

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 665 of 2011

1. Tekram Sahu, S/o Gangaram Sahu, aged 25 yrs.
3. Tameshwar Sahu S/o Gangaram Sahu, aged 23 yrs.
4. Gangaram Sahu S/o Anjori Sahu, aged 45 yrs.

All residents of Village Dani Ghatoli PS Sahaspur Lohara Distt. Kabirdham (CG)

**---- Appellants
(In Jail)**

Versus

1. State Of Chhattisgarh, through P.S. Sahaspur Lohara, Distt. Kabirdham.

---- Respondent

For Appellants:
For Respondent:

Shri Malay Bhaduri, Advocate
Shri Ashish Shukla, Government Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgement

Per P. Diwaker, J

28/09/2016

1. Present appeal is directed against the judgment of conviction and order of sentence dated 6.8.2011 passed by the Sessions Judge, Kabirdham (Kawardha) in S.T. No.43/10 convicting the accused/appellants under Sections 302/34 & 323/34 (two counts) of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo imprisonment for life & fine of Rs.5,000/- and RI for 3 months & fine of Rs.1,000/- plus default stipulations, respectively.
2. Facts of the case, in brief, are that on 16.5.2010 at about 5.00 p.m. Rakesh Lodhi, son of deceased Ramswaroop, was returning his house

from village pond and when he reached near his house, he saw accused/appellant No.3 talking aloud with his father and therefore he asked his father to get back home. Thereafter, on being asked, his father informed that they were talking about the money borrowed by Rajaram. Meanwhile, accused/appellants armed with spade & club came there and attacked on his father. Accused/appellant No.2 gave repeated spade blows from the blunt side to his father, whereas accused/appellant No.1 & 3 assaulted by club. Bhagwani (PW-4) & Geetabai (PW-9) intervened in the matter and they too were assaulted by accused persons. FIR (Ex.P-9) was lodged on 16.5.2010 at 8.45 p.m. by Rakesh Lodhi (PW-3) against the accused/appellants based on which offence under Sections 294, 506 (2), 323/34 IPC was registered. Injured Ramswaroop was taken to the hospital where he was declared brought dead by the doctor. Merg intimation (Ex.P-7) was recorded on 17.5.2010. Inquest was prepared over the dead body vide Ex.P-8A. Dead body was sent for post-mortem examination which was conducted by Dr. Prabhat Chandra Prabhakar (PW-12) vide Ex.P-23 and noticed following injuries;-

- Lacerated wound at the right side of occipital region of 4x4x4cm size.
- Lacerated wound over left eyebrow of 2x2cm in size.
- lacerated wound over right cheek of 3x2cm in size.
- Fracture of scalp, parieto occipital region and braing mater coming out.

The doctor has opined that cause of death was shock due to haemorrhage on account of head injury and death was homicidal in nature. Injured Bhagwani (PW-4) was examined by Dr. M.P. Maheswar (PW-7) vide Ex.P-14 who noticed one lacerated wound on the left side of forehead. Injured Geetabai (PW-9) was also examined by the doctor vide

Ex.P-15 who noticed one lacerated wound on the left occipital region of skull and pain & swelling on the right ring finger.

3. After completion of investigation, charge sheet under Sections 294, 506B, 323, 302, 34 IPC was filed against the accused/appellants, however, the trial Court has framed the charges under Sections 302/34 & 323/34 (two counts) against the accused/appellants. The prosecution in order to substantiate its stand, examined 12 witnesses and exhibited a number of documents. Statements of the accused/appellants 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, found the accused/appellants guilty of the aforesaid offences and sentenced them as has been stated herein-before.
5. Learned counsel for the accused/appellants submits that;
 - that the statements of Rakesh Kumar (PW-3), Bhagwani (PW-3) & Geetabai (PW-9), being the interested witnesses, cannot be relied upon by the Court and considering the inconsistencies in the their statements, the appellants deserve to be acquitted.
 - the appellants cannot be convicted with the aid of Section 34 IPC as there is no evidence to show that the appellants have caused the death of deceased in furtherance of their common intention.
 - Even if the entire case of the prosecution is taken as it is, at best the accused/appellants can be convicted under Section 304 Part-I or II IPC and not under Section 302 IPC, as has been done by the Court below, because the appellants had no intention to commit murder of the deceased. In alternative, it has been argued that if at all someone has to be convicted then it is accused/appellant No.2-Tameshwar and not

accused/appellants No.1 & 3 because it is he who gave fatal blows to the deceased by blunt side of spade.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that 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. He further submits that there is no reason for this Court to disbelieve statements of Rakesh Lodhi (PW-3), Bhagwani (PW-3) & Geetabai (PW-9) who are injured eyewitness of incident. He further submits that incident took place in two parts i.e. first at near the house of deceased where accused/appellant Gangaram was talking loudly with deceased and second, in the grain-yard of deceased where he and his son were discussing over the matter.
7. We have heard learned counsel for the parties and perused the material available on record.
8. Santosh Gandharv (PW-1) is the witness of memorandum and seizure, however, he did not support the prosecution case and turned hostile.
9. Gopal (PW-2) is the witness of inquest (Ex.P-8A), seizure memo (Ex.P-9), memorandums (Ex.P-1 to P-3) and spot map (Ex.P-7).
10. Rakesh Lodhi (PW-3), son of deceased, is the lodger of FIR (Ex.P-9). He has stated that on the date of incident seeing accused/appellant No.3- Gangaram abusing his father filthily, he asked his father to get back home and thereafter when he was enquiring from his father in the grain-yard as to why accused Gangaram was abusing him, the accused/appellants armed with spade & club again came there. Accused/appellant No.1- Tameshwar repeatedly assaulted his father by spade, whereas accused/appellants No.1 & 3 assaulted his father by club on his head. When his grandparents i.e. Bhagwani (PW-4) & Geetabai (PW-9) came for intervention, they too were assaulted by accused/appellants by spade

& club. He has further stated that being chased by accused/appellants, he went inside the room and thereafter the accused persons fled from the spot.

11. Bhagwani (PW-4), father of deceased, has stated on the date of incident when he along with his wife Geetabai (PW-9) was in the grain-yard, the accused/appellant armed with spade & club came there and started hurling abuses to his son deceased Ramswaroop. Accused/appellant No.1-Tameshwar assaulted the deceased by spade, whereas accused/appellant No.1 & 3-Gangaram & Tekram assaulted him by club. When he rushed towards his son to rescue him, the accused persons assaulted him also. This witness has further stated that when his wife Geetabai tried to intervene, she too was assaulted by accused persons. He has further stated that after committing the incident, the accused persons fled from the scene.
12. Manoj Kumar Meher (PW-5) & Shankar Satnami (PW-6) did not support the prosecution case and turned hostile.
13. Dr. M.P. Maheshwar (PW-5) is the person who medically examined Bhagwani (PW-4) & Geetabai (PW-9) and noticed the simple injuries as described above.
14. Laxmikant (PW-8) is the Assistant Sub-Inspector who recorded the merged statement (Ex.P-17).
15. Geetabai (PW-9), mother of deceased, is another injured witness of the incident. She has also made almost similar statement as has been made by Bhagwani (PW-4). She too has categorically stated as to the manner in which the deceased was done to death and injuries were inflicted to her and Bhagwani (PW-4).
16. Devsharan Sahu (PW-10) is the Patwari who prepared the spot map Ex. P-7.

17.Vedram Nayak (PW-11) is the Investigating Officer who has duly proved the prosecution case.

18.Dr. P.C. Prabhakar (PW-12) is the person who conducted post-mortem on the body of deceased vide Ex.P-23 and noticed injuries as stated above. This witness has opined that cause of death was shock due to haemorrhage as a result of head injury..

19.Close scrutiny of the evidence available on record makes it is clear that it is the accused/appellants who assaulted the deceased and Bhagwani (PW-4) & Geetabai (PW-9) on the date of incident with spade & club and injuries suffered by the deceased led to his death. Incident was also witnessed by Rakesh Lodhi (PW-3), who has stated that on the date of incident when he was getting back home from the village pond, accused/appellant No.3-Gangaram was abusing his father filthily on which he asked his father to get home. Soon thereafter the accused/appellants again came to his grain-yard and started abusing them. According to him, accused/appellant No.2-Tameshwar assaulted his father (deceased) by spade repeatedly whereas accused/appellant No.1 & 3-Gangaram & Tekram assaulted his father (deceased) on his head with club. Accused/appellant No.1 is also stated to have assaulted his grandfather Bhagnani (PW-4) with spade and other accused/appellants with club. Thereafter when his grandmother Geetabai (PW-9) came for intervention, all three caused injuries to her also on the head & hand and thereafter the accused/appellants got away. Injured Bhagwani (PW-4) & Geetabai (PW-9) have also categorically stated as to in what manner the accused/appellants have assaulted them and the deceased. Statements of injured witnesses have been duly supported by Dr. M.P. Maheswar (PW-7) who had medically examined them and found the injuries as described in the reports Ex.P-13 & Ex.P-14. These witnesses were cross-

examined at length by the defence but nothing favourable to the accused persons could come on record and therefore there is no evidence whatsoever before this Court to doubt the version given by them. By now it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relative of the deceased is an interested witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished.

That apart, on the basis of disclosure statements of accused/appellants, bloodstained articles were recovered from their possession but no explanation has been offered by them in their statements under Section 313 Cr.P.C. as to how the blood stains are there in the articles seized from their possession.

20. Further, we find no substance in the argument of counsel for the accused/appellants that this was a fight at the spur of moment, without any pre-meditation and therefore conviction of appellants could be converted into that under Section 304 Part-I or II IPC for the reason that it was not a dispute which arose at the spur of moment as the evidence clearly shows that the accused/appellants had gone again to the spot with a common intention and with the preparedness to assault and even kill the deceased and in furtherance of such intention, gave repeated blows on the vital part of the deceased i.e. head, as a result of which his brain matter came out and parieto occipital region of scalp got fractured. Thus, from the force with which the assaults were made it is evident that accused/appellants had intention to cause death of the deceased and had

every knowledge that the injuries being inflicted by them on the deceased were sure to result in his death.

21. Thus, on the basis of the documentary and ocular evidence, we are fully satisfied that the prosecution has been able to prove its case beyond reasonable doubt and has brought home the guilt of accused/appellants under Sections 302/34 & 323/34 IPC.

22. For the reasons afore-stated, 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 their surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge

roshan/-