

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 7-9-2017

Judgment delivered on 11-10-2017

CRA No. 793 of 2008

1. Dwarika Prasad s/o. Dalpat Singh aged 17 years. R/o Village Baridih, P.S.:- Ratanpur, Distt.- Bilaspur (Cg)
2. Vyas Narayan S/o Dwarika Prasad, aged 23 years, R/o Village Baridih, P.S.:- Ratanpur, Distt.- Bilaspur (CG)

---- Appellants

Versus

- State of Chhattisgarh through Police Station Ratanpur, District Bilaspur. (CG).

– Respondent

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CRA No. 331 of 2009

1. Paras Ram Gond s/o. Samelal Gond, aged about 55 years.
2. Jamuna Prasad S/o Paras Ram Gond, aged about 22 years
- Both are R/o Village Baridih, P.S. Ratanpur, Bilaspur, Distt.-Bilaspur, C.G.

---- Appellants

Versus

- State Of Chhattisgarh through Police Station Ratanpur, District Bilaspur. (CG).

– Respondent

For Appellants in : Mr. Yogeshwar Sharma, Advocate.
CRA No. 793 of 2008

For Appellants in : Mr. S.K. Chandel, Advocate.
CRA No. 331 of 2009

For Respondent/State : Mr. Adil Minhaj, Panel Lawyer.

**Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. Since both the appeals arise out of common judgment dated 31-3-2008 passed in S.T.No.42 of 2008, they are heard analogously and are being disposed of by this common judgment.
2. The appellants have preferred these appeals against the judgment of conviction and order of sentence dated 31-3-2008 passed by the First Additional Sessions Judge, Bilaspur (CG), in Sessions Trial No. 42 of 2008 wherein the trial Court, after holding guilty the appellants for commission of murder, convicted them under Section 302 read with Section 34 of the IPC and sentenced them to undergo life imprisonment and fine of Rs.200/- each, with default stipulations.
3. As per the prosecution case, during night of 25-12-2007 in front of the house of Suniram (PW/1) Ramayan was convened in village Baridih, Sipatpara, where number of people gathered and at the stage brother of Suniram namely Kanhaiya Gond (deceased) was also sitting for hearing Ramayan. At about 3.00 a.m., in the night programme was ended and people started going to their houses. At the same time, all the four accused/appellants came on the spot armed with Tabbal (axe), iron pipe and club and started assaulting Kanhaiya Gond and in order to save his life he ran inside the house of Suniram and closed the door from outside. After few minutes Kanhaiya Gond had broken some part of the materials of the roof of the room and came out of the room and started running. All the four appellants chased him and gave

serious blows due to which he fell down on the ground. He was brought to the house of the appellant Dwarika Prasad in serious condition where he made oral dying declaration to his wife Ganga (PW/3), Rajesh Tiwari (PW/11) and Anasuya (PW/15) and died later. Next day i.e., 26-12-2007 at 10.30 a.m., Suniram went to Police Station Ratanpur and lodged first information report and offence under Section 302 read with Section 34 of the IPC was registered. After inquest of the dead body, the same was sent for post-mortem where Dr. Madhu Saxena (PW/12) and Dr. Anil Kumar (PW/14) conducted autopsy of the deceased. On memorandum statements of the appellants, weapons of the offence were seized. Statements of the witnesses were recorded.

4. After completion of investigation charge-sheet was filed in the court of Judicial Magistrate First Class, Bilaspur, who in turn committed the case to the court of Sessions. The trial Court framed charge under Section 302 read with Section 34 of the IPC against the appellants but they did not plead guilty, therefore, trial was conducted and after completion of the evidence of prosecution side, statements of the appellants under Sections 313 of the Code of Criminal Procedure, 1973 were recorded and after completion of trial, appellants were convicted as mentioned above.

5. Learned counsel for the accused/appellants submit as under:

(I)	That the important witnesses of the incident have turned hostile and their version is not sufficient to base conviction.
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(ii)	Statements of alleged eye-witnesses PW/8 Ramkumar Porte and PW/10 Rajkumar were recorded by the Investigating Officer after 1 and ½ months and there is no explanation by the Investigating Officer, therefore, their version is unreliable.
(iii)	That the blood stains found on the seized weapons have not been proved to be that of the blood group of the deceased for want of serological examination and the same is not incriminating piece of evidence.
(iv)	That no previous enmity between the deceased and appellants has been proved, therefore, the conviction of the appellant is not sustainable.
(v)	That the finding arrived at by the trial Court is not in the fitness of factual matrix and legal aspect of the matter, therefore, the same is liable to be quashed.

He placed reliance on **Lalan Prasad Vs. State of MP (Now CG), reported in 2011(2) CGLJ 463 (DB).**

6. *Per contra*, State counsel supporting the impugned judgment of the trial Court has submitted that the finding arrived at by the trial Court is just and proper and there is no illegality or infirmity in it warranting any interference by this Court.
7. We have heard counsel for the parties and perused the material on record.
8. Dr. Madhu Saxena (PW/12) conducted autopsy of the deceased on 26-12-2007 at about 3.30 pm at Primary Health Centre, Ratanpur. He deposed that he conducted autopsy of the deceased Kanhaiya Gond of village Baridih brought by Constable Dharmendra Sharma

No.44, identified by Hapal Singh and Santosh (inquest of the deceased). As per deposition of this witness, he and Dr. Anil Kumar Shrivastava PW/14 conducted post-mortem and noticed the following injuries.

1)	One deep lacerated wound present over 6 cms above from right eye brow over vertically/obliquely in the size of 8x1x1/2 cm , clean cut regular margin clotted blood present over left scalp brain is clotted and blank;
ii)	One lacerated wound present over 5 cm above left eye brow over forehead 1x1/4x1/4 cm in side clotted blood present.
lii)	Reddish high discharge from nose and mouth, blood present.
iv)	Right leg hymen side 10 cm above ankle just three peritoneal wounds present in the size of 1x1 cm, 1x1cm, and 1x1 cm. Clotted blood present.
v)	Left leg included wound present ins the size of 1x1 cm, clotted blood present, both knees just multiple arteries present in the size of 1x1/2 and 1 ½ x 1cm
vi)	Bruise present over both hands free arm side 2x1cm , left sided free from bruise in colour below elbow just wrist joint.
vii)	Skull bone was broken into three pieces and blood was clotted.

As per opinion of the expert, all injuries were anti-mortem caused by hard and blunt object and cause of death is shock due to internal bleeding on head and breaking of frontal bone and skull bone. It is opined that death is caused since 24 hours of the examination and death is homicidal in nature. This witness is firm after searching cross examination and nothing could be elicited against the medical report.

9. PW/1 Suniam deposed that on the date of incident Ramayan was convened in Goura Chowk of his village in front of his house and

number of persons were collected there. The programme was culminated at about 3.00 am of 26-12-2007 and at the same time appellants Paras Ram Gond, Jamuna Prasad, Dwarika Prasad and Vyasnarayan reached there with Tabbal, clubs and iron pipe. Deceased Kanhaiya Gond entered into his house and closed the door and after removing some materials of the roof started running from the house and appellants chased him. PW/2 Manohar Singh deposed that he has not seen the incident. PW/3 Ganga is wife of the deceased and as per her statement, her husband Kanhaiya Gond had gone to hear the programme of Ramayan at about 10.00 pm and thereafter he did not return. She further stated that at about 7-00 am in the morning one Pancharam of the village informed her that her husband is in the house of appellant Dwarika Prasad and when she reached there with Anasuya Bai, Rajesh Tiwari and some other persons, she saw the deceased in injured condition and her husband made declaration that all the appellants Paras Ram Gond, Jamuna Prasad, Dwarika Prasad and Vyasnarayan had beaten him and also declared that they have assaulted him with Tabbal (axe) and iron rod.

10. PW/4 Nandu Ram Yadav deposed that he had seen the appellant Jamuna Prasad with iron rod and Dwarika Prasad, Vyasnarayan and Paras Ram Gond with clubs. He also deposed that Kanhaiya Gond entered into the house of Suniram and after removing some part of the materials of the roof he was running away and then all the four accused/appellants chased him. PW/5 Manoj deposed that he has not seen the incident. PW/6 Rajaram deposed that the

appellant Jamuna Prasad was having a pipe and appellant Vyasnarayan was having a club and all the four accused/persons were standing at the place of programme of Ramayan.

11. Satpal (PW/7) stated that he has not seen the incident. PW/8 Ramkuamr Porte deposed that at about 3.00 am in the morning he heard the voice of "Maaro Maaro" and thereafter he and Rajkuamr woke up and saw the appellants Paras Ram Gond, Jamuna Prasad, Dwarika Prasad and Vyasnarayan assaulting the deceased by iron rod and clubs. Version of this witness is supported by the version of Raj Kumar (PW/10). After going through the evidence of Ram Kumar Porte (PW/8), Raj Kumar (PW/10), it cannot be held that these witnesses have no occasion to witness the incident and minor discrepancies, if any, are to be ignored looking to the searching cross examination.
12. PW/11 Rajesh Tiwari deposed that wife of the deceased informed that her husband was brought to the house of accused/appellant Dwarika Prasad and thereafter he reached the house of Dwarika Prasad and there the deceased made oral dying declaration that all the accused persons have assaulted him and further declared that appellant Paras Ram Gond was having Tabbal (axe), Jamuna Prasad was having iron rod and rest of the two appellants were having clubs. Version of this witness is supported by the version of Anasuya Bai (PW/15) regarding dying declaration made by the deceased before her in the house of the appellant Dwarika Prasad.
13. PW/13 J.R. Yadav is Assistant Sub Inspector and Investigating Officer, who has stated that on discovery statement of appellant

Paras Ram Gond as per Ex.P/13, Tabbal and full pant were seized, as per Ex.P/14, on discovery statement of Jamuna Prasad, one full pant, shirt, iron pipe and Baniyan were recovered, as per Ex.P/15, on discovery statement of appellant Dwarika Prasad, one club, full pant and shirt were seized. As per Ex.P/18, on discovery statement of appellant Vyasnarayan club, short and pant were seized. As per Dr. Anil Kuamr Shrivastava (PW/14), Tabbal seized from the appellant Paras Ram Gond was brought before him and as per his opinion, injuries on the body of the deceased could be caused by this article. Again he examined iron pipe seized from the appellant Jamuna Prasad and opined that the injuries of the deceased could be caused by these articles. He also examined clubs seized from the appellant Dwarika Prasad and Vyasnarayan and opined that the injuries found on the body of the deceased could be caused by these articles. PW/16 Amar Kumar Dahayat is a Patwari, who prepared spot map.

14. True it is that the statements of 161 Cr.P.C of PW/8 Ram Kumar Porte, and Rajkumar (PW/10) were recorded on 17-2-2008, but from the statement of Investigating Officer, it is clear that the statement was recorded only on availability of these witnesses. Both the witnesses are firm in their version after searching cross examination and nothing could be elicited against them to declare them unreliable, therefore, the delay is not sufficient to discard their version. There is abundant evidence against all the appellants that they gathered with rod and clubs at the place of progamme of Ramayan and when deceased entered into the

house of Suniram to save his life and again when he ran from the house of the Sunram, all the appellants chased him and that shows their common intention to kill the deceased.

15. From the evidence of PW/3 Ganga, Rajesh Tiwari (PW/11) and Anasuba Bai (PW/15), it is established that deceased had made oral dying declaration before them to the effect that all the four accused/appellants have assaulted him with iron rod and clubs. Injuries found on the body of the deceased show that the deceased had been brutally assaulted by all the appellants, that is why skull bone was broken into three pieces and he died just after the incident. Witnesses of the prosecution have been subjected to lengthy and searching cross examination, but nothing could be elicited in favour of the appellants and their complicity is established undoubted.
16. From the evidence, it is established that the intention of the appellants was to kill the deceased because when the deceased was running away from the house of Suniram, all the four accused/appellants chased him and assaulted mercilessly and their case does not fall into any of the Exception of Section 300 of the IPC and in our view, the same falls within the definition of murder as mentioned in Section 300 of the IPC and the case law cited by counsel for the appellants is distinguishable on facts and circumstances of the present case.
17. In our view, direct evidence, evidence of oral dying declaration and supporting evidence are totally reliable and the trial Court

was right in holding the appellants guilty under Section 302 read with Section 34 of the IPC and sentencing them.

18. For the foregoing, this Court is of the considered opinion that the findings recorded by the Court below do not suffer from any legal flaw warranting inference in these appeals. Resultantly, the appeals being devoid of merit are liable to be dismissed and are hereby dismissed as such with the affirmation of the judgment impugned.
19. All the appellants are on bail. Their bail bonds shall stand cancelled. The trial Court is directed to issue non-bailable warrant against them and after their arrest they be sent to jail for serving out the remaining part of the jail sentence.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju