

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 283 of 2012**

- Dilip Singh Rathiya, S/o Hole Singh Rathiya, R/o Village Chilkaguda , P.S. Lailunga , Distt. Raigarh C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through - Sho.- P.S. Lailunga , Distt. Raigarh C.G.

---- Respondent

For Appellant	: Shri Rajesh Ranjan Sinha, Advocate
For Respondent/State	: Shri Anand Verma, Dy.G.A.

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

Judgment On Board By Manindra Mohan Shrivastava, J.**03/04/2019**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 24.01.2012 passed by the First Additional Sessions Judge Raigarh in ST No. 104/2010 whereby and whereunder the appellant has been held guilty of commission of the offence under Section 302 IPC and sentenced to undergo imprisonment for life on the allegation of having murdered Chamar Singh Rathia.

2. Prosecution story is that, the FIR in Ex.P-1, was lodged by PW-1 Bhog Singh Rathia, at 22.10 hrs., on 20th July 2010, in which, it

was alleged that on that day in the evening, the appellant assaulted Chamar Singh with club and murdered. In the FIR, it was stated that appellant was nephew of the FIR informant and deceased and he used to quarrel with the deceased quite often stating that as the deceased does not have any issue he may bequeath his property in favour of the appellant and the incident of assault was culmination of this quarrel. After inquest prepared over the dead body, it was sent for postmortem examination and Dr. Raj Kumar Gupta, PW-8 conducted postmortem and having found number of injuries on vital parts, including temporal part of the head, opined that cause of death was neurogenic shock as a result of injury in the temporal part of the head and fracture and compression of skull bone. As the FIR alleged that it is the appellant who had assaulted the deceased, the investigation went in that direction and finally charge sheet was filed against the present appellant on which basis learned trial court framed charges for the commission of offence under Section 302 IPC. Appellant having abjured guilt, he was put to trial. Prosecution case rests mainly on the evidence of Bhog Singh PW-1, uncle of the appellant and brother of the deceased. Learned trial court relied upon this evidence as also recovery of club said to have been seized from the place of incident. Hence, this appeal.

3. The only point and short submission of the counsel for the appellant is that Bhog Singh PW-1 is not the eyewitness and the manner in which he has stated in his evidence, clearly shows that he is a planted witness and only on suspicion, that in the past, the appellant and the deceased had a quarrel with regard to property, has involved the present appellant. He would argue that this witness

claims to have reached the spot upon hearing noise and there is evidence that his house is about half a kilometer away from the place of incident, which is very near to the house of one Chetan. According to this witness, when he reached the spot, Chetan, Khiteshwar, Ashok and Dilip were present. In the cross-examination, this witness has admitted that he is deposing as informed by Chetan meaning thereby, that he is only a hearsay witness, and not the eyewitness. Next submission is that, while Chetan has not been examined, Ashok and Khiteshwar have been examined as PW-2 and PW-3, respectively, who have not supported the prosecution case that Chamar Singh was assaulted by the present appellant. Kheteshwar (PW-3) states that when he reached the spot, he found Chamar Singh, lying dead near the boring and the recovery of club from open place does not link the present appellant with the crime in question. Therefore, the entire prosecution case is highly doubtful. The case of the prosecution is not only doubtful, but of false implication.

4. On the other hand, State counsel would argue that, immediately after the incident, prompt FIR was given by Bhog Singh PW-1, who is also FIR informant at 22.10 hrs. i.e. within three hours of the incident, in which he clearly stated that it is the appellant who assaulted the deceased. He would argue that minor contradictions or omissions did not impeach the credibility of these witnesses because it is not only related to the deceased but also to the appellant and there is no reason why he would falsely implicate his own nephew. Counsel for the State would further argue that recovery of club at the instance of the appellant on the basis of memorandum corroborates the evidence of eyewitness.

5. We have heard counsel for the parties and perused the records.

6. The entire prosecution case is based on the evidence of Bhog Singh Rathiya PW-1 who claims to be the eyewitness of the incident. He is clearly related not only to the appellant, but also to the deceased as appellant is his nephew and deceased was his brother.

