

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 57 of 2011

1. Shivcharan, son of Bodhiram Kashyap, aged about 24 years.
2. Sundar S/o Bodhiram Kashyap, aged about 27 years.

Both are Residents of village Pouna, Police Station Pamgarh, Distt.-Janjgir-Champa, C.G.

---- Appellants

Versus

1. State Of Chhattisgarh, through the Station House In-charge, Police Station Kota, District Bilaspur (CG)

---- Respondent

For Appellants:
For Respondent:

Shri C.K. Kesharwani, Advocate
Shri Ravindra Agrawal, Panel Lawyer

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

JUDGEMENT

Per P. Diwaker, J

15/02/2016

1. Present appeal is directed against the judgment of conviction and order of sentence dated 19.11.2010 passed by the 2nd Additional Sessions Judge, Bilaspur in S.T. No.179/09 convicting the accused/appellants under Sections 302/34 of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo imprisonment for life & fine of Rs.2,000/-, in default to undergo additional R.I. for 01 month.
2. The facts of the case, in brief, are that deceased Ramkhilawan and accused persons were originally residents of village Pauna and there exists old enmity between them. However, at the relevant time the deceased was working and residing at village Kendabaad, whereas accused persons

were residing at village Kharora. On 16.7.2009 when the deceased was going on his bicycle towards Daandjangdi School, the accused persons met him on the way and committed his murder by causing multiple injuries to him by axe and stick. On the basis of information given by Shrawan Kumar (PW-1), dehati FIR (Ex.P-3) was recorded on 16.7.2009 itself. Dehati Merg Intimation was recorded vide Ex.P-2. Inquest was prepared vide Ex.P-5 on 16.7.2009. Numbered Merg was recorded vide Ex.P-37 on 17.7.2009 and number FIR (Ex.P-36) was registered under Section 302/34 IPC against 3-4 unknown persons. Body of deceased was sent for post-mortem examination which was conducted by Dr. Nandraj Kanwar (PW-13) who noticed following injuries;-

- Incised wound of 10x1x5cm at the right in the middle of head and temporal frontal bone was visible.
- Incised wound adjacent and posterior to first incised wound measuring 8x1x5cm over right occipital temporal region.
- Two incised wounds over occipital region of 5x1x1cm & 3x1x1cm respectively.
- Incised wound over posterior aspect of neck of 8x 1½ x8cm.
- Incised wound below Injury No.4 of 7x1½ x 5 cm
- Incised wound at the left side of neck of 5x1cm.
- Incised wound on the left shoulder of 5x2x5cm.
- Incised wound at right scapular back of 3x10x2cm.
- Incised wound at right para vertical of 5x ½ x ½ cm.
- Incised wound on the right armpit of 4x ½ x ½ cm.

The doctor has opined that cause of death was haemorrhagic shock due to head injury & incised wound at neck and death was homicidal in nature. During the course of investigation, memorandum statements of accused/appellants Shivcharan & Sunder were recorded vide Ex.P-14 & P-16 respectively. Based on the disclosure statement of accused/appellant Shivcharan, one axe, clothing & umbrella were seized vide Ex.P-18. Similarly, on the basis of disclosure statement of accused Sunder, clothing,

one bamboo stick having five knots and umbrella were seized vide Ex.P-19. Test identification parade of accused persons was conducted by the Naib Tahsildar (P-11) vide Ex.P-10 in which the accused persons were duly identified by eyewitness Niranjana Singh (PW-20).

3. After completion of investigation, charge sheet was filed against the accused persons under Sections 302/34 IPC and accordingly the charge was framed against them by the trial Court. The prosecution in order to substantiate its stand, examined 23 witnesses and exhibited a number of documents. 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 in the crime in question.
4. The trial Court, on the basis of the ocular and documentary evidence brought on record, came to hold that co-accused Gorelal & Ramayan are not guilty of the offence under Section 302/34 of IPC, but found the present accused/appellants guilty of the said offence and sentenced them as has been stated herein-before.
5. Learned counsel for the accused/appellants submits that;
 - the deceased has been murdered by his brother and present appellants have been falsely implicated in the crime in question.
 - entire investigation is faulty and to rope the appellants, the prosecution with the help of witnesses have concocted the evidence including that of statements of eyewitness Niranjana Singh (PW-20) and witnesses of last seen.
 - during the course of investigation, the relatives of the deceased were with the police and they have ensured the arrest of appellants.
 - Budhiman (PW-2) failed to identify the appellants in the test identification parade.

- 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.
 - test identification parade is doubtful and has not been conducted in accordance with law as prior to conduction of parade the accused persons were shown to the witnesses.
 - due to previous animosity, the appellants have been falsely implicated in the crime in question.
 - the documents prepared by the police including arrest memo, memorandum statements etc. are absolutely false as they are created documents.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant 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 Niranjana (PW-20) who is an eyewitness of incident. In the test identification parade conducted by the Executive Magistrate (PW-11), Niranjana (PW-20) has correctly identified the accused/appellants. Apart from the evidence of eyewitness, there is evidence of last seen which has been duly supported by Budhhman (PW-2), Tribhuwan Singh (PW-4), Sarotan Singh (PW-5), Kunjidas (PW-9) & Prabha Devi (PW-19). He further submits that there exists animosity between accused persons and deceased and on account of said enmity, the appellants have committed murder of deceased. He further submits that the appellants are habitual offenders and various criminal cases are registered against them.
7. We have heard learned counsel for the parties and perused the material available on record.

8. Shrawan Kumar (PW-1) is the person who lodged the dehati FIR (Ex.P-3) & dehati merg (Ex.P-2). He is also witness of inquest (Ex.P-5), spot map and articles seized from the spot. However, this witness has not fully supported the prosecution case and turned hostile.
9. Budhmaan (PW-2) has stated in his evidence that on the fateful day when he was working in his field, he saw three persons sitting there. At about 10-10.15 a.m. when he was taking his breakfast, he saw 3-4 persons carrying axe, stick & umbrella running away through the field of Sanat Kumar. Thereafter when he was going towards his house, he saw a bicycle lying near the field. He has admitted his signature over the documents relating to test identification parade.
10. Bhukan Das (PW-5) is the village Kotwar who informed the police about the incident. He is also witness of inquest (Ex.P-5).
11. Tribhuwan (PW-4) has stated that on the fateful day he saw 3-4 persons sitting near the tree and they have hidden their faces by umbrella. He has further stated that he had seen the body of deceased and the aforesaid three persons were not of his village.
12. Sarotan Singh (PW-5) has also stated about the presence of 3-4 persons near the Neem tree and that they had covered their faces by umbrella. This witness has stated that Niranjan (PW-20) has duly identified accused Shivcharan & Sundar in the identification parade.
13. Lalit Paikra (PW-6) is the police person who seized certain articles vide seizure memo of Ex.P-13.
14. Ganesh alias Pappu (PW-7) is the witness of memorandum statements (Ex.P-14 & P-15) of accused/appellants, seizure memos of Ex.P-18 to 22 and arrest memos of Ex.P-23 to P-26.
15. Rajkumar Kashyap (PW-8) is the witness of inquest (Ex.P-5).
16. Kunjidas (PW-9) has also seen four persons running towards the forest and

they were carrying axe, stick and umbrella. He is witness to the spot map (Ex.P-11) and panchnama (Ex.P-12).

17. B.R. Dhruv (PW-11) is the Executive Magistrate-cum-Tahsildar who conducted the test identification parade vide Ex.P-10. While supporting the prosecution case, this witness has described the manner in which the identification parade was conducted. He has stated that Niranjana (PW-20) has duly identified the accused/appellants by touching them, whereas Buddhman (PW-2) did not identify the accused persons.
18. Ajay Singh (PW-12) is the police constable who took the body of deceased for post-mortem examination. He has denied the fact that the police persons had beaten the accused persons.
19. Dr. Nandraj Kanwar (PW-13) is the witness who conducted post-mortem examination on the body of the deceased and gave his report of Ex.P-29. According to this witness, he noticed as many as ten injuries on the body of deceased and opined the cause of death as haemorrhagic shock due to head injury & incised wound at neck and the death was homicidal in nature.
20. Ramsukh Pandey (PW-14) is the Assistant Sub-Inspector of Police who did the initial investigation.
21. I.R. Sahu (PW-15) is the Sub Inspector of Police who helped in the investigation.
22. Narsingh Paikra (PW-16) is the Patwari who prepared the spot map Ex. P-11.
23. Ramphal Kashyap (PW-17) is the brother of deceased. He has stated that there exists old enmity between accused and deceased and number of cases are registered against the accused persons. He has produced the criminal record of accused/appellants vide Ex.P-27.
24. Prabha (PW-19) is the wife of deceased. She has stated that on 16.7.2009

at about 8-8.30 a.m.in the morning when she had gone to the river to take bath, she saw the accused persons going towards village Kendradaad. They were carrying stick, axe and umbrella. Seeing the accused persons, she got scared and came back to her house, however, by that time her husband i.e. deceased, had left for the school. She rushed towards the school to inform her husband, but on the way she saw her husband lying in dead condition and the accused persons running away towards the river. She has further stated that accused Shivcharan was holding axe in his hand and others were holding stick and umbrella. In the cross-examination she has stated that since last 2-3 years the dispute is going on between them.

25.Niranjan (PW-20) is the eye-witness to the incident. He has stated that on the fateful when he was working in field of Upendra Thakur, he saw 3-4 persons assaulting the deceased by club & axe and on accounts of assaults, the deceased fell down and thereafter the assailants fled towards the forest. He has further stated that in the test identification parade he has identified two persons by putting hand on their head.

26.R.K. Sahu (PW-23) is the witness who did initial part of investigation.

27.The entire case hinges upon the trustworthiness, reliability or otherwise of the testimony of Niranjan Singh (PW-20), an eye-witness to the incident. It is well settled proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eyewitness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be

doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty.

28. In the light of the above principles, this Court proceeds to examine legality of the conviction imposed on the appellant on the basis of evidence available on record.

29. Close scrutiny of the evidence, particularly of sole eyewitness Niranjana Singh (PW-20), makes it clear that it is the accused/appellants who assaulted the deceased on the date of incident with axe & stick and injuries suffered by him led to his instantaneous death. The incident was witnessed by Niranjana Singh (PW-20), a person who had no axe to grind against any of the accused persons. This witness has stated that on the date of incident when he was ploughing the field of one Upendra Thakur, he saw some persons assaulting the deceased by stick & axe and after committing the offence, the assailants escaped towards the forest from the side of house of Kunjidas. This witness had participated in the identification parade, which was conducted in the Sub-Tahsil Office, Belgehna, and identified the present appellants as the assailants in the Court by touching them.

Evidence of eyewitness Niranjana Singh (PW-20) further stands fortified from the evidence of Prabha Devi (PW-19), Budhiman (PW-2), Tribhuwan Singh (PW-4), Sarotan Singh (PW-5), Kunjidas (PW-9) & Prabha Devi (PW-19). Prabha Devi (PW-19) has stated that seeing the accused persons armed with deadly weapons, she rushed to inform her husband, however, on the way she found her husband lying dead and the accused persons fleeing towards the forest. She has categorically stated that accused Shivcharan was holding axe in his hand and others were holding stick and umbrella. Budhiman (PW-2), Tribhuwan Singh (PW-4),

Sarotan Singh (PW-5), Kunjidas (PW-9) & Prabha Devi (PW-19) have also seen the accused/appellants, armed with stick, axe & umbrella, going towards Kendadaad.

Statement of this eyewitness (PW-20) that accused persons attacked the deceased gets further corroboration from the recovery of bloodstained articles including axe from the accused/appellants. Ganesh alias Pappu (PW-7), seizure witness, has duly supported the recoveries effected from the appellants. No explanation has been offered by the appellants in their statements under Section 313 Cr.P.C. as to how blood stains are there in the articles seized from their possession. According to the medical evidence also, the injuries present on the body of the deceased could be caused by the axe so seized. The defence has not been able to elicit anything incriminating in the cross-examination of the eyewitness or other prosecution witnesses based on which their evidence can be disbelieved or discarded. Thus, the evidence of Niranjana Singh (PW-20) is cogent, reliable and fits into the chain of events that have been stated by the prosecution and there is no reason before this Court to disbelieve the same.

Now coming to the submission of counsel for the appellants that test identification parade is doubtful. The primary object of the test identification parade is to enable the witnesses to identify the persons involved in the commission of offence (s) if the offenders are not personally known to the witnesses. We have carefully examined the manner in which the identification parade was conducted and the manner in which Niranjana Singh (PW-20) identified the accused persons and we have no reason to doubt the identification of the accused, which assumes importance in this case since this witness did not know the accused before the incident. Furthermore, there is no evidence on record to show that the witness had an opportunity to see and study the features of the accused persons

between their arrest and test identification parade to enable a tutored identification. Mere fact that other witnesses to the identification parade have not identified the accused persons, would not be a reason for discarding the evidence of Niranjana (PW-20). It is a settled proposition of law of evidence that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses.

As regards the motive, conviction of accused/appellants is substantially based on the eyewitness account and it is settled position that in a case where there are direct eyewitnesses, absence or inadequacy of motive cannot stand in the way of conviction. In the present case however, accused/appellants clearly had animosity towards the deceased as is proved from the evidence of Prabha Devi (PW-9) & Ramfal Kashyap (PW-17), who have categorically stated that since last 2-3 years there is ongoing dispute between the family of the appellants and that of the deceased, and some criminal proceedings are pending between them.

As regards the acquittal of co-accused persons on the same set of evidence, the trial Court has extended them benefit of doubt on the ground that they have not been identified by Niranjana Singh (PW-20) and apart from that, there was no other cogent and clinching evidence to connect them with the crime in question. Whereas, present appellants have been identified by said Niranjana Singh (PW-20) in the test identification parade conducted in accordance with law by touching them.

Now coming to the submission of the counsel for the accused that due to enmity, the appellants were falsely implicated. It is accepted position that accused/appellants and deceased were on inimical terms and some criminal proceedings were going on between them when the incident

took place. By now, it is well-settled principle of law that animosity is a **double-edged sword**. It cuts both sides. It could be a ground for false implication and it could also be a ground for assault. However, in the present case the conviction of the accused/appellants is not based on the evidence of relatives of the deceased, but the entire prosecution rests upon the testimony of Niranjana Singh (PW-20), a person who had no axe to grind against any of the accused person and whose testimony inspires confidence, therefore, the submission of counsel for the appellant that possibility of false implication of the appellants in the crime in question cannot be ruled out, has no force.

30. Thus, considering the totality of facts and circumstances of case, the un-rebutted eyewitness account which finds due corroboration from the other attending and surrounding evidence, this Court is of the considered opinion that the trial Court was fully justified in convicting and sentencing the accused/appellants under Section 302/34 of IPC for causing murder of the deceased.

31. For the reasons aforesaid, we do not find any infirmity in the judgment of conviction, recorded by the trial Court, which warranted our interference. This appeal is, accordingly, dismissed. Since the accused/appellants are already in custody no extra direction is needed regarding his surrender etc.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(I.S. Ubaweja)
Judge

roshan/-