

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 801 of 2011**

1. Neel Kamal Yadav (Deleted) As Per Honble Court Dated 14/11/2018
2. Bholiya @ Arishiti S/o Sahebo Aged About 34 Years By Profession Labour, R/o Village Kolaibahal Jamgaon, Police Station Chakradhar-Nagar, District Raigarh Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Its District Magistrate, Raigarh Chhattisgarh

---- Respondent

For Appellants : None.

For Respondent/State : Shri Rajendra Tripathi & Shri Pawan Kesharwani, PL.

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Shri Gautam Chourdiya, JJ**

Judgment On Board By Prashant Kumar Mishra, J**09/12/2019 :**

1. The appellants would call in question their conviction under Section 302 of the IPC and sentence of imprisonment for life vide impugned judgment dated 28.9.2011 passed by the first Additional Sessions Judge, Raigarh in ST No.84/2010.
2. As per the FIR lodged by (PW-1) Parshuram Patel, at about 11 pm on 27.5.2010, Cheeku and Mantu Sidar came to his house and informed that Neel Kamal, Rajkamal, Ravi Yadav and Bholiya have assaulted his

elder brother Purnachand @ Bantu by means of club and Khatia and he is lying flat near Shiv temple. (PW-1) Parshuram Patel immediately rushed to the place of occurrence and found his brother lying unconscious. The accused persons were present over there and were saying that they should have killed him. The deceased was admitted to the hospital. The deceased died of the injuries and as per postmortem report (Ex.-P/11) submitted by (PW-8) Dr. C.S. Uikey, cause of death was multiple injuries to vital organs like brain and intra-cranial bleeding leading to cardio respiratory failure.

3. In course of investigation, memorandum statements of the appellants were recorded vide Ex.-P/13 & P/14 consequent to which seizure of *Khatia Pati* and club was made from appellants Bholiya and Neelkamal (since deceased) vide Ex.-P/15 & P/16 respectively.
4. The deceased was initially treated at Government Hospital, Raigarh and was thereafter taken to Apollo Hospital, Bilaspur where he was declared brought dead.
5. The trial Court has acquitted accused No.2 Rajkamal and accused No.4 Ravi Yadav but convicted the present appellants, out of whom appellant No.1 Neelkamal has died during the pendency of the appeal, on the basis of their memorandum statements and consequent recovery.
6. In the absence of learned counsel for the appellants, we have heard learned State Counsel and perused the record.
7. Case of the prosecution rests on the evidence of two eyewitnesses

namely, (PW-6) Mohd. Imran and (PW-7) Manoj Sidar. However, both these witnesses have turned hostile and have not supported the prosecution at any stage of their examination.

8. (PW-1) Parshuram Patel is the informant. In his examination-in-chief, he states that when he reached the place of incident, all the 4 accused persons were present at the place of occurrence and all of them were carrying club and assaulting them. However, in cross-examination, he denies that he has seen the incident. His evidence is only to the extent that when he reached the place of occurrence, he saw the accused persons. He admits that appellant Neelkamal had also sustained injuries in the same incident and he and the deceased were together taken to the hospital in the same ambulance. He also admits that appellant Neelkamal had lodged a report against the deceased for assaulting him by means of knife.
9. (PW-2) Laxmi Prasad Yadav, (PW-3) Rajkumar Chouhan, (PW-4) Tilak Ram Pradhan and (PW-5) Dinesh Kumar Agrawal have turned hostile and have not supported the case of the prosecution. (PW-8) Dr. C.S. Uikey is the physician, who has conducted autopsy. The other witnesses namely, (PW-9) Faggu Mali and (PW-10) Heeralal Sidar have also turned hostile whereas (PW-11) Sushanti Banerjee is the IO.
10. The above discussed evidence would reveal that the eyewitnesses are not supporting the case of the prosecution, even witnesses to the memorandum and seizure vide Ex.-P/13, P/14, P/15 & P/16 had turned

hostile.

11. There is no credible evidence against the appellants which can form basis for their conviction for committing murder of the deceased. The trial Court has wrongly concluded that the appellants are guilty of committing murder. There is no supporting evidence to reach such conclusion.

12. Consequently, the Appeal deserves to be and is hereby allowed. Conviction and sentence imposed upon the appellants under Section 302 of the IPC are set aside and they are acquitted of the said charge. Appellant No.1 Neelkamal Yadav has died during the pendency of the appeal and, therefore, the present Appeal as regards appellant No.1 Neelkamal Yadav already stood abated, vide order dated 14.11.2018. Appellant No.2 Bholiya @ Arishithi is already on bail. His bail bond shall remain in operation for a period of 6 months from today in view of the provisions contained under Section 437-A of the CrPC. He shall appear before the higher Court, as and when directed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge