

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 386 of 2010**

1. Devendra @ Chandan Jain, S/o Basantlal Jain, aged about 20 years, occupation - General Store, R/o Tetarkuti Para, Jagdalpur, PS Bodhghat, District Bastar, CG

---- Appellant**Versus**

1. State of Chhattisgarh through PS Jagdalpur, District Bastar, CG

---- Respondent**CRA No. 387 of 2010**

1. Rameshwar @ Appu S/o Ashok Nayak, aged about 22 years, Student R/o Ward No. 36, Tetarkuti Para, Jagdalpur, PS Bodhghat, District Bastar, CG

---- Appellant**Versus**

1. State of Chhattisgarh through PS Jagdalpur, District Bastar, CG

---- Respondent**CRA No. 479 of 2010**

1. Chhotu @ Ved Prakash, S/o Ghasi Ram Mahara, aged 20 years, R/o Naya Munda Para, Jagdalpur, PS Bodhghat, District Bastar, CG

---- Appellant**Versus**

1. State of Chhattisgarh through PS Jagdalpur, District Bastar, CG

---- Respondent**CRA No. 501 of 2010**

1. Hemant Kumar @ Taklu S/o Rajendra Dhruva, aged about 21 years, occupation - Gas Welding, Resident of Tetarkuti Para,

Jagdalpur, PS Bodhghat, District Bastar, CG

Versus

State of Chhattisgarh through PS Jagdalpur, District Bastar, CG

AND

CRA No. 369 of 2011

1. Sanjeeb @ Chhotu S/o Pradeep Baghel, aged about 20 years, occupation - Labourer, R/o Nayamunda Para, Near Hinglajin Mandir, Jagdalpur, PS Bodhghat, District Bastar, CG

Versus

1. State of Chhattisgarh through PS Jagdalpur, District Bastar, CG

For Appellants : Shri H.S. Ahluwalia, Smt. Kiran Jain,
Shri Keshav Dewangan and Smt.
Ranjana Jaiswal, Advocates

For Respondent/State : Shri Vaibhav Goverdhan, PL

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice A.S. Chandel

Judgment on Board by Pritinker Diwaker, J

26/10/2017

As the aforesaid five Criminal Appeals arise out of the same judgment dated 02.06.2010 passed by Sessions Judge Bastar at Jagdalpur in Sessions Trial No. 58/2009 convicting the accused/appellants under Sections 147, 148 and 302/149 IPC, and sentencing each of them to undergo rigorous imprisonment for two years with fine of Rs. 1000/- u/s 147; rigorous imprisonment for three years with fine of Rs. 1000/- under Section 148 and

imprisonment for life with fine of Rs. 5000/- under Section 302/149 IPC plus default stipulations, they are disposed of by this common judgment.

2. Facts of the case in brief are that on 24.1.2009 accused Devendra alias Chandan and his friend Danti had gone to Aasna Park where they saw some boys beating the brother of one girl. On their intervention, those boys started beating them also. Thereafter, on 27.1.2009 at about 11 AM accused Devendra alias Chandan and accused Hemant alias Taklu hired a Maruti van for Aasna Park, armed themselves with hockey stick, club, *Khanjar*, *Gandasa*, chain, knife and went to Naya Munda area from where they picked up accused Chhotu alias Ved Prakash, Sannilal alias Sonu, Sanjeev alias Chhotu and Sandeep alias Babu and went to the PG College. On inquiry being made, they came to know that it was deceased Hitesh alias Bade who had beaten accused Devendra alias Chandan at Aasna Park. Thereupon, they all went near Aasna School where deceased Hitesh alias Bade was already standing. Accused Sunny got down and brought deceased Hitesh to Aasna Park on his own motorcycle where other accused persons also reached little later. At Aasna Park all the accused persons are alleged to have assaulted Hitesh with knife and *naan chaku* as a result of which he died on the spot itself. *Dehati merg* Ex. P-3 was recorded on that day itself at 4.40 PM at the instance of Babita Ashwani (PW-1) – the sister of the deceased followed by Dehati Nalisi Ex. P-1 and *merg* intimation Ex. P-18. Based on *Dehati Nalisi*, FIR Ex. P-17 was registered against unknown persons for the offence punishable under Sections 302 IPC. After making inquest Ex. P-7, dead-body was sent for postmortem examination which was conducted by Dr. K.M. Gupta (PW-6) who gave his report Ex. P-

5. On the memorandum of accused Devendra Jain Ex. P-37, chopper was seized under Ex. P-38; on the memorandum of Hemant alias Taklu Ex. P-13, poniard (*Khanjar*), one bag and T-shirt were siezed under Ex. P-14; on the memorandum of accused Rameshwar Nayak Ex. P-35, one wooden bat was seized under Ex. P-36; on the memorandum of accused Chhotu alias Ved Prakash Ex. P-9, knife and a plastic number plate were seized under Ex. P-10; on the memorandum of accused Sanjeev alias Chhotu Ex. P-39, seizure of *naan chaku* was made under Ex. P-40. Though as per FSL report Ex. 150, blood was found on the articles seized on the memorandums of accused Devendra alias Chandan, Hemant alias Taklu, Ramehwar alias Appu and Chhotu alias Ved Prakash but there is no serological report on record. On completion of investigation, charge sheet was laid by the police against the accused/appellants and two juveniles under Sections 147, 148 and 302/149 followed by framing of charge by the Trial Court accordingly. Juveniles were however tried separately.

3. In order to prove its case the prosecution has examined 18 witnesses in support of its case. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties and going through the record, the Court below has convicted and sentenced the accused/appellants as mentioned above.

5. Counsel for the accused/appellants submit as under:

(i) That there is no eyewitness to the incident and the conviction of the accused/appellants is based solely on the circumstantial

evidence, however, even the circumstances relied upon by the prosecution are not as such to hold the accused/appellants guilty of commission of the murder of the deceased.

(ii) That though on the memorandum of accused/appellants certain weapons have been seized and as per FSL report blood was present thereon but in the absence of serological report such seizure is of no value in the eye of law.

(iii) That except seizure on the memorandum of the accused/appellants there is no other evidence to connect them with the crime in question.

(iv) That identification of the accused/appellants itself is doubtful.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below are strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the evidence available on record.

8. Babita Ashwani (PW-1) is the witness who rushed to the spot after coming to know through one Parmanand about the death of the deceased caused by some unknown persons. This witness however has nowhere stated that she saw anyone assaulting the deceased. Bamdev (PW-2) – a hearsay witness is stated to have come to know about the deceased being taken away by the accused persons in a Maruti Van and was killed by them. Bablu Kashyap (PW-3) and Dipeshwar Yadav (PW-4) are just stated to have seen the deceased with juvenile accused Sunny. Dr. B. Suri Babu (PW-5) has not stated anything specific against the accused

persons. Dr. K.M. Gupta (PW-6) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-5 stating that he noticed number of incised (stab) wounds on his body including the vital parts like chest, lung, liver etc. and the cause of death was coma due to hemorrhagic shock as a result of visceral injuries (injuries to heart and lung) and the death was homicidal in nature. Vijay Panigrahi (PW-7) is the witness to inquest Ex. P-7. Dr. L.L. Thakur (PW-8) is the witness who medically examined accused Hemant. Mohan Kashyap (PW-9) - the witness to memorandum and seizure has not supported the case of the prosecution and has been declared hostile. Lalit Thakur (PW-10), Lalit Yadav (PW-15) and Parmanand Yadav (PW-16) have also not supported the case of prosecution and turned hostile. Fattelal Sahu (PW-11), K.P.S. Paikra (PW-12), Gyatri Singh (PW-14) and Satya Bhan Singh Thakur (PW-17) are stated to have assisted in the investigation. M.K. Hota (PW-13) is the investigating officer who has duly supported the case of the prosecution. Hemant Kavi (PW-18) - the witness to memorandum and seizure has however supported the case of the prosecution.

9. We have gone through the entire material collected by the prosecution and the evidence of the witnesses recorded during trial. There is, however, nothing cogent and clinching before us on the basis of which accused/appellants could be connected with the crime in question. Even PW-3 and PW-4 whose testimony could be of some support to the case of the prosecution, did not speak anything specific against the accused/appellants herein. They are only stated to have seen the deceased in the company of juvenile accused Sunny. None of the witnesses has stated that any incriminating act was done by any of the accused/appellants to

accomplish the common object of unlawful assembly. There is nothing on record even as to the fact that the accused/appellants formed an unlawful assembly armed with any weapon which is likely to cause death. Even the seizure of certain articles including weapons made on the memorandum of the accused/appellants does not strengthen the case of the prosecution for the reason that though as per FSL report blood is said to be present thereon but in the absence of serological report establishing the origin of the blood and that it was of the blood group of the deceased, it cannot be made a basis of conviction. In other words, it is a case of no evidence to hold the accused/appellants guilty for commission of murder of the deceased, and being so the benefit of doubt has to stand in their favour. Findings of the Court below thus do not appear to be in consonance with the evidence of the witnesses and therefore are liable to be set aside.

10. In the result, the appeals are allowed, judgment impugned is hereby set aside and the accused/appellants are acquitted of the charges levelled against them. As they are already on bail, their bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(A.S. Chandel)

Judge