearsay evidence and he deposed that one Amin informed him that the respondent assaulted the deceased, but in his cross examination, he admitted that the same version was not stated by him before the Police Authorities while his statement was recorded under Section 161 of CrPC. The version of this statement is hearsay evidence and again there is no explanation for not stating the same before the Authorities just after the incident.

4. The remaining evidence adduced by the prosecution is either evidence of medical expert or person who assisted during investigation. There is no eye witness account to the incident.

The so called oral dying declaration made before the witnesses is not satisfactory and the so called extra judicial confession is also not reliable piece of evidence. On an overall assessment of the evidence, it is not proved that the respondent is the author of the crime. After proper marshaling of the evidence, the trial Court recorded the finding of acquittal, which is based on legally admissible evidence, and not liable to be interfered with invoking jurisdiction of appeal.

5. The appeal deserves to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma

Nirala