

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 73 of 2005

1. Puran Chand @ Garra Rajwade S/o Ramswaroop Rajwade, age 22 years, R/o Village Labji, Ledradand, P.S. Darima, Distt. Surguja (CG)

---- Appellant

Versus

1. State Of Chhattisgarh through P.S. Darima, District Surguja (CG)

---- Respondent

For Appellants	:	Shri AK Prasad, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, P.L.

And

CRA No. 346 Of 2006

1. Puranchand @ Garra Rajwade S/o Ramswaroop Rajwade, aged 22 years,
2. Deenaram S/o Bhavan Sai, aged 19 years,
- R/o Village Labji, Ledradand, P.S. Darima, Distt. Surguja (CG)

---- Appellants

Vs

1. State Of Chhattisgarh through P.S. Darima, District Surguja (CG)

---- Respondent

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

And

CRA No. 904 Of 2005

1. Santosh Ram S/o Shobhit Ram Lohar, aged 20 years,

2. Moti Ram S/o Shobhit Ram Lohar, aged 23 years,
R/o Village Labji, Ledradand, P.S. Darima, Distt. Surguja (CG)

---- Appellants

Vs

1. State Of Chhattisgarh through P.S. Darima, District Surguja (CG)

---- Respondent

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

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

22/08/2017

As these three appeals arise out of the common judgment of conviction and order of sentence dated 30.11.2004 passed by 4th Additional Sessions Judge (FTC), Ambikapur, Distt. Surguja in ST No.120/2004, they are being disposed of by this common judgment. By the said judgment, each of the appellants has been convicted under Sections 450/34, 302/34 & 120B of IPC and sentenced to undergo RI for 10 years, pay a fine of Rs.1000/-; life imprisonment, pay a fine of Rs.2000/- and RI for six months with default stipulations respectively.

02. In the present case, name of the deceased is Prabhuram, husband of PW-1 Budhiyarobai. On 12.11.2003 merg intimation (Ex.P/19) was lodged by PW-1 at around 5.10 pm mentioning therein that on the previous night at about 11 pm when she was sleeping along with her family members, the accused/appellants reached there, asked for liquor and when she replied in negative they enquired about her

husband Prabhuram and despite her saying that Prabhuram is not there at the house, they forcibly entered the house, caused club and stone injuries to her husband as a result of which he expired. Immediately thereafter at 5.15 pm on the same day FIR (Ex.P/1) was lodged by PW-1 against the appellants under Sections 450, 302, 34 of IPC. Inquest over the dead body was conducted vide Ex.P/29 on 13.11.2003 and the body was thereafter sent for postmortem which was conducted on 14.11.2003 by PW-15 Dr. RN Gupta vide Ex.P/18 who noticed antimortem lacerated wound over left parietal area of scalp, over center of frontal area, over right pinna of ear and one antimortem abrasion over right knee. He also noticed presence of blood in the cranium. In his opinion the mode of death was coma and cause of death was head injury. The incident was witnessed by PW-1 Budhiyaro Bai, PW-2 Dhanmet Bai, PW-3 Tiharo Bai, PW-4 Karmi Bai and PW-5 Nanuha. After completion of investigation, charge sheet was filed against the appellants and one accused Gangaram and while framing charges, the trial Court framed charges under Sections 450/34, 302/34, 120B/34 and 323/34 of IPC.

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. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting co-accused Gangaram of all the charges,

convicted and sentenced the appellants as mentioned above.

Appellant Puran Chand has preferred Cr.A.No.73/2005 and has also preferred an appeal along with accused Deenaram i.e. Cr.A.No.346/06. As appellant Puran Chand has already preferred Cr.A.No.73/2005, the another appeal i.e. Cr.A.No.346/06 becomes redundant insofar as it relates to appellant Puran Chand and is confined to only in respect of appellant Deenaram.

05. Counsel for appellants submit as under:

(i) that PW-1 Budhiyaro Bai appears to be the only witness who was present at the time of incident and rest of the eyewitnesses appears to be subsequently created ones and as such, the entire prosecution case is rendered doubtful.

(ii) that there are material contradictions and improvements in the statements of the eyewitnesses.

(iii) that no seizure of any weapon has been effected from any of the appellants.

(iv) even if the entire prosecution case is taken as it is, the appellants cannot be convicted under Section 302 of IPC as admittedly they were not carrying any weapon, the autopsy surgeon has also not noticed any fracture and has only noticed skin deep injuries on the person of the deceased, the doctor has nowhere opined that the injuries suffered by the deceased were sufficient in the ordinary course of nature to cause his death and thus considering the overall facts and circumstances of the case, it appears that the appellants' only intention was to get some liquor from the house of the deceased and when the same was refused they out of anger beat the deceased which

unfortunately resulted in his death. Therefore, at best, they can be convicted under Section 304 Part-II of IPC.

(v) that the appellants have already remained in jail for the last more than five years and therefore, after conversion of their conviction into one under Section 304 Part-II, they may be sentenced to the period already suffered by them.

Reliance has been placed on the judgments of in the matters of ***Nadodi Jayaraman Vs. State of Tamil Nadu, AIR 1993 SC 777*** and ***Bunnilal Chaudhary Vs. State of Bihar, (2007) 1 SCC (Cri) 66***.

06. On the other hand, State counsel supporting the impugned judgment submits that conviction of the appellants is strictly in accordance with law and there is no illegality or infirmity in it. He submits that considering the manner in which the deceased was done to death by causing repeated stone blows on his vital part head resulting in his on-the-spot death, their conviction under Section 302/34 of IPC is just and proper.

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

08. PW-1 Budhiyarobai, wife of the deceased, has stated that she knew all the accused persons and all of them are resident of her village. Previously accused/appellant Puranchand had threatened her son that his father Prabhuram would be killed and thereafter, in another incident accused Puranchand came to her house and threatened her husband Prabhuram of his life. She has stated that after the second incident she went to the house of Puran and told his aunt to make him (Puranchand) understand and leave peacefully as all of them belong to

same village, however, at that point of time accused Puranchand and his wife caused lathi blow on her head for which a report was lodged by her. She has stated that after about 4-5 days of the above incident, acquitted accused Gangaram threatened her husband of life and it was told by accused Puran that he be assisted in killing, he has a lot of money and he can save everyone. On the date of incident at about 10-11 pm accused/appellant Deena along with other accused persons came to her house, asked for liquor and when she refused to have liquor, appellant Deena enquired about her husband Prabhuram and when she replied that he had gone to the field, the accused persons forcibly entered the house by breaking open the door and appellant Santosh caught hold of her husband and appellants Puran, Moti and Deenan assaulted him with stone on his head and then they dragged him to the house of one Bharat and beat him there by club. She followed her husband and saw the accused persons beating her husband. She has stated that her husband was beaten to the extent where the accused persons got tired and left the said place and then she somehow took her husband into her house. However, the appellants again returned to her house and enquired about her husband. She further states that she had locked the door of her house from outside and went to call the neighbours and when she returned the accused persons again came to her house and enquired about her husband. She has stated that thereafter the accused persons entered her house by breaking the roof, took her husband out near the house of Tiharobai and when she intervened she too was threatened of life and on account of fear she ran away from there. At that time, appellant Deena was saying that after committing murder of Prabhuram they

would eat his flesh. Next morning she found her husband dead and lodged the report Ex.P/1. In cross-examination she has admitted the fact that at times she makes liquor for her own consumption in her house, however, she does not sell the same. She has denied the suggestion that on the date of incident her husband Prabhu had consumed liquor. She has admitted the fact that she has a *kachcha* house and if the same is locked from inside, a person cannot open it from outside. She has admitted that condition of her house is not very good. There are minor contradictions in her Court statement from that of her diary statement (Ex.D/1) and this has come in paras 24 & 25 of her cross-examination.

09. PW-2 Dhanmet Bai, neighbour of the deceased and eyewitnesses to the incident has stated that on the date of incident when she was sleeping in her house, PW-1 Budhiyarobai came to her house and informed that the appellants are beating her husband. Immediately she along with Tiharobai (PW-3) went to the house of the deceased where she and Tiharobai saw the accused persons beating the deceased. She has stated that Tiharobai asked the appellants as to why they are beating the deceased and also Budhiyarobai, on which the appellants threatened Tiharo and also chased them carrying club in their hands. Thereafter, she took shelter of a tree and from there saw the appellants beating the deceased and the deceased was found dead the next morning. In cross-examination she remained firm, however, she has stated that the police had asked her to make statement as told by them. PW-4 Karmibai is also neighbour of the deceased. She has stated that on the date of incident when she was sleeping in her house, she heard cries of the deceased and that of his

wife (PW-1) and then saw the accused persons beating the deceased by club. When her husband Nanuha Ram (PW-5) intervened, the accused/appellants also abused him and on account of fear both of them left the said place. This witness has also admitted the fact that the police had asked her to make statement as told by them or else they would send her behind the bars. PW-5 Nanuha Ram, husband of PW-4, has also supported the prosecution case and his statement is almost identical to that of PW-4. He remained firm in cross-examination. He has further stated that after the incident he slept and in the morning when he woke up he was informed by PW-1 Budhiyarobai that Prabhuram has expired.

10. PW-6 Charitra Singh, PW-7 Shrinarayan Singh and PW-8 Gopi Das Mahant have turned hostile. PW-9 Ramlakhan and PW-10 Krishna Nath, witnesses to inquest, seizure Ex.P/10 and P/11 have supported the prosecution case. PW-11 Dr. PL Koushal medically examined PW-1 Budhiyarobai and noticed simple injuries on her left thigh, abdomen and right shoulder which were caused by hard and blunt object vide Ex.P/12. PW-12 Pawan Sai, Patwari, prepared the spot map Ex.P/13. PW-13 V. Pradhan, investigating officer, has duly supported the prosecution case. PW-15 Dr. RN Gupta, conducted postmortem on the body of the deceased on 14.11.2003 vide Ex.P/18 and noticed antimortem lacerated wound over left parietal area of scalp 5 cm x 2 cm x skin deep; antimortem lacerated wound over center of frontal area 4 cm x 2 cm x skin deep; antimortem lacerated wound over right pinna of ear 3 cm x 2 cm x whole pinna is ruptured; and one antimortem abrasion over right knee 5 cm x 3 cm. He also noticed presence of blood in the cranium. In his opinion the mode of death was

coma and cause of death was head injury.

11. Close scrutiny of the evidence makes it clear that on 11.11.2003 at about 11 pm the accused/appellants entered the house of the deceased Prabhuram, asked for liquor from PW-1 Budhiyaro and when she refused to have liquor, they enquired about her husband-Prabhuram and despite her saying that he is not in the house, they forcibly entered the house by breaking open the door and started beating Prabhuram and also dragged him out of the house by beating. When the accused/appellant got tired beating the deceased they left the said place and then PW-1 Budhiyaro somehow took her husband/deceased inside the house. However, the accused/appellants again reached there and when the door was not opened, they entered the house by breaking the roof, took the deceased out of the house and caused him injuries by stones on his head. The incident was witnessed by PW-1 Budhiyaro Bai, PW-2 Dhanmet Bai, PW-3 Tiharo Bai, PW-4 Karmi Bai and PW-5 Nanuha. PW-1 is the witness to the whole incident which took place in two parts and she has duly supported the prosecution case on material particulars. We have no reason to disbelieve her statement. This apart, PW-2 to PW-5 have also supported the prosecution case, though PW-2, PW-3 & PW-4 have admitted the suggestion that they were asked by the police to make such statements, however, PW-1 and PW-5 remained intact in their lengthy cross-examination and PW-2 to PW-4 have also not denied the fact that they have not witnessed the incident. They have merely stated that they were asked by the police to state whatever told to them by the police. In their diary statements as also in their Court statements they have supported the prosecution case by saying that

they saw the appellants beating the deceased. It is relevant to note here that these witnesses are rustic villagers and they have been cross-examined by the lawyers well aware about the niceties of law and thus some variation in their statements is of no help to the accused persons.

12. Even otherwise, 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.

13. Though the prosecution has cited five witnesses namely PW-1 to PW-5 as eyewitnesses to the incident and even if we keep aside the statements of PW-2, PW-3 & PW-4, the other eyewitnesses PW-1 & PW-5 have consistently deposed before the Court as to the manner in which whole incident took place and the appellants beat the deceased mercilessly. The above ocular evidence finds due support from the medical evidence whereby corresponding injuries were noticed on the person of the deceased.

14. We find no substance in the arguments of the appellants that in the facts and circumstances of the case, the appellants can at best be convicted under Section 304 Part-II of IPC for committing culpable homicide as their only intention was to cause bodily injuries to the

deceased and there is no evidence that such bodily injuries were sufficient in the ordinary course of nature. As is established from the evidence of the eyewitnesses, the appellants first went to the house of the deceased and when they were not given liquor by PW-1, they forcibly entered her house and started beating the deceased and having got tired left the said place and then again went to her house by breaking open the roof of the house and beat the deceased so mercilessly that he died on the spot. Thus, considering the manner in which the whole incident took place it is apparent that the appellants were having common intention of committing murder of the deceased because had their only intention been to cause some injuries to the deceased, they would not have come back after assaulting him once, that too by breaking open the roof of the house. The injuries were caused on his vital part head with stone and as per postmortem report there were lacerated wounds over left parietal area of scalp, over frontal area and also over right pinna and that blood was found in the cranium. According to the autopsy surgeon, the mode of death was coma and cause of death was head injury. True it is that the doctor has nowhere stated that the injuries suffered by the deceased were sufficient in the ordinary course of nature to cause his death, but the medical report itself reflects that the injuries suffered by the deceased were grievous in nature and its impact was such that the deceased immediately went in coma and succumbed to the same. Considering the manner in which the appellants assaulted the deceased, it can easily be inferred that apart from intention to cause death they also had the knowledge that infliction of such bodily injuries would result in death of Prabhuram. In these circumstances, their case is covered by

2ndly of Section 300 of IPC which makes the culpable homicide murder. As regards the judgments cited by the appellants, the same being distinguishable on facts from the present case are of no help to them.

15. Thus regard being had to the overall facts and circumstances of the case, the ocular evidence coupled with the medical evidence as also the conduct of the appellants, we are of the firm view that the prosecution has been successful in proving their guilt under Sections 450/34, 302/34 & 120B of IPC and as such, the trial Court has committed no illegality or infirmity in convicting them for the aforesaid offences.

16. Resultantly, all the appeals being merit-less are liable to be dismissed and are dismissed as such. The appellants are reported to be on bail, their bail bonds stand cancelled and they be taken into custody forthwith to serve out the remaining part of their sentence.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(R.P. Sharma)
Judge