

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 446 of 2019**

- Pandit Ram Yadav S/o Shri Parmeshwar Yadav Aged About 51 Years
Occupation Labour, R/o Kudumkela, Police Station Gharghoda District
Raigarh Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station-
Gharghoda, District-Raigarh Chhattisgarh

---- Respondent

For Appellant	:	Shri Rishi Rahul Soni, Advocate
For State	:	Shri Subhash Yadav, Panel Lawyer

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

Judgment On Board**Per Manindra Mohan Shrivastava, J.****09/05/2019**

This appeal is directed against impugned judgment of conviction and order of sentence dated 28/09/2012 passed by the learned 2nd Additional Sessions Judge, Raigarh whereby the appellant has been convicted under Section 302/34 of IPC on the allegation of commission of murder of Radhe Yadav – his brother.

2. According to the case of the prosecution, the appellant and co-accused - Dandul @ Parsan murdered Radhe Yadav. Against his conviction, Dandul @ Parsan filed Cr.A.No.993/2012 which has been allowed vide judgment dated 20/01/2018 by which, the co-accused - Dandul @ Parsan has been acquitted by allowing his appeal.

3. Submission of learned counsel for the appellant is that his case is identical to that of co-accused–Dandul @ Parsan, whose appeal has been allowed, could not be substantially disputed by learned counsel for the State.

4. Prosecution story is that on 05/03/2011, at about 11:30 AM, the accused persons inflicted injuries over the parietal and mandible region of the deceased with the help of a club. The motive for causing death is the subsisting land dispute between the deceased and the appellant. Since eye-witness Dhansingh (PW9) has turned hostile, the appellant's conviction is based on circumstantial evidence in the nature of seizure of club and the statements of Suresh Yadav (PW2); Dr. Ashishan Kumar Minj (PW5) - Medical Officer, who conducted the postmortem; I.O. as well as Shahid Ram (PW10), who is the witness to the Panchanama, dead body inquest and memorandum statement of the appellant and consequent seizure of club.

5. We have heard learned counsel for the parties and perused the record.

6. The FIR was lodged by Suresh Yadav (PW2), who is the son of deceased Radhe Yadav. In the FIR, he has stated that Baundela (PW4) and Aatmaram (PW8) have informed him that the accused persons have committed murder of his father. Thus, in the FIR as also in the statement under Section 161 CrPC, he has mentioned Baundela (PW4) and Aatmaram (PW8) as the persons, who have seen the incident.

7. Baundela (PW4) in his deposition has not stated anything which may be construed as the ocular version of the incident. Similarly, Aatmaram (PW8) has not stated anything to attribute commission of offence by the accused persons. The case diary statement of this witness is not exhibited. Dhansingh (PW9) has appeared after 11 days of the incident as the person, who is an eye-witness.

However, in his deposition, he has not supported the case of the prosecution and has refused to have given any statement to the police regarding witnessing the incident as mentioned in his case diary statement (Ex.P/21).

8. Upon scrutiny of the oral testimony of the witnesses, we find that the oral statements of the witnesses do not support the prosecution, therefore, the other evidence regarding seizure of club and the FSL report is required to be examined. A perusal of the FSL report would reveal that the club articles 'C' and 'E' recovered from both the accused persons were not found stained with blood.

9. Mere recovery of club would, therefore, not come to the prosecution's support, as a conviction merely on the basis of seizure of club, which was not found to be stained with blood, is not permissible in law.

10. The learned Trial Court has not appreciated the statements of the prosecution witnesses in its proper perspective. The entire evidence has to be read as a whole and not in isolation. On a careful reading and analysis of the evidence available on record, as discussed above, we are not satisfied with the findings of guilt recorded by the Trial Court.

11. For the foregoing, the appeal is allowed and the conviction and sentence imposed on appellant – Pandit Ram Yadav under Section 302 of IPC is hereby set aside and he is acquitted of the said charge. The appellant is set at liberty forthwith unless to be required in connection with any other case.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge