

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 421 of 2010**

1. Sukhdev, S/o Badriprasad Yadav, aged about 45 years.
2. Ramkishun S/o Badriprasad Yadav, aged about 38 years.

Both R/o village Nawapara, P.S. Nawagarh, District - Janjgir-Champa

---- Appellants

Versus

State of Chhattisgarh, Through District Magistrate Janjgir, Distt.-Janjgir-Champa

---- Respondent

CRA No. 402 of 2010

1. Pitamber, S/o Bedram Yadav, aged about 55 years.
2. Chhedilal, S/o Vishal Yadav, aged about 53 years

Both R/o Village Navapara, P.S. Navagarh, District - Janjgir-Champa

---- Appellants

Vs

State of Chhattisgarh, Through District Magistrate Janjgir, Distt.-Janjgir-Champa

---- Respondent

CRA No. 480 of 2010

Shishupal S/o Shivnandan Sahu, aged about 40 years, R/o Village Nawapara, P.S. House - Nawagarh, District - Janjgir-Champa

---- Appellant

Vs

State of Chhattisgarh, Through District Magistrate Janjgir, Distt.-Janjgir-Champa

---- Respondent

CRA No. 487 of 2010

Sonau S/o Badri Prasad Yadav, aged about 35 years, R/o Nawapara, P.S. Nawagarh, District - Janjgir-Champa

---- Appellants

Vs

State of Chhattisgarh, Through District Magistrate Janjgir, Distt.-Janjgir-Champa

---- Respondent

And

CRA No. 416 of 2010

Anand Ram @ Nanki S/o Gokul Yadav, aged about 50 years, R/o Village - Nawapara, P.S. Nawagarh, District - Janjgir-Champa

---- Appellant

Vs

State of Chhattisgarh, Through District Magistrate Janjgir, Distt.-Janjgir-Champa

---- Respondent

For Appellants in Cr.A. No. 421 of 2010	: Shri Basant Dewangan
For Appellant in Cr.A. No. 416 of 2010	: Smt. Kiran Jain
For Appellant in Cr.A. No. 480 of 2010	: Shri Ashok Kumar Verma
For Appellants in Cr.A. Nos. 402 & 487 of 2010	: Shri Rakesh Thakur
For Respondent / State Advocate.	: Shri Satish Gupta, Govt.

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

JUDGMENT

11/03/2015

Per, T.P. Sharma, J.

1. These Criminal Appeals filed against common judgment dated 17.05.2010 passed by the Sessions Judge, Janjgir Champa in Sessions Trial- 144 of 2009 are being disposed of by this common judgment.
2. By filing these Criminal Appeals, the appellants had challenged the legality and propriety of the common judgment of conviction and order of sentence dated 17.05.2010, passed by the Sessions Judge, Janjgir Champa in Sessions Trial- 144 of 2009, whereby and whereunder after holding the appellants guilty for forming unlawful assembly, armed with deadly weapons, having common object for causing homicidal death, amounting to murder of deceased- Sanjay & Darsu and attempt to commit murder of Johrik (PW-11), injured witness and in furtherance of common object of unlawful assembly, the trial Court has convicted and sentenced

the appellants in the following manner :

CONVICTION	SENTENCE
Section 148 of IPC	1 year RI and fine of Rs.500. In default of payment of fine, one month RI
Section 302 of IPC (for murder of Sanjay Sahu)	Life imprisonment and fine of Rs.2,000/-. In default of payment of fine, 6 months RI
Section 302 of IPC (for murder of Darsu)	Life imprisonment and fine of Rs.2,000/-. In default of payment of fine, 6 months RI
Under Section 307 of IPC	RI for seven years and fine of Rs.1,000/-. In default of payment of fine, 3 months RI. All the sentences run concurrently

3. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellants as aforementioned and thereby committed an illegality.

4. As per case of the prosecution, on account of previous dispute, on 24.03.2009 at about 11 pm, while coming back after lodging report in the Police Station, unfortunate deceased- Sanjay and Darsu, Johrik, Motilal, Jawahar and Naresh were coming back on motorcycles. Deceased Sanjay and Johrik (PW-11) were sitting on first motorcycle, on second motorcycle Naresh (PW-12) and Jawahar (PW-13) were sitting and on third motorcycle, Motilal (PW-10) and deceased Darsu were sitting. When they were passing Hadha Nala, all the appellants who were hiding themselves, suddenly came near the aforesaid persons, they assaulted deceased Sanjay and Johrik (PW-11). Deceased- Sanjay fell down and died on the spot. Johrik (PW-11) fled from the spot after receiving injuries. Naresh (PW-12) and Jawahar (PW-13) also fled from the spot. Motilal (PW-10) along with unfortunate deceased Darsu after leaving the motorcycle tried to

flee from the spot, but the appellants caught hold of Darsu and killed him on the spot. Motilal (PW-10) went to village Dahida, where he informed the Police by telephone and other witnesses. Thereafter, they reached to the spot. Police also reached to the spot. Then he lodged Dehati Nalishi vide Ex.P/35 and also Dehati Morgue Intimations vide Exs.P/31 and 33. Finally, FIR vide Ex.P/36 was registered and numbered Morgue Intimation vide Exs.P/32 and 34 were recorded. After summoning the witnesses vide Exs.P/37 and P/37-A, inquest over the dead bodies of deceased- Sanjay and Darsu were prepared vide Exs.P/38 and P/39. Spot map was prepared vide Ex.P/3. One rope, plastic chappal, one towel, TVS two wheeler, plastic chappal, Hero Honda two wheeler and Splendor two wheeler and plastic chappal were seized from the spot vide Ex.P/4. Bloodstained cable wire, bloodstained towel, bloodstained soil and plain soil were recovered from the spot vide Ex.P/5. Johrik (PW-11), fled from the spot and finally reached to village Hadha Muhan (Hardi Hari), two kilometres away from the place of incident, where he fell down and from where his bloodstained towel, bloodstained soil and plain soil were recovered vide Ex.P/6. He was examined by Dr.K.B.Singh (PW-1) vide Ex.P/1 and following injuries were found :

- (i) Incised wound over right side of the forehead of 6.0 cm x 2.0 cm x bone deep;
- (ii) Incised wound over left part of the head on tempo parietal region of 6.0 cm x 1.5 cm x bone deep;
- (iii) Superficial lacerated wound over middle part of parietal region of head of 8.0 cm x 0.3 cm;
- (iv) Superficial lacerated wound over right hand of 3.0 cm x 3.0 cm clotted blood and Superficial lacerated wound of 2.5 cm x 3.0

cm over right hand;

- (v) Lacerated wound of 1.5 cm x 3.0 cm over left middle finger with pain.

He was referred to CIMS hospital vide Ex.P/2. Dr. Anil Pratap Singh (PW-14) conducted X-ray of right wrist and found fracture of radius bone vide Ex.P/37.

5. Dead bodies of deceased Sanjay and Darsu were sent for autopsy to Primary Health Centre, Nawagarh. Dr. Rajendra Singh Raj (PW-6) conducted autopsy on dead body of deceased Sanjay vide Ex.P/29 and found following injuries:

- (i) Incised wound of 4 x 1.5 inch x bone deep over right fronto parietal of scalp;
- (ii) Incised wound of 3 x 1.5 inch x bone deep over right parietal of scalp;
- (iii) Reddish black contusion over right eye of 3 x 2 inch.
Haemorrhagic right eye;
- (iv) Incised wound of 3 x 1 inch x bone deep over right maxillary region of face;
- (v) Multiple incised wound over right cheek below right eye;
- (vi) Incised wound of 2 x 1 inch x bone deep over right chin on right mandibular region;
- (vii) Haematoma of 3 x 2 inch over right side of the mouth and blood clot inside the mouth;
- (viii) Reddish black contusion of 15 x 11 inch over right side of chest up to right hand;

- (ix) Reddish black contusion of 6 x 1.5 inch over left side of chest;
- (x) Lacerated wound of 5 x 5 mm over dorsal left hand;
- (xi) Haematoma below the skull, Haematoma on right shoulder on face below the right eye;
- (xii) Fracture of temporo parietal bone;
- (xiii) Laceration of brain subdural and cerebral haemorrhage.

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

6. He has also conducted autopsy on dead body of deceased Darsu vide Ex.P/30 and found following injuries:

- (i) Incised wound of 4 x 1 inch x bone deep over right parieto temporal region;
- (ii) Incised wound of 4 x 2 inch x bone deep over right occipito temporal region;
- (iii) Incised wound of 2 x 2 inch x bone deep over lower part of right external ear over mastoid and temporal region;
- (iv) Incised wound of 2 x 1/2 inch x bone deep over left parieto occipital region;
- (v) Incised wound of 3 x 1/2 inch x bone deep over mid parietal region;
- (vi) Incised wound of 1 inch x 1 cm x bone deep over left fronto parietal scalp;
- (vii) Incised wound of 1 x 1/2 inch x bone deep over left fronto temporal scalp;
- (viii) Reddish blue contusion of 9 x 6 inch over back of right side of

chest and abdomen;

- (ix) Reddish blue contusion of 20 x 2 inch over right shoulder up to abdomen;
- (x) Bluish contusion of 5 x 3 cm over back of right ear;
- (xi) Fracture of right occipito temporal, fracture of right temporo parietal bone of skull, fracture of frontal bone;
- (xii) Contusion of 6 x 4 cm over right cheek, fracture of maxilla, reddish blue contusion of 4 x 2 inch over right mandible, fracture of right mandible;
- (xiii) Haematoma of 6 x 3 inch over left side of skull on left parieto temporal region of skull.

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

7. Dying declaration of Johrik (PW-11) was recorded vide Ex.P/28. However, he was discharged after treatment on 25.03.2009 vide Ex.P/2.

8. During the course of investigation, appellant Sukdev was taken into custody. He made disclosure statement of stick vide Ex.P/8, same was recovered at his instance vide Ex.P/9. Appellant Ramkishun was also taken into custody. He made disclosure statement of axe vide Ex.P/10, same was recovered at his instance vide Ex.P/11. Appellant Sonavu was also taken into custody. He made disclosure statement of stick vide Ex.P/12, same was recovered at his instance vide Ex.P/13. Appellant Pitamber was also taken into custody. He made disclosure statement of stick vide Ex.P/14, same was recovered at his instance vide Ex.P/15. Appellant Chedilal was also taken into custody. He made disclosure statement of stick vide Ex.P/16, same was recovered at his instance vide

Ex.P/17. Appellant Shishupal was also taken into custody. He made disclosure statement of stick vide Ex.P/18, same was recovered at his instance vide Ex.P/19. One stick was seized from appellant Anandram @ Nanki vide Ex.P/20. The appellants were arrested vide Exs.P/21 to P/27.

9. Seized articles were sent for chemical examination to Forensic Science Laboratory and presence of blood upon the articles seized from the appellants has been affirmed vide Ex.P/40.

10. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short). After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Nawagarh, who in turn, committed the case to the Court of Sessions, Janjgir, from where learned Additional Sessions Judge received the case on transfer for trial.

11. In order to prove the guilt of the accused/appellants, the prosecution has examined as many as sixteen witnesses. Accused were examined under Section 313 of the Code, in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question. They have also examined defence witnesses Saharanlal Yadav (DW-1), Gurudayal Sahu (DW-2), Dinesh Kumar Sahu (DW-3), Deviprasad Yadav (DW-4), Vinod Sao (DW-5), Puneeram (DW-6) and Ramkishun Yadav (DW-7) and thereby appellants Anandram @ Nanki and Shishupal have taken the defence of alibi.

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

13. We have heard learned counsel for the parties and perused judgment impugned and record of the Court below.

14. Shri Basant Dewangan, learned counsel for the appellant in Cr.Appeal-421 of 2010 vehemently argued that Johrik (PW-11) is the only material witness who received injury and was present on the spot. As per para-23 of his evidence, he was sitting behind Sanjay on motorcycle till last moment. Appellant Ramkishun has not assaulted Sanjay by axe. Other appellants have assaulted Sanjay by stick. He has admitted that Ramkishun has assaulted him by axe, but he denied the suggestion that, when appellant was assaulting deceased Sanjay then he fled from the spot. Learned counsel further submits that Naresh (PW-12) has also admitted in para-5 of his evidence that there was dispute between appellant-Ramkishun and Johrik (PW-11) regarding Panchayat election. Jawahar (PW-13) also has admitted the enmity between the complainant party and appellants' party on account of Panchayat election. Motilal (PW-10) has also admitted in para-4 of his evidence about the enmity. Learned counsel also submits that as per Dehati Nalishi (Ex.P/35), evidence of Motilal (PW-10), Johrik (PW-11), Naresh (PW-12) and Jawahar (PW-13), the incident took place at about 11 pm at night. There was no light facility when Sanjay received injury, then all the other persons fled from the spot. Virtually, they have not witnessed the incident, but on account of enmity, they have lodged report and have stated against the appellants.

15. In addition to this argument of Shri Basant Dewangan, Shri Rakesh Thakur, learned counsel for the appellants in Cr.Appeals- 402 and 487 of 2010, submits that evidence of Motilal (PW-10), Johrik (PW-11), Naresh (PW-12) and Jawahar (PW-13) does not inspire confidence and are not trustworthy. They are interested and inimical witnesses. Their presence on the spot is doubtful. Even it would not be possible for them to see the appellants while causing injury beside the Hadha Nala. The Nala was not

adjoining to the house of the appellants. Therefore, their evidence without any corroboration from independent source is not sufficient for basing conviction of the appellants.

16. Smt Kiran Jain, learned counsel for the appellant in Cr.Appeal- 416 of 2010, and Shri Ashok Kumar Verma, learned counsel for the appellant in Cr.Appeal- 480 of 2010 vehemently argued that star witness of the prosecution is Johrik (PW-11), who was present on the spot. He was injured witness. His presence on the spot cannot be doubted. His dying declaration (Ex.P/28) has been recorded on the same day i.e. on 24.03.2009 on the spot. He has not named appellants- Anandram @ Nanki and Shishupal, which shows that both the appellants were not present on the spot and they are persons from the outside. By examining defence witnesses Saharanlal Yadav (DW-1), Gurudayal Sahu (DW-2), Dinesh Kumar Sahu (DW-3), Deviprasad Yadav (DW-4), Vinod Sao (DW-5), Puneeram (DW-6) and Ramkishun Yadav (DW-7), they have successfully discharged their burden of proving alibi, which finds support from Ex.P/28, dying declaration of Johrik (PW-11), and which subsequently became previous statement.

17. Shri Ashok Kumar Verma, learned counsel placed reliance in the matter of **Jumni and others Vs State of Haryana** (2014 AIR SCW 1787), in which the Supreme Court has held that standard of proof for plea of alibi would be same as applied to the prosecution for proving their case.

18. On the other hand, Shri Satish Gupta, learned Government Advocate opposed these arguments and submitted that evidence of Motilal (PW-10), Johrik (PW-11), Naresh (PW-12) and Jawahar (PW-13) is sufficient for proving the guilt of the appellants. As per their evidence, six persons were coming by motorcycles after lodging the report against the appellants,

when they were crossing Hadha Nala at about 11 pm, all the appellants, who were sitting upon the *tilla*, came with sticks and axe. They assaulted Sanjay and caused his homicidal death. They assaulted Johrik (PW-11). He fled from the spot. They chased Darsu and caused his homicidal death. Injuries found over the aforesaid persons are sufficient for drawing inference that all the appellants have participated in the incident. Even otherwise, presence of the appellants at 11 pm near Hadha Nala with arms specially knowing that aforesaid witness and the deceased were coming after lodging report by itself is sufficient to prove the unlawful assembly in furtherance of common object for commission of said offence.

19. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the parties.

20. In the present case, homicidal death as a result of injuries found over the body of deceased Sanjay and Darsu has not been substantially disputed on behalf of the appellants. On the other hand, it is also established by the evidence of Motilal (PW-10), Johrik (PW-11), Naresh (PW-12) and Jawahar (PW-13), Dehati Nalishi (Ex.P/35), Dehati Morgue Intimations (Exs.P/31 and 33), FIR (Ex.P/36), Dr.Rajendra Singh Raj (PW-6), autopsy report (Exs.P/29 and P/30) that death of the deceased persons was homicidal in nature. Grievous injuries found over the body of Johrik (PW-11) has not been substantially disputed on behalf of the appellants. On the other hand, same also stand established by evidence of Motilal (PW-10), Johrik (PW-11), Naresh (PW-12) and Jawahar (PW-13), Dehati Nalishi (Ex.P/35), FIR (Ex.P/36), evidence of Dr.K.B.Singh (PW-1) and injury report (Ex.P/1).

21. As regards complicity of the appellants in crime in question, as per case of the prosecution, initially, the appellants have formed unlawful

assembly having common object to commit murder of Sanjay and Darsu and have attempted to commit murder of Johrik (PW-11) after forming unlawful assembly, armed with deadly weapons. Johrik (PW-11) is injured witness and his presence cannot be doubted. As per his evidence, he along with Motilal (PW-10), Naresh (PW-12), Jawahar (PW-13), deceased Sanjay and Darsu were coming from Police Station after lodging report. When they were crossing Hadha Nala, all the appellants came there. They were holding weapons and shouted *maro maro* and also abused. Thereafter, they killed Sanjay. Ramkishun made assault by axe. Then, he fled from the spot. After some time, he turned back and saw that they were also assaulting Darsu. Then he fled and went to village Hadhamuhan (from where Hadha Nala originates). After some time, Motilal (PW-10), Jawahar (PW-13) and Police came. Police recorded his statement. Johrik (PW-11) was examined by doctor and was admitted in the hospital. Motilal (PW-10), Naresh (PW-12) and Jawahar (PW-13) have supported his evidence. They have deposed the presence of all the appellants on the spot. Motilal (PW-10) has lodged Dehati Nalishi vide Ex.P/35 including the names of all the appellants. Johrik (PW-11) has deposed in para- 23 of his evidence that Ramkishun has not caused any injury to Sanjay by axe. Other appellants have caused injuries by stick. He has denied the suggestion that he fled from the spot. But para-2 of his evidence is very clear and unambiguous that he fled from the spot, which also finds support from the recovery of bloodstained articles vide Ex.P/6 from the place where he was lying.

22. As per evidence on Motilal (PW-10), Johrik (PW-11), Naresh (PW-12) and Jawahar (PW-13), on account of previous dispute with the appellants, they have gone to Police Station for lodging report and after lodging report, they were coming by three motorcycles. Dead bodies of Sanjay and Darsu

were lying near the Hadha Nala. As per spot map (Ex.P/3), Nala is not adjoining to the village or houses of the appellants. Although Johrik (PW-11) has deposed in para-23 of his evidence that he was present till last moment when the appellants were causing injury to Sanjay and he did not leave the spot, but he was found near village Hadhamuhan, 2 kms away from the main place of incident, which shows that he fled from the spot after some time, and which finds support from para- 1 of his evidence.

23. Defence has cross-examined these witnesses in detail. In their cross-examination, they have admitted about the presence of light of motorcycle. Even otherwise, they came by motorcycles at night having headlights on. They are having sufficient opportunity to watch the assailants. They have witnessed the incident which clearly shows presence of all the appellants. Although Ex.P/28, dying declaration in form of previous statement of Johrik (PW-11), does not contain the presence of appellants Anandram @ Nanki and Shishupal, but Dehati Nalishi (Ex.P/35) contain their presence, which has been recorded earlier and which shows that after receiving injury, Johrik (PW-11) fled from the spot and he has not seen appellants Anandram @ Nanki and Shishupal, therefore, he has not stated relating to aforesaid appellants in his previous statement (Ex.P/28). But only on the ground that he has not stated in his previous statement (Ex.P/28), evidence of other witnesses cannot be brushed. Evidence of Motilal (PW-10), Johrik (PW-11), Naresh (PW-12) and Jawahar (PW-13) is sufficient to prove that the appellants were present near Hadha Nala with axe and sticks. They were waiting for the deceased and complainant party. When they were passing the Nala, all of sudden they came out from *tilla* and caused homicidal death of Sanjay and Darsu and also caused fatal injuries to Johrik (PW-11) which shows that they have formed unlawful assembly,

armed with deadly weapons, having common object for causing homicidal death, amounting to murder of deceased- Sanjay & Darsu and attempt to commit murder of Johrik (PW-11).

24. After appreciating the evidence available on record, the Court below has convicted and sentenced the appellants as aforementioned. Conviction of the appellants under Section 302 of IPC for causing murder of Sanjay and Darsu, and conviction under Section 307 of IPC for attempt to commit murder of Johrik (PW-11) is sustainable with aid of Section 149 of IPC, though specific Section has not been mentioned by the trial Court. We do not find any substance in these appeals.

25. Consequently, Criminal Appeals- 402, 416, 421, 480 and 487 of 2010, being devoid of merit, are liable to be and are hereby dismissed.

JUDGE

JUDGE