

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2325 of 1999**

1. Ram Narayan S/o Ram Prasad Panika, aged about 32 years, R/o Grown Dafai, Koriya, P.S. Chirmiri, District Koriya
2. Sunder Urao, S/o Deo Saran Urao, aged about 30 years, R/o Grown Dafai, District Koriya

---- Appellants**Versus**

State of Madhya Pradesh (Now State of Chhattisgarh)

---- Respondent

For Appellants	:	Smt. Meena Shastri, Advocate
For Respondent/State	:	Shri Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board By Justice Pritinker Diwaker**24/05/2017**

1. This appeal arises out of impugned judgment and order dated 29.6.1999 passed by the Additional Sessions Judge, Manendragarh, District Koriya in Sessions Trial No. 134/1996 convicting the appellants under Sections 148 and 302 read with Section 149 of the IPC and sentencing them to undergo rigorous imprisonment for one year & RI for life and pay a fine of Rs. 500/- each with default stipulation.

2. In the present case, name of the deceased is Jot Singh @ Baba. As per the prosecution case, deceased Jot Singh was friend of PW-3 Krishna Singh who had borrowed Rs.1000/- from accused Ram Narayan. It is said that the said Ram Narayan went to the house of Krishna Singh for return of Rs.1,000/- and for which he threatened Krishna Singh and his father PW-2 Manbodh. It is alleged that on 11.3.1994 at about 2.30 PM, the present appellants and eight other accused

persons came to the house of PW-3 Krishna Singh and caused injury to PW-2 Manbodh, father of Krishna Singh, PW-4 Ghansi Ram, PW-6 Inder Deo Singh. Deceased Jot Singh somehow escaped, however he was chased by the accused persons and thereafter he was done to death by them by causing several injuries by axe, club and *Farsa*. Dehatinalishi (Ex.P/10) was lodged on 11.3.1994 at 4.30 pm by injured PW-2 Manbodh naming all the accused persons except accused Indaj. Immediately, thereafter merg intimation Ex.P/11 was recorded and at 10.10 PM First Information Report (Ex.P/1) was registered against the accused persons. Inquest on the dead body of the deceased was prepared vide Ex.P/4 on 12.3.1994 and body was sent for postmortem examination which was conducted on 12.3.1994 vide Ex.P/17 by PW-13 Dr. Pradeep Kumar Rohni. He noticed multiple injuries on the body of the deceased i.e. one abrasion each present over both upper arms; abrasion of size 2 cm x 2 ½ cm on the lower back side; abrasion of size 3 cm x 2 cm over both sides of back scapular and sub scapular region; a large gaping incised wound over upper neck of size 12 cm x 8 cm x bone deep; extending from right mastoid regions to left angle of mandible above through cartridge. Clotted and dried blood was present; scratch marks seen on middle cervical vertebrae anterior surface etc; all the abrasions are ante-mortem and caused by hard & rough object. He opined that the cause of death was due to shock as a result of massive haemorrhage externally from neck wound and the death was homicidal in nature. After investigation, the Charge-sheet was filed against three accused persons namely Indaj, Sunder Urao and Ram Narayan @ Raju showing rest of the accused persons as absconders. After the committal, accused Bharat was also arrested on 16.1.1998 and he has been tried separately, whereas accused Balram after his arrest has been tried in present sessions trial along with other accused persons. While framing the charge, the trial Judge framed the charges against five accused persons under Sections 147, 148, 302/149, 323/149 and 324/149 of IPC.

3. So as to hold the accused persons guilty, the prosecution examined 16 witnesses in all. Statements of the accused persons were also 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.

4. By the impugned judgment, the trial Judge has acquitted accused No. 1 Raju @ Runkumar, accused No. 3 Indaj and accused No. 4 Balram of all the charges and had convicted only the present accused/appellants under Sections 148 and 302/149 of IPC.

5. Counsel for the appellants submits that the three injured eye-witnesses PW-2 Manbodh, PW-4 Ghansi Ram, PW-6 Inder Deo Singh have not fully supported the prosecution case and considering their statements, the appellants cannot be convicted for any offence. The other so-called eye-witnesses PW-3 Krishna Singh and PW-5 Ramwati have also not deposed anything specific on the basis of which it has been held that the appellants had committed murder of deceased Jot Singh. It has been further argued that on the same set of evidence, other accused persons have been acquitted by the trial Court, thus, the trial Court erred in law in convicting the present appellants.

6. On the other hand, counsel for the respondent/State supports the judgment impugned. It has been argued by the State counsel that conviction of the appellants is in accordance with law and there is no infirmity in the same.

7. We have heard the counsel for the respective parties and perused the evidence on record.

8. PW-2 Manbodh is the father of PW-3 Krishan Singh. He has stated that he knew the accused/appellants. He deposed that prior to the date of incident, accused/appellant Ram Narayan and his friends were searching for Jot Singh and Krishna Singh. They entered his house and after enquiring about Jot Singh and

Krishna Singh, took mouth freshener in the house of Manbodh and thereafter went away. At about 9.00 PM, they again came to his house, but when he did not open the door, accused Ram Narayan abused him and by the time, he opened the door, all of them left his house. On the second day in the afternoon, the accused persons again came to his house and accused Mulayam Singh abused him and caused injury with an iron-rod on his occipital region and head, as a result of which he became unconscious. He has stated that thereafter the other accused persons also caused injury to his family members and then they left his house in search of Jot Singh. After about half an hour, he came to know from Kedar that while searching Krishna Singh and Jot Singh, the accused persons had committed murder of Jot Singh. He further stated that at that time his son Krishna Singh was also slapped by the accused persons and then Krishna escaped himself from the clutches of the accused persons. He has further stated that though Kedar had informed him about the murder of Jot Singh, but he did not inform as to who killed the deceased Jot Singh. In paragraph-10, he has stated that he did inform the police that he had not seen the murderer of the deceased.

9. PW-3 Krishna Singh is the son of PW-2 Manbodh. He states that after entering his house, the accused persons slapped him and somehow he escaped from their clutches, but was chased by accused Bharat with a sword for about 1 ½ Km and by the time he left his house, deceased Jot Singh was hiding himself in his house and after about one hour of the first incident, when he returned to his house, he was informed by Bansdhari that Jot Singh has been killed.

10. PW-4 Ghansi Ram is stated to be the injured eye-witness. However, in his opening line in the Court evidence, he has stated that he does not know the accused persons and had seen them for the first time in the Court. He has further stated that he is not aware as to how Jot Singh has expired and then this witness was declared hostile. In paragraph-7, he has reiterated that he had not seen any of

the accused persons prior to the date of his examination and as the incident took place about 16-17 years back, he is not in a position to identify them. He has further clarified that he had not seen the incident of murder of Jot Singh but just had heard that Jot Singh was killed.

11. PW-5 Ramwati has stated that her father-in-law Manbodh was beaten by the accused persons and they also chased Krishna Singh who escaped from the custody of the accused persons. He has stated that she did inform the police about any acquaintance with the accused persons. In paragraph-9, she has reiterated that she does not know any of the accused persons.

12. PW-6 Inder Deo Singh is also an injured eye-witness. He has categorically stated that he does not know any of the accused persons and has not supported the prosecution case. PW-9 Beera Bai is the wife of PW-2 Manbodh. She has not stated anything specific against the accused persons. PW-14 Chandrapal is a seizure witness. He has also not stated anything against the appellants. PW-11 Pramod Kumar, PW-12 Vinod Kumar and PW-15 Kedar Agrawal have also stated that they do not know the accused persons, therefore, they have been declared hostile. PW-7 Ramprasad is a witness of inquest. PW-8 Radhacharan Vyas is a Patwari who prepared the spot map. PW-10 Lochan Prasad Sharma, ASI who investigated the case. PW-13 Dr. Pradeep Kumar Rohni who conducted the autopsy.

13. Close scrutiny of the evidence makes it clear that all the three eye-witnesses to the incident namely PW-2 Manbodh, PW-4 Ghansi Ram and PW-6 Inder Deo Singh have not supported the prosecution case and have categorically stated that they had not seen anyone committing murder of deceased Jot Singh and they subsequently came to know that Jot Singh has been murdered. Likewise, PW-3 Krishna Singh and PW-5 Ramwati and other eye-witnesses to the incident have also not stated anything against the appellants showing their involvement in

commission of crime.

14. Thus, taking cumulative effect of evidence collected by the prosecution and the statements made by the prosecution witnesses who have not supported the prosecution case, we are of the view that the trial Court erred in law in convicting the appellants for commission of murder of deceased Jot Singh, therefore, the accused/appellants are entitled to benefit of doubt.

15. Accordingly, the appeal is allowed. Judgment impugned is set aside and accused/appellants are acquitted of the charges levelled against them. As the accused/appellants are already on bail, no further order to set them free etc, is necessary. Bail bonds so furnished stand discharged.

Sd/-

(Pritinker Diwaker)
Vacation Judge

Sd/-

(Sanjay K. Agrawal)
Vacation Judge