

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.57 of 2015**

Dularchand Ram S/o Late Bahadur Ram Aged About 48 Years R/o Village Rajawada-Pyanatarraya, Police Station And Distt. Chhapra Bihar Presently R/o Sector 06 Road No. 30, Quarter No. 1f-Bhilai Nagar Distt. Durg C.G.

---- Appellant

Versus

State Of Chhattisgarh, Through - District Magistrate Durg. District Revenue And Civil Durg C.G.

....Respondent

For Appellant	:	Mr. S.D. Singh, Advocate
For State	:	Mr. Ankur Kashyap, Panel Lawyer

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board by Manindra Mohan Shrivastava, J.

22.11.2019

Heard.

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 15.09.2014 passed by Sessions Judge, Durg (CG) in Sessions Trial No.228/2013, whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below :

Conviction	Sentence
Under Section 302 of IPC	Imprisonment for life and fine of Rs.5000/-, in default of which, additional R.I. for 4 months.

2. The prosecution story, as unfolded from the impugned judgment and records of the case, is that an incident of assault on deceased Jai Kumar is said to have taken place on 04.05.2013 in the night. Jai Kumar sustained injury on his head and thereafter, he was admitted in the hospital on 05.05.2013 at 4:30 a.m.

He finally succumbed to death on 07.05.2013 at about 11:55. On the information received from the hospital, morgue Ex.P/10 was recorded and the dead body was sent for postmortem. The postmortem report prepared by Dr. Akhilesh Yadav revealed head injury and the doctor opined that cause of death was shock as a result of head injury and it appears to be homicidal in nature. An FIR in Ex.P/20 was also registered. The appellant being suspect, was taken into custody and his memorandum statement was recorded and according to the prosecution, the appellant disclosed that it is he who assaulted the deceased with the help of bricks. The pieces of bricks said to be used for giving assault were said to be recovered. After completion of usual investigation, charge-sheet was filed and learned Trial Court on the basis of material contained in the charge-sheet, framed charges against the appellant alleging commission of offence under Section 302 IPC that the appellant had assaulted deceased and killed him. The appellant having abjured guilt, was put to trial. In order to prove its case, the prosecution examined as many as 17 witnesses. The appellant was thereafter examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him in the evidence led by the prosecution. The appellant came out with the defence that he did not commit offence and has been falsely implicated. No defence witness was examined.

3. Even though, the eyewitnesses of the case did not support the prosecution story on having witnessed incident of assault given by the appellant on deceased Jai Kumar, on the basis of evidence that the appellant was also found present in the same room where Jai Kumar was sitting and was seen with injury, learned Trial Court held the appellant guilty of commission of offence and sentence described above.

4. Assailing correctness and validity of impugned judgment of conviction and order of sentence, learned counsel for the appellant would argue that the conviction of the appellant is liable to be set aside because it is founded on suspicion without there being any concrete and clinching evidence to translate suspicion into truth that it is the appellant who assaulted the deceased. He would argue that two eyewitnesses of the case namely, Naresh Kumar Ram (PW2) and Preeti Kumari (PW3) both have not supported the case of the prosecution. It is argued that in the room where the deceased were sleeping, there were more than one persons who were also found sleeping on the occasion of the marriage of deceased. It is also argued that evidence has come that one of the witnesses

reached the room, he found that the appellant was enquiring from deceased as to how he sustained injury. The alleged recovery of bricks from the appellant does not constitute incriminating evidence because the bricks have not been found sustained with human blood much less that of the group and origin of that of the deceased. No motive have also been proved by the prosecution as to why the appellant would kill the deceased. Therefore, it is prayed, the impugned judgment and conviction of sentence may be set aside.

5. Per contra, learned State counsel, supporting the judgment of conviction and sentence argued that even though, two eyewitnesses Naresh Kumar Ram (PW2) and Preeti Kumari (PW3) have not stated that they witnessed the appellant giving assault of the deceased, they have confirmed that the appellant was also present in the room and when came to the room, they found that Jai Kumar had already suffered head injury. The appellant failed to explain as to how deceased sustained injury and this constitutes an important link evidence to support the prosecution case that the appellant must have murdered the deceased.

6. We have heard learned counsel for the parties and perused the impugned judgment and records of the case.

7. After Jai Kumar sustained injury, he was admitted in the hospital and postmortem report, as proved by Dr. Akhilesh Yadav (PW13), undoubtedly proves that Jai Kumar died because of head injury. Apparently death is homicidal in nature.

8. It however, arises for consideration as whether the prosecution has been able to prove beyond reasonable doubt that it is the appellant who assaulted the deceased, due to which, Jai Kumar succumbed to death.

9. The prosecution came out with the case that atleast two eyewitnesses Naresh Kumar Ram (PW2) and Preeti Kumari (PW3) both had seen the incident. Therefore, case of the prosecution was based on these two eyewitnesses who were cited as eyewitnesses of the incident.

10. However, none of those witnesses supported the case of the prosecution that they saw the appellant assaulting the deceased. As far as Naresh Kumar Ram is concerned, he has deposed in his evidence that when hearing noises, he came

to the room of his brother, he saw that he was bleeding and he also found that the appellant was also sitting. Thereafter, he had taken his brother to the hospital for treatment. He has been declared hostile. In his cross-examination, he has admitted that the room was newly constructed and pieces of bricks were already lying here and there. In his cross-examination, he admits that in the room where the deceased Jai Kumar was sleeping, he, Jai Kumar and appellant were all sleeping in the same room. He is unable to say whether the door was closed or open. He admits that no lock was put in the main door. At the last, he states that he had not seen how incident happened.

11. Preeti Kumari (PW3) has deposed that after taking meals in the night, Naresh Ram, deceased and appellant along with some children were sleeping in the room and when she woke up hearing noises, she saw her uncle Jai Kumar was bleeding and appellant was also seen in the room sleeping. Thereafter, her uncle was taken to hospital. This witness has not supported the prosecution case of she being witness to the incident and was therefore declared hostile. In the cross-examination, she admitted that large number of persons including many children were sleeping in the same room. She cannot say whether, after she having gone to sleep, someone had opened the room. She has also stated in her cross-examination that the appellant was also enquiring as to how this incident happened.

12. The bricks which are said to be recovered at the instance and disclosure given by the appellant, were not found to be stained with any human blood much less that of the deceased. Even the clothes of the appellant have not been found to be stained with blood. The prosecution has not come out with any case of motive against the appellant as to why he would kill the deceased. The conduct of the appellant also does not create any doubt to create any suspicion. In any case, in order to translate suspicion into truth, the prosecution was required to prove its case by clinching reliable evidence. The entire case of the prosecution could not travel beyond the suspicion so as to warrant conviction of the appellant. In order to prove its case, the prosecution is required to prove guilt beyond reasonable doubt.

13. The totality of the evidence as we have considered, there is serious doubt with regard to involvement of the appellant in the alleged commission of offence and the benefit of this would obviously go in favour of the accused and not the prosecution.

14. In the result, we are inclined to set aside the impugned judgment of conviction and order of sentence. The appellant is acquitted of the charges.

15. The appeal is accordingly allowed and the appellant be set free forthwith.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge

Rekha