

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1151 of 2012

Banshi Lal Yadav, S/o Rangi Lal, aged about 50 years, R/o Village Kera, Thana, Shivrinarayan, District Janjgir Champa, (CG)

---- Appellant

Versus

State Of Chhattisgarh through Police Station Shivrinarayan, District Janjgir Champa, (CG)

---Respondent

For the Appellant	:-	Mr. Ravindra Agrawal, Amicus Curiae
For the Respondent	:-	Mr. Vikash Shrivastava, PL

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava J.

13.12.2019

1. This appeal is preferred against the judgment of conviction and order of sentence dated 10.04.2012 passed by Sessions Judge, Janjgir-Champa in Sessions Trial No.184/2011 whereby the appellant has been convicted and sentenced as hereunder:-

Conviction	Sentence
Under Section 302 of Indian Penal Code.	Life Imprisonment and fine of Rs. 1000/- in default of payment of fine amount further RI for three months.

2. This appeal is pending since 2012 and the appellant is in jail.

3. Despite repeated calls as no one appears on behalf of the appellant we requested Mr. Ravindra Agrawal, learned Member of

the Bar and present in the Court to assist the Court. Mr. Vikash Shrivastava appeared for the State.

4. By the impugned judgment of conviction and order of sentence, the appellant has been guilty of commission of offence under Section 302 IPC and sentenced for life imprisonment.

5. The prosecution case, as is revealed from the records of the case and impugned judgment is that, an FIR was lodged in Police Station Shivrinarayan on 19.05.2003, wherein it was stated that while the father of the deceased was sitting in the house, he came to know about a dead body lying near Pachri and when he went there to identify that dead body it was that of his son Kaleshwar. In his FIR, he stated that upon enquiry, Ramlakhan Kahra informed that his son was assaulted by the appellant with help of axe in his neck.

6. The Investigating Officer proceeded to the scene of occurrence inquest was prepared, and dead body was sent for postmortem. Doctor (PW-9) conducted postmortem and prepared postmortem report. In the postmortem, doctor found incised wound on the neck of the deceased resulting in fracture of cervical bone. In the opinion, doctor stated that cause of death was injury and excessive bleeding and it was homicidal in nature.

7. As the suspicion pointed on the appellant on the basis of what was stated in the FIR, the appellant was arrested and according to the prosecution, the axe allegedly used in commission of offence was seized.

8. Upon completion of usual investigation, charge-sheet was filed against the appellant and on the basis of material contained in the charge-sheet, learned trial Court framed charges against the appellant alleging that the appellant had murdered Kaleshwar with the help of an axe. The appellant having abjured guilt, was put to trial.

9. In order to prove its case, the prosecution examined as many as 10 witnesses. The appellant was, thereafter, examined under Section 313 IPC in respect of incriminating evidence and circumstances. The appellant pleaded innocence and stated that he was falsely implicated because complainant's son had murdered his son. Learned trial Court, relying upon evidence led by the prosecution witnesses that, though, the witnesses have not seen the appellant assaulting the deceased, he was seen running away from the spot along with an axe and that there was a motive also for commission of offence because of the enmity, convicted the appellant.

10. Mr. Agrawal, learned Amicus argued that the prosecution case is based on no evidence, none of them have stated having witnessed the incident. He would submit that the evidence of the prosecution witnesses that they had seen the appellant moving away from the spot, by itself, without anything more, would not constitute material evidence to, prove beyond reasonable doubt, that the appellant committed murder of the deceased. He would further submit that the axe said to have been recovered at the

instance of the appellant was not found having contained any human blood. He would also submit that on motive alone, without any material evidence, no conviction could be ordered.

11. State counsel on the other hand argued that, even though, the witnesses have not stated having seen the appellant assaulting the deceased, the evidence of the prosecution witnesses proves that when there was hue and cry that Kaleshwar has been assaulted and lying on the ground, the appellant was also seen at the spot holding an axe in his hand and that he gradually moved away from the spot. His next submission is that coupled with this evidence, there was strong motive because the prosecution has led overwhelming evidence that earlier, son of appellant, Bhupendra was murdered and brother the deceased namely Bhuneshwar was facing trial on the allegation of commission of murder of Bhupendra, thus appellant had strong motive to commit murder of the deceased. He would further submit that the weapon alleged to have been used in commission of offence has also been recovered from the possession of the appellant and the nature of injury being incised, it also connects the appellant with the alleged commission of offence as the injury could be caused by the said weapon.

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

13. The conviction of the appellant is founded only on circumstantial evidence as there is no direct evidence and none of the prosecution witnesses said before that they have seen in the incident of assault on deceased Kaleshwar.

14. One of the circumstance, relied upon by learned trial Court to hold the appellant guilty is presence of strong motive. Nanku Ram (PW-1) – father of the deceased has deposed in his evidence that on an accusation that his son Bhuvneshwar murdered son of the appellant, he was in jail and accused/appellant in order to take revenge killed Kaleshwar, son of this witness.

Ramlakhan (PW-2), Siddharam (PW-3) and Vyasnarayan (PW-6) have stated in their evidence that there was animosity on account of an allegation that Bhuvneshwar, brother of the deceased Kaleshwar killed appellant's son. Though this shows that there was animosity, the motive for the appellant, if any would be to kill that person i.e. Buvneshwar against whom there is allegation of killing son of appellant/accused Bansilal.

15. The father of the deceased Nankuram (PW-1) admitted in his evidence that he has not seen the incident and his source of information is from Lakhan.

Ramlakhan (PW-2) has deposed that when he was sitting near the pond in the village, people started running away out of fear and he saw that Bansi was gradually proceeding away from the spot and then he saw dead body of Kaleshwar. In his

examination-in-chief, he has not stated regarding having seen the incident of assault on deceased, he has not even said that he saw blood stained axe in the hand of Bansi. He doesn't say that Bansi ran away from the spot. Even after having been declared hostile and cross-examined by the prosecution he has deposed that appellant was quietly going away. He has stated that Siddhu and 5 to 7 other persons were present at the spot and cleaning their teeth. In para 7 of his cross-examination he stated that he has not seen accused holding anything in his hand.

16. Siddhu (PW-3) has also stated that when Kaleshwar - the deceased was cleaning his teeth and then he saw that Bansi was going towards trees and Kaleshwar was lying. As he did not support the prosecution story he has been even declared hostile and in his cross-examination it has been elicited that while he was washing his clothes, he had heard a call from Kaleshwar but he did see the accused standing near kaleshwar but saw him going towards tree with an axe and then he states that he does not know whether that accused had assaulted. A suggestion has been given to him that after Kaleshwar fell down he saw the accused running towards trees.

17. In cross-examination a suggestion was given which was denied that he had not seen the accused running away with an axe.

The evidence of this witness is also very shaky. In the examination-in-chief he did not state regarding accused living the

spot with an axe, it is only when such suggestions are given to him by the prosecution that he improves upon statement to add that he had seen the accused leaving the spot, holding an axe in his hand.

18. Dev Prasad (PW-4) deposes that why he had gone towards pond to take bath, it was said that Kaleshwar was murdered by Bansi and he ran away from the spot. He states that he had not seen Kaleshwar. He was also declared hostile by the prosecution. He further states that he could not see if there was anything in the hands of the accused.

19. Vyasnarayan (PW-6) has deposed that he had gone towards pond, took bath and came back home and then came to know that Kaleshwar was murdered.

20. From the aforesaid evidence of prosecution witnesses it is clear that nobody deposes that he had witnessed the incident of assault on Kaleshwar. From the evidence of the witnesses it is clear that at the spot, there were 6 to 7 villagers who had gathered in the morning and were cleaning their teeth. Even though, Ramlakhan (PW-2), Siddharam (PW-3), Devprasad (PW-4) and Vyasnarayan (PW-6) claim to be present at the spot, their statements with regard to the accused are at variance and also contradictory to what has been stated by them in their examination-in-chief and their cross-examination. Whether or not, accused was holding an axe is also doubtful because either it has not been clearly stated by the witnesses or stated by the witness when he was cross-examined by the prosecution. While some of the

witnesses say that the accused was quietly leaving the spot, they are not in a position to say whether or not he was holding anything in his hand. Another version is that he ran away from the spot.

21. Thus the witnesses, large in number claiming to be present at the spot along with deceased Kaleshwar, not involving the accused/appellant renders the prosecution story extremely doubtful. This incident, according to the prosecution witnesses, was early in the morning and none of them have stated that it was dark and therefore, they could not identify the assailant. If number of villagers had gathered together near the pond and cleaning teeth along with Kaleshwar, not naming the person who had assaulted, makes the prosecution case still more doubtful.

22. In the present case, the prosecution could not prove that the axe said to be recovered from the appellant was stained with blood, much less human blood of the group and origin of the deceased. Availability of axe in the house of a villager, by itself, is not incriminating evidence.

23. On the above set of evidence, at the most, it could be a case of suspicion but in order to translate suspicion into truth, the prosecution was required to lead much more clinching evidence. Appellant could not be held guilty of commission of offence u/s 302 IPC only on suspicion without there being clinching evidence.

24. In the result, the accused is entitled to be given benefit of doubt and therefore, the impugned judgment of conviction and sentence is not sustainable in law. Accordingly, judgment of

conviction and order of sentence is hereby set aside and the appellant is acquitted of the charges. He be release from jail, if not required in any other case.

25. We place on record, our appreciation for valuable assistance rendered by learned Amicus Curiae.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge

Pawan