

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 439 of 2010**

1. Gokul Baghel, S/o Latkhar Baghel, aged about 43 years,
2. Kanhaiya Baghel S/o Latkher Baghel, aged about 40 years, Both R/o vill. Khapari, Ps Kurud, Dhamtari (C.G.)

---- Appellants (in jail)**Versus**

1. State of Chhattisgarh, through Police Station Kurud, District Dhamtari (C.G.)

---- Respondent**And****CRA No. 677 Of 2010**

1. Smt. Santoshi Baghel, W/o Kanhaiya Baghel, aged about 24 years
2. Sudhe Singh S/o Bhukhau, aged about 70 years, R/o vill. Chhura, PS Gariyaband, Dist. Raipur (C.G.)

---- Appellants (in Jail)**Vs**

1. State of Chhattisgarh, through Station House Officer, Police Station Kurud, Dist. Dhamtari.

---- Respondent

For Appellants in Cr.A.No.439 of 2010	:	Mr. Manoj Mishra, Advocate.
For Appellants in Cr.A.No.677 of 2010	:	Ms. Anita Suryawanshi, Advocate
For Respondent/State in both appeals	:	Mr. Roshan Dubey, Panel Lawyer

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgement on Board by T.P.Sharma,

23/04/2015

Criminal Appeal No.439 and 677 of 2010 filed by the appellants against the common judgment dated 28/04/2010 are being disposed of by this common judgment.

2 By filing the above criminal appeals, the appellants challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 28.04.2010 passed in Sessions Trial No. 30/2009 by the Additional Sessions Judge (F.T.C.), Dhamtari, whereby and whereunder after holding the appellants guilty for causing homicidal death amounting to murder of Kamdev in sharing common intention and caused injury to Smt. Lakkhi Bai, the trial Court convicted the appellants under Section 302/34 of the I.P.C. and sentenced them to imprisonment for life with fine of Rs.500/- and in default of payment of fine to undergo additional RI for one month each. In addition to the above conviction and sentence, appellants Santoshi and Sudhe Singh were convicted under Section 323 of the I.P.C. and sentenced to undergo RI for six months each.

3. Conviction is impugned on the ground that without there being any iota of evidence against the appellants, the Court below convicted and sentenced the appellants and thereby committed illegality.

4. As per case of the prosecution, on 10.04.2009 at about 3.00 pm on account of previous dispute appellants abused deceased Kamdev and his wife Smt. Lakkhi P.W.06. The appellants assaulted by stick and knife. Appellant Kanhaiya assaulted Kamdev (deceased) by knife and caused fatal injuries to him. P.W.6 Smt. Lakkhi was trying to save her husband, then appellant Sudhe Singh assaulted her by stick over her head. P.W.6 Smt. Lakkhi, P.W.15 Anil Baghel and P.W.16 Anita Baghel brought the injured Mission Hospital, Dhamtari. P.W.6 Smt. Lakkhi lodged *Dehati Nalishi* at Dhamtari City Kotwali vide Ex.P.14. Injured Kamdev was examined by P.W.18 Dr. Veena Chatterjee vide Ex.P.33 and noticed the following injuries upon the body of Kamdev, who was admitted for treatment in Dhamtari Christian Hospital:

- i. Laceration cut injury of 4 cm x 4 cm x deep over left side of the chest.
- ii. Laceration cut injury of left side of the chest of 4 cm x 4 cm.
- iii. Laceration cut injury over middle chest of 4 cm x deep.

Likewise, she also examined the injured Smt. Lakkhi Bai (P.W.6) vide Ex.P.34 and found one laceration wound over right parietal region of 4 cm x bony deep.

5. During the course of treatment, Kamdev died on 21.04.2009. Death was intimated to the Police vide Ex.P.26. Merg intimation was recorded vide Ex.P.23 and F.I.R. was recorded vide Ex.P.22 at Police Station Kurud. Finally, numbered F.I.R. was lodged at Dhamtari Police Station vide Ex.P.28.

6. After summoning the witnesses, inquest over the dead body was prepared vide Ex.P.1. Cloths of the deceased were seized from P.W.6 Smt. Lakkhi Bai vide Ex.P.3. Dead body was sent for autopsy to Government Hospital, Dhamtari, vide Ex.P.8A. P.W.5 Dr. C.L.Sahu conducted autopsy vide Ex.P.8 and found following injuries:

- i. Stitched wound 16 cm in length, which was 2 cm above left side umbilicus.
- ii. Stab wound of 2 cm x 2 cm x 4 cm at 8 cm left nipple.
- iii. Stab wound of 1 x 1 cm x 2 cm over right side umbilicus.
- iv. Stab wound of $\frac{1}{2}$ x $\frac{1}{2}$ x $1\frac{1}{2}$ x 6 cm below from xiphisternum.
- v. Stab wound of 1 cm. X 1 cm x 1.5 cm over left nipple of 7.5 cm.

Mode of death was shock and death was homicidal in nature.

7. Spot map was prepared vide Ex.P.15. Bloodstained and plain we soils were recovered from the spot vide Ex.P.16. One stick was seized from the appellant Santoshi vide Ex.P.18. Appellant Kanhaiya was taken into custody. He made disclosure statement of knife vide Ex.P.19. The same was recovered at his instance vide Ex.P.21. Stick was seized from the appellant Sudhe Singh vide Ex.P.20. Patwari prepared spot map vide Ex.P.25. Sealed cloths of the deceased were seized vide Ex.P.24. Seized articles were sent for chemical examination to F.S.L. vide Ex.P.31 and presence of blood upon the knife and sticks has been confirmed vide report Ex.P.36.

8. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

9. After completion of investigation, charge sheet has been filed before the Court of J.M.F.C. Kurud, who in turn committed the case to the Court of Sessions, Dhamtari. The learned Additional Sessions Judge received the case on transfer for its trial.

10. In order to prove the guilt of the appellants, the prosecution examined as many as 18 witnesses. The accused persons were examined under Section 313 of the Code wherein they denied the circumstances appearing against them and innocence and false implication in crime in question was claimed.

11. After providing an opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellants as aforementioned.

12. We have heard learned counsel for the parties and perused the trial Court's record including judgment impugned.

13. Mr. Manoj Mishra and Ms. Anita Suryawanishi, learned counsel for the appellants, vehemently argued that conviction of the appellants is substantially based on the evidence of P.W.6 Smt. Lakkhi Bai, P.W.15 Anil Baghel and P.W.16 Anita Baghel, but, their evidence does not inspire confidence and trustworthy, they are interested witnesses as well as relative witnesses, i.e., wife and children of the deceased and there was no enmity between them. Therefore, their evidence without corroboration is not sufficient for placing reliance, that too, for conviction of the appellants under Section 302/34 of the I.P.C. They further argued that even if the evidence of aforesaid witnesses is considered relating to causing injury to Smt. Lakkhi Bai by the appellant Sudhe Singh and by the appellant Santoshi Baghel by using hands and fists, then their evidence is not safe because the said appellants have not actively participated and have not shared common intention in causing injuries to them. It was next argued by them that after receiving injuries, deceased

died after 11 days of the incident and none of the injuries were visible. Even the appellants did not have any intention and the weapon of offence, i.e., knife is a small instrument, which shows that they have no motive for commission of offence. At the most the act attributed to the appellant Kanhaiya may be the offence under Section 304 Part II of the I.P.C. and not under Section 302/34 of the I.P.C.

14. Mr. Roshan Dubey, learned counsel for the State, submitted that the evidence of P.W.6 Smt. Lakkhi Bai, P.W.15 Anil Baghel and P.W.16 Anita Baghel is sufficient for proving the guilt of the appellants. After appreciating the evidence available on record, the Court below has rightly convicted and sentenced the appellants as aforesaid.

15. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced by the prosecution. In the present case, homicidal death as a result of fatal injuries found over the body of deceased Kamdev has not been substantially disputed on behalf of the appellants, but, on the other hand also established by the evidence of P.W.6 Smt. Lakkhi Bai, P.W.15 Anil Baghel and P.W.16 Anita Baghel, merg intimation Ex.P.23, *Dehati Nalishi* Ex.P.14, F.I.R. Ex.P. 22 and P.28, P.W.5 C.L.Sahu and autopsy report Ex.P.8 as well as injury report Ex.P.33. Injury found over the body of Smt. Lakkhi Bai has also not been substantially disputed on behalf of appellants, but, has also been established by the evidence of P.W.6 Smt. Lakkhi Bai, P.W.15 Anil Baghel and P.W.16 Anita Baghel, P.W.18 Dr. Veena Chatterjee and injury report Ex.P.34.

16. As regards complicity of the appellants in crime in question, conviction of the appellants is substantially based on the evidence of P.W.6 Smt. Lakkhi Bai, P.W.15 Anil Baghel and P.W.16 Anita Baghel. As per evidence of P.W.6 Lakkhi Bai, initially on account of previous dispute, appellant Kanhaiya hurled abuses to her and appellant Gokul threatened to kill her whereupon her son P.W.15 Anil Baghel replied him that hand-pump belonged to them and at any time they may go to it and he will call for a meeting in this regard in the evening. On arrival to house, this witness

explained him about the incident and objected him to go to hand-pump, but, Kamdev proceeded towards his field. Thereafter, her daughter P.W.16 Anita raised hue and cry by informing her that her husband was assaulting by knife whereupon this witness rushed the spot where she saw the appellant Gokul caught hold of deceased whereas appellant Kanhaiya assaulted him by knife. This witness tried to save her husband but appellant Sudhe Singh caused simple injury to her by stick. Appellant Kanhaiya caused multiple injuries to deceased Kamdev. P.W.15 Anil Baghel and P.W.16 Anita Baghel corroborated the evidence of P.W.6 Smt. Lakkhi Bai. The defence has cross-examined these witnesses but has not been able to elicit anything in their cross-examination to discredit their testimony to the extent that they have witnessed the incident, P.W.6 Smt. Lakkhi Bai has not received any injury, appellant – Gokul was not holding deceased and appellant Kanhaiya did not assault deceased by knife or the appellant Sudhe Singh did not cause any injury to P.W.6 Smt. Lakkhi Bai. The evidence of above witnesses alone is sufficient for proving the fact that appellant Kanhaiya has caused fatal injuries to Kamdev, as a result of such injuries, finally Kamdev died after 11 days of the incident. At the time of causing injuries, appellant Gokul was actively participated by holding Kamdev in order to facilitate the appellant Kanhaiya assaulting him by knife. This evidence is also sufficient to prove the fact that appellant Sudhe Singh caused injury to P.W.6 Smt. Lakkhi Bai.

17. As regards question of motive, in case of direct evidence, motive loses its importance. Even otherwise, it is aid in criminality and can be inferred from the kind of weapon used, part of body hit, nature of injury and other circumstances. In the present case, as per clear evidence of P.W.6 Smt. Lakkhi Bai, P.W.15 Anil Baghel and P.W.16 Anita Bathel on account of previous dispute appellant Gokul was holding deceased Kamdev and appellant Kanhaiya assaulted Kamdev by knife causing as many as 5 injuries over his abdomen whereas other appellants were not having any knife or any other weapon. Appellant Sudhe Singh caused injury to P.W.6 Smt. Lakkhi Bai while she was saving her husband from the clutches of the appellants. Appellant Sudhe Singh was holding the stick but has not caused any injury to

deceased Kamdev. The evidence of P.W.6 Smt. Lakhi Bai, P.W.15 Anil Baghel and P.W.16 Anita Baghel relating to incident happened, in which, the appellants actively parties clearly reveals that appellant Kanhaiya has caused homicidal death amounting to murder of Kamdev in sharing common intention with the appellant Gokul. The evidence adduced on behalf of the prosecution is not sufficient fastening liability upon the appellant Santoshi Baghel. Likewise, the evidence adduced on behalf of the prosecution is also not sufficient fastening liability upon the appellant Sudhe Singh in causing homicidal death of Kamdev in sharing common intention with the appellant Gokul and Kanhaiya as the appellant Sudhe Singh has simply caused injury to Smt. Lakkhi Bai (P.W.6).

18. After appreciating the evidence available on record, the learned Additional Sessions Judge has convicted all the appellants under Section 302/34 of the I.P.C. and thereby committed illegality.

19. Consequently, Criminal Appeal No. 439 of 2010 filed by the appellants Gokul Baghel and Kanhaiya Baghel is liable to be and is hereby dismissed. Conviction of the appellants Kanhaiya Baghel and Gokul Baghel under Section 302/34 of the I.P.C. is hereby affirmed. Criminal Appeal No. 677 of 2010 filed on behalf of Smt. Santoshi Baghel and Sudhe Singh is partly allowed. Appellant Santoshi Baghel is acquitted of the charge under Section 302/34 and 323 of the I.P.C. Similarly, appellant Sudhe Singh is also acquitted of the charge under Section 302/34 of the I.P.C. Conviction under Section 323 of the I.P.C. is hereby maintained and as he has already suffered the sentence awarded to him, therefore, he shall be released forthwith, if not required in any other case. Appellant Santoshi Baghel shall also be released forthwith, if not required in any other case.

(T.P.Sharma)
JUDGE

(I.S.Uboweja)
JUDGE