

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 260 of 2011

1. Lakhan Ram S/o Late Shiv Bhajan Ram Choudhary, aged about 27 years,
2. Baban Ram S/o Late Shiv Bhajan Ram Choudhary, aged about 30 years,

Both R/o Sohagpur (Dhapanapara), Chowki Karanji, P.S. Jainagar, Distt.-Surguja, C.G.

---- Appellants

In Jail

Versus

1. State Of Chhattisgarh Through P.S. Jainagar, Distt. Baster (C.G.)

---- Respondent

For appellants : Shri D.N. Prajapati, Advocate
For Respondent/State : Shri Chandresh Shrivastava, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board by Justice Pritinker Diwaker

04/09/2015:

This appeal arises out of the judgment of conviction and order of sentence dated 31.1.2011 passed by the II Additional Sessions Judge (FTC), Surajpur, Distt. Surguja in S.T.No.370/10 convicting each of the accused/appellants under Sections 302 & 201 of IPC and sentencing them to undergo imprisonment for life, to pay a fine of Rs.1000/- and R.I. for one year, to pay a fine of Rs.500/- respectively with default stipulations.

02. In the present case, name of the deceased is Sukhlal. As per the

prosecution case, on 21.7.2010 there was some quarrel and hot talks between the deceased and the accused/appellants and it is alleged that the accused/appellants first dragged the deceased near the house of one Shankar, then with the aid and support of juvenile delinquent Devdhari committed murder of the deceased by causing several injuries on his body by hands & fists as also by clubs. When the deceased did not return in the night, he was searched by his wife Ramkeli who on being informed by PW-2 Devanand about the incident of marpeet by the accused/appellant with her husband (deceased) lodged unnumbered merg intimation (Ex.P/1) on 22.7.2010 and then numbered merg intimation (Ex.P/14) was recorded on the same day. Unnumbered FIR (Ex.P/17) was recorded on 22.7.2010 and thereafter, numbered FIR (Ex.P/15) was recorded at the instance of PW-1 Ramkeli on the same day naming the accused/appellants under Section 302, 201, 34 of IPC. Postmortem on the body of the deceased was conducted on 22.7.2010 by Dr. Rashmi Kumar (PW-16) vide Ex.P/18 who noticed two lacerated wounds and two contusions on his body including fracture of bone of the neck. In her opinion the cause of death was asphyxia due to strangulation and the death was homicidal in nature. After investigation charge sheet was filed against the accused/appellants and accordingly charges under Sections 302, 201, 34 of IPC were framed.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 16 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) though PW-5 Shankar Prasad and PW-7 Ramsunder have been projected by the prosecution as eyewitnesses, in fact they were not eyewitnesses and therefore, their statements are not reliable.

(ii) that PW-2 Devanand has not supported the prosecution case and has been declared hostile.

(iii) that PW-6 Vijay Kumar before whom extrajudicial confession was allegedly made by the accused persons is also not reliable.

(iv) even if the entire prosecution case is taken as it is, at best the accused/appellants can be held guilty under Section 304 Part-II of IPC because the incident had taken place all of a sudden when the accused persons were provoked by the deceased. Therefore, considering the fact that the deceased was beaten by hands, fists and clubs, they did not cause him any grievous injuries and did not act in a cruel manner, their conviction under Section 302 of IPC is liable to be altered to Section 304 Part-II of IPC.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same. He submits that eyewitnesses to the incident (PW-5 Shankar and PW-

7 Ramsunder) remained consistent throughout their examination in Court and have fully supported the prosecution case. They have categorically stated as to the manner in which the deceased was done to death by the accused/appellants. He further submits that PW-2 Devanand and PW-3 Suraj who are witnesses of last seen and PW-6 Vijay Kumar before whom appellant No.1 made extrajudicial confession have also supported the prosecution case. This apart, based on the memorandum of appellant No.1 (Ex.P/11) two clubs were seized vide Ex.P/12. He further submits that considering the nature of injuries caused by the appellants it is apparent that how brutally they beat the deceased. Evidence goes to show that PW-5 Shankar was trying to prevent the accused/appellants from beating the deceased, yet they beat the deceased and thus their intention to cause death of the deceased is writ large and under no circumstances, it can be said that their act would fall within any of the exceptions to Section 300 of IPC.

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

08. PW-5 Shanker Prasad, an eyewitness to the incident, while supporting the prosecution case has stated that at the eve of some Pooja in the village he was in his house, at about 8 am the accused/appellant No.1 Lakhan called him, when he came out of his house he saw the accused/appellants and minor Devdhari holding the deceased and then accused/appellant No.1 disclosed that the person caught by them is the deceased and thereafter they started beating him (deceased). He has stated that the accused/appellants beat the

deceased by club and when he asked them not to beat the deceased, they also cautioned him and thereafter, he went back to his house. After some time when he again came there, he saw dead body of the deceased and that the accused/appellants were not there. He has further stated that he again went back to his house and when he came out dead body of the deceased was not there and it was taken away by the accused persons. In cross-examination this witness remained very firm and nothing could be elicited from him by the defence to make his evidence untrustworthy or doubtful. Though in para-5 he has stated that he too was detained by the police but after recording his statement he was set free. He has categorically denied the suggestion that he is a planted witness.

09. PW-7 Ramsunder is another eyewitness to the incident. While supporting the prosecution case he has stated that at about 8 pm in the night when he was going to the house of one Baratu for having his meals he saw the accused persons beating the deceased and they were dragging him towards the house of Shanker. He has stated that when he asked accused/appellant No.2 Baban as to what they are doing, accused/appellant No.2 said that they are taking the deceased to the house of Shanker for doing justice and near the house of Shanker all the accused persons started beating the deceased by club. When he asked them not to do so, they did not stop and also threatened him to go away, on which he went back to his house. In cross-examination this witness also remained very firm.

10. PW-1 Ramkeli, wife of the deceased, has stated that on the date of incident at about 8 pm her husband had gone to the house of his father

to bring *Gudakh* and when he did not return till 4 am of the next morning she enquired from her father-in-law who in turn told her that the deceased had not come to his house. Then she was informed by PW-2 Devanand that he saw quarrel between the accused persons and the deceased. She has stated that at about 10 am she was informed by her *Jeth* Ashok Choudhary that dead body of the deceased is lying near brook and then she lodged merg intimation (Ex.P/1).

11. PW-2 Devanand is cousin brother of the deceased. He has stated that on the date of incident he had seen the accused/appellants and the deceased having their meals. When he was returning he heard the sound of quarrel between the accused/appellants and the deceased and then he went back to sleep. This witness was later declared hostile.

12. PW-3 Suraj who is a child witness, aged about 10 years, though deposed in examination-in-chief against the accused/appellants but in cross-examination did not support the prosecution case. PW-4 Nehru has turned hostile and has not supported the prosecution case. PW-6 Vijay Kumar is a witness before whom accused/appellant No.1 Lakhan made extrajudicial confession. He has stated that at about 8 pm when he came out of his house to ease himself he found accused/appellant No.1 Lakhan standing there and on being asked as to why he is standing there, he demanded tobacco from him. When he again asked Lakhan as to why he is gasping, he disclosed that he has committed murder of the deceased.

13. PW-8 Swarath Ram, father of the deceased, has stated that on the date of incident at about 4 am PW-1 Ramkeli met him and enquired about her husband, on which he told her that her husband has not come to his house. On being told by PW-1 Ramkeli that she was informed by Tilakdhari that there was quarrel in the house of Jhannu and Nehru with her husband, he telephoned his son Ashok and informed him about the incident. Thereafter, he (PW-8) went to police station and on his return he came to know that the deceased was murdered and his dead body was recovered from the brook. PW-9 Ashok Choudhary, elder brother of the deceased came to know about the incident after it had taken place. He is also a witness to inquest (Ex.P/6), spot map (Ex.P/7), seizure (Ex.P/8) and site plan (Ex.P/9). PW-10 Ram Shringar who is a witness to inquest (Ex.P/6), seizure (Exs.P/10,12 & 13) and memorandum of appellant No.1 Lakhan (Ex.P/11) though has admitted his signature on the documents but has not supported the prosecution case. PW-11 Ramjaan, Up-Sarpanch, who is a witness to inquest and seizure has supported the prosecution case. PW-14 Sunil Tiwari, investigating officer, has duly supported the prosecution case. PW-15 Arjun Singh, Patwari, prepared spot map Ex.P/9. PW-16 Dr. Rashmi Kumar conducted postmortem on the body of the deceased vide Ex.P/18 and noticed following injuries:

- (i) both eyes damages, no eyeball in cavity.
- (ii) lower lip - lacerated wound - 2" x 1" x 1"
- (iii) swelling on left face - 2" x 2" x 1"
- (iv) lacerated wound on mentum - 3" x 1" x 1"
- (v) both jaws fractured and many teeth broken
- (vi) contusion present on neck about 5" x 1" transverse in shape and

on cutting blood was found and hyoid bone was fractured.

(vii) contusion over chest - 7" x 3", on cutting blood was found.

(viii) bleeding from both eyes.

In her opinion the cause of death was asphyxia due to strangulation and the death was homicidal in nature.

14. Close scrutiny of the evidence makes it clear that on 21.7.2010 it is the accused/appellants who committed murder of the deceased. PW-5 Shanker Prasad and PW-7 Ramsunder eyewitnesses to the incident have fully supported the prosecution case and categorically stated as to the manner in which the accused/appellants assaulted the deceased and caused his death. Throughout their examination they remained very firm and reiterated as to the manner in which the deceased was done to death by the accused/appellants. There is no reason for this Court to disbelieve their testimonies. Further, PW-2 Devanand and PW-3 Suraj have partly supported the prosecution case and have stated that they saw the accused/appellants with the deceased quarreling. PW-6 Vijay Kumar, before whom appellant No.1 Lakhan made extrajudicial confession, also remained consistent throughout his examination and therefore, this Court finds no reason to disbelieve his version. Moreover, on the basis of disclosure statement (Ex.P/11) of appellant No.1 Lakhan, clubs were seized (Ex.P/12) and it has also been duly proved by the prosecution. Evidence on record further reflects that after commission of murder, the accused/appellants in order to cause disappearance of evidence of the offence had thrown the dead body near the brook.

15. As regards contention of counsel for the appellants that in the facts and circumstances of the case, the appellants can at best be held guilty under Section 304 Part-II of IPC, considering the manner in which they assaulted the deceased after dragging him for a considerable distance despite being objected by the witnesses as a result of which both his eyes got damages, he suffered multiple injuries including fracture of hyoid bone and ribs, their intention to cause death of the deceased is writ large and it cannot be said that they had only knowledge that the injuries being inflicted by them on the deceased could result in his death.

16. For the reasons stated above, we are of the opinion that the prosecution has been successful in proving the guilt of the accused/appellants on the basis of evidence adduced beyond reasonable doubt. The findings recorded by the trial Court holding the appellants guilty under Sections 302, 201, 34 of IPC are based on proper appreciation of the evidence, warranting no interference by this Court.

17. In the result, the appeal being without any merit is liable to be dismissed and it is dismissed as such.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(I.S. Uboweja)

Judge

