

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1156 of 2003

1. Baburam, aged 32 years, son of Tulsiram Satnami, resident of Village – Katalbod, Police Station-Bemetara, District Durg (C.G.)
2. Juggu alias Ram Prasad, aged 40 years, S/o Ramu Satnami, resident of Village Katalbod, Police Station – Bemetara, District Durg (C.G.) (Dead)

---- Appellants

Versus

1. State of Chhattisgarh

---- Respondent

For Appellants	:	Shri Deepak Jain, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice R.C.S. Samant

Judgment On Board By Justice Pritinker Diwaker

27/03/2017

This appeal arises out of the judgment of conviction and order of sentence dated 31.1.1998 passed by the Additional Sessions Judge, Bemetara, Distt. Durg in ST No.139/1988 convicting the appellant Baburam under Sections 302 & 120B of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.200/- with default stipulation.

02. Brief facts of the case are that on 5.3.1988 at 8.30 pm an FIR (Ex.P/7) was lodged by PW-4 Panchuram alleging therein that in the previous year cattle of one of the deceased namely Premdas had

entered in the field of uncle of accused Ramprasad resulting in quarrel between the two groups in which accused/appellant Baburam also sustained injuries. After lodging of report, the case was registered against him (Panchuram), Ganesh, Naindas and Premdas. Even proceedings under Sections 107 and 116 of Cr.P.C. were drawn by the Sub Divisional Magistrate. It is alleged that on 5.3.1988 when he along with Ganesh (deceased), Naindas (PW-6) and Premdas (second deceased) were returning after attending the Court, Mehattar Sahu (PW-7) joined them in the market. In the evening when all of them were returning by their bicycles, on the way they were assaulted by the accused/appellant Baburam and other accused persons. It is alleged that first Ganesh was subjected to number of injuries by the accused persons as a result of which he died and immediately thereafter the accused persons caused injuries to second deceased Premdas which led to his death also. As per FIR, the incident was witnessed by PW-6 Naindas and PW-7 Mehattar. FIR under Section 302/34 of IPC was registered against all the accused persons. Immediately thereafter merg intimation Ex.P/17 was registered at the instance of PW-4 Panchuram. Inquest over the dead body of deceased Premdas was prepared vide Ex.P/3A on 6.3.1988 and thereafter the dead body was sent for postmortem which was conducted on the same day by PW-1 Dr. Naresh Tiwari vide Ex.P/1 wherein he noticed number of injuries, including incised and penetrating wound as well as crushed injuries, on the person of the deceased and opined that the cause of death was shock and hemorrhage. After filing of charge sheet, the trial Court framed charges under Sections 302/34, 120B of IPC and Section 5 of Explosive Substances Act against all the accused persons.

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

04. During trial, accused No.4 Johna expired and the trial Court proceeded in respect of appellant Baburam, accused Juggu @ Ramprasad and Kejau.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting accused Kejau of all the charges, convicted and sentenced the appellant Baburam and accused Juggu @ Ramprasad as mentioned above.

06. This appeal has been originally preferred by accused Baburam and Juggu @ Ramprasad, however, during pendency of the appeal Juggu @ Ramprasad has expired and therefore, the present appeal is now only in respect of accused/appellant Baburam.

07. Counsel for the appellant submits as under:

(i) that PW-4 Panchuram and PW-6 Naindas have falsely implicated the accused/appellant as unfortunately there was old dispute between them and the accused persons.

(ii) that as per PW-4 Panchuram he did not immediately lodge the report and fled away from the spot whereas as per prosecution case the report was lodged promptly.

(iii) that PW-4 & PW-6 being interested witnesses have falsely

implicated the accused persons and therefore, their evidence cannot be relied upon.

(iv) that at the place of occurrence there was a mob of other persons who have allegedly thrown bomb and other explosive substances but they have not been joined as accused and therefore, the appellant is entitled for acquittal by giving him benefit of doubt.

(v) that even FSL report Ex.P/34 does not support the prosecution case.

(vi) even if the entire prosecution case is taken as it is, the accused/appellant had no intention to commit murder of the deceased, there was a free fight between the two groups and if during that process some injury suffered by the deceased led to his death, the appellant cannot be held guilty of commission of murder and at best, he can be convicted under Section 304 Part-I of IPC. Further, considering the period of imprisonment of the appellant i.e. 8 years & 7 months, after converting the offence into one under Section 304 Part-I of IPC, he may be sentenced to the period already suffered by him.

08. On the other hand, State counsel supporting the impugned judgment has submitted that a very detailed report was lodged by PW-4 Panchuram wherein he has categorically stated about the role played by the accused persons. The other eyewitness PW-6 Naindas has also supported the prosecution case. He submits that PW-7 Mehattar has though been declared hostile but has partly supported the prosecution case. Lastly he submits that present is a case of double murder in a brutal manner and therefore, the judgment impugned convicting and sentencing the appellant under Section 302 of IPC is strictly in

accordance with law warranting no interference by this Court.

09. Heard counsel for the respective parties and perused the material on record.

10. PW-1 Dr. Naresh Tiwari conducted postmortem on the body of the deceased Premdas on 6.3.1988 vide Ex.P/1 and noticed following injuries:

- (i) incised wound $3 \times \frac{1}{3} \times \frac{3}{4}$ inch on front portion of left hand,
- (ii) incised wound $1 \frac{1}{2} \times \frac{1}{2} \times \frac{1}{3}$ inch on front portion of left hand,
- (iii) incised wound $3 \times \frac{1}{2}$ inch x bone deep on left side occipital and parietal region,
- (iv) multiple abrasions on face and frontal region measuring from $\frac{1}{4} \times \frac{1}{4}$ to 1×1 inch,
- (v) abrasion $2'' \times \frac{1}{2}''$ over left lateral surface of neck,
- (vi) penetrating wound 1.5 inch depth just behind right ear width being $\frac{1}{4}'' \times \frac{1}{4}''$
- (vii) penetrating wound $\frac{3}{4} \times \frac{1}{4} \times \frac{1}{4}$ inch over ear just by side of tragus of ear,
- (viii) swelling of right side of face, on dissection fracture of bones of upper and lower jaw found, muscles contain effused blood and redish in colour,
- (ix) crushed injury – of lower $\frac{1}{3}$ rd of leg right side size being 5 inch in length. The foot was hanged only by tag of skin, there was fracture of lower end of tibia, bones of ankle joint, blood vessels, muscles of this portion is crushed, injury contains antemortem clotted blood, skin of anterior surface was intact.

All the injuries were caused by hard and sharp object and the

crush injuries can be caused by some explosive substance. In his opinion, the cause of death was shock and hemorrhage.

11. PW-2 Ghusu and PW-3 Ajab Singh are witnesses to inquest. PW-4 Panchuram, lodger of FIR (Ex.P/7) and merged intimation (Ex.P/17), is an eyewitness to the incident. While supporting the prosecution case, he has stated that he knew deceased Ganesh and Premdas. On the date of incident when he was returning along with PW-7 Mehattar and the deceased persons on their bicycles, on the way he met Naindas (PW-6), who was coming afoot. He has stated that near the brook, number of persons, including the appellant and other accused persons, who were hiding themselves came out, the accused/appellant asked the other accused persons to surround the deceased party and accordingly, he and his friends were surrounded by them. He has stated that the accused/appellant Baburam started talking to deceased Ganesh and thereafter, Baburam said to other persons not to leave said Ganesh. One bomb was thrown by someone at Ganesh as a result of which he sustained injury. While Ganesh was trying to flee from the spot, another deceased Premdas also followed him, however, another bomb was thrown at Premdas resulting in injury on his leg. He has stated that the accused/appellant Baburam and Ramprasad who were carrying axe & tabbal in their hands started beating Ganesh as a result of which he died. Thereafter, another deceased Premdas was also chased by appellant Baburam and Ramprasad, they committed his murder as well. Thereafter he narrated the entire incident in detail. In cross-examination this witness remained very firm and reiterated as to the manner in which Ganesh and

Premdas were brutally killed by the accused/appellant.

12. PW-5 Gorelal Pandey is a witness of inquest and seizure memo Ex.P/4 & P/5. PW-6 Naindas, another eyewitness to the incident, while supporting the prosecution case has stated that while he was returning afoot, Ganesh, Premdas and Mehattar came from behind on their bicycles and immediately thereafter he saw about 15 persons including the appellant Baburam and other accused persons, surrounding deceased Ganesh and then bombs were thrown at Ganesh as a result of which he suffered injury on his leg. While Premdas was trying to run away from the spot, he too was subjected to bomb injury as a result of which his leg got cut off. He has further stated that thereafter accused/appellant Baburam and accused Ramprasad, who were carrying axe & tabbal in their hands, caused injuries to Ganesh and Premdas resulting in their death. In cross-examination this witness also remained very firm and reiterated as to the manner in which the incident had taken place where Ganesh and Premdas were killed.

13. PW-7 Mehattar, eyewitness to the incident, has stated that on the date of incident he was returning alongwith deceased persons Ganesh and Premdas and PW-4 Panchuram on their bicycles and that near the bund he saw accused Ramprasad throwing bomb at Ganesh. However, subsequently this witness has not supported the prosecution case and therefore, has been declared hostile. PW-8 Pancham is a hearsay witness. PW-9 Tularam Sahu, Revenue Inspector, prepared the spot map. PW-12 Ashwani Kumar reached the place of occurrence after it had taken place. PW-13 OP Dubey, investigating officer, has duly supported the prosecution case. PW-14 Radheshyam is a witness

of seizure memo Ex.P/15 & P/16. PW-15 Sadhelal accompanied the Kotwar while lodging FIR. PW-16 Shankar Sharma is a witness of memorandum of the appellant Ex.P/25 & P/27 and seizure memos Ex.P/20 to P/24.

14. Close scrutiny of the evidence makes it clear that there was an old dispute between the accused group and that of the deceased group. On the fateful day when deceased persons Ganesh and Premdas were returning alongwith Panchuram (PW-4) and Mehattar (PW-7) after attending the Court, on the way they met PW-6 Naindas. At that juncture, the accused/appellant and other accused, who were hiding themselves, came out and surrounded them and started beating them. A prompt report was lodged by PW-4 Panchuram naming all the accused persons including that of the appellant Baburam. PW-4 Panchram and PW-6 Naindas, eyewitnesses to the incident, have categorically stated as to the manner in which the incident had taken place and the role played by the accused/appellant in commission of murder of the deceased persons. They have also stated that after the deceased persons suffered bomb injuries, they were brutally assaulted by the accused/appellant Baburam and deceased/accused Ramprasad. Though another eyewitness to the incident PW-7 Mehattar has not fully supported the prosecution case and the FSL report also does not lend support to the prosecution case, but considering the un rebutted evidence of PW-4 and PW-6, who have made vivid description of the whole incident and attributed specific role played by the appellant in commission of the crime, we have no doubt in our mind that it is the accused/appellant who caused fatal injuries to the

deceased Ganesh resulting in his death.

15. It is the mandate of Section 134 of Evidence Act that quality and not quantity of evidence is material. Section 134 enshrines the well recognized maxim "Evidence has to be weighed not counted". the matter thus depends upon the circumstances of each case and the quality of evidence even of a single witness whose testimony has either to be accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. In the present case, evidence of PW-4 & PW-6 is sufficient enough to establish involvement of the appellant in the crime in question beyond reasonable doubt.

16. We further find no substance in the arguments of learned counsel for the appellant that in the facts and circumstances of the case, the appellant can at best be held guilty under Section 304 Part-I of IPC. There is absolutely no material on record to show that the incident occurred all of a sudden in the heat of passion upon a sudden quarrel without there being any premeditation on the part of the appellant, rather the evidence goes to show that the appellant in a well planned manner, armed with a lethal weapon tabbal, assaulted the deceased even after he suffered bomb injuries on his vital parts which led to his instantaneous death. The act of the appellant speaks volumes that while causing injuries to the deceased he had not only intention to cause death of the deceased but had every knowledge that such bodily injury would result in his death. Being so, his act, in no way, falls under any of the exceptions to Section 300 of IPC i.e. culpable homicide not amounting to murder.

17. Thus, having given a thoughtful consideration to the overall evidence, ocular and medical, available on record, we are of the opinion that the trial Court after due appreciation of the evidence adduced by the prosecution has rightly convicted and sentenced the appellant under Sections 302 & 120B of IPC.

18. In the result, the appeal fails and is, accordingly, dismissed. The appellant is reported to be on bail, therefore, his bail bonds stand cancelled and he is directed to be taken into custody forthwith.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge