

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 179 of 2007

1. Nadhira, S/o Maan Singh Cherwa, aged about 55 years.
2. Ramsoorat alias Chhattu alias Phool Sai, son of Nadhira Cherwa, aged about 22 years,.

Both are resident of village Badka Gaon, P.S. Chalgalli, District Surguja (CG)

---- Appellants

Versus

1. The State Of Chhattisgarh, Police Station Chalgali, Dist. Surguja (CG)

---- Respondent

And

CRA No. 270 Of 2007

1. Foolsai @ Jagat Cherwa, S/o Bigam Cherwa, aged about 30 years
2. Bigan Cherwa S/o Dhani Cherwa, aged about 55 years.
3. Sahoran Ram Cherwa S/o Ghata Ram Cherwa, aged about 30 years.
4. Jagdhari Cherwa S/o Ram Khelawan, aged about 32 years.

All residents of village Badalagaon, Thana-Chalgali, Dist. Surguja (CG)

---- Appellants

Vs

1. State Of Chhattisgarh, Police Station Chalgali, Dist. Surguja (CG)

---- Respondent

For Appellants	:	Shri N.K Mehta & Shri Manoj Mishra, Advocates
For Respondent	:	Shri Rahul Tamaskar, Panel Lawyer..

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement

Per the Acting Chief Justice

17/02/2017

1. As the above criminal appeals arise out of the common judgment dated 23.1.2007 passed by the 2nd Additional Sessions Judge (FTC), Ramanujganj, District Sarguja in Sessions Trial No.224/2005, they are being disposed of by this common judgment.
2. Appellants have been convicted under Sections 302/149 of the Indian Penal Code (for short "the IPC") and sentenced to undergo R.I. for life & fine of Rs.1000/-, in default to undergo additional R.I. for six months.
3. In the present case name of deceased is Parmeshwar Cherwa.
4. The prosecution case, in brief, is that there was some land dispute between the accused persons and the deceased. On 24.3.2005 at about 8.00 p.m. when the deceased was returning from the pond, the accused persons attacked and assaulted him by club, hands & fists as a result of which he sustained various injuries. He was taken to the hospital where his MLC was conducted by Dr. Janeshwar Singh (PW-10) vide Ex.P-27. However, said Parmeshwar Cherwa died in the hospital during the course of treatment. Incident is said to have been witnessed by Ramjeet (PW-1), Smt. Sukhmen Bai (PW-2) & Prano Bai (PW-5). On the report lodged by Ramjeet (PW-1), FIR (Ex.P-1) was registered against the accused persons under Sections 147, 294, 323, 506 Part-II & 341 IPC. Un-numbered Merg (Ex.P-30) was recorded on 25.3.2005 and subsequently, numbered Merg (Ex.P-22) was recorded on 4.4.2005. Meanwhile, inquest on the body of deceased was conducted vide Ex.P-3. Body was sent for

post-mortem examination which was conducted by Dr. A. Bhagat (PW-13) who vide Ex.P-33 noticed following injuries;-

- Contusion over right frontal region of 4x3 cm size
- Contusion over right maxillary region of right side of face of 6x2cm
- Abrasion over right parieto occipital region of 1x1cm.
- diffuse swelling over right parieto temporal region.
- Contusion over frontal region, obliquely placed, of 5x0.5cm in size.
- Ligature mark over front of neck below thyroid cartilage of 7x1cm
- Abrasion over right nipple region of right chest of 6x4cm, superficial.
- Abrasion over right hip region below anterior superior iliac spine on lateral aspect of 2x1cm size.
- Abrasion over medial aspect of left knee of 2x1cm size.
- Abrasion over right leg, middle 1/3rd region, obliquely placed of 6x1cm size
- multiple superficial abrasion above the hip of 20x6cm.
- Abrasion over right forearm below right elbow of 4x1cm
- Abrasion over right shoulder of 1.5 x 1/5 cm size.

The cause of death assigned by the doctor was head injury. After completion of investigation, charge sheet for the offences punishable under Sections 147, 148, 149, 302, 341, 294, 506B IPC was filed against the accused persons. However, the trial Court has framed the charge under Section 302/149 IPC against the accused persons. To substantiate the charge, the prosecution has examined 13 witnesses in all. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in

which they abjured their guilt and pleaded innocence & false implication.

They have examined one defence witness in support of their case.