This witness in his court statement has deposed that he was in his house and when he heard Chetan Singh giving a call that Chamar Singh is being assaulted by Dilip, he rushed to the place of incident near boring where he saw that appellant was assaulting Chamar Singh at the spot whereas Ashok, Kheteshwar and Chetan were also there. He further states that Chetan was lying on the ground and Chamar Singh was being assaulted with club and he asked Dilip as to why he was assaulting Chamar Singh.

7. In cross-examination, the omission in the diary statement Ex.P-1, that he heard Chetan giving a call that Chamar Singh was being assaulted by Dilip, has been elicited. He admits that from the house of Chetan, his house is situated at a distance of about half kilometer and if he has to reach Chetan's house, he would take 10 minutes. He further states that before he reaching the spot, Chetan, Ashok and Kheteshwar had already reached there and they were present. In para 16 of his cross-examination, however, he admits that he is deposing as informed by Chetan.

8. Thus, the entire evidence of the witnesses would show that even according to him, he reached the spot after hearing the call and

it would take 10 minutes from his house to reach the spot and that before he reaching the spot, Chetan, Ashok and Kheteshwar had already reached and present at the spot. But what he has stated in his cross-examination, that he is stating as is informed to him by Chetan, raises serious doubt and therefore, unless there is an independent corroboration, this witness is not reliable.

9. We find that the prosecution has not examined Chetan in front of whose house, the incident had taken place. According to Bhog Singh PW-1, he reached the spot on call given to him by Chetan.

The other two persons said to have reached and present at the spot even before reaching PW-1 Bhog Singh are Ashok Kumar Rathiya and Kheteshwar PW-3.

10. Ashok Rathiya has not supported prosecution case. He has deposed that he was in his house and he does not know who assaulted whom. Next day he came to know that Chamar Singh was found dead near boring in front of the house of Chetan and he does not know who assaulted the deceased. In cross-examination he admits that the house of Bhog Singh PW-1 is at a distance of about half kilometer from the house of Chetan and it takes about 15 minutes from his house and near Chetan's house, there was no light. He has further stated that he had not gone to the place of incident with Kheteshwar or Bhog Singh.

Kheteshwar (PW-3) has also not supported the prosecution story. He states that when he came out of his house, he saw that Chamar Singh was lying dead near the boring. He does not know

who assaulted Chamar Singh. He has been declared hostile. He admits in his cross-examination that when he reached the spot, Chamar Singh was lying dead and Chetan was standing over there but he denies that Ashok, too, was also present. He also admits that after he reached the spot Bhog Singh and other person whose name is not known to him, had come. He admits that appellant Dilip was not present at the spot. He further admits that he had not seen the appellant assaulting the deceased. He also admits that the needle of suspicion point towards the appellant because, there exist dispute between the appellant and the deceased.

11. From the aforesaid evidence, we find that Chetan has not been examined. Ashok and Kheteshwar have not supported the evidence of PW-1. According to Kheteshwar, when he reached the spot, he saw the dead body of deceased Chamar Singh lying on the ground and that Dilip Singh was not present at the spot and further that after his arrival, Bhog Singh PW-1 arrived at the spot. It is therefore, highly doubtful, that Bhog Singh arrived at the spot and witnessed the incident of assault on Chamar Singh. What appears to be more probable is that this witness reached the spot after the incident had happened and when Chamar Singh was lying injured on the ground and then on suspicion, because of background of quarrel, the appellant appears to be involved in the incident.

12. Recovery of club from the open place does not constitute incriminating evidence. There is no other circumstantial evidence of clinching nature to involve the appellant in the alleged offence.

13. In view of above, we are of the view that prosecution has failed to prove beyond reasonable doubt that the appellant assaulted the deceased. Appellant is accordingly, entitled to benefit of doubt. The impugned judgment of conviction and order of sentence is set aside. Appellant is acquitted of the charges levelled against him. He be set at liberty forthwith if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge