

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 784 of 2011**

1. Ram Kumar Sivare, S/o Pitambar Sivare, aged about 23 years, Occupation Vegetable Seller, R/o Adarsh Nagar, Camp-1, Shantipara, Bhilai, District Durg (CG)

**---- Appellant  
(In Jail)**

**Versus**

1. State Of Chhattisgarh, through P.S. Chhaoni, District Durg (CG)

**---- Respondent**

**And**

**CRA No. 787 Of 2011**

1. Bhuneshwar Prasad, S/o Kapil Deo, aged 25 years, Occu. Labourer, job in grocery shop, R/o Camp-1, Adarsh Nagar, Shantipara, Bhilai, Dist. Durg (CG)

**---- Appellant  
(In Jail)**

**Vs**

1. State Of Chhattisgarh, through P.S. Chhaoni, District Durg (CG)

**---- Respondent**

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Shri U.Pandey, Advocate for appellant–Bhuneshwar Prasad in Cr. A. No.784/11.  
Shri S.Yadav, Advocate for appellant– Ramkumar Sivare in Cr.A. No.787/11.  
Shri V.A. Goverdhan, Panel Lawyer for the State.

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**Hon'ble Shri Justice Pritinker Diwaker**  
**Hon'ble Shri Justice Inder Singh Uboweja**

**Judgement**

**Per P. Diwaker, J**

**09/02/2016**

1. Since both the aforesaid appeals arise out of the same incident, they are being disposed of by this common judgment.
2. These appeals are directed against the judgment of conviction and order of sentence dated 28.6.2011 passed by the Additional Sessions Judge,

Durg in S.T. No.34/10 convicting the accused/appellants under Section 302/34 of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo imprisonment for life & fine of Rs.5,000/-, in default to undergo additional R.I. for 06 months.

3. The prosecution story, in brief, is that on 5.1.2010 at 12.00 noon Merg Intimation (Ex.P-1) was lodged one Sandeep Kumar Pal (PW-1) alleging in it that on that day at about 10.30 a.m. he along with friend Anil Bhoyar (since deceased) was returning after answering the call of nature. On the way i.e. near the government hospital, they met accused Ramkumar Sivare & Bhuneshwar. Both the accused persons while saying to Anil that he has falsely implicated Manoj (acquitted accused) in the case of eve teasing, caught hold of him and accused Ramkunar Sivare assaulted on his stomach & neck by *Khukhri* (a kind of knife). Accused Bhuneshwar also assaulted him by sword-stick (gupti) as a result of which he started bleeding profusely and became unconscious. It is further alleged that accused persons chased him also, however, he managed to flee. He informed about the incident to the family members of the deceased. The deceased was taken to the hospital where he was declared brought dead by the doctors. After lodging merg intimation at 12.05 p.m., FIR (Ex.P-2) was registered against the accused persons under Section 302/34 of IPC. MLC of Sandeep Kumar Pal (PW-1) was done vide Ex.P-20. Inquest was prepared vide Ex.P-5. Body of the deceased was sent for post-mortem which was conducted by Dr. V.S. Baghel (PW-3) on 5.1.2010 vide Ex.P-12 and noticed following injuries:-

- Incised wound of 12x5x3cm size on lower part of occipital & upper part of neck on posteriorly placed slightly oblique.
- Incised wound of 6x3x3cm on right side of upper posterior of neck.
- Incised wound of 5x1x1cm on right & posterior part of neck.
- Incised wound, penetrating in nature, of 4x2cm, bone deep on right

lateral aspect of neck.

- Incised wound penetrating in nature of 4x1cm bone deep on right side of neck.
- Incised wound of 4 ½ x 2 ½cm bone deep obliquely placed on postero medial aspect of left forearm.
- Incised wound of 10x6cm size communicating to left elbow joint placed obliquely on postero lateral aspect of left elbow.
- Incised wound of 6x3cm size penetrating placed oblique above right nipple.
- Incised wound of 7x3cm penetrating on right lower part of chest extending to right subchondral area.
- Incised wound of 5x1cm skin deep below left scapula.
- Incised wound of 4x3cm size penetrating on left lower dorsal & lateral aspect linear.
- Incised wound 2cm long skin deep on left lumbar area.
- Incised wound of 5x3cm bone deep on left axilla posteriorly.

The doctor has opined that cause of death was shock due to extensive visceral injuries & haemorrhage and death was homicidal in nature. Injured Sandeep Kumar Pal (PW-1) was also medically examined by the doctor (PW-11) vide Ex.P-20 who noticed abrasion of 6cm x 4cm at the left leg caused by hard object. During the course of investigation, accused/appellant Bhuneshwar was taken into custody, he made disclosure statement of *Khukhri*, full pant & t-shirt vide Ex.P-7 and the same were recovered at his instance vide seizure memo of Ex.P-8. Accused/appellant Ramkumar was also taken into custody, he made disclosure statement of *Khukhri*, white colour full pant & orange colour half shirt vide Ex.P-9 and the same were recovered at his instance vide seizure memo of Ex.P-10. Bloodstained soil, plain soil & other articles were recovered from the spot vide Ex.P-6. Patwari prepared the spot map vide Ex.P-11. Seized articles were sent for chemical examination to the FSL from where report Ex.P-30 has been received confirming presence of blood upon the articles seized from the appellants. However, the

prosecution has not produced the report of the Serologist.

4. After completion of investigation, charge sheet was filed against the accused persons and the trial Court has framed charge under Section 302/34 IPC .
5. So as to hold the accused persons guilty, the prosecution examined as many as 14 witnesses. Statements of the accused persons 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.
6. After hearing the parties, the Court below, while acquitting co-accused Manoj of the charge under Section 302/34 of IPC, has convicted & sentenced the accused/appellants in the manner as described above.
7. Learned counsel for the accused/appellant submits that;
  - conviction of the appellants is substantially based on the evidence of Sandeep Pal (PW-1) but this witness appears to be a shaky witness as there are material contradictions and omissions in his statement.
  - the recoveries based on disclosure statements of appellants do not inspire confidence because the seizure witnesses have not supported the prosecution case.
  - though blood stains on almost all the seized articles were found in the F.S.L. report, but the prosecution has utterly failed to establish origin and blood group of the blood.
  - on the same set of evidence co-accused persons have been acquitted by giving benefit of doubt, therefore, present appellants are also entitled for acquittal.
8. 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 statement of Sandeep Pal (PW-1), an eyewitness of the incident. He further submits that considering the fact that Sandeep Pal (PW-1) is a rustic villager, minor contradictions in his evidence are required to be ignored. Though the seizure witnesses have not supported the prosecution case but they have admitted their signature on the documents and they have also been proved by the investigating officer and thus the same are fully reliable. He further submits that though no serological report could be filed on record, but FSL report confirms presence of blood on almost all the seized articles and the accused persons failed to offer any explanation as to how the blood came on the articles seized from their possession.

9. We have heard learned counsel for the parties and perused the material available on record.
10. Sandeep Kumar Pal (PW-1) is an injured eyewitness. While supporting the prosecution case, he has stated that on the date of incident at about 10-10.30 a.m. he along with the deceased was returning after answering the call of nature. The accused persons met them on the way. Accused Ramkumar asked the deceased to forgive Manoj for teasing his sister. The deceased and Manoj slapped each other and thereafter the moment we turned around, accused Ramkumar caught hold of the collar of deceased and gave a blow of khukhri in his stomach. The deceased kicked accused Ramkumar and asked him to run. Thereafter accused Bhuneshwar came with Khukhri and gave a blow of Khukhri in the chest of the deceased. This witness has further stated that accused Bhuneshwar armed with Khukhri chased him also. He has further stated that acquitted accused Manoj had also assaulted the deceased in his neck by Khukhri. He informed about the incident to the brother of the deceased who asked him

to go to the police station and lodge the report. Thereafter he went to the police station and lodged merged intimation & FIR. In the cross-examination this witness has reiterated as to the manner in which the deceased was done to the death. There appears some contradictions in the statement of this witness relating to weapon of offence etc. but considering the fact that the deceased was done to death by the accused persons who were armed with sharp edged weapons, such contradictions are required to be ignored.

