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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2982 of 1999

1. Rambagas, S/o Ram Lal Yadav, aged about 55 years.
2. Tikora @ Tikaram, S/o Rambagas, aged about 21 years.
3. Shalik Ram @ Nankan, S/o Lachhi, aged about 26 years.
4. Dhola, S/o Firat Ram, aged about 26 years.

All resident of Village Bandha, P.S. Takhatpur, District Bilaspur (MP) (now CG)

---- Appellants

Versus

The State of Madhya Pradesh (now the State of Chhattisgarh), through District Magistrate, Bilaspur (MP) (now CG)

---- Respondent

For Appellants: Mrs. Indira Tripathi, Advocate.

For State/Respondent: Mr. Vinod Deshmukh, Deputy Govt. Advocate.

AND

Criminal Appeal No.3026 of 1999

Sitaram, S/o Ram Bagas Yadav, aged about 26 years, R/o Village Banda, P.S. Takatpur, Distt. Bilaspur (M.P.) (now C.G.).

---- Appellant

Versus

State of M.P. (now State of C.G.), through District Magistrate, Bilaspur (M.P.) (now C.G.)

---- Respondent

For Appellant: Mr. Kamal Pandey, Advocate.

For State/Respondent: Mr. Vinod Deshmukh, Deputy Govt. Advocate.

Hon'ble the Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

Per Deepak Gupta, Chief Justice

29/08/2016

1. These two appeals are being disposed of by one judgment since they both arise out of the judgment dated 15-10-1999 passed by the learned 2nd Additional Sessions Judge, Bilaspur in Sessions Trial No.200/1997 whereby he convicted accused Ram Singh, Jagan Singh and Sitaram for having committed the offence punishable under Section 302 of the IPC and sentenced them to life imprisonment and fine of Rs.2,000/- each and in default of payment of fine to undergo six months RI. By the same judgment, the trial Court convicted accused Rambagas, Tikora, Dhola and Shalik Ram for having committed the offence punishable under Section 201 of the IPC and sentenced them to undergo 3 years RI and fine of Rs.500/- each, and in default of payment of fine to undergo six months RI.
2. The prosecution story, briefly stated, is that accused Ram Singh, Jagan Singh and Sitaram along with other 16 accused persons had conspired to kill Ramashray. The prosecution story is that deceased Ramashray as well as Chaitram (PW-1), Gokul (PW-3) and Chhahura (PW-4) used to work in the Forest Department and on the complaint made by Ramashray and others, some timber of Rambagas, Tikora and Sitaram was seized and a case was initiated against them. According to the prosecution, this was the motive for all the 19 accused to form an unlawful

assembly with the intent of killing Ramashray. It is further the prosecution story that Ram Singh, Jagan Singh and Sitaram were armed with tabbals and gave blows of tabbals on deceased Ramashray. At that time, other 16 accused were all standing in a field close-by. However, there is nothing in the prosecution story that these 16 persons took any active part in the attack on Ramashray. The prosecution further story is that all the accused then hid the body of Ramashray in the forest. FIR was lodged by Chaitram (PW-1). Thereafter, investigation was started. Finally, a report under Section 173 of the CrPC was submitted and the accused were charged for having committed the offences aforesaid. After trial, three of the accused Ram Singh, Jagan Singh and Sitaram were convicted for the offence of murder and four accused Rambagas, Tikora, Dhola and Shalik Ram were convicted for offence under Section 201 of the IPC. Other 12 accused were acquitted of all the charges.

3. Sitaram filed Cr.A.No.3026/1999, Ram Singh and Jagan Singh filed Cr.A.No.3103/1999 and Rambagas, Tikora, Shalik Ram @ Nankan and Dhola filed Cr.A.No.2982/1999. Ram Singh and Jagan Singh expired during the pendency of appeal and therefore the appeal was disposed of having been abated, on 2-8-2016.
4. We have heard Mr. Kamal Pandey, learned counsel for accused/appellant Sitaram in Cr.A.No.3026/1999 and Mrs. Indira Tripathi, learned counsel for accused/appellants Rambagas, Tikora @

Tikaram, Shalik Ram @ Nankan and Dhola in Cr.A. No.2982/1999, and also Mr. Vinod Deshmukh, learned Deputy Govt. Advocate for the State/respondent.

Cr.A.No.3026/1999

5. The incident took place in Village Bandha which falls within the jurisdiction of Police Station Takhatpur. However, Chaitram (PW-1) who is said to be the eyewitness and who filed the complaint went to Police Station Lormi to lodge the complaint. His explanation is that though his area falls within the jurisdiction of Police Station Takhatpur, he went to Lormi because it was much closer and Takhatpur is much farther from his village. The FIR lodged at Lormi is Ex.P-1. In this FIR, all 19 accused have been named. This FIR is stated to have been recorded on 6-9-1992 at 14:10 hours i.e. 2.10 p.m.. In this FIR, Chaitram (PW-1) has stated that deceased Ramashray was his paternal cousin. He used to work as Chowkidar in the Forest Department, and in the morning, he used to go to Bangla to do his work. According to him, on the complaint of Ramashray, timber of Ram Singh and others was seized. As far as the allegations of the date of occurrence are concerned, he stated that on 6-9-1992 at about 6 O' clock in the morning, his cousin Ramashray was going towards Bangla for his work. At that time, the complainant had gone to answer the call of nature and was stiling on the northern side of the village pond, he then saw the three accused Ram Singh, Jagan Singh and Sitaram armed with tabbal. They were

waiting for Ramashray and as soon as Ramashray came towards them, they all attacked him. He names the other 16 accused also but he specifically states that Sitaram attacked Ramashray with tabbal which he was carrying and immediately thereafter, the other persons also attacked the deceased with lathis and tabbal. Then all of them took Ramashray towards the forest. He also states that Gokul (PW-3) and Chhahura (PW-4) who were also working in the Forest Department were just behind Ramashray. He then states that because of previous enmity, this murder has been committed.

6. At this stage, we may point out that this FIR was recorded by P.S. Mahilane (PW-6) and he states that he had recorded it as zero number FIR because the place where the incident took place did not fall within his jurisdiction and thereafter, he had sent the information along with a Constable to the Police Station at Takhatpur. At Takhatpur, a second FIR Ex.P-34 was lodged. This has been lodged at the instance of the Constable who was deputed by P.S. Mahilane (PW-6) but the facts which are stated therein are virtually a copy of the FIR Ex.P-1 lodged by Chaitram (PW-1).
7. Chaitram (PW-1) in Court has given a virtually identical statement as stated in the FIR. The only addition is that he in his statement has now named four of the accused Rambagas, Tikora, Shalik Ram and Dhola as the persons who also helped the three other accused in taking away the body. He has been

cross-examined on this aspect.

8. The main cross-examination to this witness is that he was not present at the spot and in this behalf, the case of the defence is that the tenth day death ceremony of the father-in-law of deceased Ramashray was to be performed on that very day and Chaitram (PW-1), Gokul (PW-3) and Chhahura (PW-4) along with some ladies had gone to the village of father-in-law of deceased Ramashray and therefore all three witnesses were not present at the spot. We shall deal with this aspect later-on but Chaitram (PW-1) in his statement has clearly stated that when he was defecating on the other side of the pond, he saw that three accused Ram Singh, Jagan Singh and Sitaram attacked the deceased with tabbals, on his neck and Ramashray fell down at the spot. Thereafter, other accused who were hiding nearby came to the spot and tried to attack Gokul (PW-3) and Chhahura (PW-4), but these two witnesses managed to escape. According to this witness, he went to Police Station Lormi because it is much closer to his village. He also states that at that time, there was no regular bus service from their village to Village Takhatpur. His further version is that he had gone to the police station along with Gokul (PW-3) and Chhahura (PW-4). He further states that in-charge of the police station had sent wireless messages to the other police station at Takhatpur and waited for some official to come from Police Station Takhatpur. According to him, the dead body of deceased Ramashray was

found the next night.

9. Gokul (PW-3) has fully supported the prosecution version. According to him, he along with Chhahura (PW-4) and deceased Ramashray were going to Bangla in connection with their work. Ramashray was walking ahead and the other two were behind him. When they reached near the canal, he found that some of the accused were standing in the field of Anantram and some were near the field of Anantram. As soon as Ramashray reached near the accused, then Ram Singh, Jagan Singh and Sitaram attacked Ramashray with tabbal and caused injuries to him on his neck. When this witness objected, the accused ran towards the witness and Chhahura (PW-4) and they both ran away from the spot to save their lives. Later when they went to the spot they did not find the dead body. The cross-examination of this witness is also mainly to the fact that he was not present at the spot when the occurrence took place.
10. The statement of Chhahura (PW-4) is also similar. According to him, he along with Ramashray – the deceased and Gokul (PW-3) were going towards the forest and when they reached near the canal, they saw Ram Singh, Jagan Singh, Sitaram and other accused, Ram Singh first gave a blow to Ramashray with tabbal, thereafter, Jagan Singh gave a blow with tabbal and lastly, Sitaram gave a blow with tabbal, all three blows were given on neck and then Ramashray fell down. Thereafter, the accused persons attacked him and Gokul (PW-3) but they managed to

run away. He also says that he along with Chaitram (PW-1) and Gokul (PW-3) went to Lormi to lodge report.

11.As far as the question regarding the attack on deceased Ramashray is concerned, three witnesses in one voice have clearly stated that the first blow was given by Ram Singh, second blow by Jagan Singh and third by Sitaram. Their testimonies in this regard remain unshattered. The case of the defence is that these three witnesses did not see the occurrence. According to the defence, these three witnesses had gone to Village Nevsa to attend the tenth day death ceremony of the father-in-law of Ramashray. In this behalf, the defence has examined two witnesses also. The statement of Ramswaroop (DW-1) is to the effect that about six years earlier on a Saturday evening at about 4/5 p.m., he was standing on the side of the road near Village Domanpur then he saw Chaitram (PW-1), Gokul (PW-3) and Chhahura (PW-4) along with two ladies. He asked Gokul (PW-3) where he was going and he answered that he is going to Village Nevsa. The statement of Kanhaiya (DW-2) is that about 7 years earlier, he had gone to Village Nevsa to attend the tenth day death ceremony of Amru, father of Bahadur. According to him, he reached Nevsa at 8-9 a.m. and lot of people from neighbouring villages had come. He met Chaitram (PW-1), Gokul (PW-3) and Chhahura (PW-4) at Nevsa who had also come to attend the same ceremony. By the time they all bathed at the ceremony it was noon time. Thereafter, lunch was served

to all and according to him, till about 3 p.m. all the three witnesses remained at Nevsa.

12.The statements of these two witnesses do not inspire confidence. None of the inmates of the house where the ceremony was conducted has been examined. These are two chance witnesses. Furthermore, their statements are totally belied by the document Ex.P-1. This is the FIR which was lodged at 2.10 p.m. at Police Station Lormi. Therefore, Chaitram (PW-1) was at Lormi at that time. He could not be present at Village Nevsa at the same time. It is obvious that these two witnesses are procured witnesses and no reliance can be placed on them.

13.On the other hand, the statements of the three eyewitnesses inspire confidence. They have no personal enmity against the accused and they have no personal grudge against them. It may be true that the witnesses of the recovery of tabbals have turned hostile, but mere non-recovery of the weapon of offence cannot be fatal to the prosecution case especially when there are three eyewitnesses and according to us, there is no reason why the statements of these three eyewitnesses should be disbelieved. Therefore, as far as the appeal of Sitaram is concerned, it is dismissed.

Cr.A.No.2982/1999

14.As far as this appeal is concerned, in the FIR, a general

statement was made by Chaitram (PW-1) that “all of them” took Ramashray towards the forest. He has not named any specific person. As far as the injuries are concerned, as held by us above, he has named three persons. However, with regard to the persons who took the body of Ramashray into the forest and hid it there, there is no clear cut evidence in this regard. We may also point out that besides the three main accused, there were 16 other accused and if this statement of the prosecution witness Chaitram (PW-1) is believed then all 16 shall be held guilty under Section 201 of the IPC. On the basis of same evidence, remaining 12 accused have been acquitted and as far as the offence under Section 201 of the IPC is concerned, we are clearly of the view that the prosecution has failed to prove beyond reasonable doubt that accused Rambagas, Tikora, Shalik Ram and Dhola were instrumental in hiding the body. Some other evidence had to be led as to who took the body inside the forest. We may point out that the body was not found near the place of occurrence but about 1½ k.m. away. The prosecution was required to prove by leading more evidence as to who carried the body to the forest. In the absence of any such evidence, we have no other option but to acquit the accused in this case.

15. In view of the above discussion, Cr.A.No.3026/1999 filed on behalf of Sitaram is dismissed. He is directed to surrender and undergo remaining sentence. A copy of the judgment shall also

be sent to the trial Court which shall ensure that if the accused does not willingly surrender within one month from today, then warrant of arrest shall be issued against him.

16.As far as the appeal of remaining four accused namely Cr.A. No.2982/1999 is concerned, it is allowed. The impugned judgment dated 15-10-1999 passed by the 2nd Additional Sessions Judge, Bilaspur in Sessions Trial No.200/1997, qua accused / appellants Rambagas, Tikora @ Tikaram, Shalik Ram @ Nankan and Dhola is hereby set aside. They are acquitted of the charge alleged against them. They are on bail. They need not surrender. However, their bail bonds shall remain in force for a period of six months in view of the provision contained in Section 437A of the CrPC.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge