

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 42 of 2011

- 1 Bajrang alias Guddu, aged about 22 years, s/o Barat Satnami, r/o Dhodha Tarai, Chowki Urga, Thana Kotwali, Korba, District Korba (CG)
- 2 Bharat Lal, aged about 30 years, s/o Baldu Ram Satnami, r/o Dhodha Tarai, Chowki Urga, Thana Kotwali, Korba, District Korba (CG)

– Appellants

Versus

The State of Chhattisgarh, through Police Station, Balco Nagar, Korba, District Korba (CG)

– Respondent

For Appellant : Shri O.P.Agrawal, Advocate
For Respondent / State : Shri Satish Gupta, Government Advocate

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

JUDGMENT

08.04.2015

Per **T.P.Sharma, J.:-**

- 1) Challenge in this appeal is to the judgment of conviction & order of sentence dated 24.11.2010 passed by the Sessions Judge, Korba in Sessions Trial No.49/2009, whereby and whereunder after holding the appellants guilty for causing homicidal death amounting to murder of Birju Ram and for causing simple injury to Kismat Ram in sharing common intention, the trial Court has convicted the appellants under Sections 302/34 and 324/34 of the IPC and sentenced them to undergo imprisonment for life & fine of Rs.1,000/-, in default, additional RI for one year and RI for one year respectively.

- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellants as aforementioned and thereby committed illegality.
- 3) As per case of prosecution, on fateful day of 30.01.2009 at about 9.00 p.m. unfortunate deceased Birju Ram and injured Kismat Ram (PW-1) were returning to their house after consuming liquor. Both the appellants were present on the way. After some discussion, the appellants assaulted deceased Birju Ram by axe and caused fatal injuries to Kismat Ram (PW-1). Kismat Ram fled away from the spot and went to village and called other villagers. They saw that Birju Ram was badly injured, they brought him to hospital for treatment. On the next day i.e.31.01.2009, during the course of treatment, Birju Ram died in the District Hospital, Korba. Kismat Ram (PW-1) went to Police Station Balco Nagar, Korba and lodged FIR vide Ex.P/1. Death of Birju Ram was intimated to police chowki, Rampur vide Ex.P/26. Morgue was recorded vide Ex.P/17 and finally numbered Morgue was recorded vide Ex.P/16 by police station, Balco Nagar.
- 4) Injured Kismat Ram was examined by Dr.P.Verma (PW-11) vide Ex.P/24 and found the following injury:
 - i) One lacerated wound of 2 x $\frac{1}{4}$ x $\frac{1}{4}$ on left side of the head.

Samaru (PW-3), who tried to save deceased Birju Ram also assaulted by the appellants. He was examined by Dr.P.Verma (PW-11) vide Ex.P/25 and found the following injuries:

- i) Lacerated wound of 2 x ½ x ½ cm on right side of forehead;
- ii) Lacerated wound of 2 x ½ x ¼ cm on occipital region.

5) After summoning the witnesses vide Ex.P/22, inquest over the dead body of deceased Birju Ram was prepared vide Ex.P/3. Bloodstained and plain soil was seized from the spot vide Ex.P/9. Pair of Chappal has been seized from the spot vide Ex.P/10. Spot map was prepared vide Ex.P/13. Dead body of the deceased was sent for autopsy to the District Hospital, Korba vide Ex.P/23. Dr. Sharad Anant (PW-5) conducted autopsy vide Ex.P/14 and found following injuries :-

- i) Incised wound of 8x 1 cm x bone deep over right side of the neck, internal organs and arteries were found cut;
- ii) Incised wound of 3 x 1 cm on right side of face below nose;
- iii) Incised wound of 3 x ½ cm x bone deep over right parietal region;
- iv) Contusion of 6 x 1 cm over mid chest;
- v) Contusion of 6 x 1 cm over left thigh.

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

6) Patwari prepared spot map vide Ex.P/2. During the course of investigation, appellant Bajrang was taken into custody. He made disclosure statement of axe vide Ex.P/5 and the same was recovered at his instance vide Ex.P/7. Stick was seized from appellant Bharat Lal vide Ex.P/8. Seized articles were

sent for chemical examination to FSL and as per report of FSL presence of blood upon the axe and stick has been affirmed.

- 7) Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge-sheet was filed before the Court of Judicial Magistrate First Class, Korba, who in turn, committed the case to the Court of Sessions, Korba.
- 8) In order to prove the guilt of the accused/appellants, the prosecution has examined as many as 13 witnesses. Statement of the accused/appellants were recorded under Section 313 of the Code, in which they denied the circumstances appearing against them and pleaded innocence and false implication in the crime in question.
- 9) After providing opportunity of hearing to the parties, the trial Court has convicted & sentenced the appellants as aforementioned.
- 10) We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 11) Learned counsel for the appellants vehemently argued that conviction is substantially based on the evidence of Kismat Ram (PW-1), but his evidence does not inspire confidence and is not trustworthy. Only on the ground that he is injured witness, his evidence cannot be considered as gospel truth. Another injured

witness Samaru (PW-3) has deposed that Kismat Ram (PW-1) has assaulted him. Other witnesses have admitted the presence of the appellants, but prosecution has failed to examine them. In absence of such corroboration, the conviction of the appellants is not sustainable under the law. Even otherwise, there was no motive for commission of offence. The incident took place all of a sudden when Kismat Ram (PW-1) asked the appellants relating to the person lying on the field. Therefore, the act attributed to the appellants does not travel beyond the scope of Section 304 Part-II of the IPC.

- 12) On the other hand, learned Panel Lawyer for the State opposes the appeal and submits that evidence of Kismat Ram (PW-1) is sufficient for proving the guilt of the appellants. The appellants have caused five injuries upon deceased Birju Ram and one injury to Kismat Ram (PW-1), which shows their grave intention to commit murder of deceased Birju Ram and causing injuries to Kismat Ram (PW-1).
- 13) In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
- 14) In the present case, homicidal death as a result of fatal injuries found over the body of deceased Birju Ram and simple injury over the body of Kismat Ram (PW-1) have not been substantially disputed on behalf of the appellants. Even

otherwise, it is also established from the evidence of Kismat Ram (PW-1), FIR (Ex.P/1), Morgue Intimations (Exs.P/16 and 17), Samaru (PW-3), Dr. Sharad Anant (PW-5), autopsy report (Ex.P/14), Dr.P.Verma (PW-11) and injury report (Ex.P/24).

- 15) As regards the complicity of appellant in crime in question, conviction is substantially based on the evidence of Kismat Ram (PW-1), injured witness. As per his evidence, he along with unfortunate deceased Birju Ram were coming to their house after consuming liquor. When they were passing near Nagarda Plot, they have noticed one person lying on the road and appellant Bajrang was lifting him. When he asked Bajrang as to what had happened, then he abused and assaulted him by axe. He also assaulted deceased Birju Ram by axe and caused fatal injuries. He rushed to the village and came with other persons. They saw injured Birju Ram and took him to the hospital. He died on the second day. Defence has cross-examined this witness at length, but has not been able to elicit anything to discredit his testimony that appellant Bajrang has not assaulted him and also not caused fatal injuries to Birju Ram resulting into his death. Another injured witness Samaru (PW-3) has not supported the case of prosecution and prosecution has declared him hostile. Evidence of Kismat Ram (PW-1) is sufficient for drawing inference that appellant Bajrang has caused homicidal death of deceased Birju Ram and also caused simple injury to him i.e.Kismat Ram (PW-1).

- 16) As regards the question of motive, in case of direct evidence motive loses its importance. Even otherwise, motive is only an aid in criminality and can be inferred on the basis of nature of injury, kind of weapon used, part of the body effected and other similar circumstances. Motive is a state of mind of person at the time of commission of offence and only the person concerned would be in a position to explain that what was his intention or motive behind commission of any act.
- 17) In the present case, as per evidence of Dr. Sharad Anant (PW-5) and autopsy report (Ex.P/14), as many as five injuries have been found over the dead body of the deceased, which shows the grave intention and motive for causing homicidal death amounting to murder of the deceased Birju Ram.
- 18) After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellants as aforementioned.
- 19) Evidence of Kismat Ram (PW-1) is very specific and clear relating to appellant Bajrang that he has caused homicidal death of deceased Birju Ram, but, he has not deposed against appellant Bharat Lal that he has shared common intention. In absence of specific evidence of sharing common intention, conviction of appellant Bharat Lal under Section 302/34 of IPC is not sustainable under the law.

20) Consequently, the appeal is partly allowed. Conviction and sentence of appellant Bharat Lal under Sections 302/34 and 324/34 are hereby set aside. He be set at liberty at once, he be released forthwith if not required in any other case. Conviction of appellant Bajrang under Section 302/34 IPC is technically altered to Section 302 IPC and sentenced to imprisonment for life and fine of Rs.1,000/-, in default, additional RI for one year and conviction under Section 324/34 is altered to Section 323 IPC and sentenced to RI for six months.

(T.P.Sharma)
JUDGE

(I.S.Uboweja)
JUDGE