

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 775 of 2011

1. Anand Das Patre, S/o Mohandas Patre, age 55 years,
2. Lakhan Patre, S/o Anand Das Patre, age 32 years,
3. Girvar Patre, S/o Anand Das Patre, age 35 years,
4. Sushila Bai Patre, W/o Girivar Patre, age 32 years,
5. Dipak Bai W/o Lakhan Patre, age 30 years,

Both R/o Vill. Chandapurakala, P.S. Pandatarai, Distt. Kabirdham
(CG)

---- Appellants

In Jail

Versus

1. State Of Chhattisgarh, Through Station House Officer, Pandatarai,
Distt. Kabirdham (CG)

---- Respondent

For appellants : Shri Yogeshwar Sharma, Advocate.

For Respondent/State : Shri Chandresh Shrivastava, P.L.

Hon'ble Shri Justice Pritinker Diwaker, &

Hon'ble Shri Justice I.S. Uboweja, JJ

Judgment On Board by Pritinker Diwaker, J

15/07/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 01.10.2011 passed by the Sessions Judge, Kabirdham (Kawardha) in S.T.No.45/10 convicting the accused/appellants under Section 148 and 302/149 of IPC and sentencing each of them to

undergo RI for one year and imprisonment for life, to pay a fine of Rs.5000/- and in default thereof to undergo one year's additional R.I. respectively.

02. As per prosecution case, there exists old enmity between the accused/appellants and the deceased over agricultural land. It is alleged that on the date of incident i.e. 28.6.2010 the accused/appellants had gone to the field in question which belongs to the deceased and when deceased also reached there, the accused/appellants severely beat him with axe, pickaxe, Tutarti (agricultural equipment having sharp iron tip) and sickle, as a result of which the deceased died instantaneously. Upon receiving information, PW-6 Hariram Sahu, investigating officer, reached the place of occurrence, recorded Dehati merg (Ex.P/14) on 28.6.2010 at 8.05 am at the instance of PW-2 Jagannath, son of the deceased and thereafter Dehati FIR (Ex.P/15) at 8.10 am was recorded at the instance of PW-2. FIR (Ex.P/19) was lodged at 11.40 am on the same day by PW-2 against the accused/appellants under Sections 148, 149 and 302 of IPC. Inquest (Ex.P/1A) was performed over the body of the deceased. Postmortem on the body of the deceased was conducted on 28.6.2010 by PW-3 Dr.Ramkishun Chandravanshi vide Ex.P/10 wherein he noticed five injuries on the body of the deceased and opined that the cause of death was shock due to excessive bleeding caused by head injury and that the death was homicidal in nature. After investigation charge sheet was filed against the accused/appellants and accordingly charges were framed against them under Section 148 and 302/149 of IPC.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 8 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellants as mentioned in para-1 of this judgment.

05. Learned counsel for the appellants submits as under:

(i) neither PW-2 Jagannath, son of the deceased, nor PW-4 Smt. Jagoutinbai Patre, wife of the deceased, have seen the incident and they have been projected as eyewitness much after the incident.

(ii) that there is inordinate delay in recording case diary statements of PW-2 and PW-4.

(iii) that in Dehati Nalishi Ex.P/14 it has not been stated by PW-2 Jagannath that he had seen the accused/appellants causing injuries to the deceased whereas while improving in his Dehati FIR (Ex.P/15) he has stated that he saw the accused/appellants assaulting the deceased.

(iv) that PW-2 and PW-4 have not stated as to which weapon was used by which of the accused/appellants for assaulting the deceased.

(v) that the land in question where the incident took place was in

possession of the accused/appellants and if any such incident had taken place on the said land, the appellants cannot be held guilty under Section 302 of IPC and at best, in the facts and circumstances, they are liable to be convicted under Section 304 Part-II of IPC.

(vi) that PW-2 has substantially improved in the Court while deposing and therefore, his statement is required to be discarded as a whole.

(vii) that the accused/appellants are in jail since 28.6.2010, thereby they have also remained in jail for about 5 years and therefore, after converting their conviction into Section 304 Part-II of IPC they may be sentenced to the period already undergone by them.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

(i) from the evidence it is clear that since last 8-10 years the deceased was in possession of the land in question and it is he who was sowing the field and harvesting the crop.

(ii) that even if the diary statements of PW-2 and PW-4 are recorded after some delay, it will be of no help to the appellants because in the promptly lodged FIR itself it has been stated by PW-2 that he and PW-4 had witnessed the entire incident and it is the appellants who assaulted the deceased to death.

(iii) that after mere enquiry numbered FIR (Ex.P/19) was recorded naming all the accused/appellants.

(iv) that on the basis of memorandum of the accused/appellants (Ex.P/4, P/6, P/8, P/12 & P/10), the weapons of offence were seized

vide Ex.P/5, P/7, P/9, P/13 & P/11 and on all these articles blood was found as per FSL report Ex.P/29.

(v) that it is the the appellants who had unauthorizedly entered the field of the deceased and when the deceased reached there, they assaulted him brutally with deadly weapons and therefore, considering the nature of injuries and the weapon of assault, their conviction under Section 302/149 of IPC is strictly in accordance with law, warranting no interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. It is not in dispute that Dehati merg Ex.P/14 was recorded on 8.05 am on 28.6.2010 i.e. just after the incident and immediately thereafter, at 8.10 am Dehati FIR (Ex.P/15) was recorded. In both these reports it has been stated by PW-2 Jagannath that while he was working in his field he heard the cries of his mother who was working in the other adjacent field, when he reached there he saw his father bleeding profusely and on account of land dispute the accused persons had beaten his father. He has stated that all the accused persons were present there and after seeing him all of them fled from the spot.

09. PW-1 Amardas Satnami is a witness of memorandum (Ex.P/4, P/6, P/8, P/12 & P/10) of the accused/appellants and likewise, he is also a witness of seizure Ex.P/5, P/7, P/9, P/13 & P/11 of weapons of offence made from the accused/appellants. Though he has been declared hostile but has admitted his signature on all the documents. PW-2

Jagannath Satnami, son of the deceased, has stated that on the date of incident he was working in the adjacent field, upon hearing the cries of his mother asking him to immediately come as his father was being beaten when he reached the place of occurrence he saw the accused/appellants assaulting his father. All of them were carrying weapons in their hands. After beating his father, all the accused persons ran away from the spot and when he reached to his father, he found him dead. There were number of injuries on the body of his father and his brain material had also come out. He has further stated that since last 8-10 years there was dispute between the accused/appellants and his family. He lodged Dehati merg (Ex.P/14), Dehati FIR (Ex.P/15) and numbered merg intimation Ex.P/16. He is also a witness of inquest Ex.P/1A. In cross-examination he has stated that the land in question where the incident had taken place has been recorded in the name of Laxman but since last 10-12 years it is his family which was cultivating the said land. It was being done with understanding between his family and that of the owner of the land. He has categorically stated that his family was cultivating the said land with the consent of its owner Laxman. He has further clarified that he was working in the adjacent field and it took him about 10 minutes to reach the place of occurrence after hearing cries of his mother. He has further stated that while lodging Dehati FIR (Ex.P/15) he did inform the police that he had seen the accused/appellants beating his father and if the same could not be recorded he cannot tell the reason.

If Ex.P/15 is seen it appears that the learned Sessions Judge has wrongly recorded this finding that in Ex.P/15 it has not been stated by

PW-2 that he had seen the accused/appellants assaulting the deceased. He has further stated that he and his family were cultivating the field which was objected by the accused/appellants but even then they were cultivating the field and the accused/appellants always used to create some hurdles. He has further stated that partition had already taken in his family and has denied the suggestion that the land in question was in possession of the appellants.

10. PW-4 Smt. Jagoutinbai Patre, mother of PW-2 and wife of the deceased, has stated that on the date of incident the deceased had gone to his field and when she too had gone to attend the call of nature, she saw the accused/appellants beating her husband in the field which was in possession of her family. She has stated that in the incident her husband had suffered several injuries on his vital parts, he was drenched with blood and near the dead body number of weapons were also lying. She has stated that since last 10 years they are cultivating the field in question for which quite often there used to be quarrel between the two families. She saw the incident from a nearby place and then has described as to which of the weapon was used by which of the accused persons. She has denied the suggestion that at any point of time the appellants were in possession of the land in question. She has stated that her ancestral land is adjacent to the land in question and there is no dispute so far as her ancestral land is concerned. Upon hearing her cries, her son PW-2 Jagannath also reached there but he could not intervene in the matter because by that time the accused persons had fled from the spot. She was cross-

examined at length by the defence but she remained very firm and reiterated as to the manner in which her husband was done to death by the accused/appellants.

11. PW-3 Dr. Ramkishun Chandravanshi conducted postmortem on the body of the deceased on 28.6.2010 vide Ex.P/18 and noticed following injuries on his person:

(i) sharp incised wound and clear cut edges present in right frontoparietal region 10 cm long x 3 cm wide and deep up to brain matter. Brain matter herniating from the wound.

(ii) sharp incised wound is present with smooth edges in left frontoparietal region also. Brain matter is also herniating from this wound. 8 cm long x 3 cm wide and deep up to brain matter.

(iii) wound with sharp edges is present in the right maxillary region just lateral to right ala of nose 2 cm x 2 cm x ½ cm.

(iv) wound with sharp edges 2 cm x 2 cm x ½ cm at the root of the nose left side.

(v) two contusions on right side of chest (mid) (a) 20 cm x 2 cm (b) 22 cm x 2 cm.

12. PW-5 Chandrakumar Satnami is also son of the deceased. He has stated that on the date of incident he had gone with the deceased to his field and saw the accused persons in their field. A day prior to the incident it is he and his family who had ploughed the said field, but on the date of incident since morning the appellants had reached their field and were trying to cultivate the field. Seeing this, his father

(deceased) had asked him to go and call the villagers. Thereafter, he immediately went to the village and informed this fact to the villagers and when he returned to the field, he saw dead body of his father and that number of weapons and agricultural equipments were lying there. He has further stated that his mother and brother were also there and his mother informed him that it is the accused/appellants who had killed the deceased. PW-6 Hariram Sahu is the investigating officer. There may be minor discrepancy in the statement of this witness while narrating the time of incident but if his entire statement is read as it is together with the documents, it is apparent that he is very firm in his deposition and has duly supported the prosecution case. PW-7 Pramod Thakur, Patwari, prepared the spot map Ex.P/24 and stated that in the revenue record the land in question is recorded in the name of Laxman. PW-8 Premlal Satnami, a witness of memorandum of the accused/appellants and seizure made in pursuant thereto, has been though declared hostile but admitted his signatures on all these documents.

13. On the basis of memorandum (Ex.P/4, P/6, P/8, P/12 & P/10) of accused/appellants, axe, pickaxe, axe, Tutari (agricultural equipment) and sickle were seized from them vide Ex.P/5, P/7, P/9, P/13 & P/11 respectively. As already stated that PW-1 Amardas Satnami and PW-8 Premlal Satnami, the witnesses of memorandum and seizure have duly admitted their signatures on these documents. As per FSL report Ex.P/29, blood has been found on the seized article D, F, G, H and I i.e. axe seized from appellant No.1, pickaxe seized from appellant No.2,

axe seized from appellant No.3, sickle seized from appellant No.5 and Tutari seized from appellant No.4. However, there is no serological report.

14. Close scrutiny of the evidence makes it clear that the land in question where the incident had taken place was recorded in the name of Laxman but since last 8-10 years it was in possession of the deceased family and it is they who were cultivating the same. On the date of incident i.e. 28.6.2010 when the deceased and his son Chandrakumar (PW-5) reached the place of occurrence, they saw the accused/appellants ploughing their field, the deceased immediately asked PW-5 to go and call the villagers and when PW-5 after informing the villagers about this fact returned to the place of occurrence, he found his father dead with multiple injuries on his body and the weapons of offence/agricultural equipments were lying there. The incident has been witnessed by PW-4 Smt. Jagoutinbai Patre, wife of the deceased, who has fully supported the prosecution case and narrated as to the manner in which her husband was killed by the accused/appellants. After hearing cries of PW-4, her son PW-2 Jagannath also reached there and saw the accused/appellants fleeing from the spot. There may be some improvements in the statement of PW-2 if it is compared with Dehati Nalishi Ex.P/14 and Dehati FIR Ex.P/15 but the fact remains that after hearing cries of his mother he reached the place of occurrence and saw the accused/appellants running away from there. On the basis of memorandum of the accused/appellants, various weapons have been seized and as per FSL report, blood has been noticed on these articles. Thus, on the

basis of evidence adduced by the prosecution complicity of the accused/appellants in the crime in question is established beyond reasonable doubt.

15. So far as the argument of the appellants that in the facts and circumstances of the case, they are liable to be convicted under Section 304 Part-II of IPC is concerned, we find no force in this argument because on the date of incident it is the appellants who had entered into the field which was in possession of the deceased family for the last 8-10 years and on objection being raised by the deceased, assaulted him with deadly weapons on vital parts of his body with such a force that his brain material came out and he died instantaneously.

16. On the basis of aforesaid discussion, we are of the opinion that the findings recorded by the trial Court holding the accused/appellants guilty under Section 148 and 302/149 of IPC are based on proper appreciation of the evidence led by the prosecution. There is no illegality or infirmity in the judgment impugned warranting interference by this Court. The appeal is without any substance, the same is liable to be dismissed and is, accordingly, dismissed. Since the appellants are already in jail, no further order is required.

(Pritinker Diwaker)

Judge

(I.S. Uboweja)

Judge