

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 560 of 2019**

- Bandhan, S/o Bortal, Aged About 36 Years, Occupation- Agriculture, Caste Pahadi Korwa, R/o Village Devgarh, Parewaara, Police Station - Ritapur, District- Surguja, Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Of Police Station-Sitapur, District- Surguja, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Shri Kishore Narayan, Advocate
Shri A. K. Mishra, PL

Hon'ble Justice Mr. Prashant Kumar Mishra**Hon'ble Justice Mrs. Rajani Dubey****Order On Board****14/05/2019**

1. The appeal is posted today for hearing on IA No.1, application for suspension of sentence and grant of bail. However, with the consent of learned counsel for the parties, we proceed to hear the appeal finally.
2. Appellant stands convicted for committing offence under Section 302 of IPC with sentence of life imprisonment and fine of Rs.500/- in default, additional RI for 6 months.
3. The merg intimation (Ex-P-7) was recorded by the concerned Police at about 23:15 Hours on 03.09.2017 on the information

supplied by the deceased's son Dil Prasad (PW-2). The Merg Intimation records that the appellant informed Dil Prasad that his father is lying dead near Deogarh Bhalupani Hill Road. On this information, Dil Prasad, Omprakash and the appellant went to the place and witnessed that the body of deceased Balsai had sustained serious injuries over his head, nose and left mandible region.

4. In the postmortem report (Ex-P-3A) conducted on 04.09.2017, the cause of death was found to be on account of head injury and the nature of death was homicidal.
5. During interrogation, appellant's memorandum statement was recorded vide Ex-P-12 pursuant to which one bamboo stick and shawl was recovered from appellant's possession on 24.09.2017. The FIR was thereafter registered on the same day vide Ex-P-15. During further investigation, Tejan (PW-9) informed the Police on 04.10.2017 that he had seen the appellant assaulting the deceased by bamboo stick.
6. The prosecution thus filed the charge sheet on the strength of eye witness account of Tejanram Paikra and circumstantial evidence in the nature of memorandum statement and recovery of bamboo stick supported by the FSL report (Ex-P-19).
7. Admittedly, there is no evidence of extra judicial confession or last seen together. The case of the prosecution is based on the eye witness account of PW-9, memorandum statement and seizure of articles. However, PW-9 Tejan has turned hostile and

has not supported the prosecution even during the cross examination.

8. Insofar as seizure of bamboo stick and shawl is concerned, the FSL report has not established blood stains over the bamboo stick (Article-D). The shawl recovered from the appellant is his own shawl and was not used as a weapon.
9. Coming to the testimony of other witnesses, the son of the deceased (PW-2) would not throw much light as to who committed the crime. Similarly, other witnesses namely PW-3 Omprakash, PW-4 Budhsagar, PW-6 K. P. Gupta, PW-7 Ramkaran Rajwade and PW-8 Shivpujan Tiwari have also not stated anything, which would incriminate the appellant connecting him with the crime.
10. It is settled law that an accused cannot be convicted merely on the basis of suspicion. In order to succeed by establishing a case of commission of murder, the prosecution has to submit cogent and reliable evidence, which leads to only one view i.e. commission of crime by the accused and none other person. True it is that in a case where the prosecution case is initially based on eye witness account but subsequently the eye witness turns hostile, still conviction can be based on circumstantial evidence, but in the case at hand, no such circumstance has been found established against the appellant, which would connect him with commission of crime.

11. In our considered opinion, there is absolutely no evidence against the appellant connecting him with the commission of crime, therefore, the impugned judgment and conviction rendered by the Trial Court deserve to be and are hereby set aside. The appellant is in jail. He be released forthwith unless required to be detained in any other case, on his furnishing a personal bond in sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the Trial Court. Surety and personal bonds shall remain operative for a period of 6 months from today in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the Higher Court as and when required.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Rajani Dubey
Judge

Nirala