

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 144 of 2011

1. Shankar Nayak, s/o Sapneshwar Nayak, aged about 30 years, R/o vilalge Gajpur (Chakradharpur ka Para), Police Station Chakradharpur, Distt. Singh Bhoom (Jharkhand), at present R/o Mohan Dhaba Chhote Urla, P.S. Abhanpur, Distt. Raipur.
2. Deepak Yadav, S/o Ramadhar Yadav, aged about 22 years, R/o village Sanchra, Police Station Rajendra Gram, Distt. Anuppur (MP), at present R/o Mohan Dhaba Chhote Urla, P.S. Abhanpur, Distt. Raipur.

**---- Appellants
(In Jail)**

Versus

1. State of Chhattisgarh, through:- Station House Officer, Police Station Abhanpur, Distt. Raipur (CG)

---- Respondent

For Appellant
For Respondent

Shri V.P. Singh, Advocate
Shri Adil Minhaj, Advocate

DB: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice I.S. Uboweja

Judgment on Board

P. Diwaker, J

15.10.2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 23.11.2010 passed by the Sessions Judge, Raipur (CG) in S.T. No.79/2010 convicting the accused/appellants under Section 302/34 & 201 of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo R.I. for Life & fine of Rs.1000/-, in default to undergo additional R.I. for 01 month and R.I. for 2 years and fine of Rs.500/-, in default to undergo R.I. for 15 days respectively.
2. The prosecution story, in brief, is that the accused/appellants and deceased Chandrasekhar were working in Mohan Dhaba. In the night of 26.1.2010 there was some quarrel between accused/appellant No.2-Deepak &

Chandrasekhar (since deceased) and in that process, Chandrasekhar slapped accused/appellant No.2-Deepak. However, on the intervention of others, the quarrel stopped. Thereafter the accused/appellants, deceased Sekhar were playing cards in the servant quarters situated at the back side of dhaba. While playing cards some dispute had taken place between the deceased and the accused persons therefore they had committed his murder by causing injuries by chopper. It is further case of the prosecution that after committing murder of deceased, they stuffed the body of deceased in a gunny bag and threw the said gunny bag in the field situated at some distance from the place of occurrence. Khilawan (PW-8) & Fatteeram (PW-11) had witnessed the incident and they informed about the same to Dipak Kansari, Manager of Dhaba, who called the owner of Dhaba namely Shobhraj and narrated the incident to him. On 27.1.2010 at 8.00 a.m. FIR (Ex.P-3) was lodged by Shobhraj against the accused/appellants. Merg Intimation (Ex.P-2) was also recorded at 8.05 p.m. The investigating officer after summoning the witnesses prepared inquest of the dead body of deceased vide Ex.P-5. Dead body was sent for post-mortem examination to Medical College Hospital, Raipur where Dr. Ulhas Gonnade (PW5) conducted post-mortem examination and opined that cause of death was injury to skull & neck by hard, sharp & heavy weapon and death was homicidal in nature.

3. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302/34 & 201 of the IPC and accordingly the charges were framed by the trial Court against the accused/appellants.
4. So as to hold the accused/appellants guilty, the prosecution examined as many as 12 witnesses. Statements of the accused/appellants were 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.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, convicted & sentenced the accused/appellants as mentioned in para-1 of this judgment.
6. Learned counsel for the accused/appellant submits that though two eyewitnesses namely Khilawan (PW-8) & Fatteram (PW-11) have been examined by the prosecution but their evidence are not sufficient to convict the accused/appellants. He further submits that though the articles allegedly seized from the possession of accused persons were stained with blood but in absence of FSL or serological report, the same is of no help to the prosecution. Lastly he submits that even if the entire prosecution case is taken as it is, at best the accused/appellants can be held guilty under Section 304 Part-1 of the IPC and not under Section 302/34 of the IPC because the incident had occurred all of sudden, in the spur of moment and without any premeditation.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that there is no reason for this Court to disbelieve statements of Khilawan (PW-8) & Fatteram (PW-11), who are eyewitnesses of incident.
8. We have heard learned counsel for the parties and perused the material available on record.
9. Harbinder Singh (PW-1) has not supported the prosecution case and turned hostile.
10. Shobhraj (PW-2) is the owner of Mohan Dhaba where the incident has taken place. On coming to know about the incident through his employees,

he has lodged the report of incident and merged intimation.

11. Radheshyam Sinha (PW-3) is the witness of memorandum and seizures of Ex.P-8, Ex.P-9, Ex.P-10 & Ex.P-11, however, he has not supported the prosecution case and has been declared hostile.

12. Dr. Ullhas Gonnade (PW-5) is the autopsy surgeon who conducted post-mortem on the body of deceased and noticed following injuries:-

- Abrasion of 20x18cm size at the lower half of chest anteriorly only upto coastal margin.
- Chop wound of 6.5cm x 1cm x bone deep cut on the body.
- Incised wound of 24cm x 2.5cm x bone deep on the forehead at the nose joint. Bone cut and crushed.
- Incised wound of 22cm x 2.5cm x 6.5cm x bone deep at the level of nostril.
- Chop wound of 6cm x 0.4cm x 5.5cm x 0.5cm x 0.6cm x 0.5cm x skin deep on the right cheek.
- Chop wound of 8x0.5x3.5x5cm x bone deep on the right side of chin.
- Transverse chop wound of 12x3.5cm from lower jaw to thyroid cartilage.
- Face bones and both the jaws were crushed and fractured.

According to doctor's report, cause of death of the deceased was injuries to skull & neck by hard, sharp & heavy weapon and death was homicidal in nature.

13. Dulendra Kumar Sen (PW-6) is the witness of memorandum and seizure memos of Ex.P-8 to Ex.P-11, but this witness has not supported the prosecution case and has been declared hostile by the prosecution. However, he has admitted his signatures over the aforesaid documents.

14. Basantram (PW-7) is the Patwari who had prepared the spot map of Ex.P-7.

15. Khilawan (PW-8) is the eye-witnesses to the incident. While supporting the prosecution case, he has stated that on the date of incident at about 11.00 p.m. in the night he went to sleep, whereas accused/appellants and the deceased were playing cards in the same room. Next morning at about 5.00 a.m., on hearing sound of beating, he & Fatte woke-up and saw that accused/appellant-Shankar was assaulting the deceased with the chopper and accused/appellant Deepak was standing there. Accused Shankar was saying that now he will cut the deceased into pieces. Accused Deepak asked him to remove the dead body from there and thereafter both the accused persons had stuffed the dead body into the gunny-bag and took the same outside the room. Since myself and Fattee were witnessing such type of incident for the first time, we stood quite at the corner of room. When accused persons took the dead body towards the field then we had informed about the incident to the Manager of Dhaba and Harvinder Mistry, who was sitting in the counter of dhaba. After some time accused persons came back to the room having thrown the dead body and then fled from the spot.

16. Dilip Bharti (PW-9) is the witness of seizure memos of Ex.P-27, P-28 & P-29 by which bloodstained soil, plain soil, bloodstained pillow & bed-sheet & gunny-bag respectively were seized. He is also witness to the inquest (Ex.P-5).

17. Dipak Kansari (PW-10) is the Manager of Mohan Dhaba where the accused persons and the deceased were working. While supporting the prosecution case, this witness has stated that Khilawan (PW-8) & Fattee (PW-11) had narrated the entire incident to him.

18. Fatteram (PW-11) is the another eye-witness to the incident and he has made almost similar statement as has been made Khilawan (PW-8). He has stated that he saw both the appellants causing injuries with chopper to

the deceased and thereafter they had taken his dead body in a gunny-bag.

19. Narayan Oti (PW-12) is the investigating officer and he has duly supported the prosecution case.

20. Close scrutiny of the evidence makes it clear that on 27.1.2010 at about 5.00 a.m. in the morning the accused/appellants had assaulted the deceased with chopper and injuries suffered by him led to his instantaneous death and thereafter they stuffed the dead body in a gunny bag and had thrown the same in the field situated at some distance from the place of occurrence. The incident was witnessed by Khilawan (PW-8) & Fatteram (PW-11) and these witnesses have categorically stated it is the accused/appellants who had assaulted the deceased with chopper. Their evidence finds corroboration from the medical evidence also wherein it has been stated that cause of death was injuries to skull & neck by hard, sharp & heavy weapon. Since nothing has been brought on record by the defence to controvert the stand of the prosecution, this Court does not find any reason to disbelieve the statements of eyewitnesses who have described the incident in a lucid manner. Looking to the quality of evidence of eyewitness to the incident and the fact that there is no explanation on behalf of accused/appellants as to how blood stains are there in the articles seized from their possession, it cannot be said that non-production of FSL report is fatal to the prosecution.

21. We find no substance in the argument of counsel for the accused/appellants that in the facts and circumstances of case the accused/appellants are liable to be held guilty under Section 304 Part-I of the IPC. The manner in which offence is said to have been committed, weapon of offence i.e. chopper, the parts of body on which assaults were made and the force with which the assaults were made causing multiple wounds in the head, skull etc. leading to his instantaneous death, it is

evident that the accused/appellants had intention to cause death of the deceased and had every knowledge that the injuries being inflicted by them on the deceased were sure to result in his death.

22. In the result, the appeal being without any substance is liable to be and is accordingly dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-