

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 807 of 2003**

- Somaru Ram, S/o Konda Ram Kavar, aged about 48 years, R/o Village Barkola Barpara Police Station Dhaurpur, District Surguja, C.G.

---- Appellant**Versus**

- State of Chhattisgarh, Through S.O. Police Station Dhaurpur, District Surguja, C.G.

---- Respondent

For Appellant	Shri R.V. Rajwade, Advocate.
For Respondent/State	Shri Vimlesh Bajpai, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

29/09/2020

1. The appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 17.07.2003 passed by the Sessions Judge, Surguja (Ambikapur), C.G. in Sessions Trial No.51/2003, whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 326 of Indian Penal Code	Rigorous imprisonment for three years and fine of Rs.1,000/-, in default of payment of fine amount to undergo further rigorous imprisonment for three months

3. Case of the prosecution, in brief, is that on 05.11.2002 at about

22:05 pm FIR (Ex.P-1) was lodged by Shivmangal (PW-1) to the effect that on the same day i.e. 05.11.2002, Garra (deceased) invited PW-1 Shivmangal to his home for dinner. When PW-1 Shivmangal reached his home, he/deceased told his mother to serve them food, then his mother said to him '*wait for a while*' but deceased continuously asked his mother to serve food quickly. At that time, accused/appellant (his father) came there and hearing his continuous demand, assaulted upon deceased by means of axe (*tangiya*) and deceased sustained injury on back side of his right knee as a result of which blood was oozing. The said incident was witnessed by PW-2 Tileshwari Bai (wife of deceased) and PW-5 Raitalo Bai (mother of the deceased). Thereafter, people came there and took the deceased on Tractor to police station and FIR Ex.P-1 was lodged by PW-1 Shivmangal against the accused/appellant. Then, deceased was sent for medical examination to Government Hospital, Dhurpur and during treatment he died. On 06.11.2002, merg intimation Ex.P-13 was lodged by Sokha Das, son of Ramdas Panika. Inquest on the dead body was conducted vide Ex.P-3 and the body was sent for postmortem. The postmortem examination was conducted on 06.11.2002 by PW-9 Dr. Kamlesh Kumar who gave his report vide Ex.P-20 finding following injuries on the body of the deceased:-

Body lying supine position, eyes closed, mouth closed. Rigor mortis present both upper and lower limbs. Antemortem incised wound at right popliteal fossa obliquely size 5 ½ cm x 3cm x upto bone deep. Margin regular. Clotted blood present over the

wound. Large blood vessels are also cut. Lateral epicondylal of femur also cut. Reddish colour blood stain present around the knee joint and whole right leg. Blood stain also present over clothes.

The Autopsy Surgeon has opined that the cause of death was shock due to excessive hemorrhage and the death was homicidal in nature. Time passes approximately within 12-24 hours of postmortem examination.

4. During investigation, accused/appellant's memorandum statement was recorded vide Ex.P-16 consequent to which one axe was recovered from him vide Ex.P-17. Clothes of the appellant were seized vide Ex.P-18. Plain soil and blood stained soil were seized vide Ex.P-19. Spot Map Ex.P-5 was prepared by Investigating Officer and spot map Ex.P-7 was prepared by Patwari. Seized articles were sent to FSL for examination and as per FSL report, blood was found on the seized articles i.e. plain soil, blood stained soil, *baniyan* and towel. Accused/appellant was arrested on 06.11.2002 vide Ex.P-21. After recording statements of the witnesses, charge sheet was filed against the accused/appellant under Section 302 of IPC.
5. The trial Court framed charge under Section 302 of IPC against the accused/appellant which was denied by him and he prayed for trial. The prosecution examined 10 witnesses in support of its case i.e. PW-1 Shivmangal, PW-2 Tileshwari Bai, PW-3 Urmila, PW-4 Babunath, PW-5 Raitli Bai, PW-6 Ku. Shashikala Markam, PW-7

Indar Sai, PW-8 Sokhadas, PW-9 Dr. Kamlesh Kumar and PW-10 Ravindra Kumar Pathak. Statement of the accused/appellant was recorded under Section 313 of CrPC in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by him.

6. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above.
7. Learned counsel for the appellant submits that in this case no eye witness has supported the prosecution case. He also submits that PW-2 Tileshwari Bai (wife of the deceased), PW-3 Urmila and PW-5 Raitalo Bai (mother of the deceased) are not the eye-witnesses in this case and they have not supported the prosecution case. There are material contradictions and omissions in the statements of PW-2 Tileshwari Bai, PW-3 Urmila and other witnesses. No cogent evidence is available on record. He also submits that only on the basis of memorandum of appellant, he has been falsely implicated in this case. Neither blood group was proved nor any motive was proved by the prosecution against the appellant in this case. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the charge.
8. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the

accused/appellant are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

9. Heard learned counsel for the parties and perused the material available on record.
10. As per inquest (Ex.P-3) on the dead body of the deceased and the postmortem report (Ex.P-20), number of injuries were found on the body of the deceased and his death was due to injuries suffered by him. The above fact has not been disputed by the counsel for the parties.
11. PW-1 Shivmangal stated in his deposition that on the date of the incident, after having dinner he went to sleep. After some time, he heard the hue and cry, then he came out of his room and saw that the deceased was lying in injured condition and blood was oozing from his leg. He also stated in his deposition that at that time deceased and other people were in drunken condition. Thereafter, he along with deceased went to the police station and lodged the FIR against the accused/appellant. He also stated in para 4 of his deposition that he had not seen the incident and he did not know who assaulted upon the deceased. But in para 8 of his cross-examination, he stated that he woke up at 8 pm on the date of incident and saw that deceased had fallen down near cattle shed and axe was lying there. Thereafter, he went there and asked the deceased about the injury, on which he/deceased told him that he had slipped on the axe. But this witness has turned hostile and not

supported the prosecution case. This witness has lodged the FIR Ex.P-1 but he denied the contents of the FIR Ex.P-1.

12. PW-2 Tileshwari Bai is the wife of deceased. She stated in para 2 of her deposition that she had not seen the incident. She also stated that when she reached the place of occurrence, she saw that her husband/deceased was lying in injured condition and blood was oozing from his right leg. Thereafter, she took him to the hospital and during treatment he/deceased died. She also stated in para 4 of her deposition that at that time she was in another room and when she heard the hue and cry, she came out of her room and saw that her husband had fallen down near cattle shed then she went there and saw her husband/deceased in injured condition and axe was also lying there.

13. PW-3 Urmila, daughter-in-law of the appellant, stated in para 2 of her deposition that she had heard about the incident that appellant assaulted upon the deceased by means of axe. But in her cross-examination, she stated that she had no knowledge whether deceased was demanding food and she had not seen the incident and did not know anything about the dispute between them. She denied that the accused/appellant had assaulted upon deceased. She also admitted in para 5 that deceased sustained injury on his leg by means of axe which was lying in *Bhitka*. This witness has also not supported the prosecution case.

14. PW-4 Babunath and PW-5 Raitli Bai have also not supported the prosecution case and turned hostile. They have also denied their

case diary statements given to police vide Exs. P-9 and P-10. Both have also stated in their depositions that deceased himself fell down and got injured.

15. PW-6 Ku. Sashikala Markam, Sub-Inspector, who investigated the case, has supported the prosecution case.

16. PW-7 Indar Sai stated in para 2 of his deposition that he had heard that accused/appellant assaulted upon deceased by axe and when he reached the home of deceased at about 6:00 pm, he saw the deceased in injured and unconscious condition. Then, he along with deceased went to the police station and from there they took the deceased to hospital and during treatment he died. But in para 5 of his cross-examination, he stated that accused/appellant told him that he had assaulted upon the deceased but that fact is not mentioned in his case diary statement Ex.D-1 recorded on 09.11.2002 and no extra judicial confession was made by the appellant in his presence. He stated that deceased had told him that appellant assaulted upon him but that fact is also not mentioned in his case diary statement. He is also not the eye-witness in this case and he went to the spot after the incident and found Garra (deceased) in unconscious condition. His both statements regarding extra judicial confession and dying declaration are not mentioned in his case diary statement Ex.D-1. Therefore, the evidence of this witness has no legal value.

17. PW-8 Sokha Das lodged the merg intimation Ex.P-13. He is the witness of memorandum Ex.P-16 and seizure memo Ex.P-17. In cross-examination, he stated that clothes, axe, plain soil and blood

stained soil were seized in police station & all documents were signed in police station. He also stated that small axe was seized in police station and when police enquired from appellant, he/appellant denied to have committed any crime or assaulted upon the deceased.

18. PW-9 Dr. Kamlesh Kumar conducted the postmortem of deceased vide Ex.P-20 and gave his report as mentioned in the preceding paragraph. He has duly proved the said report. He has also examined the seized axe and opined that the injuries suffered by the deceased could be caused by seized axe.

19. PW-10 Ravindra Kumar Pathak is the Patwari. He has prepared the spot map Ex.P-7 and duly proved the same.

20. From the evidence available on record, it is clear that none of the witnesses projected as eye-witnesses by the prosecution has supported the prosecution case. Rather, from the evidence it has come on record that deceased accidentally fell down on the axe and got injured and was found on the cattle shed. Further, as per PW-8 Sokha Das, all the articles were seized in the police station and not at village Barkol. Thus, all the seizure documents were not proved according to law and the seizure of articles and recording of memorandum of the appellant were done in the police station, not at village Barkol. As per FSL report, though blood was found on the seized articles i.e. soil seized from the spot, axe and baniyan seized from the appellant and the towel but there is no report of the Serologist on record confirming the said blood to be human blood. In

this case also no motive has been attributed to the appellant for commission of the offence and all the important witnesses of the prosecution have turned hostile. Thus, the prosecution has utterly failed to prove the guilt of the appellant either by direct evidence or through circumstantial evidence as required under the law. Being so, the benefit of doubt must go to the accused/appellant and he deserves to be acquitted of the charge leveled against him. Accordingly, the impugned judgment is set aside and the accused/appellant is acquitted of the charge under Section 326 of IPC. It is also stated the accused/appellant is on bail, therefore, his bail bonds shall continue for a period of six months from today, in view of the provisions of Section 437-A of Cr.P.C.

21. In the result, the instant Criminal Appeal is allowed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh