

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.687 of 2002

1. Soukhilal, S/o Jagatram Kurmi, aged 60 years,
–**Abated**

2. Kunja Bihari, S/o Soukhilal Kurmi, aged 30 years,
Both R/o Deori, P.S./Takhatpur, District Bilaspur, Chhattisgarh

Appellants

versus

State of Chhattisgarh

Respondent

For Appellant Kunja Bihari	:	Ms. Sharmila Singhai, Advocate
For State/Respondent	:	Ms. Smita Ghai, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Deepak Gupta, Chief Justice

10.8.2016

1. This appeal was filed by two accused Soukhilal and Kunja Bihari against judgment dated 24.5.2002 passed in Sessions Trial No.285 of 2001 by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act'), Bilaspur, whereby accused Soukhilal has been convicted under Section 302 of the Indian Penal Code and accused Kunja Bihari has been convicted under Section 302 read with Section 34 of the Indian Penal Code. Both the accused have been sentenced as follows:

Accused Soukhilal	Under Section 302 IPC	Life Imprisonment and Fine of Rs.300/-, in default of payment, 2 months' Simple Imprisonment
Accused Kunja Bihari	Under Section 302 read with Section 34 IPC	Life Imprisonment and Fine of Rs.300/-, in default of payment, 2 months' Simple imprisonment

2. At this stage, it is pertinent to mention that accused Soukhilal died during pendency of the appeal and the appeal has been disposed of in his respect as having been abated vide order dated 20.11.2006.

3. The undisputed facts of the case are that PW-1, Ramkumari and deceased accused Soukhilal are step brother and sister. They have a common mother, but the fathers are different.

4. According to the prosecution, the sister of deceased accused Soukhilal was married to brother of PW-1, Ramkumari and Ramkumari was got married to accused Soukhilal's brother-in-law Chhoteram. Ramkumari and Chhoteram lived together only for a month and thereafter Ramkumari came back to her parental home. Thereafter, she got married to Fekan alias Bilaspuriya, who used to ply a rickshaw in Bilaspur town. PW-1, Ramkumari used to live in Village Deori. It is also the case of the prosecution itself that deceased accused Soukhilal had been beaten-up and he (Soukhilal) was under the impression that he was got beaten-up by Fekan alias Bilaspuriya, husband of PW-1, Ramkumari.

5. The prosecution case is that on 24.4.2001, accused Kunja Bihari (the present Appellant), son of deceased accused Soukhilal came to the house of Fekan alias Bilaspuriya and PW-1, Ramkumari. He told Fekan alias Bilaspuriya that his father Soukhilal had called Fekan alias Bilaspuriya to settle the dispute and thereafter Fekan alias Bilaspuriya accompanied accused Kunja Bihari and left his house. On the same day, during the noon hours, the body of Fekan alias Bilaspuriya was found in a drain outside the house of Manharan. Thereafter, PW-3, Janaklal along with some other villagers went to the police station and gave intimation about the death which was recorded in the form of Merg Intimation, Ex.P-15. In the Merg Intimation, it is mentioned that PW-3, Janaklal was informed by other villagers that they had seen accused Soukhilal and deceased Fekan alias Bilaspuriya fighting and that Fekan alias

Bilaspuriya had died. There is no mention of the name of accused Kunja Bihari in the Merg Intimation or in the First Information Report, Ex.P-5 lodged on the basis of Merg Intimation. As far as accused Soukhilal is concerned, there were some allegations that he had made extra judicial confession and he was convicted on the basis of said extra judicial confession.

6. Since the appeal on behalf of deceased accused Soukhilal has abated, we are not going into the merits of the so called extra judicial confession. However, as far as accused Kunja Bihari is concerned, none of the witnesses has named him except PW-1, Ramkumari, widow of deceased Fekan alias Bilaspuriya and PW-12, Bitawan Bai, mother of PW-1, Ramkumari. They both stated that accused Kunja Bihari had called Fekan alias Bilaspuriya from their house. For the sake of deciding the appeal, even if this statement is expected to be correct, this means that accused Kunja Bihari, i.e., the present Appellant came to the house of deceased Fekan alias Bilaspuriya and asked Fekan alias Bilaspuriya to accompany him to the house of his father Soukhilal since his father wanted to settle some old dispute. Admittedly, deceased Fekan alias Bilaspuriya was not killed in the house of accused Soukhilal. There is no evidence to even remotely indicate that accused Kunja Bihari was present at the spot where Fekan alias Bilaspuriya was actually assaulted and killed. There is no evidence at all to show that there was some conspiracy between deceased accused Soukhilal and his son accused Kunja Bihari to kill deceased Fekan alias Bilaspuriya. There is no material on record to show that the father and son had hatched the conspiracy to kill Fekan alias Bilaspuriya. There was some evidence against deceased accused Soukhilal. He was convicted, but has died. As far as accused Kunja Bihari is concerned, there is no evidence against him to connect him with the crime in question.

7. Consequently, the impugned judgment of conviction and sentence passed by the Trial Court, insofar as it relates to present Appellant/accused Kunja Bihari, is set aside. The instant appeal is allowed. Appellant Kunja Bihari is acquitted of the charge framed against him. He is on bail. His bail bonds are discharged subject to his compliance of the conditions incorporated in Section 437A of the Code of Criminal Procedure.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE