

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 110 of 2013**

- Rajim Netam S/o Sonuram Aged About 28 Years R/o Village-Amodi, PS Bhanupratappur, Distt. Kanker C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through SHO, PS Bhanupratappur, Distt. North Bastar C.G.

---- Respondent

For Appellant	:	Shri Suresh Verma, Advocate
For State	:	Shri Suryakant Mishra, Panel Lawyer

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board**05/03/2019****Per Manindra Mohan Shrivastava, J.**

This appeal is directed against impugned judgment of conviction and order of sentence dated 13/12/2012 passed by the learned Sessions Judge, North Bastar, Kanker (CG) in Sessions Trial No.40/2012 by which, the appellant has been held guilty of commission of offence and sentenced as described below -

	<u>Conviction</u>	<u>Sentence</u>
1.	U/s 302 of IPC	Rigorous life imprisonment with fine of Rs.500/- (in default of payment of fine, additional S.I. of 1 month)

2. The prosecution story, as unfolded from the records of the case is that a report was lodged in the police station on the allegation that the appellant assaulted his brother – Pandiram with the help of a club due to which, Pandiram sustained head

injury and died.

The post mortem conducted by Dr. A.K.Dhruw (PW1) revealed one injury in the parietal part of the head and parietal bone was also found fractured leading to brain hemorrhage and death. According to the doctor, the cause of death was head injury and it was homicidal in nature.

3. Though, prosecution examined number of witnesses which were cited as eye witness of the case, none of the witnesses supported the prosecution case of they having seen the appellant assaulting his own brother – Pandiram. Learned Trial Court, however, held the appellant guilty of commission of offence of murder of his brother, relying upon certain circumstantial evidence.

4. Learned counsel for the appellant would argue that the conviction of the appellant is based only on conjecture and surmise and strong suspicion which could not take place of proof in the absence of clinching and proved circumstantial evidence. He would argue that the prosecution has failed to prove that there was any quarrel between the appellant and his brother for taking mobile, in which incident, the appellant assaulted his brother. He would next argue that the other circumstance is that the appellant had informed and also confessed having committed offence by assaulting his brother, has also not been proved from clinching and reliable evidence. The club said to have been recovered from the possession of the appellant is not found to be stained with human blood and in the absence of there being any other proof of clinching and circumstantial evidence, pointing only towards guilt of the appellant, only on the basis of recovery of so called blood stained club, conviction of the appellant is not sustainable in law.

5. Learned State counsel opposes and submits that even though, there is no eye witness, the appellant's own relatives and villagers stated that it is the appellant, who had informed others that he assaulted his brother during quarrel over a mobile phone

in which, his brother sustained injuries. He had also given extra judicial confession of having assaulted his brother which has been relied upon by the learned Trial Court to convict the appellant. The third circumstance that a club which was recovered on appellant's memorandum was found to be stained with blood and the appellant having not explained as to how it was stained with blood, completes the chain of circumstances that it is the appellant and the appellant alone, who must have killed his brother.

6. We have heard learned counsel for the parties and perused the records.

7. The case of the prosecution and conviction of the appellant is based on circumstantial evidence because none of the prosecution witnesses claimed to have witnessed the incident of assault, if any, on deceased – Pandiram.

As far as cause of death of Pandiram is concerned, the evidence of Dr.A.K.Dhruw (PW1) is quite emphatic and the same could not be impeached in the cross-examination that Pandiram sustained injury on his head and this injury resulted in fracture of parietal bone, leading to neurogenic shock and death.

8. We, however, find ourselves unable to hold that the prosecution has proved beyond reasonable doubt, incriminating and clinching circumstantial evidence to form complete chain of circumstances, pointing only towards guilt of the appellant so as to uphold the guilt of the appellant.

Shyamsai (PW2) deposed in his examination-in-chief that he was informed by the appellant that his brother-Pandiram fell down in intoxicated condition, whereafter, he came to his house and saw the dead body. The witness has been declared hostile and then a suggestion given to him that the appellant had confessed before him that he killed his brother - Pandiram, has been admitted. In the cross-examination, this witness clearly states that he has not seen the incident. He further states that the appellant had come to his house to state that his brother fell down and

sustained injury. He further states that he does know as to what was recorded in his statement by the police and that he heard the appellant telling the investigating officer that he murdered his brother but he did not state in the police statement regarding appellant having killed his brother.

The evidence of this witness is quite shaky because he did not remain firm on anything. The statement regarding extra judicial confession has come only by way of suggestion whereas in the examination-in-chief, this witness has stated that he was informed by the appellant that the appellant's brother fell down due to he being in intoxicated condition and further that he sustained injury due to fall.

9. Indira Bai (PW3) says that she was informed by Santram that her husband – Pandiram was assaulted by the appellant. She further says that she was told that there was a quarrel between the appellant and the deceased – Pandiram over a mobile phone, upon which, the appellant assaulted his brother with a club. She is only a hearsay witness.

10. Sonuram (PW4) has deposed that there was an altercation between the appellant and the deceased over a mobile phone. He does not support the prosecution case and has been declared hostile. He has denied having given statement in Ex.P/8 to the police, as recorded therein.

11. Jogiram (PW5) is a witness of memorandum and seizure, but in his cross-examination, he states that in the presence of villagers, the appellant had assaulted Pandiram during quarrel over a mobile phone. He does not say that he had seen the incident. The evidence, therefore, appears to be only hearsay one.

12. Budhiyarin Bai (PW6), who is the Village Kotwar, though, states in her examination-in-chief that the appellant had come to call her stating that over a quarrel for mobile, he had assaulted his brother – Pandiram, in her cross-examination, she admits that the appellant told her that his brother fell down in

intoxicated condition and sustained injury.

13. We would, thus, find the entire evidence of the prosecution, whether it be a case of quarrel between the brothers or assault or extra judicial confession, is not at all reliable because it is quite shaky. The witnesses have not remained firm on their statement and they are speaking differently and also utter contradictions to what has been stated by them in their examination-in-chief.

14. As far as weapon is concerned, we find that there is no report that it was stained with human blood much less that of the origin and group of blood of the deceased. On the basis of such shaky evidence, we are unable to hold that the prosecution has succeeded in proving beyond reasonable doubt, any incriminating circumstances to draw an inference that in all probability, it is the appellant and the appellant alone who must have killed his brother. This view is further strengthened by what has been stated by the doctor that the injuries could be caused due to fall on the pointed stone. The prosecution witnesses have admitted in the cross-examination that the appellant told that his brother fell down in intoxicated condition.

15. Therefore, in these circumstances, it would be unsafe to convict the appellant on the basis of aforesaid evidence. The appellant, therefore, is entitled to be given benefit of doubt and we would accordingly do so. The impugned judgment of conviction and order of sentence is set aside. The appeal is, accordingly, allowed. The appellant be set free forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge