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SHATRUGHAN

v.

THE STATE OF CHHATTISGARH

(Criminal Appeal No. 437 of 2016)

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JULY 20, 2023

[VIKRAM NATH AND AHSANUDDIN AMANULLAH, JJ.]

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Penal Code, 1860: s. 302 – Culpable homicide amounting to murder – Conviction u/s. 302 – Correctness of – FIR against the appellant by the informant-uncle of deceased – Allegation that the deceased had shouted that the appellant had assaulted him with a tabbal – Informant rushed to the place of incident and saw his nephew lying there with deep cut on the neck – Nephew later succumbed to his injuries – Conviction of the appellant u/s. 302 and sentenced to life imprisonment by the courts below – On appeal, held: Prosecution failed to establish the charge – Prosecution story does not appear to be a probable story – Supporting evidence does not inspire confidence, rather there are material contradictions – Testimony of the informant not found to be reliable, thus could not form the basis of conviction – Medical evidence also does not support the prosecution case as the weapon of assault could not have caused injury on the deceased – Further, no motive as to why the appellant would commit the murder of the deceased – Defence version that the deceased was under the influence of alcohol and could have tripped and fallen on a sharp object resulting into the ante-mortem injury reported in the post-mortem was quite possible, and is clearly borne out from the record – Thus, the conviction and sentence of the appellant set aside.

Allowing the appeal, the Court

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HELD: 1.1 None of the eye-witnesses had actually seen the occurrence of the appellant assaulting the deceased. [Para 31][770-F]

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1.2 According to the informant, he was the first person to arrive at the site along with his wife upon hearing the cry for help from the deceased that the appellant was assaulting him with a tabbal. When he reached the site he saw that the deceased was

lying on the road and the appellant was moving towards his house on a cycle along with tabbal. This is the FIR version. In his deposition the informant stated that when he rushed to the place of occurrence, he saw the accused running away and the tabbal was lying there. The deceased had fallen unconscious and there was deep cut on his neck with blood flowing from the injury. Upon his call, the other neighbours and his daughter all came out from their houses. PW-14 stated that PW-1 only informed him that deceased had been assaulted and had been taken to the hospital. PW-1 did not inform PW-14 that it was the appellant who had assaulted. PW-14 stated that it was later on that others who informed about the appellant assaulting the deceased. The other eye-witnesses did not state that they saw the appellant assaulting the deceased. PW-2 is the wife of PW-1, PW-3 is the widow of the deceased, PW-4 is daughter of PW-1, are the other witnesses who reached the place of occurrence. None of them stated that they had seen the appellant assaulting the deceased. Thus, the only evidence is of PW-1 stating that the appellant was running away from the place of occurrence when he reached there. He himself stated that the deceased was already unconscious as such was not in a condition to speak. There is one more aspect to be considered as to whether the cry given by the deceased could have been made as stated. Normally in villages nobody takes the name of elders and especially their uncles. PW 1 is the uncle (father's brother) of the deceased. Under normal course the deceased would have called kaka only and would not take his name. In the First Information Report it is stated that when PW 1 came out he saw the appellant running towards his house on a cycle along with tabbal but in the deposition before the trial court it is stated that when he reached the place of occurrence the appellant was running and the tabbal was lying there and then he stated that the deceased had only shouted that the appellant is assaulting him. Another aspect to be considered is whether after receiving the said injury the deceased could have shouted and if he had shouted before being assaulted then the situation would have been different. It would have been a one to one and he could have resisted the assault. The fact is there is only one injury on the neck. [Para 32][770-G; 771-A-H; 772-A-B]

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A **1.3 The prosecution story as set out does not appear to be a probable story and the supporting evidence led during trial of the witnesses of fact also does not inspire confidence. Rather there are material contradictions. [Para 33][772-C-D]**

B **1.4 The defence has been successful in making a serious**
C **dent in the prosecution case. The first point is that no motive has**
D **been set up by the prosecution as to why the appellant would**
E **assault the deceased. All the witnesses of fact who are family**
F **members stated that there was no enmity between the appellant**
G **and the deceased. Once there is no eye-witness of the incident**
H **the prosecution will have to establish a motive for the commission**
 of the crime inasmuch as in a case of direct evidence, motive
 may not have a major role. If there is no motive setup or proved
 and there are direct eye- witnesses, motive may loose its
 importance but in the instant case as admittedly no one has seen
 the occurrence, the motive has an important role to play. The
 defence during the cross-examination elicited that the Sarpanch
 had grouse against the appellant for the reason that the appellant
 had made a complaint regarding misappropriation of government
 funds and also of committing major illegality in distribution of
 essential commodities. On the said complaint an enquiry was
 made where the Sarpanch PW 11 had to tender public apology.
 Defence also suggested that in the night itself after the deceased
 was taken to the hospital, a meeting was called by the Sarpanch
 where the appellant was forced to confess. The said meeting has
 been admitted by PW-5. It was suggested that appellant in the
 meeting had stated that he had seen the deceased tripping and
 falling on the sharp object resulting into the injury which proved
 fatal. It is possible that on account of the influence of the Sarpanch
 that the appellant has been falsely implicated. The defence also
 elicited during cross- examination of PW 6 that the weapon of
 assault recovered and produced before him could not have caused
 the injury in view of the size of the weapon of assault and the size
 of the injury which had no match. The defence also suggested
 that in fact the deceased was heavily drunk and had fallen on a
 sharp-edged object because of which he had received the injury.
 This appears probable for two reasons: firstly, that PW 6 had

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stated that there was sufficient alcohol in the body of the deceased and secondly that the weapon of assault produced by the prosecution did not match with the injury. The injury could have been caused by the deceased slipping and falling on a sharp object. [Para 34][772-D-H; 773-A-E]

1.5 From the narration of the evidence and analysis, it is evident that the testimony of PW 1 was not reliable and could not have formed the basis of conviction. Apparently, he was influenced by Sarpanch whose active participation in the proceedings subsequent to the incident cannot be ruled out. The medical evidence did not support the prosecution case as the weapon of assault could not have caused injury on the deceased as noticed in the post-mortem report. There was no motive as to why the appellant would commit the murder of an acquaintance and a friend for no reason. The defence version that the deceased was under the influence of alcohol and could have tripped and fallen on a sharp object resulting into the ante-mortem injury reported in the post-mortem was quite possible. The same is clearly borne out from the record. The explanation for delayed lodging of the FIR is not satisfactory. [Para 35][773-E-H]

1.6 The appellant would be entitled to acquittal. The conviction and sentence of the appellant are set aside. He is acquitted of all the charges. [Para 37][774-A-B]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 437 of 2016.

From the Judgment and Order dated 06.04.2015 of the High Court of Chhattisgarh at Bilaspur in CRLA No. 03 of 2010.

Ms. Anu Gupta, Sanjay Mani Tripathi, Kamal Kant Tripathi, Suraj Kumar Singh, Advs. for the Appellant.

Sumeer Sodhi, Ms. Shreya Singh, Advs. for the Respondent.

A The Judgment of the Court was delivered by

VIKRAM NATH, J.

By means of this appeal, the accused appellant has assailed the correctness of the judgment and order of the High Court dated 06.04.2015 passed by a Division Bench of the High Court of Chhattisgarh dismissing the Criminal Appeal No.3 of 2010 titled Statrugan vs. State of Chhattisgarh, whereby the conviction under section 302, Indian Penal Code¹ and the sentence to undergo life imprisonment along with fine of Rs.5,000/- passed by the IInd Additional Sessions Judge, Baloda Bazar, Dist.Raipur in Sessions Trial No.41 of 2009 has been affirmed. The appellant is in jail and has already undergone almost 15 years incarceration.