11. Imran (PW-2) is the witness of inquest (Ex.P-5), seizure memos Ex.P-6 to P-8 & P-10, memorandum statement Ex.P-9 and map (Ex.P-11). Though this witness has been declared hostile by the prosecution but he has admitted his signature over the aforesaid documents.
12. Dr. V.S. Baghel (PW-3) is the witness who conducted post-mortem examination on the body of the deceased and gave his report of Ex.P-12. According to this witness, he noticed as many as 13 injuries on the body of deceased and opined the cause of death as shock due to extensive visceral injuries & haemorrhage and the death was homicidal in nature.
13. Kartik alias Sunil (PW-4) is the hear-say witness to whom the incident was narrated by Sandeep Kumar Pal (PW-1) immediately after the incident.
14. Vijay Bhoir (PW-5) is the cousin of the deceased and he is also a hear-say witness.
15. Badal Dhole (PW-6) is a witness of memorandum statement (Ex.P-9), arrest memo (Ex.P-13), seizure memos (Ex.P-6 to P-8 & P-10). He is also witness to the map (Ex.P-11). Though this witness has not supported the prosecution case and turned hostile, but he has admitted his signature over the aforesaid documents.
16. K.R. Sahu (PW-11) is the Assistant Sub Inspector who recorded the merged intimation and FIR.

17. V.D. Nand (PW-12) is the investigating officer and he has duly supported the prosecution case.
18. B.C. Meshram (PW-13) is the Patwari who prepared spot map (Ex.P-11).
19. Dr. M.R. Kurre (PW-14) is the witness who examined the injuries of accused Bhuneshwar vide Ex.P-18; accused Ramkumar vide Ex.P-19 and Sandeep Kumar Pal vide Ex.P-20.
20. Close scrutiny of the evidence makes it clear that on 5.1.2010 at about 10-10.30 a.m. in the morning the accused/appellants had assaulted the deceased with *Khukhri* (a kind of knife) and injuries suffered by him led to his death. Accused/appellant had also caused injuries to Sandeep Kumar Pal (PW-1), an injured eyewitness of the incident and he has categorically stated that it is the accused/appellants who had assaulted the deceased with *Khukhri*. Evidence of this witness finds corroboration not only from the facts stated in the promptly lodged FIR (Ex.P-2) but also from the medical evidence wherein it has been stated that cause of death was shock due to extensive visceral injuries & haemorrhage caused by sharp edged weapon. This apart, on the basis of disclosure statements (Ex.P-7 & P-9) made by accused/appellants, bloodstained *Khukhri* & clothing were recovered vide seizure memo of Ex.P-8 & P-10 respectively and FSL report (Ex.P-30) available on record also confirms that there were blood stains on the articles seized from the possession of accused/ appellants, however there is no explanation from the appellants as to how the blood stains are there in the articles seized from them. True it is that in the statement under Section 313 of Cr.P.C. the accused/appellants have taken the plea of false implication due to previous animosity, but the defence has not been able to substantiate the said allegation by explaining as to why they would be falsely implicated in this case.

As regards the contradictions in the deposition of injured eyewitness

Sandeep Pal (PW-1), the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. Thus deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein. In the present case though there were some contradictions in the deposition of Sandeep Pal (PW-1) but such contradictions are not on material particulars for which his entire evidence can be discarded. Thus, there is no reason before this Court to disbelieve the testimony of eyewitness who has described the incident in a lucid manner.

Looking to the quality of evidence of eyewitness to the incident, the fact that FSL report confirms presence of blood on the articles seized at the instance of accused/appellants and that there is no explanation on behalf of accused/appellants as to how blood stains are there, it cannot be said that non-production of serological report is fatal to the prosecution.

Submission of the counsel for the appellants claiming parity to the accused who has been acquitted by the Court below has no substance for the reason that name of acquitted accused does not find place either in the promptly lodged FIR or merg intimation, whereas name of present appellants is very much there in both the aforesaid documents i.e. FIR & Merg Intimation. According to K.R. Sahu (PW-11) also, who recorded the FIR & Merg, Sandeep Pal (PW-1) came to him and informed that accused/appellants Ramkumar & Bhuneshwar had committed *maarpeet* with the deceased. True it is that while deposing in the Court the eyewitness has taken the name of acquitted accused also but justifying the same the trial Court has given the reason that on account of previous

enmity between him and the deceased, the possibility of addition of his name subsequently cannot be ruled out. Thus the present appellants cannot be given benefit of parity with the acquitted accused because there exist cogent and clinching evidence against them establishing their involvement in commission of offence beyond reasonable doubts.

21. In the result, both the appeals being devoid of substance are liable to be and are, accordingly, dismissed. Since the accused/appellants are already in custody no extra direction is needed regarding their surrender etc.

Sd/-  
(Pritinker Diwaker)  
Judge

Sd/-  
(I.S. Uboweja)  
Judge

roshan/-