

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 499 of 2011

1. Manoj, S/o Budheshwar Prasad Yadav, aged about 20 years, R/o New Mines, 44 Qtr. Podi, Police Station Podi, Distt. Koriya (CG)
2. Santosh S/o Dharampal Singh R/o Welcome Dhaba, Dharmnagri Podi, Distt.-Koriya, C.G.

---- Appellants (In Jail)

Versus

1. State Of Chhattisgarh, through Police Station Podi, District Koriya (CG)

---- Respondent

For Appellants:
For Respondent:

Smt. Savita Tiwari, Advocate.
Shri Ravindra Agrawal, Panel Lawyer.

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

Judgement

Per P. Diwaker, J

02/03/2016

1. This appeal has been filed against the judgment of conviction and order of sentence dated 25.6.2011 passed by the Sessions Judge, Koriya (Baikunthpur) in S.T. No.4/2009 convicting appellant No.1 under Section 302 IPC and appellant No.2 under Section 302/34 IPC and sentencing them to undergo RI for life with fine of Rs.1,000/-, plus default stipulation.
2. The prosecution case, in brief, is that on 13.12.2008 at about 10.30 p.m. Bhaiyalal (since deceased), Amarnath (PW-1) & Santosh Kumar (PW-5) had gone to Welcome Dhaba, Dharamnagari, Podi to have their dinner and there some dispute took place between accused/appellant No.1 & the deceased and therefore when they came out from dhaba after having their meals, the accused persons assaulted them with stick & club and caused

several injuries. Further case of the prosecution is that Amarnath & Santosh Kumar managed to flee from there, however, the accused persons could catch hold of deceased Bhaiyalal, forcibly took him on their motorcycle to the house of accused Manoj and assaulted him there also as result of which he died. Thereafter the accused persons threw the body of deceased on Street No.44 near Jagannath Temple. Next morning when Amarnath (PW-1) & Santosh Kumar (PW-5) went in search of the deceased, they found him lying dead beside Street No.44. On 14.12.2008 Merg Intimation was recorded vide Ex.P-1 and FIR was registered vide Ex.P-2 against four accused persons i.e. present appellants and two others namely Kailash & minor Punjabi. On 14.12.008 injured Amarnath (PW-1) & Santosh Kumar (PW-5) were medically examined by the doctor (PW-10) vide Ex.P-25 & Ex.P-26 respectively. Inquest was conducted on the body of deceased vide Ex.P-4 and thereafter dead body was sent for post-mortem examination which was conducted by Dr. Jagat Yadav (PW-9) on 14.12.2008 vide Ex.P-23. The doctor conducting post-mortem examination noticed following injuries & symptoms;-

- Abrasion on both the auxiliary area laterally of eyebrow.
- Abrasion on inferior lateral aspect of mandible left side.
- Abrasion on chest at the left nipple
- Abrasion below the right eye.
- 2nd, 5th, 6th & 7th ribs of left side were fractured.
- Both the lungs were pale and notice fracture in it.
- Rigor mortis was present in the entire body.

He opined that cause of death and the death was homicidal in nature. Ad/ After completion of investigation, challan was filed under Sections 307, 302, 201 & 34 of IPC, however, the trial Court has framed the charges under Sections 307/34, 302/34 & 201 of IPC against present appellants and charge under Section 307/34 of acquitted accused Kailash.

3. In order to prove the complicity of accused persons in the crime in question, the prosecution has examined 12 witnesses. Statements of accused persons were also recorded under Section 313 Cr.P.C. in which they denied their guilt, pleaded innocence & false implication.
4. After hearing the parties, the Court below while acquitting co-accused Kailash of the charge under Section 307/34 IPC and present appellants under Section 201 of IPC, convicted & sentenced the accused/appellants herein in the manner as described above.
5. Counsel for the accused/appellants submits that;
 - there are material contradictions and omissions in the statements of Amarnath (PW-1) & Santosh Kumar (PW-5) and therefore these witnesses do not appear to be trustworthy.
 - Though on the basis of memorandum of accused/appellants certain recoveries have been made but in absence of report of FSL, the same are of no consequence.
 - The appellants had no intention to cause death of the deceased and the incident occurred all of a sudden in the spur of moment, there was no premeditation on the part of appellants and therefore considering all these facts, they can be at best convicted under Section 304-I or II of IPC.
 - The appellants are in custody since 15.12.2008 therefore after converting their conviction into Section 304-I or II IPC, they be sentenced to the period already undergone by them.
6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that there is no reason before this Court to disbelieve the testimonies of Amarnath (PW-1), Santosh Kumar (PW-5) & Ramji Bhagat (PW-7). He further submits that minor contradictions in

the statement of aforesaid witnesses are required to be ignored considering the fact that they are rustic villagers. He further submits that it is not the case where the deceased was done to death at Dhaba itself rather the accused persons chased the deceased, caught hold of him, forcibly took him on their motorcycle to the house of co-accused Manoj, assaulted him there also and thereafter threw his dead on Road No.44 near Jagannath Temple after committing his murder. In these circumstances, conviction of accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

7. Heard counsel for the parties and perused the evidence available on record.
8. Amarnath (PW-1) is the injured eyewitness of incident and also lodger of FIR (Ex.P-2). He has deposed that on the date of incident he along with Santosh Kumar (PW-5) & the deceased had gone to Welcome Dhaba. Accused Manoj & Kailash were also present there. Accused/appellant Manoj was drunk and saying that he knows Karate and does not care of anyone. On this count, the deceased had a quarrel with accused/appellant No.1-Manoj. He has further stated that after having their meals when they came out from the dhaba, the accused persons armed with stick & club came out and started assaulting them. He has further stated that first Santosh and thereafter he managed to flee from there. He has further stated that had he not escaped from there they would have killed him. He has further stated that he knows Ramji Bhagat, his residence is near the place where accused persons attacked on them. Next morning when he went to the police station to lodge the report of incident, he came to know that body of the deceased is lying near Jagannath Temple. He has stated that mere intimation regarding death of deceased was not

given by him, however, he admits his signature over mere intimation of Ex.P-1. At this stage this witness has been declared hostile and while answering the leading questions put to him by the Public Prosecutor, he has reiterated that it is the accused persons who came out from the dhaba carrying stick & club in their hands and after beating him & Santosh took them near the transformer and there also assaulted them after removing their clothes.

9. Sushila (PW-3) is the wife of the deceased, however, nothing has been deposed by her against anyone.
10. Babulal (PW-4) is the witness of inquest (Ex.P-4), memorandum (Ex.P-6) of accused /appellant No.1, memorandum (Ex.P-8) of accused/appellant No.2 and seizure memos (Ex.P-9 to Ex.P-14). Though this witness has not supported the prosecution case and declared hostile but admitted his signature over the aforesaid documents.
11. Santosh Kumar (PW-5) is another injured eyewitness of the incident. This witness has admitted the prosecution story to the extent of going to Welcome Dhaba with Amarnath (PW-1) & the deceased; presence of accused persons in the dhaba and ensuing of incident. He has deposed that he does not know as to what had happened with the deceased and Amarnath because as soon as accused/appellant No.1 assaulted him with club, he fled away from the spot. He has further stated that next morning he came to know that the deceased was found lying dead near Jagannath Temple. After declaring this witness hostile, he was cross-examined by the Public Prosecutor and he has admitted that some dispute between the deceased and accused Manoj had taken place at Dhaba and that he sustained injury on his head & leg.
12. Jageshwari (PW-6) has not supported the prosecution story & turned

hostile.

13. Ramji Bhagat (PW-7) has stated that after hearing commotion when he came out, accused/appellants and the deceased were there but accused Kailash was not there and they were hurling abuses at each other. According to this witness, when he asked as to why they were abusing, accused Manoj told him that the deceased had committed theft in his house on which he further told him that if it was so then the matter may be reported to police. He has further stated that conceding to his say, they expressed their readiness to go to the police station but next day he came to know that body of the deceased is lying at Koriya Road, near Jagannath Temple. In this cross-examination this witness has clarified that conceding to his say, accused/appellants & the deceased had moved away.
14. Sandeep (PW-8) has not supported the prosecution story and turned hostile.
15. Dr. Jayant Yadav (PW-9) is the witness who conducted the post-mortem examination on the body of the deceased and gave his report Ex.P-23. According to this witness, he noticed abrasions and fracture of 2nd, 5th, 6th & 7th ribs and opined the cause of death as shock and the death was homicidal in nature.
16. Dr. R.R. Gajbhiye (PW-10) is the witness who medically examined injured Amarnath (PW-1) and gave his report Ex.P-25. According to this witness, he noticed swelling on his forehead and one lacerated wound of ½" & ¼" on chin. This witness had also medically examined injured Santosh Kumar (PW-5) and noticed one abrasion on right leg caused by hard and blunt object.
17. Vishal Sone (PW-12) is the investigating officer who has duly supported

the case of the prosecution.

18. Close scrutiny of evidence makes it clear that on 13.12.2008 between 11-12.00 a.m. in the night while the deceased along with Amarnath (PW-1) & Santosh Kumar (PW-5) and accused/appellants were having their meals separately at the Welcome Dhaba, some dispute arose between accused/appellant No.1 and deceased as a result of which accused/appellants started assaulting them with stick & club. Amarnath (PW-1) & Santosh Kumar (PW-5), injured eyewitness, have somehow managed to flee away from there, however, the accused/appellants caught hold of the deceased, confined him in the house of accused/appellant No.1, assaulted him there also and because of the injuries inflicted on the deceased, he died.

True it is that the aforesaid injured eye-witnesses have not supported the prosecution case in its entirety and turned hostile, but they have vividly deposed about the genesis of occurrence, the participation and involvement of accused/appellants, the injuries inflicted on the deceased and each of them. According to Amarnath (PW-1), after having their meals when they came out from the Dhaba, the accused/appellants came out from inside and started assaulting him, Santosh Kumar (PW-5) and the deceased with stick & club as a result of which he sustained injuries over his head and chin, which is established from MLC report Ex.P-25. He has further stated Santosh had run away before himself and if he had not run away from there, they would have killed him also. Santosh Kumar (PW-5), another injured witness, has deposed that when accused/appellant No.1 assaulted him on his leg with club, he fled away from there and this gets corroboration from the medical evidence (Ex.P-26) according to which one abrasion on the right leg of this witness caused by some hard and blunt object was found. The defence has not

been able to elicit anything in their evidence which goes to show that they were not present on the spot or they have not suffered injuries in the incident in question. It is settled legal position that evidence of hostile witness is not required to be rejected in toto on account of few infirmities or contradictions in his evidence and if any part of his evidence is otherwise found useful, the same can be read in evidence. Thus, keeping in mind un-rebutted portion of evidence of aforesaid injured eye-witnesses which finds due corroboration from the medical evidence as well, the complicity of accused/appellants stands proved beyond reasonable doubt.

19. Other piece of the evidence against the accused/appellants is that accused/appellants and deceased were seen together by Ramji Bhagat (PW-7). According to this witness, after hearing commotion when he came out, accused/appellants and the deceased were there and they were hurling abuses at each other. When he asked as to why they were abusing, accused/appellant No.1 told him that the deceased had committed theft in his house on which he further told him that if it was so then the matter may be reported to police and conceding to his say, they expressed their readiness to take the deceased to the police station but few hours thereafter the body of the deceased was recovered from near Jagannath Temple. However the accused/appellants either in their statements recorded under Section 313 Cr.P.C. or by any other evidence failed to establish that when and where they and deceased parted company after being last seen. Thus the time gap between the point of time when the accused/appellants and the deceased were seen last alive and the recovery of body of deceased is so small that possibility of any person other than the accused/appellants being the author of crime becomes impossible. It is settled position of law that in cases where the deceased was found murdered within a short time after seeing alive in the

company of the accused, it becomes the duty of the accused to explain while making statement under Section 313 Cr.P.C. the circumstances under which the death of the victim occurred. Keeping silent and not furnishing any explanation for such circumstance is an additional link in the chain of circumstances to sustain the charge against him.

20. That apart, on the basis of disclosure statements made by accused/appellants, bloodstained articles including clubs were recovered vide seizure memos of Ex.P-12 & Ex.P-14 and there is no explanation from the accused/appellants as to how the blood stains are there in the articles seized from their possession. Even the doctor performing autopsy has opined that injuries found on body of deceased could be caused by the hard and blunt object.

21. Further, we find no substance in the argument of counsel for the accused/appellants that in the facts and circumstances of case the accused/appellants can at best be held liable guilty under Section 304 Part-I or II of the IPC. Considering the manner in which the appellants assaulted the deceased, the nature and extent of injuries i.e. fracture of four ribs, rupture of liver, tearing of spleen & haematoma on lateral aspect of right kidney, it can safely be hold that they had not only intention to kill the deceased but also had the knowledge the injuries being inflicted by them on the deceased were sure to result in his death.

22. Accordingly, the appeal being without substance is liable to be dismissed and it is dismissed as such. Since the accused/appellants are already in custody no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-