

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 629 of 2011

1. Rajaram @ Rajesh, aged about 27 years, S/o Roparam, Cast-Muria, Occupation – Agriculturist
2. Smt. Jhunki W/o Rajaram Caste Muria, Both are R/o Village Pahurnar, Hulbapara, Thana Barasur, Distt.-dantewada, C.g.

---- Appellants

Versus

1. State Of Chhattisgarh

---- Respondent

For Appellants	: Mr. Yogesh Pandey, Advocate.
For Respondent/State	: Mr. Ramakant Pandey, P.L.

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

Judgement

02/03/2015

Per T.P.Sharma, J.

Challenge in this appeal is to the judgment of conviction and order of sentence dated 09th May, 2011, passed by the Sessions Judge, South Bastar, Dantewada (C.G.) in Sessions Trial No. 185 of 2009 whereby and whereunder after holding the appellants guilty for causing homicidal death amounting to murder of Rajuram in sharing common intention, the trial Court convicted appellant No.1 - Rajaram under Section 302 of the I.P.C. and sentenced him to life imprisonment with fine of Rs.1000/- and in default to undergo further imprisonment for two months RI. Similarly, the trial Court also convicted appellant No.2 – Smt. Jhunki under Section 302/34 of the I.P.C. and sentenced her to life imprisonment with fine of Rs.1000/- and in default to further undergo RI for two months.

2. Conviction is impugned on the ground that without there being any iota of any

evidence against the appellants, the trial Court convicted and sentenced the appellants as aforementioned and thereby committed illegality.

3. As per case of the prosecution, appellant No.2 – Smt. Jhunki is the wife of deceased – Rajuram and was residing with appellant No.1 Rajaram. On 31.08.2009, the appellants crossed the river with the help of boat being driven by P.W.3 Munshi and P.W.5 Sudru. Unfortunately, deceased – Rajuram also crossed the river by boat with the help of the aforesaid witnesses. Thereafter, the appellants caused injuries to deceased by knife whereupon deceased shouted for help which was heard by P.W.3 Munish and P.W.5 Sudru, who went towards the place of incident where they saw the appellants assaulting upon deceased by knife. After causing his death, the appellant fled towards forest. P.W.3 Munshi and P.W.5 Sudru came to the deceased and found him dead. They informed the incident to the villagers. P.W.1 Ganguram, who is the father of deceased, went to Police Station Barsur and lodged F.I.R. vide Ex.P. 14 and merg vide Ex.P.13.

4. Investigating Officer left for scene of occurrence and after summoning the witnesses, prepared inquest over the dead body vide Ex.P.1. Spot map was prepared vide Exs. P.16 and 17. Bloodstained soil and plain soil, broken piece of bangles, radio and umbrella were seized from the spot vide Ex.P.19. Dead body was sent for autopsy to Primary Health Center, Barsur vide Ex.P.15. P.W.7 Dr. P.S.Komre conducted the autopsy vide Ex.P.8 and found following injuries:

- i. Incised wound over the neck of 6 x 3 x 3 inches.
- ii. Stab wound near right chest over 4th rib of 1 x 0.3 x 4.
- iii. Internal organ of the neck was found cut.

Mode of death was due to massive Haemorrhage and death was homicidal in nature.

5. Cloths of the deceased were sealed and seized vide Ex.P.18. During the course of investigation, appellant No.1 - Rajaram was taken into custody, he made disclosure statement of knife and cloth vide Ex.P.2 and the same was recovered at his instance vide Ex.P.4. Likewise, appellant No.2 – was also taken into custody, she

made disclosure statement of *Gamcha* vide Ex.P.3 and the same was recovered at her instance vide Ex.P.5.

6. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

7. After completion of investigation, charge sheet was filed before the C.J.M. Dantewada, who in turn committed the case to the Sessions Judge, South Bastar, Dantewada.

8. In order to prove the guilt of the appellants, prosecution examined as many as 08 witnesses. The accused persons were examined under Section 313 of the Code, in which, they denied the circumstances appearing against them and innocence and false implication of the crime in question was claimed.

9. After providing opportunity of hearing to the parties, learned Sessions Judge, convicted and sentenced the appellants as aforementioned in paragraph 1.

10. We have heard learned counsel for the parties. Judgment impugned and record of trial Court perused.

11. Mr. Yogesh Pandey, learned counsel for the appellants, vehemently submits that as per case of the prosecution, appellant – Rajaram was holding weapon of offence whereas appellant No.2 Smt. Jhunki was not holding any weapon of offence and the appellant Rajaram has caused injuries but not by appellant No.2 – Smt. Jhunki. Only on the ground that she was accompanying the appellant – Rajaram, the trial Court has convicted and sentenced both the appellants as aforementioned.

12. Mr. Rama Kant Pandey, learned counsel for the State, opposed the appeal and submitted that evidence of P.W.3 Munshi and P.W.5 Sudru is sufficient for proving guilt of the appellants that both had shared their common intention and in furtherance of sharing of common intention, appellants have caused homicidal death amounting to murder of Rajuram, husband of appellant No.2 Smt. Jhunki.

13. In order to appreciate the arguments advanced on behalf of the parties, we

have to examine evidence adduced on behalf of the prosecution. In the present case, homicidal death as a result of fatal injuries found over the vital part of body of deceased – Rajuram has not been substantially disputed on behalf of the appellants, but, on the other hand also established by the evidence of P.W.1 Ganguram, P.W.3 Munshi, P.W.5 Sudru, F.I.R. Ex.P.14, merg Ex.P.13, P.W.7 Dr. P.S. Komre and autopsy report Ex.P.8. Death of deceased was homicidal in nature.

14. As regards complicity of the appellants in crime in question, conviction of the appellants is substantially based on the evidence of P.W.3 Munshi and P.W.5 Sudru. As per evidence of P.W.3 Munshi, he assisted the appellants for crossing the river by boat with the help of P.W.5 Sudru. At that time, appellant No.1 Rajaram was holding knife. After left them by crossing over the river, deceased – Rajuram came, whom they also assisted for crossing the river by their boat. At that time, the deceased was holding one Radio and umbrella. After sometime he heard the sounds from the forest whereupon this witness went towards forest and saw both the appellants causing injuries to deceased and dragging him towards river. P.W.5 Sudru has substantially corroborated the evidence of P.W.3 Munshi. Defence has cross-examined the witness P.W.3 Munshi, but, in his detailed cross-examination, this witness has specifically deposed that he assisted the appellants for crossing the river by using boat, he heard the sounds from forest and went to the spot. His evidence, in this regard, also finds support from the evidence of P.W.5 Sudru. The evidence of above witnesses is sufficient for proving the fact that appellants have caused homicidal death of deceased by using knife.

15. As regards question of motive, in case of direct evidence, motive losses its importance. Even otherwise, it is aid in criminality and can be inferred from the kind of weapon used, part of body hit, nature of injury and other circumstances. In the present case, as per the evidence of prosecution witnesses, firstly, appellants crossed the river by boat owned by the P.W.3 Munshi and P.W.5 Sudru and thereafter deceased cross the river by the same boat, then they assaulted deceased by knife, appellant – Rajaram was holding weapon of offence, i.e., knife but the fact remains that co-accused Smt. Jhunki accompanied the appellant – Rajaram from his

house till the place of incident. She was present all along with the appellant – Rajaram till completion of incident and then she fled along with appellant – Rajaram. Appellant – Smt. Jhunki, who is first wife of the deceased, was residing with appellant – Rajaram. These circumstances clearly revealed that both the appellants had shared common intention and in furtherance of sharing common intention appellant – Rajaram has caused fatal injuries resulting into death of deceased. As per evidence of P.W.3 Munshi, both the appellant have caused injuries, which shows the overt act of the appellant – Smt. Jhunki, which is sufficient to establish the fact that appellants have caused homicidal death amounting to murder of deceased – Rajaram in sharing common intention.

16. After appreciating the evidence available on record, the learned Sessions Judge has convicted and sentenced the appellants as aforementioned. On close scrutiny of the evidence, we do not find any illegality or infirmity in the judgment of conviction and order of sentence.

17. Consequently, the appellant, being devoid of merit and substance, is liable to be and is hereby dismissed

JUDGE

JUDGE