

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 600 of 2011

1. Sukul Ram, son of Nohar Sai Yadav aged about 55 years
2. Chat Ram Yadav, son of Sukul Ram Yadav aged about 27 years
3. Nanhi Ram Yadav, son of Sukul Ram Yadav aged about 19 years

All resident of village Lalpur, Para-Bankheta, police chowki-Korbi,
Police Station – Pasan, Distt. - Korba (C.G.)

---- Appellants
(In Jail)

Versus

1. State of Chhattisgarh through P.S. Pasan, Distt – Korba (C.G.)

---- Respondent

For Appellants	:	Ms. C.K. Navrang, Advocate.
For Respondent / State	:	Mr. Mahesh Mishra, Panel Lawyer

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

C A V JUDGMENT

Passed on : 27/04/2015

Per I.S. Uboweja, J

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 12.07.2011 passed by the Special Sessions Judge under S.C.S.T (Prevention of Atrocities) Act, 1989), Korba in Special Sessions Trial No. 19 of 2010, whereby and whereunder after holding the appellants guilty for causing homicidal death amounting to murder of Arjun Toppo and causing simple injuries to Raju and Balsai, the trial Court has convicted the appellants under Section 302 & 323 of the IPC and sentenced

them to undergo imprisonment for life and fine of Rs.1,000/-, in default additional R.I. for one year and imprisonment for one year respectively.

2. Conviction is impugned on the ground that without there being an iota of evidence against the appellants, the trial Court has convicted & sentenced the appellants as aforementioned and thereby committed illegality.
3. As per case of prosecution, on fateful day of 01.03.2010 at about 5.00 p.m., in village Lalpur, complainant Raju (PW-1) and some other persons were playing holi, the accused Nanhi also came there and playing holi with them, in the meantime, the sister of the complainant Kumari Maniyaro Bai (PW-2) said to her brother that Nanhi is calling her to play holi, then Raju and Arjun Toppo ran towards the accused Nanhi and Nanhi ran away towards his house and thrown a stone on Raju, who received injury near left eye. Thereafter, accused Sukul Ram and his sons Chat Ram and Nanhi came out from their house holding stick, they have assaulted deceased – Arjun and Balsai by stick & fist. Arjun and Balsai also received injuries. Arjun received injuries in all over his body, accused have also abused and threatened to kill them. Raju (PW-1) has lodged First Information Report at Police Chowki, Korbi which was registered at zero vide Ex.P-1. Later on numbered FIR was registered as Crime No. 14/2010 by the Police Station, Pasan vide Ex.P-11. Injured Raju, Arjun and Balsai were

brought to Podi Uproda hospital for treatment were Doctor declared Arjun Toppo dead. Death was intimated to Police Station, Bango vide Ex.P-24. Merg was lodged in connection with the death of deceased Arjun Toppo vide Ex.P-6. Injured Raju was examined by Dr. Ghanshyam Singh Jatra (PW-7) vide Ex. 23A and found following injuries :-

- (i) Lacerated wound of 1 x ½ cm over medial side of left eyebrow;
- (ii) Contusion of 2 x 1 cm over lateral side and middle part of right arm.

Injured Balsai was also examined by Dr. Ghanshyam Singh Jatra (PW-7) vide Ex.16A and found following injuries :

- (i) Lacerated wound of 3 x ½ cm over left post side of head at occipital region;
- (ii) Contusion of 2 x 1 cm over nose;
- (iii) Contusion of 3 x 1½ cm over lateral side of left arm.

4. Dead body of the deceased was sent for autopsy to Community Health Centre, Podi Uproda vide Ex.P-10. Dr. Ghanshyam Singh Jatra (PW-7) conducted autopsy vide Ex.P-10A and found following injuries :

- (i) Contusion of 3" x 1½" posterior side of left forearm upper ¼ part;
- (ii) Contusion of 3" x 1½" posterior side of left elbow joint;
- (iii) Contusion of 4" x 2" posterior side of right buttock upper part;

- (iv) Contusion of 3" x 2" posterior side and upper part of right shoulder;
- (v) On de-section of head fractured of skull bone. Right parietal bone 3 1/2" x 3" is fractured and inside the skull cavity;
- (vi) Hair line fractured present over left parietal bone 3 1/2" x 2" (round).

Mode of death was neurogenic shock due to head injury and death was homicidal in nature.

5. Spot map was prepared vide Ex.P-18. Caste certificates and bonafide residential certificates (Exs.P-12 to P-15) of injured Raju and deceased Arjun Toppo were seized vide Exs.P-27. Bloodstained cloth of accused Chat Ram was seized vide Ex.P-4. Bloodstained cloth of accused Sukul Ram was seized vide Ex.P-5. During the course of investigation, appellant Chat Ram was taken into custody, he made disclosure statement of stick vide Ex.P/2, same was recovered at his instance vide Ex.P/3.
6. Statements of 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 Special Sessions Judge, (SC & ST Act), Korba.
7. In order to prove the guilt of the accused/appellants, the prosecution has examined as many as eleven witnesses.

Accused were examined under Section 313 of the Code, in which they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question was claimed.

8. After providing opportunity of hearing to the parties, learned Special Sessions Judge convicted and sentenced the appellants as aforementioned.
9. We have heard learned counsel for the parties and perused the judgment impugned and record of trial Court.
10. Learned counsel for the appellants vehemently argued that conviction of the appellants is substantially based on the evidence of Raju (PW-1), Maniyaro (PW-2) and Balsai (PW-11), but their evidence does not inspire confidence and is not trustworthy as they have not witnessed the incident and their evidence is based on conjunctures and surmises. Evidence of above witnesses is not sufficient for definite conclusion. So, the appellants are entitled to be acquitted from the charges levelled against them.
11. On the other hand, learned Panel Lawyer for the State opposes the appeal and submits that evidence of Raju (PW-1), Maniyaro (PW-2) and Balsai (PW-11) is sufficient to prove the guilt of the appellants. Evidence of injured witnesses Raju and Balsai cannot be discarded. It is unchallenged to the extent that the appellants had caused injuries to Raju and Balsai and also caused injuries to

Arjun and as a result of such injuries Arjun has died. Their evidence further reveals that they were present on the spot and they have witnessed the incident, therefore, the trial Court has rightly convicted and sentenced the appellants as aforementioned.

12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
13. In the present case, homicidal death as a result of fatal injuries found over the body of deceased Arjun Toppo and simple injuries caused to injured Raju and Balsai have not been disputed on behalf of the appellants. On the other hand, it is also established by the evidence of Raju (PW-1), Maniyaro (PW-2), Balsai (PW-11), death intimation (Ex.P-24), Merg (Ex.P-6), FIR (Exs.P-1 & P-11), Dr. Ghanshyam Singh Jatra (PW-7), MLC reports (Exs. P-23A and P-16A) and autopsy report (Ex.P-10A) that the injuries caused to Raju and Balsai were simple in nature and the death of deceased – Arjun Toppo 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 injured witnesses Raju (PW-1), Balsai (PW-11) and Maniyaro Bai (PW-2), sister of injured Raju. As per evidence of Maniyaro Bai (PW-2) three days prior to the incident, when she was alone in her house, accused Nanhi came there and molested her. She

narrated this incident to her brother Raju (PW-1). On the day of Holi festival, Raju (PW-1) had asked Nanhi about molestation committed to her sister whereupon accused Nanhi assaulted Raju (PW-1) by stone. Raju (PW-1) was injured and blood was oozing from his forehead. Raju (PW-1), deceased Arjun Toppo and one another person went to house of accused Nanhi, at there all accused persons were holding stick, they assaulted Arjun and Raju (PW-1), resulting into they received injuries due to which deceased Arjun Toppo fell down there. Injured witness Raju (PW-1) has deposed and supported the evidence of her sister Maniyaro Bai (PW-2) about she was being molested by Nanhi and in order to ensure the same Raju asked Nanhi about molestation but he did not give any reply and assaulted Raju by stone on his forehead. Thereafter, his brother Arjun Toppo (deceased), Balsai (PW-11) and he himself went to the house of Nanhi about the assault made by him. At there, all accused persons came out with stick and assaulted Arjun Toppo, Balsai (PW-11) and him. In the assault made by the accused persons, Arjun was badly injured and died whereas Raju and Balsai got injured. He reported the incident in Police Chowki, Korbi. They were examined by doctor at Podi Uroda. Other eyewitness and injured witness Balsai (PW-11) has also corroborated the evidence of Maniyaro Bai (PW-2) and injured witness Raju (PW-1). He stated that on the eve of Holi festival, he along with Raju

(PW-1) and deceased Arjun went to the house of accused for advising them. At there accused persons came with stick and assaulted them by their stick. Arjun was lying down there, they went to Police Chowki, Korbi and reported the incident.

15. Defence has cross-examined the witnesses Raju (PW-1), Maniyaro Bai (PW-2) and Balsai (PW-11) at length, but has not been able to elicit anything in their cross-examination to discredit their testimonies that the appellants have not assaulted the deceased and others. Their evidence clearly reveals that they were present on the spot and witnessed the incident which is sufficient for drawing inference that the appellants have caused homicidal death of the deceased.
16. As regards the question of motive, in case of direct evidence motive loses its importance, even otherwise, motive only aids 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 person concerned would be in a position to explain that what was his intention or motive behind commission of any act. Accused / appellants have caused fatal injuries by sticks, which shows their grave intention for causing homicidal death amounting to murder of deceased – Arjun Toppo.
17. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellants as aforementioned.

18. On close scrutiny of the evidence, it reveals that the appellants have caused homicidal death amounting to murder of deceased Arjun Toppo and caused simple injuries to Raju and Balsai, therefore, we do not find any illegality and infirmity in the judgment impugned.
19. Consequently, the appeal, being devoid of merit, is liable to be and is hereby dismissed.

(T.P. Sharma)
JUDGE

(I.S. Uboweja)
JUDGE