

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 1283 of 2015

- Dharmjit S/o Jagarsay Gond, Aged About 24 Years, Occupation Agriculture, R/o Village Kapildevpur, Police Station Chalgali, Civil Distt. Surguja (Ambikapur) And Revenue Distt. Balrampur-Ramanujganj Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh, Through Station House Officer, Police Station Chalgali, District Balrampur Ramanujganj Chhattisgarh.

---- Respondent

For Appellant	Mr. R.R. Soni, Advocate
For Respondent /State	Mr. Aditya Sharma, Panel Lawyer

DB: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Gautam Chourdiya****Judgment On Board by Prashant Kumar Mishra, J.****29/11/2019**

1. Heard.
2. The appellant has challenged his conviction under Section 302 of IPC and sentence of RI for life along with fine sentence, passed by learned Additional Judge to Additional Sessions Judge, Ramanujganj.
3. Dead body of deceased Lalloo Choudhary was found beside the

road near Adrai Forest at 8:00 AM on 26.4.2013. Two persons had gone to his house at about 10:00 p.m. on the previous night i.e. on 25.4.2013 requesting him to take them to the house of one Nathura. The deceased was not seen alone thereafter. The FIR- Ex.P/1 was lodged by PW-1 Mukhlal Choudhary at 10:00 AM on 26.4.2013. Apart from mentioning the above facts, he also mentioned that his brother Lallu Choudhary (deceased) had land dispute with PW-6 Jamuna and the murder has taken place for this reason. The FIR was registered against unknown assailants. The accused persons were taken into custody on 27.4.2013 and the memorandum statements of Dharamjit was recorded vide Ex.P/7 and that of Ajay was recorded vide Ex.-P/8. A small sword was recovered from Dharamjit vide Ex.P/9. However, there is no FSL report to ascertain the finding of blood stains on the small sword. Even though it is mentioned in the recovery memo that the sword is blood stained. Case Diary statements of prosecution witnesses were recorded, however, TI parade was not conducted. The charge sheet was filed on the basis of evidence of last seen together and recovery of weapon from Dharamjeet.

4. The trial Court has acquitted accused No.1 Ajay and accused No.3 Devkumar on the reasoning that only Dharamjit had gone to the deceased's house at about 10:00 p.m. on 25.4.2013. Thus, the last seen evidence is established against Dharamjit only. Similarly, recovery of weapon has also been made from Dharamjit. As there was no recovery from accused Ajay and

Devkumar nor they were last seen with the deceased, they have been acquitted. The State has not filed any appeal against acquittal of these two accused persons.

5. We have heard learned counsel for the parties at length and perused the record.
6. In the FIR itself, it is mentioned that the deceased had land dispute with PW-6 Jamuna. PW-3 Lalmani has also stated in para 4 of her statement that Jamuna had threatened to kill her husband. She also makes statement that Ajay Choudhary, the acquitted accused, had also threatened to kill her husband. PW-13 SR Khan, the Investigating Officer, admits in para 19 of his deposition that he had not investigated the crime as to what kind of dispute Ajay Choudhary had with the deceased. PW-3 Lalmani and PW-4 Chinta Devi are the two inmates of the house of the deceased having seen those two persons, who came to their house at about 10:00 p.m. on 25.4.2013. As per their statements, one of the two persons had also come to their house 15 days before. However, they have not named those two persons in their case diary statements. Since the FIR as well as the diary statements of witnesses did not disclose names of the offender, it was incumbent on the Investigating Officer to have conducted TI parade. Even if on some secret information, the accused persons were taken into custody in the morning of 27.4.2013, and the memorandum statements of accused Ajay and Dharamjeet were recorded on the same day, the fact remains that PW-3 Lalmani and PW-4 Chinta Devi were not

aware about their names nor they had seen the accused before they were arrested. The conduct of TI parade was therefore necessary to have credible evidence about identity of the accused. Moreover, PW-4 Chinta Devi would clearly state that the accused persons were shown to her in the Police Station where she has identified them. If this witness had already identified accused Dharamjit and Ajay Choudhary in the Police Station, their dock identification is also vitiated and has no evidentiary value. PW-4 Chinta Devi also admits that she was not aware of the name of accused Dharamjit and Devkumar and that the same came to her knowledge when the Policemen informed her about their names.

7. This manner and method of identification of an accused is not at all permissible in law. Merely because the Investigating Officer has arrested two persons on suspicion that they might have committed the crime and have recorded their statements, that would not be permissible for the purpose of identification also.
8. In the absence of identification of accused Dharamjit as the person who had come to the house of the deceased at 10:00 PM on 25.4.2013, his conviction is unsustainable. Although recovery of weapon has been made from Dharamjit but there is no FSL report to bring corroborative evidence giving credence to the memorandum statement and recovery that the same weapon was used in commission of crime. Thus, both the above counts i.e. identity of the accused as well as recovery, are not so conclusive to bring home the guilt of the appellant.

9. In our considered view, the trial Court has wrongly convicted the appellant for commission of murder of deceased Lallu Choudhary.
10. Accordingly, the appeal is allowed and the impugned judgment of conviction and sentence is set-aside.
11. The appellant is in jail. He be released forthwith if not required in any other case, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court. The bail bond shall remain in operation for a period of 6 months as required under Section 437-A of Cr.PC. The appellant shall appear before the higher Court as and when directed.

Sd/-**(Prashant Kumar Mishra)**

Judge

Sd/-**(Gautam Chourdiya)**

Judge