2. According to the prosecution story, Vijay Kumar (PW1) uncle of the deceased (Jagat Ram) lodged a First Information Report at 04:30 AM on 20.07.2008 that on the previous night at about 08.00 PM while he was sitting in his house, his nephew Jagat was returning on a cycle and he heard his nephew shouting, while passing in front of the house of one Chandu “Kaka Vijay Singh run, Shatrugan has assaulted me with a Tabbal”. The exact statement as recorded in vernacular is: “काका विजय सिंह दौड़ो, मेरे को शत्रुघ्न तबल से मार दिया है” ।

3. On hearing the said cry for help, the informant along with his wife, ran to the lane in front of the house of Chandu Lal and saw that his nephew Jagat was lying on the road and that Shatrugan was moving on his cycle along with Tabbal towards his house. His nephew told him that Shatrugan, in order to murder him, had assaulted with Tabbal on his neck and thereafter escaped. His nephew was bleeding. In a loud voice, he called for help to save his nephew who had been assaulted by Shatrugan. On his call, his daughter and other residents of the neighbourhood collected. Father of the deceased, Ajit Ram took the injured on Motor Cycle of Sitaram for medical help. After some time, he returned and informed that Jagat had died. The said complaint was registered as FIR No.215 of 2008 at Police Station Kasdol, District Raipur. Investigation was entrusted to Investigating Officer² (PW-16) who visited the spot, got the inquest prepared, recorded the statements of the informants as well as the witnesses, arrested the appellant and recovered various

¹ IPC

² IO

articles including the weapon of assault, other clothes containing blood stains and also recovered the cycle. The post-mortem was conducted on 20.07.2008 itself at 02.00 PM. Following ante mortem injuries were noticed:

- Deep sharp incised wound on the left side of the neck measuring 5cm in length, 3 cm wide and 3cm deep. B
- Associated blood vessels were also cut and there was heavy bleeding.

4. After completing the investigation, the chargesheet was submitted under section 302 IPC. The case was committed to the Sessions Court. The Trial Judge framed the charge on 20.07.2008 which the appellant denied and claimed to be tried. The prosecution examined 16 witnesses and produced 21 documents. The defence did not examine any witness nor did it lead any documentary evidence. C

5. The Trial Court, after considering the material on record, came to the conclusion that the prosecution had proved beyond reasonable doubt that it was the appellant who had committed the crime and accordingly convicted him for culpable homicide amounting to murder under section 302 IPC and awarded him sentence to undergo life imprisonment along with fine of Rs.5,000/-. The said conviction has been affirmed by the High Court. Hence, this appeal. D E

6. We have heard learned counsel for the parties and perused the original record also.

7. According to Ms. Anu Gupta, learned counsel for the appellant, both the Courts below committed serious error of law by recording conviction. They relied upon inadmissible evidence and at the same time ignored the relevant admissible evidence. The witnesses of fact were not consistent and did not inspire confidence. The medical evidence did not support the prosecution story. There was no direct evidence of the commission of crime. The case was based on circumstantial and hearsay evidence. No motive had been set up by the prosecution either in the First Information Report or the statements recorded during the investigation or even in the evidence led during trial. It was a case of false implication due to various factors elicited in the cross-examination. Learned counsel has taken us to the relevant evidence which shall be shortly discussed. It was thus submitted that the appellant deserves to be acquitted. F G H

A 8. On the other hand, Shri Sumeer Sodhi, learned counsel for the
State of Chhattisgarh submitted that the prosecution had fully proved
the commission of crime by cogent material. The defence could not
disturb or shake the evidence of the prosecution witnesses despite availing
the opportunity of cross-examination. There is no reason or justification
B to interfere with the concurrent findings recorded by both the Courts
below. Mr. Sodhi has also taken us to the relevant part of the evidence in
order to discredit the arguments and the evidence shown to us by the
learned counsel for the appellant. He thus submitted that the appeal
deserves dismissal.

C 9. PW-1 is the informant and uncle of the deceased. He claims to
be the first person to arrive at the scene of the crime. Before discussing
his testimony, it would be appropriate to comment on the site plan prepared
by the IO to show the location and the distance of the place where the
incident took place and the house of the informant. In the site plan, the
place of assault is shown with alphabet “A” which is in front of the
D house of Chandu. On the other side of the lane, a little away and diagonally
from the house of Chandu is the house of Vijay Kumar, the informant
(PW-1) which has been marked by alphabet “C”. A little further away
from the house of PW-1 is the house of deceased Jagat marked with
alphabet “B”. Alphabet ‘D’ is marked to indicate the place where the
E cycle of deceased was lying. The distance between “A” to “C” is stated
to be 14.80 metres (48.56 ft.), the distance between “A” and “B” is 250
metres (820.21 ft.) and the distance between “A” to “D” is shown to be
13.30 metres (43.64 ft.).

F 10. With the above picture in mind as depicted by the site plan, the
evidence of the witnesses of fact is being discussed. It would be relevant
to note that evidence as recorded is in close proximity and within a
reasonable time from the date of occurrence (within a few months on
11.02.2009). As such the facts would be still fresh in the minds of the
witnesses.

G 11. PW-1 states that the incident happened about 4 months back
at about 08.00PM when Jagat shouted that Shatrughan has assaulted
him. He rushed to the place of occurrence and saw the accused running
away and the Tabbal was lying there. **The deceased had already fell**
unconscious by that time with a deep cut at the neck from which
blood was flowing. Upon his call, Chandu, Firtu, Akshay and his daughter
H had all come running. The incident had actually taken place in front of

house of Chandu and Akshay. The deceased was taken to Dr. Sahu who declared him brought dead and then he went to lodge the report at the Police Station. **He also states that he does not know why the appellant assaulted his nephew.** He then acknowledges the signature on First Information Report (Ex. P1). He also acknowledges his signature on Merg report (Ex. P2).

12. In his cross-examination, PW-1 admits that after the house of Chandu there is house of one Ram Singh and after the house of Ram Singh, next is his house. He further admits that there were some guests in the house of his brother Ajit Ram i.e. the house of the deceased. **He does not deny the fact that the guests at his brother's place were served alcohol** along with food and he **does not deny that maybe the deceased had also consumed alcohol with his guests.** In paragraph 9 of the cross-examination, he states that Akshay and Firtu had come to the spot on his calling. Chandu was not there, as he had gone out and he admits that Chandu did not come to the spot on his calling. **He denies the suggestion that he had come out on the calling of Firtu. He admits that the deceased was not talking at the time when he came there as he was already unconscious. He then admits that the appellant, along with one Rajendra, had lodged a complaint against the Sarpanch Khemraj as also the wife of one Munnu Lal.** He admits that **he had no dispute with the appellant nor did the deceased had any dispute with him.** Then, on his own he states that he did not know that if there was any dispute between deceased and the appellant. He denies the suggestion that he had actually not seen the appellant escaping from the spot as it was a dark night. He then **admits that the Sarpanch had accompanied him to the Police Station.** Then he explains the delay in reaching the Police Station as, according to him, he first went to Baya Chowki and then from there, he went to Kasdol Police Station. He denies the suggestion that he actually did not see the appellant and had falsely implicated him.

13. PW-2 is Sukhnantin Bai. She is wife of PW-1 Vijay Kumar. She states that on the fateful day at about 07.30PM when she was at her home, she heard the voice of her nephew Jagat that Shatrughan has assaulted him. On hearing the said shout, her husband Vijay Kumar went out and thereafter she followed. **When she reached the place of occurrence, her nephew was lying in the lane and the appellant was not there.** She states in her cross-examination that **there was a**

A **complaint against Sarpanch.** She also admits that **there was no dispute between the deceased and the appellant.** She also admits that **her nephew had helped Shatrughan and Rajendra in that complaint against the Sarpanch as a result the Sarpanch had to give a public apology.**

B 14. PW-3 is Kirantin Bai, widow of the deceased. She only states that her husband was murdered about 5-6 months ago. Her mother-in-law informed her that the appellant had assaulted her husband with a Tabbal. She also states that **the deceased was not in a position to talk when she saw him lying on the lane** and thereafter, he was taken away by the relatives. No cross-examination has been done from this witness.

C 15. PW-4 is Yashoda Kumari, daughter of PW-1, Vijay Kumar. She stated that she only heard the deceased shouting that Shatrughan had assaulted. Upon hearing the same, first her father went out, then her mother went out and then she came out and saw that there was an injury on the neck of the deceased. In the cross-examination, she admits that **there was no enmity between the deceased and the appellant.** She also admits that her house is across the lane about two houses away from the frontage of Chandu's house. She **admits that there was no light at the time when she had come out and it was dark.** She also admits the suggestion that **house of Firtu Ram is closest to Chandu Lal's house and her house is little away.** She also states that **there was no one else at the time when she came out and she had not seen the appellant.**

D 16. PW-5 is Lakhan Kumar son of Chetan Lal. He is a witness of the inquest and also of the recovery of the weapon of the assault and the cycle of the appellant. He has proved the recovery memos Ex-P3, Ex-P4, Ex-P5, Ex-P6 and Ex-P7. The cycle of the deceased was also recovered and the recovery memo Ex-P8 was also signed by him. The recovery of clothes vide Ex-P9 was also signed by him and the recovery of plain earth and blood-stained earth vide Ex-P10 was also signed by him. He is also signatory of site plan Ex-P11 and the arrest memo of the appellant Ex-P12. In his cross-examination, he states that he is brother of the deceased. In paragraph 9 of the cross-examination, **he states a meeting of the villagers was held at night in the village.** He then denies the suggestion **that the appellant in that meeting denied**

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assaulting the deceased and instead had stated that the deceased had tripped and fallen. He further denies the fact that the appellant had said the same thing to Deepak and Narottam. In paragraph 10, **he admits that the Sarpanch was there in the meeting and he also admits that in the said meeting, the appellant had said that while he was passing, he saw the deceased had fallen on the 'Pharsa'.** He also states that he was not aware at what time the inquest took place and he also states that the contents of the recovery memos and inquest were not read out to him.

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17. PW-6 is Dr. Sunil Singh who had conducted the autopsy on the dead body of the deceased on 20.07.2008 at 02.00 PM. He has proved the Post Mortem report Ex.-P13. In his examination-in-chief, he states that on 20.07.2008, the Tabbal was sent to him for inspection. He has mentioned the length and breadth of the same in his report and that the injury on the deceased could be possible from the said weapon and that he had advised that the Tabbal be sent for Chemical examination. This report he had proved and is marked as Ex.-P14.

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18. He further states that on 21.07.2008, he had **examined the appellant and had noticed some scratches on his right leg** for which he had prepared an injury report which he proved and marked as Ex.-P15. He also states that on 20.07.2008, the clothes on the body of the deceased had blood-stains on it and he had advised that the same be sent for chemical examination. This report, he also proved and marked as Ex.-P16.

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19. In his cross-examination, he **states that the length of the Tabbal (metal part) was 13.5 cm. He further states that length of the injury on the deceased was 5 cm.** He further states that it is correct in case if the said weapon is used for assault, then the length of the injury would also have been 13.5 cm. He also states **that it is correct that from the weapon recovered, the injury could not have been caused on the neck of the deceased.** He again admits that the clothes which were seized from the appellant had some stains like blood but he was not sure whether it was human blood or not. He **also admits that in the stomach of the deceased sufficient quantity of alcohol was found and it takes about 18 hours for the alcohol to pass out from the body.** He also states **that it is possible that the deceased could have received the injury in an accident.**

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A 20. PW-7 is witness of inquest and the site plan and also of the recovery, nothing much turns upon his statement. He has given a similar kind of statement as the other witness to recovery and inquest.

B 21. PW-8 is Ajit Ram, father of the deceased. He states that when he reached home around 08.00 PM after carrying out some purchases, his brother Vijay Kumar (PW-1) informed that his son Jagat had shouted that the appellant had assaulted him. He has proved some police papers. He admits that he had guests at home on that day. He also states that deceased also used to stay with him. **He admits of consuming alcohol but insofar his son Jagat is concerned he states that he does not know whether he used to consume alcohol or not.** C He also admits that **there was no enmity between deceased and the appellant.** He, however, claims that he had no knowledge of complaint being made by the appellant against the Sarpanch and his son Jagat supporting the appellant. He has denied the suggestion that he was **falsely taking the name of the appellant during the trial as** D **prior to it he had never taken his name during investigation.**

22. PW-9 is Firtu, neighbour of Chandu Lal. He states that while he was about to have dinner at around 7-8 PM, he heard some noise from outside and then there was another call that Jagat had been murdered and that the appellant has murdered him, then, he came out. E Jagat was lying in the lane with the injury on his neck and Vijay Kumar told him that the appellant had committed this crime. **He admits that Jagat, the deceased did not tell him anything.** He also states that others like Akshay and Mannu had also come. Jagat, the deceased was unconscious and he was taken to the hospital but he died on the way. He states that Shatrughan, the appellant while passing through his house F had called him and thereafter, he had heard the voice of Jagat. He also **states that the appellant, while crossing his house on his cycle, had called him and asked him as to what was he cooking.** He then states that PW-1 Vijay Kumar has told him that it was the appellant who had assaulted and that he had communicated this to IO but he has not G mentioned in the statement under section 161 for which he cannot tell the reason. He **further states that he never heard Jagat shouting and he had not seen the appellant.** It was **only on the call of Vijay Kumar that he had come out.**

H 23. PW-10 is Seepat Bai, wife of Firtu. She only states that in the night, she heard people shouting run-run. When she came out, her husband

was already outside and then she was told that the appellant had assaulted the deceased. A

24. PW-11 is Khemraj Singh. He is Sarpanch of the village. He states that **he had accompanied PW-1 to the outpost and then to the Police Station.** He then denies the suggestion that the appellant had made a complaint against him and others regarding mis-appropriation of funds. He further denied the suggestion that Jagat, the deceased had supported Shatrughan and Rajendra in the complaint. However, **he admits that on the complaint the Project Officer and others had come for inquiry.** Other suggestions relating to the complaint and inquiry are denied by him. B C

25. PW-12 is one Akshay Kumar. He states that on the date of the incident in the night, he heard lot of noise and commotion and people shouting run-run, upon which he came out of the house. He saw PW-1, his wife and his daughter. At that time, PW-1 told him that the appellant had assaulted the deceased with the Tabbal. He further states in the cross-examination that when he came out, Firtu Ram, Sarpanch & others had not come there and that he had not seen the appellant at that place. He states that **he knows that there was no enmity between the appellant and the deceased.** He is the next-door neighbour of informant PW-1. D

26. PW-13 is Chandu. He states that the murder of Jagat had taken place in front of his house in the lane and that he had heard that the appellant had assaulted him. E

27. PW-14 is Karan Singh who states that about 07.00 PM in the evening on 19.07.2008, he was changing clothes as he got wet while returning from work. Vijay Kumar came to his house and told him that Jagat had fallen down and that Jagat was taken for treatment. It was after that Lakhan and Laxman told him that it was the appellant who had assaulted the deceased. He is witness to the memo (Ex-P18) prepared for handing over the dead body to the family of the deceased. In the cross-examination he states that he had heard that Sarpanch Khemraj had accompanied the injured to the hospital. Further he had also gone to the Police Station along with Vijay Kumar (PW-1) and Sarpanch Khemraj. He further states that they reached the Police Station at 06.00 AM although police had arrived in the village at 04.00 AM. FIR was registered at 07.00 AM and they returned to the village in the evening at 04.00 PM. F G

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A 28. PW-15 is one Abhiram Sahu. He had prepared the site plan and proved it, which was marked as Ex.-P19.

B 29. PW-16, Dinu Ram Mandavi, Inspector is the Investigating Officer. He has stated about the Merg Report dated 20.07.2008 registered as Merg No.82 of 2008 which he proved as Ex-P2. He further proves the FIR as Ex.-P1, the site plan, the inquest, and its intimation as Ex-P3 and Ex-P4. Further, he proves Ex-P13 is the request for Post Mortem and the recovery memo of the Tabbal (Ex-P14) also contains his signatures. He also proves the other Police papers and further proves the recoveries made during the investigation. He tried to explain the delay in registering the FIR and, according to him, the Merg report having been registered, the criminal machinery had been put into motion. He **has denied the suggestion that in fact in the initial Merg report, the name of the appellant was not there and it was only later on that his name had been added.** He further states that **he could not find any reason as to what was the motive for committing the crime.** All other suggestions have been denied by him.

E 30. In the examination under section 313 Code of Criminal Procedure³, the entire evidence against the appellant was put to him which he has denied. He however, stated that he was doing his duty as Chowkidar in the Forest Department and **on account of personal enmity he had been falsely implicated.** He also states that he wants to examine Forest Range Officer Mr. Sinha and one Mr. Rajendra Thakur. However, no evidence was led on behalf of the defence.

F 31. The first question to be considered is as to whether any of the eye-witnesses had actually seen the occurrence of the appellant assaulting the deceased. The answer is 'no'.

32. Following are the reasons for the above conclusion:

G a) According to the informant (PW-1), he was the first person to arrive at the site along with his wife upon hearing the cry for help from the deceased that Shatrughan was assaulting him with a *tabbal*. When he reached the site he saw that the deceased was lying on the road and the appellant was moving towards his house on a cycle along with *tabbal*. This is the FIR version.

H ³ CrPC

- b) In his deposition PW 1 states that when he rushed to the place of occurrence, he saw the accused running away and the *tabbal* was lying there. The deceased had fallen unconscious and there was deep cut on his neck with blood flowing from the injury. Upon his call, the other neighbours and his daughter all came out from their houses. A
- c) PW-14 who has stated that PW-1 only informed him that Jagat (deceased) had been assaulted and had been taken to the hospital. PW-1 did not inform PW-14 that it was the appellant who had assaulted. PW-14 states that it was later on that Lakhan and Laxman who informed about the appellant assaulting the deceased. The other eye-witnesses whose testimonies have already been narrated above have not stated that they saw the appellant assaulting the deceased. B C
- d) PW-2 is the wife of PW-1, PW-3 is the widow of the deceased, PW-4 is daughter of PW-1, are the other witnesses who reached the place of occurrence. None of them have stated that they have seen the appellant assaulting the deceased. D
- e) Thus, the only evidence is of PW-1 stating that the appellant was running away from the place of occurrence when he reached there. He has himself stated that the deceased was already unconscious as such was not in a condition to speak. E
- f) There is one more aspect to be considered as to whether the cry given by the deceased could have been made as stated. Normally in villages nobody takes the name of elders and especially their uncles. PW 1 Vijay Kumar is the uncle (father's brother) of the deceased. Under normal course the deceased would have called *kaka* only and would not take his name to say that 'kaka Vijay Singh run, Shatrughan is assaulting me with a *tabbal*' ("काका विजय सिंह दौड़ो, मेरे को शत्रुघ्न तबल से मार दिया है"). F G
- g) In the First Information Report it is stated that when PW 1 came out he saw Shatrughan running towards his house on a cycle along with *tabbal* but in the deposition before the H

- A Trial Court it is stated that when he reached the place of occurrence the appellant was running and the *tabbal* was lying there and then he states that the deceased had only shouted that the appellant is assaulting him.
- B h) Another aspect to be considered is whether after receiving the said injury the deceased could have shouted and if he had shouted before being assaulted then the situation would have been different. It would have been a one to one and he could have resisted the assault. The fact is there is only one injury on the neck.
- C 33. In view of the above, the prosecution story as set out does not appear to be a probable story and the supporting evidence led during trial of the witnesses of fact also does not inspire confidence. Rather there are material contradictions.
- D 34. On the other hand, the defence has been successful in making a serious dent in the prosecution case for the following reasons:
- E a) The first point is that no motive has been set up by the prosecution as to why the appellant would assault the deceased. All the witnesses of fact who are family members have stated that there was no enmity between the appellant and the deceased. Once there is no eye-witness of the incident the prosecution will have to establish a motive for the commission of the crime inasmuch as in a case of direct evidence, motive may not have a major role. If there is no motive setup or proved and there are direct eye-witnesses, motive may lose its importance but in the present case as
- F admittedly no one has seen the occurrence, the motive has an important role to play.
- G b) The defence during the cross-examination has elicited that the Sarpanch Khemraj had grouse against the appellant for the reason that the appellant had made a complaint regarding misappropriation of government funds and also of committing major illegality in distribution of essential commodities. On the said complaint an enquiry was made where the Sarpanch Khemraj PW 11 had to tender public apology.
- H c) Defence has also suggested that in the night itself after the deceased was taken to the hospital, a meeting was called

by the Sarpanch Khemraj where the appellant was forced to confess. The said meeting has been admitted by PW-5. It was suggested that appellant in the meeting had stated that he had seen the deceased tripping and falling on the sharp object resulting into the injury which proved fatal.

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d) It is possible that on account of the influence of the Sarpanch Khemraj that the appellant has been falsely implicated.

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e) The defence also had elicited during cross-examination of PW 6 that the weapon of assault recovered and produced before him could not have caused the injury in view of the size of the weapon of assault and the size of the injury which had no match.

C

f) The defence had also suggested that in fact the deceased was heavily drunk and had fallen on a sharp-edged object because of which he had received the injury. This appears probable for two reasons: firstly, that PW 6 had stated that there was sufficient alcohol in the body of the deceased and secondly that the weapon of assault produced by the prosecution did not match with the injury. The injury could have been caused by the deceased slipping and falling on a sharp object.

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35. From the above narration of the evidence and analysis, it is evident that the testimony of PW 1 was not reliable and could not have formed the basis of conviction. Apparently, he was influenced by Sarpanch Khemraj whose active participation in the proceedings subsequent to the incident cannot be ruled out. The medical evidence did not support the prosecution case as the weapon of assault could not have caused injury on the deceased as noticed in the post-mortem report. There was no motive as to why the appellant would commit the murder of an acquaintance and a friend for no reason. The defence version that the deceased was under the influence of alcohol and could have tripped and fallen on a sharp object resulting into the ante-mortem injury reported in the post-mortem was quite possible. The same is clearly borne out from the record. The explanation for delayed lodging of the FIR is not satisfactory.

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36. In view of the above discussion, the prosecution had failed to establish the charge.

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- A 37. For all the reasons explained above, the appellant would be entitled to acquittal. The appeal is accordingly allowed. The conviction and sentence of the appellant are set aside. He is acquitted of all the charges. The appellant is in custody. He shall be released forthwith, if not wanted in any other case.
- B 38. Pending applications are disposed of.

Nidhi Jain
(Assisted by : Tamana, LCRA)

Appeal allowed.