5. The trial Court after hearing the parties in the matter and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellants in the manner as described above.
6. Counsel for accused/appellants jointly submit that;
 - appellants have been convicted solely on the basis of eyewitness account of PW-1, PW-2 & PW-5, but their testimonies cannot be relied upon because when they were examined before the trial Court, they gave an altogether different version from that of their statements recorded earlier.
 - though certain articles said to have been stained with human blood were seized from the appellants, but in absence of report of FSL or Serologist, the recovery is of no consequence.
7. 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.
8. We have heard the learned counsel for the parties and perused the impugned judgment and evidence on record carefully.
9. Ramjeet (PW-1), son of deceased, has stated that on the date of incident while returning home from the field, he saw the accused/appellants assaulting his father (deceased) by club, stick, hands & fists near the tamarind tree. He has further stated that being chased by accused persons, he entered his house. On this, the accused persons were threatening that if he will come out, he would be killed and due to this threat, he did not come out from the house. He has further stated at about 4.00 a.m. in the morning upon hearing the voice of his father, he came out

of the house and saw that his father after being beaten up was thrown near the Mango tree standing near his house. He along with his mother & wife brought him home. He has further stated that the Sarpanch was informed about the incident and thereafter the injured was taken to the hospital at Ambikapur where he died in the course of treatment. On being confronted with the diary statement, this witness has stated in his cross-examination that after being chased by accused persons, he entered his house and did not come out on account of threat extended by the accused persons that if he will come out, he would be killed. This witness has further admitted that after entering the house, he narrated the entire incident to his mother & wife. He has further stated that he cannot tell the reasons as to why all these facts have not been recorded in his diary statement. It is relevant to mention here that as per diary statement of this witness, after the incident, he immediately brought his father inside the house with the help of his wife and mother.

10. Sukhmen (PW-2), wife of deceased and mother of PW-1, has stated that when her husband was returning home from the pond and reached near the house of Sudan, the accused persons came there and assaulted her husband with stick, club & hands as a result of which her husband received injuries on various parts of the body and fell down. On being asked, this witness has stated in Para-3 of her evidence that at the relevant time she and her daughter-in-law (PW-5) were sleeping in the house, however, when her husband did not return for a long time, she came out of her house to see as to why he has not come yet. She has further stated that hearing groan of her husband she went in that direction and found her husband lying on the ground, whereas the accused persons were running away from there. She has further stated that at that time her son i.e. PW-1, had gone to irrigate the field. She has further stated

that she along with her daughter-in-law brought the deceased home and at about 7.00 a.m. in the morning they narrated the incident to the Sarpanch and thereafter took the deceased to the hospital. In the cross-examination this witness has admitted that there was old land dispute between the accused persons and the deceased.

11. Ratanlal (PW-3) is the witness of memorandum (Ex.P-8), seizure memos (Ex.P-9 & P-10), but he did not support the prosecution case and turned hostile.
12. Srinivas Singh (PW-4) is the person who reached the spot after the incident had taken place. Even otherwise he has not supported the prosecution and has been declared hostile by the prosecution.
13. Pranobai (PW-5), another eyewitness of incident, has not supported the prosecution case in its entirety and therefore declared hostile. In statement at the trial this witness has completely changed her version and given an altogether different version from that of recorded earlier vide Ex.P-12 wherein she has deposed that hearing screams of her husband i.e. PW-1, she along with PW-2 reached the spot. Whereas, in the court statement she has stated that after hearing groan of her father-in-law, she and her mother-in-law went near the mango tree and found her father-in-law lying there with injuries all over the body.
14. Arjun Singh (PW-6) did not support the prosecution case and as such declared hostile.
15. Aaram Singh Paikra (PW-7) is the Patwari who prepared the spot map of Ex.P-6.
16. Kuldeep (PW-8) is the person in whose vehicle the deceased was taken to the hospital.
17. B.N. Singh (PW-9) is the Investigating Officer and he has duly supported the prosecution case.

18. Dr. Janeshwar Singh (PW-10) is the person who did MLC of the deceased at Primary Health Centre, Chalgali.
19. Vishram Bhagat (PW-12) is the Head Constable who helped in the investigation.
20. Dr. A. Bhagat (PW-13) is the person who conducted post-mortem examination over the body of deceased vide Ex.P-33 and noticed the injuries as described above.
21. It has been settled through catena of decisions by the Hon'ble Apex Court that while dealing with the criminal appeals the High Court is expected to critically appraise the evidence available on record afresh without being influenced by the findings recorded by the Court below bearing in mind the basic concept of criminal jurisprudence that accused is innocent unless otherwise is established from the material available on record. Instead, the Court is under an obligation to see that the findings recorded by the learned Court below are justified on the basis of evidence available on record.
22. In the present case, the trial Court below relying mainly on the evidence of eyewitnesses Ramjeet (PW-1), Sukhmen Bai (PW-2) & Pranobai (PW-5), held the accused persons guilty and convicted & sentenced them as mentioned above.
23. On close and careful scrutiny of the evidence of Ramjeet (PW-1), Sukhmen (PW-2) & Pranobai (PW-5), we are of the considered opinion that the trial Court committed an error in basing the conviction of accused/appellants on the testimonies of these witnesses for the reason that their testimonies do not inspire confidence for the reason that the Court evidence of these witnesses are not only in conflict and contradiction with their statements already recorded under Section 161 Cr.P.C, particularly in respect of their presence on the spot at the relevant

point of time.

According to Ramjeet (PW-1), an eyewitness of incident and lodger of FIR (Ex.P-1), on the fateful night while returning home from the field where he had gone to irrigate the field, he saw the accused persons assaulting his father with stick, club, hands & fists. He has further stated that after being chased by accused persons, he went inside his house and remained there whole night. In the cross-examination this witness has admitted that his mother (PW-2) & wife (PW-5) were present in the house to whom he narrated the entire incident, however, due to threat given by accused persons they did not go out. He has further stated that in the morning they together went to the spot and brought back the deceased home. Interestingly, nothing of this sort is stated by this witness in his statement (Ex.D-1) to the police under Section 161 CrPC and FIR (Ex.P-1) lodged by him. Diary statement (Ex.D-1) of this witness and FIR (Ex.P-1) lodged by him, disclose altogether a different story. As per these two documents, on hearing commotion this witness reached on the spot and saw his father lying on the ground and the accused persons were assaulting him and on account of his intervention, the accused persons fled from there. It further goes to show that on hearing his screams, his mother (PW-2) & wife (PW-5) reached the spot and thereafter they took the deceased to the house. Thus , it is clear that this witness has come up with altogether a new version in the Court from that of his earlier statement recorded and FIR lodged by him, which was the first version of incident, and therefore the evidence contrary to FIR given by the lodger of report/eyewitness cannot be accepted.

Sukhmen Bai (PW-2), another eye-witness of the incident, has stated that on the fateful night when her husband did not return for a long time, she came out of the house in his search and on hearing groan of her

husband, she and her daughter-in-law (PW-5) went in that direction and saw her husband lying in injured condition and at that time the accused persons were running away from the spot. However, the statement of this witness is also in total contradiction to her statement earlier recorded by the police under Section 161 CrPC vide Ex.D-2 wherein she has stated that on hearing screams of her son Ramjeet (PW-1) coming from side of the house of accused Beegan, she along with her daughter-in-law (PW-5) went there and found her husband lying near tamarind tree and all the accused persons were assaulting him by club.

As far as Pranobai (PW-5), another eyewitness to incident, is concerned, the contents of the first statement, as given to the police by this witness, and the statement made by her in the Court, are totally inconsistent and contradictory to each other. Considering all this, she has been declared hostile by the prosecution.

True it is that no particular set of reaction can be expected from the witnesses when they witnessed a ghastly incident of murder and if five persons witness one incident there could be five different types of reactions from each of them. But, in the present case, the position is altogether different. Here, the eyewitnesses have not only come up with an altogether different version in the Court from that of their statements recorded earlier by the police but also contradicted each other in respect of their presence on the spot. According to Ramjeet (PW-1), at the time of occurrence PW-2 & PW-5 were sleeping in the house, whereas as per evidence of PW-2, on the fateful night her son i.e. Ramjeet (PW-1), was sleeping in the house of one Nanka and it is she who went to the house of Nanka in the morning to bring him back. These apparent contradictions in the evidence of aforesaid witnesses not only create serious doubt on their credibility but also on the point of their presence at the time of actual

occurrence and it appears that they had not witnessed any part of incident. However, the trial Court while convicting the accused/ appellants under Section 302 IPC does not take into account the aforesaid major discrepancies on material points making the testimonies of alleged eyewitness totally unreliable and untrustworthy and thereby committed a mistake. It is by now settled that the discrepancies in the evidence of eyewitnesses, if found to be not minor in nature, it may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution proved its case beyond reasonable doubt.

Likewise, seizure of clubs at the instance of appellants would also not be incriminating against them because the prosecution could not file any report of FSL to prove that the articles seized at the instance of accused/appellants were stained with blood much less the human blood that too of the blood group of the deceased. Thus, the prosecution has not been in a position to prove that the clubs seized from the accused/appellants were used in commission of crime in question.

24. As a result of our above discussion, we hold that the prosecution has utterly failed to establish its case against all the appellants beyond a reasonable doubt and being so, they are entitled to benefit of doubt. Their appeals consequently succeed and are allowed. Conviction and sentence recorded against them by the trial Court are hereby set aside. The appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Ag. Chief Justice

Sd/-
(RCS Samant)
Judge

roshan/-