

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2573 of 1997**

1. Jugeshwar Ram, son of Kashiram Rajwar, aged 30 years, Agriculturist,
2. Budhan Ram, son of Bevsharan Rajwar, aged 25 years, Agriculturist,
3. Ram Kumar, son of Kashiram aged 30 years, Agriculturist,
4. Man Sai, son of Govind Ram, aged 25 years, Agriculturist,
5. Gholdu Ram, son of Dev Baran, aged 35 years, Agriculturist,
6. Biyal Ram alias Rambiyal, son of Govind, aged 30 years, Agriculturist,
7. Sunil Kumar, son of Ram Sai, aged 35 years, Agriculturist,
8. Kashiram, son of Dilbandhu Ram, aged 35 years, Agriculturist,

All residents of Sirkotanga, Police Station Lakhanpur, District Surguja
(Madhya Pradesh) (now Chhattisgarh)

---- Appellants

versus

State of Madhya Pradesh (now Chhattisgarh)

---- Respondent

For Appellants	:	Shri Jagdish Singh Baraik, Advocate
For Respondent/State	:	Shri Ravindra Agrawal, Panel Lawyer

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**Per Navin Sinha, Chief Justice****3/8/2015**

1. The Appellants stand convicted under Sections 147 and 302 read with Section 149 of the Indian Penal Code to life imprisonment as ordered on 26.11.1997 by First Additional Sessions Judge, Ambikapur in Sessions Trial No.82 of 1996.

2. Deceased Budhan was assaulted on 9.10.1995 at about 9:00 a.m. Mohan, PW-2, brother of the deceased lodged First Information Report the same day about 12:30 p.m. that the Appellants armed with tabbal, spade and stones surrounded the deceased near the house of Prahlad, PW-3, and assaulted him. The deceased ran inside the house of PW-3.

The Appellants dragged him out and assaulted killing him on the spot.

3. The post mortem of the deceased, Exhibit P-21 was conducted by PW-5, Dr. I.D. Bhatnagar who opined that death was due to syncope, hemorrhagic shock caused by multiple injuries homicidal in nature. The following injuries were found on the person of the deceased:

- (i) 1"x ½"x½" incised wound over mid upper lip,
- (ii) Two incised wounds deep through over both cheeks 2"x1½" with laceration over both angle of mandible with commuted fracture of both sides of bones of mandible,
- (iii) Bruises in front of neck and chest with swelling all over it,
- (iv) Lacerated wound over both parietal regions,
- (v) Incised wound 2"x1½"x1" over right leg, 1" above right ankle.

The injuries were opined to be *anti mortem* in nature caused by sharp edged weapon and hard blunt solid object such as stones sufficient in the ordinary course of nature to cause death.

4. Learned Counsel for the Appellants submitted that PW-2, Mohan has been disbelieved as an eyewitness by the Trial Court. But, the witness in his deposition has stated that the deceased was a very cunning person and there were several cases against him of assault. The Trial Court has committed grievous error in appreciation of evidence by holding the Appellants to be the assailants merely on the evidence of PW-3, Prahlad, PW-4, Meenabai coupled with the recovery of stones stated to have blood on them. There is no serologist report that the blood allegedly found on the stones were of the same group as that of the deceased. PW-3 and PW-4 have not said that anyone of the Appellants was carrying any weapons of assault capable of causing incised wounds. The deceased is alleged to have been pulled by his muffler inside the house of

PW-3 and then assaulted with fisticuffs only. The prosecution has led no evidence that if the assault took place in the house of PW-3, how the body of the deceased reached the fields of Panchram. If the body had been dragged to the fields, there had to be bruises on the body commensurate with the act of dragging and which is completely absent in the post mortem report. PW-4, Meenabai states that the deceased was taken away in western direction from the house of PW-3, Prahlad. According to the spot map, Exhibit P-22, the body has been found in southern direction from the house of PW-3. In the aforesaid circumstances it cannot be said as proved beyond reasonable doubt that the Appellants alone were the assailants of the deceased. The possibility that after the initial assault by fisticuffs in the house of PW-3, Prahlad, the Appellants may have left and the deceased was assaulted later by others at a different location in the fields of Panchram is a distinct possibility considering that there were other cases of assault pending against him, the benefit of which doubt must be given to the Appellants.

5. Learned Counsel for the State submitted that the initial assault on the deceased was made in the house of PW-3, Prahlad. On commotion PW-4, Meenabai came and saw the Appellants running away. She recognised Appellant No.7, Sunil Kumar and further stated that there were seven others running away. Reading the evidence of PW-3 and PW-4 together it is apparent that the Appellants were the assailants who then dragged the deceased to the fields of Panchram and killed him. Human blood has been found on the stones. The absence of serologist report is therefore not very relevant. The Trial Court has adequately marshalled facts and appreciated evidence. If PW-2, Mohan was held not to be an eyewitness, it was not detrimental to the prosecution case.

6. We have considered the submissions on behalf of the parties and perused the evidence on record also.

7. The FSL Report does not confirm the presence of blood on the clothes seized from Appellant No.5 Ghouldu Ram, Appellant No.2 Budhan Ram and Appellant No.1 Jugeshwar Ram.

8. PW-2, Mohan claimed to be an eyewitness but has been disbelieved by the Trial Court. He was the brother of the deceased. The witness stated that the deceased was a very cunning person with several cases of assault pending against him.

9. PW-3, Prahlad stated that Appellant No.1 Jugeshwar Ram pulled the deceased by his muffler in the house of the witness and the other Appellants started to assault the deceased with fists and not by stones, tabbal or spade. The witness left at this time and informed PW-4, Meenabai. The witness did not state that any of the Appellants were carrying stones, spade, tabbal, tangi or any other sharp edged weapon capable of causing incised wounds. The witness proved the inquest report, Exhibit P-6 certifying that the body was found in the fields of Panchram and the seizure of blood stained earth Exhibit P-7 from the place of occurrence.

10. PW-4, Meenabai stated that she came out of her house on hearing the shouts of PW-3, Prahlad. Even though the Appellants were co-villagers and the assault was made in broad daylight at 9:00 a.m., she only mentioned seven unidentified persons apart from Appellant No.7 Sunil Kumar, who were dragging the deceased. The witness did not state that all seven of them had their back towards her. If seven persons were dragging the deceased, it is not possible that all of them had their back towards the witness. The witness also did not state that any one of the Appellants was carrying stones or any other weapon of assault capable of causing incised wounds. On the contrary, in her cross-examination, she specifically stated that Appellant No.7, whom she was recognized, was not carrying any weapon or even a lathi in his hands.

11. PW-6, Hazrat Ali prepared the spot map, Exhibit P-22. S.R. Dhritlahare, PW-7 was the Investigating Officer, who proved the inquest report, seizure of the blood stained earth and clothes of some of the Appellants and sending them to the FSL.

12. The evidence placed by the prosecution only establishes the assault on the deceased by pulling him by the muffler and with fisticuffs in the house of PW-3, Prahlad. From a combined reading of the evidence of PW-3, Prahalad and PW-4, Meenabai the prosecution has failed to establish that the Appellants were carrying any stones or any weapon of assault with which they assaulted the deceased causing incised wounds. The prosecution has not been able to establish how the body of the deceased was found in the fields of Panchram. The post mortem report does not indicate any sign of dragging or bruises by reason of the same except in front of the neck which may have been caused by pulling of muffler and on the chest possibly due to fisticuffs. If the deceased was dragged by seven persons, there had to be signs of dragging on the body either on the front or rear of the body. The bruises in such a situation could not be confined to the neck and chest of the deceased. Also crucial is the evidence of PW-4, Meenabai that the deceased was dragged towards west from the house of PW-3, Prahlad while according to the spot map, Exhibit P-22, the body had been found in the fields in a southern direction from the house of PW-3.

13. The Trial Judge erred in appreciation of evidence by reading much into evidence of PW-3, Prahlad and PW-4, Meenabai to conclude that the Appellants were the only assailants and that they dragged the deceased to the fields of Panchram. The absence of any weapon of assault in the hands of the Appellants was not noticed from the evidence of the two prosecution witnesses including the fact that the body was not found in the western direction but in the southern direction. No weapons of assault,

which may have caused incised wound, have been recovered on confession. The stones seized are stated to have sharp edges. They are items which are found lying anywhere in the ground in an agricultural field. In absence of a serologist report that the blood found on the stones was of the same group as that of the deceased it would not be safe to hold that it were these very stones used for assault. A stone could cause a lacerated wound and an incised wound could be caused by a sharp cutting weapon like tangi and tabbal alone. PW-5, Dr. I.D. Bhatnagar has not opined that the incised wounds were caused by sharp edged stones only and not by a sharp cutting weapon.

14. In the facts of the case, it cannot be held conclusively that the Appellants were alone the assailants of the deceased. The benefit of doubt has to be given to the Appellants.

15. The conviction of the Appellants is set aside subject to the conditions under Section 437A of the Code of Criminal Procedure.

16. The appeal is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE