

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 543 of 2005

Chadrama Prasad S/o Vishwanath Prasad, aged about 25 years, R/o Village Sirai PS Maharajganj, District- Seewan (Bihar)

---- Appellant

Versus

State Of Chhattisgarh through PS Basana, District – Mahasamund (CG)

---- Respondent

For Appellant : Dr. N.K. Shukla, Senior Advocate with
Ms. Abhyunnati Singh, Advocate

For State : Shri K.K. Singh, Govt. Advocate

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

Judgment On Board

16/01/2019

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 26th May 2005 passed by learned Second Additional Sessions Judge, Mahasamund in ST No.38 of 2005 whereby and whereunder the appellant has been held guilty of commission of offence alleged against him and sentenced as described below:

Conviction	Sentence
u/S. 392 IPC	RI for 7 years and fine of Rs.500/-, in default of payment of fine, additional RI for 2 months.
u/S. 302 IPC	Life imprisonment and fine of Rs.1000/-, in default of payment of fine, additional RI for 4 months.

2. The prosecution story is that the deceased Ramsukh was the driver of a vehicle No.G.J.-07-TT-5003 which was transporting consignment from

Ahmedabad to Kolkata. It is said that, later on, when the vehicle did not reach Kolkata, an enquiry was made by the consignor and upon enquiry, it was found that two unidentified dead bodies were found near Basna, Chhattisgarh. Prior to that, the two dead bodies which were seen by Amrit Nand (PW1), Kotwar of village Dhabakhar and Muniram (PW2), Kotwar of village Bijrabhata were sent for postmortem after recording morgue regarding death. Dr. Jaishri Sahu (PW15) conducted postmortem and prepared two reports in Ex.P-23 and Ex.P-24 in which, cause of death was stated to be excessive blood loss. Later on, upon receipt of information, Gayadeen Prajapati (PW17) was called to identify the dead bodies and for that purpose, two dead bodies were exhumed and then Gayadeen Prajapati (PW17) identified one of them as the dead body of his cousin Ramsukh. The other body remained unidentified. A fresh postmortem was conducted by a team of Dr.Rajkumar Singh (P.W.16) and Dr. S.P. Garg and a postmortem report in Ex. P-25 and Ex.P-26 were again prepared in which, for the first time, it was reported that the deceased persons had sustained gunshot injury. It is further said that later on, the consignment which was being transported in the truck driven by deceased Ramsukh was found at Buxar in the State of Bihar and in that connection, on the allegation of commission of offence under Sections 412 and 414 IPC, three persons Bhrigunath Prasad, Bhagwati Prasad and Dharmendra were tried but acquitted.

3. It appears that during investigation, it came out that while the appellant-Chandrama Prasad was driving his vehicle in which Vinod Giri, one of the absconding co-accused was also travelling, on way from Ahmedabad to Kolkata, somewhere near Basana, he expressed that he would like to join Ramsukh in the vehicle driven by Ramsukh, whereafter, present appellant facilitated Vinod Giri to join Ramsukh and proceeded towards Kolkata. On this much of material collected against the appellant, investigating agency filed charge sheet against the appellant on the allegation of loot and murder of deceased along with other accused.
4. Learned trial Court ordered conviction of the appellant only on the circumstance that one of the witnesses has disclosed that present appellant told him that at the request of Vinod Giri, he had overtaken the vehicle driven by deceased Ramsukh and Vinod Giri changed the vehicle and joined

Ramsukh in his truck.

5. Learned senior counsel for the appellant would argue that present is a case of no evidence. It was argued that the learned trial Court has convicted the appellant, even though, the suspicion raised by the prosecution could not translate into truth from any clinching circumstantial evidence to involve the present appellant in the alleged commission of offence.
6. On the other hand, learned State counsel supports the judgment of conviction and submits that, even though, there is no direct evidence, the evidence has come on record that the appellant informed Arvind Patel (PW8) that on request of Vinod Giri, he had overtaken the vehicle of Ramsukh and allowed Vinod Giri to change the vehicle and Vinod is absconding.
7. After hearing the learned Counsel for the parties, appreciating the evidence on record, we are clearly of the opinion that present is a case of no evidence and conviction of the appellant is based only on suspicion. The learned trial Court has referred to and relied upon the evidence of Arvind Patel (PW8), Gyadeen Prajapati (PW17) and Parminder Singh (PW20) which we have gone through.
8. Arvind Patel (PW8) the consignor who had consigned his goods for being taken to Kolkata in the vehicle driven by deceased Ramsukh, has deposed that when the consignment did not reach Kolkata, an enquiry was made then the present appellant Chandrama Prasad disclosed to him at Kolkata that at the request of Vinod Giri, he had overtaken the vehicle driven by deceased Ramsukh and then Vinod changed the vehicle and joined Ramsukh and, thereafter, Chandrama Prasad proceeded. This witness says that on the basis of this disclosure, he suspected involvement of the present appellant.
9. We fail to see how this evidence of Arvind Patel (PW8) involves the present appellant in the alleged commission of loot and murder of Ramsukh.
10. Gayadeen Prajapati (PW17) is the brother of the deceased who identified the dead body as Ramsukh. There is nothing in his evidence so as to involve the present appellant with the alleged commission of offence.

11. Parmindar Singh (PW20), the transporter only says that the two vehicles were going towards Kolkata and during the course of enquiry made by the police, the appellant had disclosed to the police regarding Vinod Giri. Except this, there is nothing in his evidence.
12. Apart from this, there is no other evidence led by the prosecution to even remotely connect the appellant with the alleged commission of offence.
13. Learned Senior Counsel rightly submits that present is a case of no evidence and the appellant has suffered conviction only on the basis of some suspicion which could not translate into truth.
14. In the result, impugned judgment of conviction and order of sentence is held unsustainable in law and the same is, therefore, set aside. The appeal is accordingly allowed. As the appellant is already on bail. His bail bonds stand discharged.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge