

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 43 of 2012

Amarsai Rout, S/o Late Samaru Rout, aged about 40 years, Occupation-
Cultivator, Labour R/o Village Ghuijorpara, Gahna Jharia, PS Lailunga, District
Raigarh (CG)

---- Appellant

Versus

State Of Chhattisgarh, through the Station House Officer, Police Station,
Lailunga, District-Raigarh (CG)

---- Respondent

For Appellant	:	Shri Roshan Dubey, Advocate
For State	:	Shri Santosh Bharat, Panel Lawyer

**D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Rajani Dubey**

Judgment On Board

08/03/2019

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 26th August 2011 passed by learned First Additional Sessions Judge, Raigarh in ST No. 49 of 2010 whereby the appellant has been held guilty of commission of offence under Section 302 read with Section 34 IPC.
2. Though learned trial Court convicted the present appellant and co-accused Sabal Sai, there is nothing on record to show that Sabal Sai preferred any separate appeal.
3. Prosecution case, as unfolded from the records of the case and the impugned judgment, is that on 7.1.2010, Ishwar (PW12) lodged FIR in Ex.P-16 at about 10:00 hrs. in the morning, wherein it was stated that the present appellant and one Sabal Sai had assaulted Mehttar with club, due

to which, he sustained injury on his head and limbs and died. The Investigating Officer proceeded to the scene of occurrence and prepared inquest report and sent the dead body for postmortem which was conducted by Dr. Rajkumar Gupta (PW7). In the postmortem report, it was found that there was a compressed fracture of the parieto occipital part of the head and a fracture in the left arm, scratch on the face, lacerated wound on the left leg, contusion on right chest. Having found that there was fracture in the parietal part which was compressed, the doctor opined that cause of death was injury resulting in neurogenic shock. In order to prove its case, the prosecution examined number of witnesses and the wife of the deceased namely Kamla (PW10) and Ku. Deepika Chouhan (PW11) daughter of the deceased were examined as eyewitnesses of the case. Learned trial Court, mainly placing reliance on the testimony of these two witnesses, held the appellant guilty of commission of offence alleged against him and sentenced as described above.

4. Assailing the judgment of conviction and order of sentence, learned counsel for the appellant would argue that the conviction is based on testimony of so called eyewitnesses Smt. Kamla (PW10) and Ku. Deepika Chouhan (PW11) which are wholly unreliable. It is argued that Smt. Kamla (PW10) and Ishwar (PW12), the wife and son of the deceased have admitted that there was past enmity between the deceased and the appellant. He would further argue that though in their examination-in-chief, they claim to have seen the incident, in the cross-examination, they have admitted that it was all dark in the evening and there was no light at the spot and it was not even possible to see and recognize anyone standing in their front. The other prosecution witnesses Puniram (PW1), Kartik Ram (PW2), Mehttar Chouhan (PW5) and Ishwar (PW12) have deposed regarding they having been informed of the incident by Smt. Kamla (PW10), the wife of the deceased but the names of the assailants were not disclosed. It is also argued that even the FIR informant Ishwar (PW12), the son of the deceased, has stated that while lodging FIR, he had stated name of three persons other than the present appellant and the co-accused and he does not know how their names were written in the FIR. He has also stated that while giving diary statement to the Investigating Officer, the appellant and the co-accused names were not mentioned but three other names were

mentioned. He does not know how the name of the appellant was involved. It is also argued that there is no other evidence to corroborate the statements of Smt. Kamla (PW10) and Ku. Deepika Chouhan (PW11) and the club said to be seized is not found to be stained with human blood in any FSL report, though two independent witnesses of seizure have turned hostile. Therefore, the appellant is entitled to be acquitted by giving him benefit of doubt.

5. On the other hand, learned counsel for the State, supporting the judgment of conviction and order of sentence, argues that the conviction of the appellant is supported from the eyewitness account of wife and daughter of the deceased who have clearly stated in their evidence that appellant came to their house, deceased was dragged outside the house and then he was assaulted with club. The wife of the deceased Smt. Kamla (PW10) has stated that even she was also assaulted with club. He further submits that the evidence of Smt. Kamla (PW10) is corroborated from the testimony of child witness Ku. Deepika Chouhan (PW11) and there is no reason why she would speak lie and falsely implicate. Therefore, the conviction of the appellant does not warrant any interference.
6. We have heard learned counsel for the parties and perused the records of the Court below.
7. From the evidence of Smt. Kamla (PW10), wife of the deceased and Ishwar (PW12) son of the deceased, we find that it has been elicited in their cross-examination that there was previous enmity between the parties.

In the present case, the incident is said to have taken place in the evening of 6.1.2010 but the FIR has been lodged in the police station on the next date at about 10:00 hrs. in the morning. This means, that the FIR was not immediately lodged. The incident is said to have taken place late in the evening.

8. Ishwar (PW12), the son of the deceased who lodged FIR has deposed that he was informed by his mother at about 3-4 PM that his father has been assaulted by Sabal Sai, Amar Sai, Dhan Sai, Chitru, Gurbari and Sumitra. However, in his cross-examination, he admits that his mother disclosed the name of Dhan Sai, Chitru and Gurbari as the assailants and except this, she

had not named anybody else. He further deposed that in the police station, while lodging report, he had named Dhan Sai, Chitru and Gurbari, but he does not know why their names were not mentioned in the FIR and morgue intimation. He admits that except this, no other names were mentioned by him in the report.

In view of the aforesaid evidence of Ishwar (PW12), particularly when the FIR was lodged on the next date of the incident, it becomes highly doubtful whether the appellant was involved in the incident.

9. While Ishwar (PW12) the son of the deceased has given contradictory statement in his evidence and has admitted that his mother disclosed only three names Dhan Sai, Chitru and Gurbari as assailants and no other names, we find that there is also contradiction with regard to the names disclosed by Smt. Kamla (PW10) to other witnesses namely Puniram (PW1), Kartik Ram (PW2), Mehttar Chouhan (PW5).

Puniram (PW1) in his examination-in-chief states that Kamla (PW10) came to him and informed that the fight took place between her husband, Kathu and Amar Sai (present appellant). However, in his cross-examination, he admits that when Kamla came to him she only disclosed that quarrel had happened but with whom her husband had quarreled was not disclosed to him. He admits that whatever is being stated in the Court is being stated as suggested by Kamla.

10. Kartik Ram (PW2) also states in his examination-in-chief regarding he having been informed by Kamla at 10-11 hrs. that her husband was assaulted by Kathu and Amar Sai (present appellant), but in his cross-examination, he admits that wife of the deceased had not stated anything to him regarding the incident and even members of his family did not disclose as to with whom the deceased had quarreled and why quarrel had taken place. In his cross-examination, he specifically deposed that on the date of incident he had not gone to the house of Mehttar. This mean that he met with Kamla on the next date at about 10-11 hrs. His admission that Kamla did not disclose anything regarding the incident to him, again renders highly doubtful the involvement of the appellant.

11. Mehttar Chouhan (PW5) has deposed that on the date of incident, at about

4:00 in the evening, mother of Ishwar came towards the locality stating that her husband was assaulted but she did not disclose any name. He also admits that when he went to the house of the deceased, nobody informed him as to with whom quarrel had taken place with the deceased.

12. The two eyewitnesses namely Smt. Kamla (PW10) and Ku. Deepika Chouhan (PW11), wife and daughter of the deceased, though state regarding assault given to Mehttar by the present appellant Amar Sai and other co-accused Sabal Sai, in their cross-examination, both have admitted that there was no light at the spot and darkness was so much so that it was not possible to recognize even the person standing in front of them. This has clearly come in their cross-examination.

13. The evidence has come on record that the deceased was drunkard and he used to enter into quarrel with the villagers.

14. There is no other evidence led and proved by the prosecution to connect the appellant with the alleged commission of offence. The club alleged to have been seized is not reported to be stained with human blood in any FSL report. Even the seizure witnesses have not supported the seizure of club from the appellant.

15. In view of the above consideration and close analysis of evidence on record, we are of the view that the prosecution has failed to prove, beyond reasonable doubt, the involvement of the present appellant in the alleged commission of offence and, therefore, he is entitled to be given benefit of doubt.

16. In the result, the appeal is allowed. Impugned judgment of conviction and order of sentence is set aside. The appellant be set at liberty forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge