

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 889 OF 2001**

1. Gokul son of Soncharan Satnami aged about 60 yrs.,
2. Birjoo son of Gokul aged about 20 yrs.

Both resident of village Lakhali, P.S. Saragaon Distt. Janjgir-Champa (C.G.)

---- Appellants

Versus

State of Chhattisgarh through P.S. Saragaon.

---- Respondent

For Appellants	:	Mr. Akhil Mishra, Advocate
For Respondent/State	:	Mrs. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board**Per Deepak Gupta, Chief Justice**

03/01/2017

1. This appeal by the accused is directed against the judgment dated 12/09/2001 delivered by Third Additional Sessions Judge (F.T.C.) Janjgir in Sessions Trial No. 99/1997 whereby he convicted the accused Gokul and Birjoo under Section 302 read with Section 34 of the IPC for having committed murder of Visheshar and his wife Maanki Bai and sentenced them to undergo life imprisonment in respect of each murder and both sentences were ordered to run concurrently.
2. Gokul, appellant No. 1 has expired and the appeal as far as Gokul was concerned, was disposed of as having abated on 15/09/2016. The

appeal is now being prosecuted only on behalf of Birjoo, and therefore, we are only dealing with that portion of the evidence which is relevant to deal with in this appeal.

3. We may point out that I.A. No. 01 of 2016 was filed on behalf of appellant No. 2-Birjoo, in which, it was claimed that he was a juvenile at the time of the commission of the offence. In the said application it was stated that he was studying in Class 10 at the relevant time. Birjoo had appeared on 15/09/2016 and we had asked him about his date of birth. He said that he did not know what was his date of birth and this fact was recorded in the order dated 15/09/2016. On 15/09/2016, Birjoo had stated that he used to study in Class 10th in DAV School, Jhariya, District Dhanbad, but this school has now closed down, and therefore, we had directed him to produce any document in support of his claim. We had passed the following order :-

“15/09/2016

Mr. Akhil Mishra, Advocate, for the Appellants.

Mr. V.A. Goverdhan, Panel Lawyer, for Respondent-State.

On 15.6.2016, we had directed for issuance of bailable warrant of arrest against the Appellants.

Now, Appellant No.2, Birjoo, is present in person before this Court today.

He stated that his father i.e., Appellant No.1, Gokul, has expired. The same is also mentioned in the report of the police officials and a copy of his death certificate is also enclosed.

In view of this, the appeal so far as Appellant No.1, Gokul, is concerned the same stands abated.

I.A. No. 1 of 2016 has been filed by Appellant No.2, Birjoo, stating that he was a juvenile at the time of the commission of the offence.

It is stated by Appellant No.2 that he was in Class 10th but he does not know what is his date of birth.

A person who has studied in Class 10th should be aware about his date of birth.

Appellant No.2 now says that he used to study in Class 10th in DAV School, Jhariya, District Dhanbad, which according to him has now closed down.

We are clearly of the view that we cannot entertain such an application without any material on record. We cannot on such vague application order for the medical examination to be conducted. Even as per Appellant No.2 he was studying in Class 10th. He may not have appeared for the Class 10th examination, but the school records either from his primary school or middle school or from the high school can be produced to show what was his date of birth in the school records.

Appellant No.2 has further stated that he studied in National School till Class 5th which was a private school and according to him this school was in Jairampur Colliery in Jharkhand. Thereafter, he studied in Adarsh Middle School in Jairampur and this was a Government School. After passing out Class 8th from Adarsh Middle School, he went to attend DAV High School, Jhariya, District Dhanbad. According to him, DAV High School has closed down.

If that be so, he should produce some certificates from the office of the concerned District Education Officer or any other record which is relevant. Even if such school is closed down, Adarsh Middle School which was a Government School would still be functioning and we see no reason why Appellant No.2 should not get a certificate from that school to show prima facie that he was a juvenile. In case, he does not produce such an evidence we shall not going to be ordered for a fishing inquiry.

Appellant No.2 may produce any document in support of his case on or before 23rd November, 2016.

List on 23.11.2016.”

4. No documents have been filed on record till today. However, Shri Akhil Mishra, learned counsel appearing on behalf of the appellant has produced two certificates. One certificate was issued by the DAV High School, Jhariya (Dhanbad) and another was issued by Adarsh Middle School Khas Jairampur. Both the school certificates relate to one Birjoo Satnami, S/o Shri Manharan Satnami. In the present case, Birjoo is the son of Gokul and not of Manharan. There is nothing on record to show that Gokul and Manharan are one and the same person. It may be true that the name of the village and other address is the same but when the father's name is different, we cannot accept these certificates to be certificates relating to Birjoo, son of Gokul. While rejecting these certificates we may also point out that these so-called certificates have not been filed either with any affidavit or any application. They have been produced before us without any affidavit or application in support thereof. These sort of certificates can be procured. If these certificates are to be believed, then Birjoo would have been just little more than 14 years old at the time of occurrence. In that eventuality the Magistrate or the Court would have definitely realised that he is a very young boy. During investigation or trial, no such plea was taken. It appears to us that this plea has been taken at a later stage on the basis of these certificates, which do not relate to the appellant Birjoo, s/o Gokul.
5. We, therefore, reject the plea taken by Birjoo that he was a juvenile at the time when the occurrence took place.
6. Coming to the merits of the case, the prosecution story is that accused Gokul was the first cousin of Visheshar. It appears that (PW7)

Bhuraram, father of Visheshar, had sold/transferred some land in favour of Gokul and there was some dispute with regard to the boundaries of the field, which was sold to Gokul. There is evidence on record to show that some meeting of Panchayat had been convened and disputes had been settled between them. The case of the prosecution is that on 29/12/1996 at about 12.00 noon, deceased Visheshar had gone to have bath in the village pond. Gokul and Birjoo also came to the pond. Both of them were armed with sharp edged weapons. They gave blows to Visheshar resulting in his death. Maanki Bai, wife of Visheshar tried to intervene but the accused persons also gave blows to her and consequently, she also died. In fact, the evidence suggests that Maanki Bai died even prior to her husband. The information regarding occurrence was given by (PW2) Mohandas, Kotwar of the village and Merg (Ex. P-4) was registered thereafter. On the basis of Merg intimation, FIR (Ex. P-21) was lodged. In the Merg intimation as well as in the FIR the names of the accused persons have been mentioned. After the FIR was lodged, the police swung into action and investigation was carried out and finally charge sheet was filed against Gokul and Birjoo, wherein it was alleged that they had murdered Visheshar and his wife Maanki Bai. The accused pleaded not guilty and claimed trial. After trial they have been convicted and sentenced as aforesaid. Hence, this appeal.

7. Mr. Akhil Mishra, learned counsel appearing for the appellant - Birjoo submits that the so-called eyewitnesses are not the eyewitnesses. He submits that Sadhram (PW4), Bhuraram (PW7) and Babulal (PW12), the alleged eyewitnesses actually reached the place of occurrence after the occurrence had already taken place and their statements cannot be

relied upon. In the alternative, he submits that even if it is believed that Sadhram (PW4) saw something, at the most, he only saw Birjoo giving one blow to deceased Visheshar. Similar is the statement of Babulal (PW12), and therefore, he submits that there is no evidence on record to show who killed Maanki Bai and further the one blow given by Birjoo would not be sufficient to hold that the accused Birjoo is guilty of commission of the offence of murder.

8. On the other hand, Ms. Madhunisha Singh, learned Panel Lawyer urges that the statement of Sadhram (PW4) clearly indicates that he was an eye-witness to the incident. He was present and saw the accused Birjoo giving knife blow to Visheshar. She submits that even if it was one blow, the natural corollary and consequence is that the other blow will also have to be attributed to him because there was no other person who could have given blows to Visheshar. She also submits that as far as Bhuraram (PW7) and Babulal (PW12) are concerned, they have in their statements mentioned that the accused gave blows to both Visheshar and his wife Maanki Bai, and therefore, they both are guilty.
9. As already stated by us above, we are not going into appeal of Gokul. Since the entire case revolves around the statements of three eye-witnesses, namely Sadhram (PW4), Bhuraram (PW7) and Babulal (PW12), we shall refer to their statements in detail. Sadhram (PW4) clearly stated that there was altercation between Visheshar and Gokul in which, Visheshar abused accused Gokul by caste and thereafter, there was physical struggle between them in which, Gokul fell down. Thereafter, Gokul went home calling for his son Birjoo. After sometime Gokul and Birjoo came back to the village pond. At that time Gokul was

carrying a small axe (Tangiya) and Birjoo was carrying a knife. He also stated that wife of Visheshar and his father were coming just behind them. This witness stated that Birjoo gave a stab blow to Visheshar, as a result of which, he fell down and then this witness ran away from the spot. The explanation of this witness is that he got scared, and therefore, he ran away. In cross examination this witness admits that he himself did not see Birjoo giving any blow to the wife of Visheshar. He further admits that Maanki Bai died first and Visheshar died later. A suggestion was put to this witness that Maanki Bai died as a result of blow given by Gokul. This witness stated that he does not know who gave the blow. In cross examination, this witness also stated that when Visheshar was given a stab blow with a knife he was standing at a distance of 20 to 25 steps. He further stated that the fight took place within the precincts of pond. He has clearly admitted that he only saw Birjoo giving one knife blow in the stomach of Visheshar and he did not see any other blows.

10. When we analyze the evidence of Sadhram (PW4), it is apparent that he is an eyewitness to the incident. He may not have seen as to who had given blows to Maanki Bai but he definitely saw accused Birjoo giving at least one blow with the knife in the stomach of Visheshar.

11. (PW7) Bhuraram is the father of deceased Visheshar. He has given the background of the dispute between the parties. According to him, the accused persons killed his son and daughter-in-law. In para-6 of the statement, he stated that Birjoo stabbed in the stomach of Visheshar with such a force that his intestine came out and Visheshar fell down. He stated that both Birjoo and Gokul gave blows to Visheshar. This witness

stated that Gokul used either *Farsa* or a *Tangiya*. He has explained that because of his old age, he could not clearly identify what was the exact weapon. He also stated that Birjoo gave 12-13 blows with the weapon which he was holding. This witness further stated that Maanki Bai, wife of Visheshar went to save her husband but she was also killed. Firstly, this witness stated that the blow was given by Gokul but later on he stated that both father and son (Gokul and Birjoo) have given blows to her. This witness further stated that after Visheshar and Maanki Bai had been killed, when he was going towards his house then he was given a blow with the handle of the weapon. In cross examination, he stated that when he heard the cries about the fight being started, he was in his home. On hearing the sounds of the fight, he went towards the place of occurrence. Much emphasis has been placed by the learned counsel for the appellants on two lines of the statement of this witness. The first is that the bodies of Visheshar and Maanki Bai were lying inside the pond. It is true that just before this sentence, he stated that he had gone towards the pond, but, this suggestion does not in any manner prove that when he reached the pond, the dead bodies were already lying there. All that is stated in his statement is that bodies of these persons were lying within the pond area. There is no exact time given.

12. From the statement of (PW7) Bhuraram, it is apparent that he reached the place of occurrence soon after the fight started. Assuming for the sake of argument that he did not see the blows being given to Visheshar by Birjoo, the fact of the matter is that Maanki Bai, wife of Visheshar also went to the place of occurrence after her husband was being beaten. She was not there at the beginning, therefore, both of them would have reached there at the same time, but his statement that the accused gave

blows to Maanki Bai cannot be totally discarded.

13. Coming to the statement of (PW12) Babulal, it would be pertinent to mention that the statement of this witness, at the outset, does not appear to be true. He is hiding something. Statement of this witness shows that after Visheshar abused Gokul, Gokul went towards house and called his son. According to this witness, Birjoo was carrying a knife and even Gokul was carrying something but this witness could not identify what sort of weapon Gokul was carrying. This witness stated that after Gokul called his son Birjoo, soon Birjoo came running to the pond and straightway gave blows to Visheshar by knife. The words used are “मारना चालू कर दिया”. This means that there is plurality of blows and not only one blow. This witness also stated that after blood was coming from the body of Visheshar, he got scared and ran away from the spot. In his examination in chief, he also deposed that Birjoo was carrying a knife in his hand. This witness does not say anything about witnessing the assault on Maanki Bai. There is virtually no effective cross-examination to this witness.

14. From the reading of the statements of these witnesses, it stands proved beyond doubt that there was some dispute between Gokul and Visheshar. It is also proved on record that they both were preparing to have bath in the pond where an altercation took place between them. It appears that in the altercation which took place between them, Gokul was either abused or assaulted by Visheshar. Thereafter, Gokul went towards his house and called his son Birjoo who came to the spot and gave knife blows straightway to Visheshar. This is not a case of grave and sudden provocation. Even if what is stated by Babulal (PW12) is

believed, then all that can be said is that the deceased Visheshar abused Gokul by using particularly derogatory caste. However, as pointed out above, they both were first cousins and belong to the same caste. This version, therefore, does not appeal to us because of this terminology being used, there would have been grave and sudden provocation. In fact, the version given is that Gokul went home and called his son which rules out the grave and sudden provocation. As far as blows are concerned, Sadhram (PW4) talks of one blow being given by Birjoo to Visheshar whereas Bhuraram (PW7) talks of multiple blows. Therefore, it stands proved that Birjoo gave knife blows to deceased Visheshar.

15. As far as Maanki Bai is concerned, neither Sadhram (PW4) nor Babulal (PW12) have seen any blows being given to her by the accused. The witness in this regard is (PW7) Bhuraram, who was confronted with the statement recorded under Section 161 of the Cr.PC. However, the statement of Bhuraram (PW7) is not entirely believable because firstly he stated that Gokul gave a blow and only later on identified that both of them have given blows. Furthermore, according to this witness, the wife (Maanki Bai) died as a result of one blow.

16. We may now deal with the medical evidence. Dr. R.K. Chandra (PW5) conducted postmortem on both the deceased persons. He found six stab wounds on the neck of Maanki Bai, four on the rear side and two on the front side. He found one stab wound on the upper portion of the chest. He found another stab wound on the abdomen area and two incised wounds on the wrist and little finger. Therefore, the wounds on the wrist and finger may have been caused while the lady was

protecting herself but even then there are as many as eight stab wounds.

17. As far as deceased Visheshar is concerned there were five stab wounds on his back and four stab wounds in his stomach. Therefore, this person had also been stabbed mercilessly. This witness had also examined Bhuraram (PW7) and issued medico legal certificate (Ex. P-20) to the effect that simple injuries have been caused to Bhuraram (PW7).

18. The first question which arises is that whether Section 34 IPC would be applicable or not? It appears to us that the occurrence took place at the spur of moment. There was a fight and there was no planning at the beginning. However, as far as Visheshar is concerned, it appears to us after Gokul went back towards his home and called his son Birjoo, at least there was meeting of minds that the deceased Visheshar has to be thrashed. Therefore, Section 34 IPC is attracted as far as death of Visheshar is concerned but Section 34 IPC is not attracted as far as death of Maanki Bai is concerned. As far as Maanki Bai is concerned, medical evidence does not indicate which wound caused the death and the doctor very clearly stated that it is from the cumulative result of all the wounds. It is not even clear that whether Birjoo actually caused death of Maanki Bai. Therefore, we cannot convict him for murder of Maanki Bai. As far as death of Visheshar is concerned, the evidence is very clear that it was Birjoo who gave blows to Visheshar and caused injuries. It may be true that Sadhram (PW4) has only seen one blow being given whereas (PW12) Babulal has seen few blows being given in the stomach and back. We can easily draw conclusion that all these

wounds which are stab wounds would have been caused by the knife. The *Tangiya* could not cause stab wounds, but could only have caused incised wounds, and therefore, all these stab wounds will have to be attributed to Birjoo, who was carrying the knife.

19. In view of the above discussion, we uphold the conviction of Birjoo in so far as murder of Visheshar is concerned. He is held guilty for having committed the offence of murder of Visheshar. However, as far as the murder of Maanki Bai is concerned, he is acquitted of that charge.

20. Accordingly, the appeal of Birjoo is partly allowed. The sentence of life imprisonment imposed by the trial Court is upheld. Appellant – Birjoo is stated to be on bail. His bail bonds are cancelled. He is directed to surrender forthwith before the Court below concerned or be taken into custody for serving out remaining part of sentence.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE