

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1373 of 1998

Judgment reserved on : 01.03.2017

Judgment delivered on : 26.04.2017

1. Budha Aged about 30 years, S/o. Roopu, Caste Halwa, R/o. Kanjipani, Police Station Sukma, District Bastar (M.P.) (now C.G.)
2. Mangal Singh S/o. Thurlu, Aged about 25 years, Caste Halwa, R/o. Kanjipani, Police Station- Sukma District Bastar (M.P.) (now C.G.) **(Dead) (Deleted)** ----- **Appellants**

Versus

State of Madhya Pradesh (now Chhattisgarh), Through Police Station Sukma, District Bastar ----- **Respondent**

For Appellants : Mr. M.K. Beag, Advocate
For Respondent/ State : Mr. Sanjeev Pandey, Govt. Advocate

Hon'ble Shri Justice Anil Kumar Shukla

C. A. V. Judgement

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 26.02.1998 passed by the Third Additional Sessions Judge, Bastar at Jagdalpur, in Sessions Trial No. 147/1994, whereby the learned Additional Sessions Judge, convicted the appellants for the offence punishable under Section 307 read with 34 IPC and sentenced each of them to undergo rigorous imprisonment for 5 years and to pay fine of Rs. 500/- with default stipulation.
2. Appellant Mangal Singh died during pendency of this appeal on 05.07.2005, therefore, the instant appeal so far as it relates to him is abated.

3. The case of the prosecution in brief is that Chamruram (PW-1) was a resident of village Kanjipani Nayapara and was doing agricultural work. A year before the date of incident, after the cock fight, Chamruram (PW-1) was returning with his cock from Misiras. Appellant No.1 Budha met him on the way in the Jangal and demanded the cock from him and on his refusal, Appellant Budha chased him to assault. On this, Chamruram (PW-1) fled from there and hid in the Jungle. Prior to one and half month of the date of incident, on the day of Nayakhani, Chamruram (PW-1) was sleeping in his house in the night. At that time, Appellant Budha armed with an Axe entered the house of Chamruram (PW-1). He was caught by the son of Chamruram (PW-1) Daso. Daso called village Kotwar Asman, Ramdhar, Kushalram and Govind. On being asked, Appellant Budha told that he did not know why had he come and asked for return of his Axe and said that on non-return of his Axe he would hang himself. On this, the villagers returned his Axe and he went from there. On the date of incident, i.e., 15.11.1993, Chamruram (PW-1), after taking dinner, had burnt fire in the *Kothar* of his *Badi* and was sleeping near the fire in the night. At about 10 PM, on being assaulted on his neck by an Axe, he got up and saw in the light of the fire that appellants Budha and Mangal Singh were standing there and they were armed with Axes. Appellant Budha assaulted him on his back with the Axe. After the assault, he caught the Axe and snatched the same from Appellant Budha. At the same time, Appellant Mangal Singh tried to assault him on his ribs with the

Axe in his hand, but the Axe dashed with the wood kept nearby due to which the handle of the Axe of Appellant Mangal Singh broke. Chamruram (PW-1) shouted. On this, both the appellants left their axes there and Appellant Budha left his towel also there and they fled from there. The appellants assaulted Chamruram (PW-1) with a common intention to kill him. On shouting by Chamruram (PW-1), his elder brother Bhagirathi and his sister-in-law (*Bhabhi*) Aasmati (PW-2), Kushalram, Ramsingh, Patel laxman, old Sarpanch Gyandhar and Kotwar Aasman came there.

The distance between the Police Station and the place of occurrence was 25 Kms. On 16.11.1993, at 10.45 AM, Sub Inspector Indrapal Singh Paikra (PW-3) recorded Dehatinalishi (Ex.P-1) on the oral statement of Chamruram (PW-1). Injured Chamruram (PW-1) was sent to the hospital for medical examination vide Ex.P-2. Dr. Arvind Chouhan (PW-4) examined him and gave his report (Ex.P-15). Dr. Arvind Chouhan (PW-4) in his report opined that the injuries were caused by hard and sharp object and the injuries were grievous in nature and dangerous to life. The condition of the patient was serious so he referred him to Maharani Hospital Jagdalpur for further treatment. The doctor has verified his report (Ex.P-15).

In further investigation, plain soil and blood stained soil were seized from the place of occurrence vide Ex.P-3. Memorandum statements of the appellants were recorded and at their instances, weapons of assault, i.e., two Axes, a Towel and a broken handle of the Axe were seized vide Ex.P-4. At the instance

of injured Chamaruram (PW-1), a white Dhoti was seized from him vide Ex.P-5. The seized articles were sent to Forensic Science Laboratory, Raipur for chemical examination vide Ex.P-13, acknowledgment of which is Ex.P-14. On the basis of the Dehatinalishi (Ex.P-1), Crime No. 82 of 1993 was registered vide First Information Report (Ex.P-12) against the appellants for the offence punishable under Section 307 read with Section 34 IPC.

4. After completion of the investigation, a charge-sheet was filed against the appellants in the Court of Judicial Magistrate First Class, at Camp Sukma, who, in turn, committed the case to the Court of Session at Bastar, from where the Third Additional Sessions Judge, Bastar at Jagdalpur received the case on transfer. After conducting trial and appreciating the evidence available on record, convicted and sentenced the appellants as mentioned in the first paragraph of this judgment.

5. Mr. M.K. Beag, learned counsel appearing for appellant Budha argued that the evidence adduced by the prosecution is not properly appreciated by the Court below. Learned counsel further argued that there are many contradictions and omissions in the prosecution story. Learned counsel further argued that the Court below has exaggeratively considered the medical report of complainant Chamruram (PW-1). No ingredient of offence punishable under Section 307 IPC is made out against the appellant. Learned counsel further argued that the injuries caused to the injured were not sufficient to cause his death in

the ordinary course of nature, therefore, the offence under Section 307 IPC is not made out. Hence, he prayed that the appellant may be acquitted of the charge framed against him.

6. On the other hand, Mr. Sanjeev Pandey, Govt. Advocate for the State/respondent, supporting the impugned judgment, submitted that the conviction and sentence awarded to the appellant do not warrant any interference by this Court.

7. The questions which arise for consideration before this Court are -

(i) Whether the appellants assaulted Chamruram (PW-1) with an intention and knowledge that had Chamruram (PW-1) died, they would have been guilty for the offence of his murder?

(ii) Whether the appellants tried to commit murder of Chamaruram (PW-1) with a common intention?

8. To hold appellant Budha guilty, the prosecution examined injured Chamruram (PW-1), Aasmati (PW-2), Sub inspector Indrapal Singh Painkara (PW-3) and Dr. Arvind Chouhan (PW-4). The appellants did not examine any witness in their defence.

9. Chamruram (PW-1) deposed that he was taking care of his crops from threshing floor and when he felt sleep, he slept there on a mat. He had covered his face and ear with a towel while sleeping. At that time, Appellant Budha came there and removed the towel from his face and assaulted him on the left side of his neck with an Axe in his hand. Thereafter, Appellant Mangal Singh assaulted him on the right back of his body. While Appellant Budha had assaulted him on his neck with the Axe, he had

snatched the Axe from him with his cloth. When Appellant Mangal Singh assaulted him on his right ribs with the Axe in his hand, the Axe dashed with a wood as a result of which the handle of Axe broke. The witness further deposed that on hearing his voice, his sister-in-law (*Bhabhi*) Aasmati (PW-2) came there along with her husband and called sons Ramsingh, Daso and village Kotwar, Patel and Sarpanch and narrated them the incident. Thereafter, the villagers brought Chamruram (PW-1) to Chhindgarh Hospital for his treatment. Chamruram (PW-1) was cross-examined in detail and his statement has remained un rebutted. This witness had identified the appellants before the Court below. From the evidence of Chamruram (PW-1), it is clear that he tried to save himself from the assaults of appellants.

10. Aasmati (PW-2) deposed that after hearing the shout of Chamruram (PW-1), she came to the place of incident and saw the appellants assaulting Chamruram (PW-1) and thereafter fleeing from there. However, this statement of Aasmati (PW-2) has not been recorded in her police statement (Ex.D-1). But, it is evident from her deposition that this witness had immediately reached to the place of occurrence after the occurrence and she was informed about the incident by Chamruram (PW-1). From the evidence of Aasmati (PW-2), it is clear that except the appellants and injured Chamruram (PW-1), no any other person was present at the place of occurrence.

11. As far as the injuries caused to Chamruram (PW-1) are concerned. Dr. Arvind Chouhan (PW-4), who examined injured

Chamruram (PW-1), found the following injuries in his report

Ex.P-15:

- (i) Incised wound over left side of throat, obliquely placed from angle of mandible upto abdomen about 7½ cm length 1½ cm width, 1 cm depth at (centre).
- (ii) Incised wound over right side of back, (thorax) obliquely placed about 12.5 cm in length width 3 cm depth 1cm sharp margin.
- (iii) Incised wound 8 to 9 cm away from right axilla about 7 cm length, width 1 cm at centre and depth 1 cm sharp margin obliquely placed.
- (iv) small incised wound over right ear about 1 cm length edges approximated and swelling over parotid region.
- (v) Small lacerated wound over scalp in it, parital region lambdoid region not well circumscribed.
- (vi) Small lacerated wound and swelling over right leg not well circumscribed.

The doctor opined that the above mentioned wounds were caused by sharp and hard object. Injuries were grievous in nature and the injured remained admitted in the hospital for near about 20 days. The condition of the injured was so serious that he referred him to Maharani Hospital Jagdalpur for further treatment. The doctor in his report (Ex.P-15) opined that the injuries were serious in nature and were dangerous to life. The doctor has verified his report Ex.P-15.

12. I have carefully perused the evidence of injured Chamruram (PW-1). He specifically deposed that the appellants assaulted him with the axes. His evidence is corroborated by the evidence of Aasmati (PW-2) and as also by medical evidence. The evidence of Aasmati (PW-2) is cogent and clinching. She has no any motive to implicate the appellants falsely.

13. On due appreciation of the entire evidence of injured Chamruram (PW-1) and Aasmati (PW-2), I find that their evidence is wholly reliable and can be based for conviction of the appellants and, therefore, the findings recorded by the learned Additional Sessions Judge convicting the appellants on the basis of the evidence of injured Chamruram (PW-1) and Aasmati (PW-2) do not call for any interference by this Court.

14. For the foregoing reasons, I do not find any substance in the appeal; it deserves to be and is hereby dismissed. The impugned judgment of conviction and sentence is affirmed.

Sd/-
(Anil Kumar Shukla)
Judge