

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 727 of 2007

1. Bhagwan Singh, S/o Netan Gond, aged about 55 years,
 2. Lal Bahadur Gond, S/o Netan Gond, aged about 55 years,
 3. Rajdev, S/o Dhan Singh Gond, aged about 50 years,
 4. Ram Naresh, S/o Bhagwan Singh Gond, aged about 19 years,
 5. Rampreet S/o Bhagwan Das Gond, aged about 28 years,
- All R/o Gram-Pariha Deeh, P.S. Ramanuj Ganj, Distt. Sarguja (CG)

---- Appellants

Versus

- State of Chhattisgarh, through Station House Officer, Police Station, Ramanuj Ganj, Distt. Sarguja (CG)

---- Respondent

For Appellants	:	Shri Sandeep Shrivastava, Advocate.
For Respondent/State	:	Shri Neeraj Mehta, Panel Lawyer.

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

Judgment On Board By Justice Pritinker Diwaker

05/01/2017

This appeal arises out of the judgment of conviction and order of sentence dated 30.6.2007 passed by the II Additional Sessions Judge (FTC), Ramanujganj, Distt. Sarguja in ST No.37/2007 convicting the appellants under Section 302/34 of IPC and sentencing them to undergo imprisonment for life and pay a fine of Rs.2000/- with default stipulation.

02. As per prosecution case, on 29.8.2006 at about 8 am deceased Devlal had left his village to see his brother Jagarnath, who was not keeping well at Village-Manikpur. It is said that Basant (PW-7) had gone to graze his cattle and at about 2 pm on 29.8.2006 he saw a person lying on the footpath, the said person was later recognized by him to be Devlal. He immediately called Ramphal and both of them noticed number of injuries on the body of the deceased. Basant immediately returned back to his village and narrated the entire incident to his brother Rajnath and other villagers. As by that time it was dark in the night, the villagers kept guard on the dead body and on the second day i.e. 30.8.2006 as it was raining heavily and there was flood in the river, the body was kept in the village. On 31.8.2006 when the situation improved, the villagers went to Police Station - Ramanujganj where at the instance of PW-7 Basant merged intimation (Ex.P/26) was recorded at 1 pm and just after 15 minutes FIR (Ex.P/27) was registered under Section 302 of IPC against unknown person. Inquest on the dead body was conducted vide Ex.P/1 on 31.8.2006 and thereafter the body was sent for postmortem which was conducted on the same day by PW-5 Dr. SK Sinha vide Ex.P/19 wherein he noticed as many as nine injuries and opined that the cause of death was shock due to excessive hemorrhage and the death was homicidal in nature. On 19.9.2006 memorandum of appellant No.4 Ramnaresh was recorded vide Ex.P/2, pursuant to which axe and umbrella were seized vide Ex.P/9 & P/10. On 16.9.2006 memorandum of appellant No.1 Bhagwan Singh was recorded vide Ex.P/3, pursuant to which axe and bamboo stick were seized vide Ex.P/6 & P/7. On 16.9.2006 memorandum of appellant No.2 Lal Bahadur was recorded

which led to recovery of bamboo stick vide Ex.P/8 and on the same day memorandum of appellant No.3 Rajdev was recorded and pursuant to which seizure of bamboo stick was made vide Ex.P/11. However, there is no FSL report on record. While framing charge, the trial Court framed charge under Section 302/34 of IPC against all the accused persons.

03. So as to hold the accused/appellants guilty, the prosecution examined 12 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. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above. Hence this appeal. However, during pendency of the present appeal, appellant No.2 Lal Bahadur has expired on 28.11.2013.

05. Counsel for the appellants submits as under:

(i) that so-called eyewitness PW-7 Basant is wholly unreliable because had he seen the incident, he would have disclosed the name of the accused persons at the time of lodging mere intimation and FIR. This witness has improved while deposing in the Court.

(ii) that other two eyewitnesses PW-8 Shivnarayan and PW-9 Ramsurat are also not reliable because there is inordinate delay in recording their statements under Section 161 of Cr.P.C. and the said delay has not been explained by them or the investigating officer as

required under the law.

(iii) that present appears to be a case where the accused persons have been planted just because the police could not get the real culprits.

Reliance has been placed on the judgment of the Supreme Court in the matters of ***Shahid Khan Vs. State of Rajasthan, 2016 Cri.L.J. 1916***.

06. On the other hand, State counsel supporting the impugned judgment has submitted that even if the statement of PW-7 Basant is ignored taking the same to be improved one, the other two eyewitnesses PW-8 & PW-9 have consistently stated about the act of the appellants. Defence has not put any question to these witnesses as to why their diary statements were not recorded promptly. PW-8 & PW-9 have even not been confronted with their diary statements by the defence and thus, the defence cannot take any advantage of lacuna, if any, in the prosecution case. He further submits that even no question has been put to the investigating officer for recording the diary statements of PW-8 & PW-9 belatedly. State counsel submits that in the facts and circumstances of the case, this Court cannot presume anything of its own for fulfilling lacuna in the case of the defence. Lastly he submits that even though FSL report is not there on record, the witnesses to memorandum and seizure are intact and have duly supported the prosecution case.

