

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 115 of 2009****Order Reserved on 19.04.2017****Order Delivered on 03.07.2017****Criminal Appeal No. 115 of 2009**

Shiv Prasad Kanwar s/o Rathia Kanwar, aged about 30 years, R/o village Lichirama, P.S. Sitapur, District Surguja, Chhattisgarh.

---- Appellant**Vs**

State Of Chhattisgarh Through Station House Officer, P.S. Sitapur, District Surguja, Chhattisgarh.

---- Respondent**And****Criminal Appeal No. 167 of 2009**

Buchan Ram s/o Shri Sururam Paikra, aged about 34 years, R/o village Lichirama, P.S. Sitapur, District Surguja, Chhattisgarh.

---- Appellant**Vs**

State Of Chhattisgarh Through Station House Officer, P.S. Sitapur, District Surguja, Chhattisgarh.

---- Respondent**And****Criminal Appeal No. 336 of 2009**

Manikchand (dead) S/o Lakhan Lal, aged about 33 years, R/o village Lichirama, P.S. Sitapur, District Surguja, Chhattisgarh.

---- Appellant**Vs**

State Of Chhattisgarh Through Station House Officer, P.S. Sitapur, District Surguja, Chhattisgarh.

---- Respondent

For the Appellants	:	Shri Pramod Kumar Verma, Senior Advocate with Shri Sumit Verma, Shri Shailendra Dubey, Advocates.
For the Respondent/ State	:	Shri V.A. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV JUDGMENT

Per R.C.S. Samant, J.

1. Since all these appeals arise out of same incident and same impugned judgment, they are being decided by a common judgment.

2. Appellant – Shiv Prasad Kanwar in Criminal Appeal No. 115 of 2009, Appellant – Buchan Ram in Criminal Appeal No. 167 of 2009 and Appellant – Manikchand (now deceased) in Criminal Appeal No. 336 of 2009 have challenged the judgment of conviction and order of sentence dated 24.10.2008 passed by the Court of Special Sessions Court (Constituted under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989), Sessions Division, Sarguja at Ambikapur, Chhattisgarh, Ambikapur, District Sarguja, Chhattisgarh in Sessions Trial No. 22 of 2008 whereby and whereunder the Learned Special Sessions Court convicted the appellants under Section 302 of the Indian Penal Code on two counts and sentenced them to undergo imprisonment for life and to pay fine of Rs.200/- on each count. Appellant – Manikchand in Criminal Appeal No. 336 of 2009 has expired during the pendency of this appeal. Hence, his appeal stands abated.

3. The case of the prosecution in brief is that co-accused - Buddesh Yadav (appellant in Criminal Appeal No. 1081 of 2008) had a grudge with deceased - Purushottam with respect to some Panchayat proceedings. On 28.11.2007, he had a quarrel with deceased – Purushottam. Co-accused – Buddesh Yadav alongwith the appellants in the present appeals arrived on the spot i.e. the barrier at Radhapur. Co-accused – Buddesh Yadav was

armed with axe and all the appellants were armed with clubs. When deceased - Purushottam arrived on the spot, he was assaulted by co-accused - Buddesh and the present appellants assaulted him using axe, clubs, stones and rods. They also assaulted Kanha @ Aniruddh by using axe and clubs. Both, Purushottam and Kanha @ Aniruddh sustained injuries and died on the spot. Lomas Singh (PW-1), son of deceased – Purushottam informed about the incident in police station Sitapur and on his information unnumbered merg Ex. P/1 was recorded at 22:25 pm. The First Information Report Ex. P/2 was separately recorded on 28.11.2007 at 22:30 pm against unknown person, registering an offence of accidental death under Section 304-A of the Indian Penal Code. Inquest procedure vide Ex. P/15 was conducted upon the body of deceased – Purushottam and inquest procedure vide Ex. P/16 was conducted upon the body of deceased – Kanha @ Aniruddh. Postmortem examination of deceased – Purushottam and Kanha @ Aniruddh was conducted vide Exs. P/39 and P/40 by a team of doctors i.e. Dr. S.N. Paikra (PW-9) and two others, in which it was opined that the death of both the deceased was homicidal. During investigation, a memorandum statement of co-accused - Buddesh Yadav was recorded vide Ex. P/3. At the instance of appellant – Shiv Prasad vide his memorandum statement Ex. P/4 one club was seized from his possession vide Ex. P/5. At the instance, appellant – Buchan Ram vide his memorandum Ex. P/6 one bamboo club was seized from his possession vide Ex. P/7. A vehicle and registration papers were seized from co-accused - Buddesh Yadav vide Ex. P/9. Spot inspection report was prepared vide Ex. P/9. Articles from the spot were seized vide Ex. P/10. Caste certificate of deceased – Purushottam was seized vide Ex. P/11. Spot map was prepared vide Ex. P/12. One motorcycle was seized from the spot vide Ex. P/19. Sample

of paints from the seized four wheeler and the motorcycle were obtained and seized vide Ex. P/21. One axe was seized from the spot. The seized axe was examined and reported by Dr. S.N. Paikra (PW-9) vide Ex. P/22A. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

4. The appellants in the present appeals were charged for the charge under Sections 149 and 302 of the IPC whereas co-accused – Buddesh Yadav in Sessions Trial No. 21 of 2008 was separately charged for the offences under Sections 147, 148, 149 and 302 of the Indian Penal Code and Section 3(ii)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellants denied the charges and prayed for trial. The prosecution examined as many as 15 witnesses. The defence examined four witnesses. On being examined under Section 313 of the Cr.P.C., denying all the incriminating evidence against them, the appellants pleaded innocence and false implication. After giving opportunity of hearing and leading evidence for the prosecution and the defence, the impugned judgment has been passed by which the appellants have been convicted and sentenced as mentioned above. Hence, these appeals.

5. The grounds taken in these appeals are that the appellants have been erroneously convicted on the basis of unreliable evidence of the prosecution witnesses. Lomas Singh (PW-1), son of deceased – Purushottam lodged the First Information Report Ex. P/2 in which he informed that death of Purushottam and Kanha @ Aniruddh occurred due to accident. Lomas Singh (PW-1) has admitted in his evidence that he received the information about the murder from Sandeep Singh (PW-3) and Santan Ram (PW-6) and

even then he gave the information of accidental death to the police this makes his statement doubtful. The trial court has not given any consideration to the fact that the statements of Shyam Sundar (PW-11) and Shankar Singh (PW-14) who were chance witnesses and their statements were not reliable. The statements of Shyam Sundar (PW-11) and Shankar Singh (PW-14) are full of contradictions and omissions. Postmortem report was more suggestive of accidental death even then Dr. S.N. Paikra (PW-9) has given a wrong opinion that the death of the deceased were homicidal. On these grounds, the appellants are entitled for acquittal.

6. Learned counsel for the appellants submit that four eye-witnesses have been examined by the prosecution and the evidence of all the four eye-witnesses is doubtful in many respects. Two of these witnesses are chance witnesses whose presence on the spot by itself creates doubt. Delay in recording of statements of the witnesses under Section 161 of the Cr.P.C. also shows that the case was concocted after due deliberations. As per the admission of Lomas Singh (PW-1), he had information that deceased Purushottam and Kanha @ Aniruddh were murdered even then he lodged the FIR with respect to accidental death of the deceased persons. The explanation as required, has not been given in any manner which creates doubt. The injuries found on the body of deceased – Purushottam and Kanha @ Aniruddh are more suggestive that the death of these persons were accidental. On a plain reading of the evidence of the prosecution, it is not of conclusive nature and there had been scope of forming more than one opinion. Under these circumstances, the appellants had been entitled for benefit of doubt.

7. On the other hand, learned State counsel has opposed the grounds raised in these appeals and the arguments submitted on behalf of the appellants. It is submitted that the statements of the prosecution witnesses Sanjay Singh (PW-2), Sandeep Singh (PW-3), Santan Ram (PW-6) and Shyam Sunder (PW-11) are reliable, which are corroborated with the statement of Dr. S.N. Paikra (PW-9). Lomas Singh (PW-1) has not been an eyewitness to the incident. Hence, the information given to the police about the accidental death was based upon the information received by him which is of no consequence and the conviction of the appellants is based on cogent, reliable and lawful evidence of the prosecution. There is no scope for interference in the impugned judgment.

8. Considering the material on record and the arguments submitted on behalf of both the sides, the question arises in these appeals is, whether the conviction against the appellants is supported by evidence of the prosecution beyond all reasonable doubt?

9. Lomas Singh (PW-1) is son of the deceased Purushottam, who gave the information. On the basis of which, merg intimation Ex. P/1C and FIR Ex. P/2C were recorded in P.S. Sitapur, District Sarguja. This information reveals that deceased – Purushottam and Kanha @ Aniruddh died an accidental death due to collision with unknown vehicle. Admittedly, Lomas Singh (PW-1) is not a witness of the spot. He stated that, at the time of incident he was in Pathalgaon, where he was informed by brother Sandeep Singh (PW-3) and Santan Ram (PW-6), that the appellants have murdered Purushottam and Kanha @ Aniruddh. Thereafter, he went to the spot of incident at about 10:00 pm in the night and saw the body of the deceased

persons. On his information, merg intimation Ex. P/1C and FIR Ex. P/2C were recorded. Further, he stated that at the time when Exs. P/1C and P/2C were being recorded, he was sitting out of the room. In cross-examination, he stated that he arrived on the spot of incident at about 10:00 pm and then he went to the police station. On a suggestion put by the defence counsel, he denied that he gave such information that Purushottam and Kanha @ Aniruddh died in an accident due to collision with unknown vehicle and also denied the contents of merg intimation Ex. P/1C and FIR Ex. P/2C.

10. The submissions of defence have some force as Lomas Singh (PW-1) is the informant of merg intimation Ex. P/1C and FIR Ex. P/2C and he denied giving information in the manner recorded in these documents. It has to be considered that Lomas Singh (PW-1) was not the witness of the spot. He gave information to the police on the basis of information received, although he is making a different statement that he came to know about the fact that Purushottam and Kanha @ Aniruddh were murdered by the appellants. Under these situations, the evidence of Lomas Singh (PW-1) cannot be held as reliable and trustworthy. But, how far this could affect the statements of other witnesses, is another question. It is settled principle that the reliability and trustworthiness of the witness the maker of FIR alone can be tested on the basis of information given by him to the police. This does not affect the statements of other witnesses. Further, it is also stated that FIR is not a substantive piece of evidence and cannot be regarded as encyclopedia of the case. It has been held in the judgments of the Hon'ble Apex Court in **Baldev Singh vs. State of Punjab** reported in **1990 (4) SCC 692** and **State of Uttar Pradesh vs. Naresh and Others** reported in **(2011) 4 SCC 324**. Hence, for these reasons, unreliability of the statement of Lomas Singh

(PW-1) shall not affect the statements of the eyewitnesses of the spot and other relevant witnesses.

11. Sandeep Singh (PW-3) has stated that when he was present in front of a hotel in Bus Stand, he saw deceased Purushottam and Kanha @ Aniruddh arrive there on a motorcycle and thereafter the appellants alongwith co-accused Buddesh Yadav on a four-wheeler. On seeing Purushottam, accused Buddesh Yadav by using abusive words for doing politics, threatened Purushottam with dire consequences. Purushottam and Kanha @ Aniruddh left the place on a motorcycle for Sitapur for the purpose of lodging FIR of this incident. Having some apprehension, this witness alongwith Santan Ram (PW-6) also proceeded on a motorcycle for Sitapur. When he reached near Radhapur barrier, he saw a four-wheeler standing and he himself halted for a moment. He heard the sounds of *bachav bachav* (help.. help..). Then, he went near the four-wheeler and saw that co-accused Buddesh Yadav was armed with an axe, the present appellants were armed with clubs and all of them were assaulting Purushottam. Thereafter, all of them assaulted deceased Kanha @ Aniruddh as well saying that if he is left alive, then he would tell about the incident. Kanha @ Aniruddh tried to escape but he was assaulted again with axe. Later on, co-accused – Buddesh Yadav and the appellants damaged the motorcycle of Purushottam. He then saw that acquitted appellant – Rajkumar drove the four-wheeler over the bodies of Purushottam and Kanha @ Aniruddh as well as over the motorcycle of the deceased. After the accused persons left the spot, he went to see the bodies of his father and Kanha @ Aniruddh and then came back to home, and informed brother Lomas Singh (PW-1) on telephone. In cross-examination, Sandeep Singh (PW-3) has remained firm

on his statement in examination-in-chief. Some discrepancies have been pointed out by the defence compared to his previous statement given to police Ex. D/1, which is of no consequence and insignificant. He admitted the suggestion of defence that he informed Lomas Singh (PW-1) about the incident and denied that he gave information that his father and deceased Kanha @ Aniruddh died in an accident. Santan Ram (PW-6) was in company of Sandeep Singh (PW-3) and he has also stated similar version as has been stated by Sandeep Singh (PW-3) about following the deceased and accused persons and witnessing the incident in which deceased Purushottam and Kanha @ Aniruddh were assaulted and fatally injured, by the co-accused Buddesh and the appellants. In cross-examination, he was also confronted with his previous statement Ex. D/3. There is no discrepancy of grave nature so as to consider it as material contradiction affecting his truthfulness. Minor contradictions, omissions and discrepancies are of no consequence and insignificant.

12. Shyam Sunder (PW-11) is a chance witness. He stated that he alongwith Shankar Singh (PW-14) had been near the spot for catching some birds. He saw a four-wheeler coming from a direction of Gaturma and stopped there. One motorcycle was also behind it and 7-8 persons got down from the four-wheeler. He recognized accused Buddesh Yadav and the appellants, who was armed with an axe. Accused - Buddesh Yadav assaulted Purushottam with axe causing various injuries. Thereafter, he also saw appellants – Shivprasad and Manikchand (now deceased) assaulting Purushottam with a club, appellant – Buchan Ram assaulting Purushottam with stones and co-accused Raju assaulting Purushottam with an iron rod. He narrated in detail about the incident and the manner in which

the deceased persons assaulted by using of axe, club, rod and stones. He stated that he got scared and went away from the spot. Later on, when the police enquired from him, he gave them the statement. In cross-examination, he stated that his statement was recorded in the police station after two days of the incident. He denied that the statement was recorded on 8.12.2007. He remained firm on his statement about the act by co-accused Buddesh Yadav and the appellants. In cross-examination, he has not been confronted with his previous statement. Though questions were put to him on the basis of his previous statement, as his previous statement under Section 161 of the Cr.P.C. is not exhibited, it cannot be made use of to contradict his statement before the Court.

13. Shankar Singh (PW-14) was in company of Shyam Sunder (PW-11). He has stated about the incident in which deceased Purushottam and Kanha @ Aniruddh were assaulted by co-accused Buddesh Yadav and the appellants with axe, clubs and stones etc in a detailed manner. In cross-examination, he has remained firm on his statement. He was also not confronted with his previous statement in his cross-examination, though questions were put to him on the basis of his previous statement under Section 161 of the Cr.P.C. As the previous statement is un-exhibited, it cannot be made use of.

14. It is argued by counsel for defence that Shyam Sunder (PW-11) and Shankar Singh (PW-14) are chance witnesses and their statements cannot be relied upon, for the reason that their presence on the spot has not been sufficiently explained. This argument has no force as both these witnesses have stated that they were present near the spot for the purpose of catching

birds and this statement has remained intact in their cross-examination. Another argument submitted that their statements were recorded after passing of sufficient time on 8.12.2007, as stated by C.D. Tandon (PW-14(ii)), Investigating Officer, hence their statements before the court are not believable. C.D. Tandon (PW-14(ii)) in his cross-examination stated that he had no information prior to 8.12.2007 that Shyam Sunder (PW-11) and Shankar Singh (PW-14) were the eyewitnesses and as soon as he came to know, he recorded their statements. No question was put to him in cross-examination that the statements of these witnesses are concocted and after thought. Hence, statement of C.D. Tandon (PW-14(ii)) mentions sufficient explanation about belated recording of statements of Shyam Sunder (PW-11) and Shankar Singh (PW-14) which has never been challenged by the defence. Under these circumstances, only on the basis of the fact that the statements of these witnesses were recorded after passing of 10-12 days from the date of incident cannot be made a ground to discard this piece of evidence. Hence, the argument of defence on this point is also found to be any substance.

15. It has been emphatically argued by counsel for the appellants that because of the interestedness of the complainant and others and also for political reasons, the accidental death has been converted into murder case and this can be made out from the mere intimation Ex. P/1C and FIR Ex. P/2C which were promptly recorded by the police and cannot be disbelieved and thrown out. It has been disclosed that Lomas Singh (PW-1) was not an eyewitness of the case and he has been found to be unreliable witness. Hence, he may be an interested witness in this case, but it cannot be said with respect to the other witnesses of the spot. Further, the death of

deceased Purushottam and Kanha @ Aniruddh was not accidental, is also confirmed by the evidence on the basis of postmortem report. Dr. S.N. Paikra (PW-9) conducted the postmortem of deceased Purushottam on 29.11.2007 and found the following injuries:

'External Injuries found on the body of deceased Purushottam:

1. Incised wound vertically placed left to right slightly oblique measuring size $5\frac{1}{2} \times 2\frac{1}{2}$ cm x bone deep over mid-frontal region caused by hard and sharp object.
2. Lacerated wound size $10 \times 2\frac{1}{2} \times 2$ cm size right frontoparietotemporal region caused by hard and blunt object.
3. Incised wound over left armpit (axillary) vertically size $12 \times 8 \times 2$ cm caused by hard and sharp object.
4. Swelling and disfigured right arm with contusion $5 \times 2\frac{1}{2}$ cm over outer aspect of swelling.
5. Swelling over right middle $\frac{1}{3}$ of forearm.
6. Incised wound over right leg extending from upper $\frac{1}{3}$ of leg to lower $\frac{1}{3}$ of thigh medially oblique size $17 \times 14 \times 8$ cm caused by hard and sharp object.
7. Incised wound over right calf measuring $7 \times 3 \times 2$ cm horizontally placed.
8. Abrasion $3 \times 2\frac{1}{2}$ cm over left patella.
9. Pale colour abrasion vague measuring $15 \times 8\frac{1}{2}$ cm over left side of abdomen.

On dissection:

1. Fracture of frontal bone with external and subdural hematoma corresponding to external injury No.1.
2. Fracture of frontoparietotemporal region bone cutting meninges to brain material extradural and subdural hematoma present corresponding to external injury No.2 multiple pieces 5 x 3 ½ cm. Depressed into right portion of brain material.
3. Fracture of right humerus bone upper 1/3 corresponding to external injury No.4.
4. Fracture of right radius-ulna middle 1/3 fracture not present. Hematoma underneath fractures. Corresponding to external injury No.5.
5. Fracture of right tibia-fibula upper 1/3 and femur bone 1/3 cutting through patella and hematoma present under fracture area. Corresponding to external injury No.6. External injuries No.1, 3, 6 and 7 caused by hard and sharp object. Rest caused by blunt about 12-24 hrs prior to postmortem. He died due to multiple injuries sharp and hard. Injuries No.1 and 2 are fatal and enough in ordinary cause of death.

External Injuries found on the body of **Kanha @ Aniruddh:**

1. Incised wound size frontal region 3 x 1 ½ x 4 cm.
2. Incised wound size temporal region 2 x 1 ½ x 3 cm.
3. Disfigured alignment of forearm.
4. Disfigured alignment of right thigh.

On dissection:

1. Fracture of frontal bone through and through upto brain material with extra and subdural hematoma

corresponding to external injury No. 1.

2. Fracture of right temporal bone cutting meninges up to brain material. Extradural and subdural hematoma present. Corresponding to external injury No.2.

3. Fracture of right forearm (radius – ulna middle 1/3) hematoma present. Corresponding to external injury No.3.

4. Fracture of right femur at middle 1/3. Hematoma around to fracture side of femur correspond to external injury No.4.

All injuries are antemortem caused by hard and sharp for 1 and 2, hard and blunt object for 3 and 4 all are about 12-24 hrs old 1 and 2 are fatal and enough in ordinary cause of nature to cause death due to shock resulted head injury.'

16. It has been clearly opined by Dr. S.N. Paikra (PW-9) in his report Exs. P/39 and P/40 that the cause of death of deceased Purushottam and Kanha @ Aniruddh is homicidal in nature. He also stated on the basis of their postmortem reports with respect to deceased Purushottam Ex. P/41C and deceased Kanha @ Aniruddh Ex. P/42C that the death was homicidal in nature. In cross-examination, he denied that he has given a false report of homicidal death due to some kind of pressure and admitted that the application for postmortem of deceased Purushottam Ex. P/17C and the application for postmortem of deceased Kanha @ Aniruddh Ex. P/18C mentioned that the deceased persons have died in an accident, however, he has made clear that he has given opinion on the basis of findings in the postmortem examination. There is no admission made by him that the death of deceased Purushottam and Kanha @ Aniruddh could have been due to

accidental injuries. Looking to the placement of the injuries on various parts of the body of the deceased persons and specifically on head, it is simply ruled out that death of Purushottam and Kanha @ Aniruddh could have been caused due to motor vehicle accident. As injuries in a motor vehicle accident are caused where the metallic part of a vehicle impacts with the body and where the body of a person falls and in such cases, specific kinds of injuries may be seen on the body of the deceased, which clearly show that the death has occurred due to accidental injuries. Finding of incised wound on head and other parts of the body of the deceased also clearly suggest that these injuries are mostly caused by some sharp and hard object and the witnesses on the spot have seen co-accused Buddesh Yadav armed with an axe causing injuries to the persons, which itself is a sufficient evidence to correlate with the charge against the accused persons. Hence, though there is a merg intimidation Ex. P/1C and FIR Ex. P/2C based on wrong information, but during the investigation procedure the truth has come out, which has been amply supported by the witnesses of the spot. Hence, only because of the reason that merg intimidation Ex. P/1C and FIR Ex. P/2C mentions of accidental death of Purushottam and Kanha @ Aniruddh, the rest of the evidence on record cannot be simply discarded and disbelieved.

17. Sanjay Singh (PW-2), Sangram Singh (PW-12) and Jagdish Prasad (PW-13) were immediately informed about the incident by the eyewitnesses Sandeep Singh (PW-3) and Santan Ram (PW-6). Sangram Singh (PW-12) has also stated about the previous incident i.e. altercation took place between the deceased and the accused persons in the Bus Stand of village Gaturma to which Jagdish Prasad (PW-13) was also a witness and his statement has remained unrebutted. This is sufficient and relevant to

corroborate the statements of the eyewitnesses of this case.

18. Defence witnesses Desha Ram (DW-1) has stated that he was told by Kedar Kanwar that Purushottam and Kanha @ Aniruddh have died in an accident. Aitwa Kanwar (DW-2) and Bramhanand Behra (DW-3) have also stated similarly and that they were not the witnesses of the spot. Head-Constable Hemant Kumar Kushwaha (DW-4) has stated about receiving information about the accidental death. Information Ex. D/3 was recorded in Station House Diary and then the police party proceeded to the spot to do the needful. It is not disputed that the first information to the police was given about the accidental death and as such the statements of the witnesses are not contrary to the circumstances in the prosecution case. It has already been made out that although the first information of death of deceased persons was recorded as accidental death, but during the investigation procedure, the truth was revealed and the case was found to be an offence of murder of Purushottam and Kanha @ Aniruddh by the accused persons. Hence, this evidence of defence is of no value and does not support the case of defence in any manner.

19. After closely scrutinizing the evidence and material on record, we are of considered view that all the appeals are without any substance and liable to be dismissed. Accordingly, the appeals are dismissed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.C.S. Samant)
Judge