

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 373 of 2020

- Bhaiyalal @ Bhayalal, S/o Ramsai Gond, Aged About 35 Years, Occupation - Farmer, Resident of Patna Bachiyabandha Para, Police Station - Ramanujnagar, District Surajpur, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station Ramanujnagar, District Surajpur, Chhattisgarh.

---- Respondent

For Appellant : Shri Sangharsh Pandey, Advocate.

For State/Respondent : Shri Ravi Maheshwari, Panel Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

27/07/2021

1. With the consent of both the parties, the matter is heard finally.
2. This appeal has been preferred against the impugned judgment dated 31/01/2020 passed in Sessions Trial No.99/2016 by the Third Additional Sessions Judge, Surajpur, District – Surajpur, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
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U/s 307 of the I.P.C.	R.I. for 7 years and fine of Rs.2000/- with default stipulations.

3. Brief facts of the prosecution case are that one Manmati (PW-8) (wife of injured Rai Singh), lodged an F.I.R. in police station on 08/08/2016 to the effect that in the night of 27/07/2016 her husband Rai Singh (PW-7) went for dinner in the house of Somar Sai (PW-1). After sometime, one Manvarparhin of village informed her that her husband Rai Singh is lying in unconscious condition in the alley/lane near the house of the appellant. There were injuries on the left side of head and on the jaw of injured Rai Singh. It is alleged that appellant suspected that the injured Rai Singh was having illicit relationship with his wife and thus, he caused injuries on the head and jaw of the injured/victim Rai Singh with intention of causing his death. On the basis of the said report made by wife of the injured Rai Singh, offence was registered. Statement of Rai Singh and other witnesses were recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. To prove the guilt of the accused/appellant, prosecution has examined as many as 16 witnesses. No defence witness has been examined. Statement of appellant under Section 313 of the Cr.P.C. was recorded, wherein accused/appellant has pleaded innocence and false implication.
4. After completion of trial, the trial Court has convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.

5. Learned Counsel appearing on behalf of the appellant submits that appellant is innocent and is falsely implicated in the present case. He further submits that trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. According to case of the prosecution, the alleged incident occurred in the front of the house of the appellant but Rai Singh (PW-7) in his Court statement has deposed that the incident occurred inside the house of Somar Sai (PW-1) but Somar Sai has not supported the same. Therefore, place of occurrence of the incident itself is suspicious. He further submits that the alleged incident took place on 27.07.2016 and F.I.R. was lodged on 08.08.2016. Delay in lodging the F.I.R. is not properly explained by Manmati (PW-8). He further states that Dr. Rachna Arthur (PW-14) and Dr. Deepak Jaiswal (PW-16) have categorically stated that at the time of admission of the injured in the hospital, relatives of the injured had told that the said injuries caused to the injured/victim has occurred due to road accident and as admitted by Dr. Rachna Arthur (PW-14), injury caused to the injured/victim is of accidental nature. Therefore, entire case of the prosecution is suspicious. With regard to the seized spade, it has been argued that though blood stain has been found on it but there is no Serologist report available in the record. Therefore, it is not established that the blood stain found in the spade is human blood and blood group of blood found in spade and blood group of injured/victim is same. Therefore, prosecution does not get any help from the seizure of spade.
6. Per contra, learned Counsel appearing for the State supports the impugned judgment and submits that sentence awarded by the trial

Court is just and proper and requires no interference.

7. I have heard learned Counsel appearing for the parties, perused the record, statement of the witnesses and other annexed documents minutely.
8. Rai Singh (PW-7) in his Court statement has deposed that on the date of incident he went to the house of Somar Sai (PW-1) for having dinner. Appellant was also present there. According to this witness, when other villagers left the house of Somar Sai, then in the house of Somar Sai itself, appellant assaulted Rai Singh with '*lathi*' due to which his jaw was broken and he became unconscious. Rai Singh in his cross-examination has admitted that he has no previous enmity or dispute with the appellant. This witness also admitted that he had no illicit relationship with the wife of the appellant, however, he has not explained any reason that why appellant has assaulted him. Contrary to the statement of Rai Singh (PW-7), Somar Sai (PW-1) has deposed that the alleged incident was not occurred in his house. According to the statement of Somar Sai (PW-1), Rai Singh had left his house after having dinner. Thereafter, he came to know that Rai Singh was found lying in front of house of the appellant in injured condition.
9. Ramphal (PW-2) in his Court statement has also deposed that he had also gone to the house of Somar Sai (PW-1) for dinner but he was not aware about any incident that took place in the house of Somar Sai (PW-1). Jagdish (PW-4), Ambelal (PW-6) and Manmati (PW-8) i.e. wife of the injured Rai Singh, Sobhnath (PW-9) and Madan Sarthi (PW-11) have deposed that Rai Singh (PW-7) was found lying in front of the house of the appellant in injured condition but none of these witnesses

have seen the alleged incident.

10. Dr. Rachna Arthur (PW-14) has deposed that on 28.07.2016, relatives of injured Rai Singh (PW-7) admitted him in the hospital and at that time they had stated that on 27.07.2016 at about 6:45 PM, appellant had caused injuries in the road accident. At that time Rai Singh was in injured condition. This witness has stated that the nature of the injuries caused to Rai Singh was accidental. According to this witness, said injuries could have occurred in the accident. She further admitted that, for the period of days injured Rai Singh remained admit in the hospital, he or his relatives did not tell any fact about causing of injuries due to mar-peet. Dr. Deepak Jaiswal (PW-16) have deposed that on 09.08.2016, Rai Singh was admitted in Shri Balaji Institute of Medical Science, Raipur for further treatment. At that time also, it was told that injuries caused to Rai Singh could have occurred in accident.
11. On minute examination of above witnesses, it makes clear that according to Court statement of Rai Singh (PW-7), the alleged incident occurred in the house of Somar Sai (PW-1) but Somar Sai has not supported the above statement of Rai Singh (PW-7). All the other witnesses have deposed that Rai Singh was found lying in injured condition in front of house of the appellant. Therefore, the actual place of occurrence of incident is not clear. There is no other eye-witness in this case other than injured Rai Singh (PW-7). Rai Singh has also admitted the fact that he has no previous enmity or dispute with the appellant and in such circumstances, why appellant had assaulted him, is not clearly explained by him. Also the fact that F.I.R. was lodged by Manmati (PW-8) on 08.08.2016 i.e. after 10 days of the alleged

incident and delay in lodging the F.I.R. is not properly explained by her. Even, she was unable to state the contents mentioned in the F.I.R. From the statements of Dr. Rachna Arthur (PW-14) and Dr. Deepak Jaiswal (PW-16), it is well-established that when Rai Singh (PW-7) was hospitalized, at that time, it was told that injuries caused to Rai Singh has occurred due to road accident and as admitted by Dr. Rachna Arthur (PW-14), nature of said injuries could have been accidental. Though, in this case, on the basis of memorandum statement of appellant, one spade in which blood stain was found has been seized. But in this regard no report of Serologist is available on record. It is also not clear that the blood stain found in spade is human blood. Therefore, it is not established that blood group of blood found in spade and blood group of injured/victim is same. Thus, prosecution does not get any help from the seizure of spade also.

12. Looking to the entire evidence adduced by the prosecution, in my considered view, prosecution has failed to prove the case against appellant beyond all reasonable doubts and appellant is entitled to get benefit of doubt.
13. Consequently, the appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charge framed against him.
14. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

**Sd/-
(Arvind Singh Chandel)
Judge**