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

08. PW-1 Rooplal is a witness of memorandum of the accused persons and seizure effected from them. He has supported the prosecution

case. PW-2 Ramdhani is a witness of inquest Ex.P/1. PW-3 Shankar Singh is a witness of Ex.P/14 i.e. spot map prepared by Patwari. He is also a witness of identification of articles i.e. umbrella, plastic bag, *dhoti*, shawl and *tangi* vide Ex.P/12. PW-4 Madan Prasad is a witness of arrest memo of the accused persons. He has stated that 2-3 days after the death of deceased a village meeting was convened as accused Bhagwan had illicit relation with one woman of the village and that on the earlier occasion the deceased had also objected to this relationship, on account of which accused Bhagwan was nurturing animosity against the deceased. He has stated that due to this ill-will accused Bhagwan killed the deceased. PW-5 Dr. SK Sinha conducted postmortem on the body of the deceased on 31.8.2006 vide Ex.P/19 and noticed following injuries:

- (i) lacerated wound over left temporal region, 5 x 3 cm bony deep,
- (ii) lacerated wound 3 x 2 cm about left maxillary region bony deep,
- (iii) lacerated wound over right temporal region about 4 x 3 cm bony deep,
- (iv) left pinna detached,
- (v) penetrating wound present over chin towards left side about 3 x 2 cm extending up to inner side (hole), fracture of the lower jaw bone,
- (vi) penetrating wound about 2 x 1 cm at lower lip towards right side,
- (vii) right eye decomposed and fracture of right orbital bone with large hematoma of right metacarpal of right hand.

In his opinion, the cause of death was shock due to excessive hemorrhage and the nature of death was homicidal. He had also examined the weapons of offence seized by the police and sent to him for opinion. According to him, the injuries suffered by the deceased

could be caused by the weapons seized i.e. club and tangi.

09. PW-6 Krishna Kumar Singh, Patwari, prepared the spot map Ex.P/14. PW-7 Basant, brother of the deceased at whose instance merger intimation and FIR were recorded has stated that on the date of incident the deceased had gone to see his another brother Jagarnath, who was not keeping well and at the relevant time he was grazing his cattle. He has stated that his brother was killed by the accused/appellants and he saw the accused persons committing the said act. He admits that while lodging report with the police, he did not disclose the name of the accused persons as assailants. PW-8 Shivnarayan, eyewitness to the incident while supporting the prosecution case has stated that on the date of incident he along with PW-9 Ramsurat had gone to jungle to collect forest produce mushroom. He states that while he was collecting mushroom he saw that the accused persons had surrounded the deceased and all of them beat the deceased. He has clarified that accused Ramratan and Rampreet assaulted deceased by tangi, accused Bhagwan and Rajdev by lathi, accused Lalbahadur by spear on the cheek of the deceased and others had kept lathi. He witnessed the entire incident from 15 feet. While he was narrating the incident to Basant, Ramphal was also there. In cross-examination this witness remained intact and no question was put to him which could cast doubt on his testimony. The defence has even not confronted him with his diary statement nor did put any question to him regarding delay in recording his diary statement.

10. PW-9 Ramsurat, other eyewitness to the incident, has stated that he had gone to jungle along with PW-8 Shivnarayan, he saw the accused persons running from the spot after beating the deceased. He has stated that the accused persons were carrying axe and club in their hands. The incident was informed to Basant. Even this witness has not been confronted with his diary statement nor any question was put to him by the defence regarding delay in recording of diary statement. He also remained firm in his cross-examination.

11. PW-10 Bhagwan is a witness to memorandum of the accused persons and seizures effected from them. PW-11 Ramphal has not supported the prosecution case and has been declared hostile. PW-12 RS Paikra is the investigating officer. Even no question was put to the I.O. for recording the diary statements of Shivnarayan and Ramsurat belatedly.

12. Close scrutiny of the evidence makes it clear that on 29.8.2006 when deceased Devlal had gone to Village - Manikpur to see his ailing brother, he was beaten by the accused persons with lathi and tangi. The incident is said to have been witnessed by PW-7 Basant, PW-8 Shivnarayan and PW-9 Ramsurat. From the statement of PW-7, who is the lodger of merg intimation and FIR, it appears that while deposing in the Court he has improved because no such statement was made by him at the time of recording merg intimation and FIR. Being so, it would not be safe for this Court to rely upon his testimony.

13. 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.

14. Though the prosecution has cited three persons as eyewitnesses to the incident i.e. PW-7, PW-8 & PW-9 and for the reasons stated above, we have disbelieved PW-7, however, the other eyewitnesses to the incident i.e. PW-8 & PW-9 have categorically stated as to the manner in which the deceased was done to death by the accused persons. In their cross-examination they remained firm and nothing could be elicited from them by the defence to render their evidence untrustworthy or doubtful and therefore, we have no reason to disbelieve their statements. Thus, from the evidence of PW-8 & PW-9 it is crystal clear that it is the accused persons who committed murder of the deceased. This apart, on the basis of memorandum of the accused persons weapon of offence i.e. lathi and tangi were seized, witnesses to the memorandum and seizure have duly supported the prosecution case and the medical evidence also lends corroboration to the prosecution case according to which corresponding injuries were noticed by the autopsy surgeon on the person of the deceased.

15. So far as the judgment in the matter of *Shahid Khan* (supra) relied upon by the counsel for the appellant is concerned, the same is of no help to the appellants for being distinguishable on facts from the present case where no question whatsoever has been put by the

defence either to the witnesses or to the investigating officer for recording the diary statements with some delay.

16. On the basis of aforesaid discussion, we are of the considered opinion that the trial Court was fully justified in holding the appellants guilty under Section 302/34 of IPC based on the evidence adduced by the prosecution. We find no illegality or infirmity in the said finding and therefore, affirm the same.

17. In the result, the appeal fails and is, accordingly, dismissed. The appellants are reported to be on bail, therefore, their bail bonds stand cancelled and they are directed to be taken into custody forthwith to serve out the remaining part of their sentence.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge