

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 792 of 2009

Judgment Reserved on 15-9-2017

Judgment delivered on 8-11-2017

1. Devnath Dewangan s/o. Pardeshi Ram Dewangan, aged about 29 years..
2. Radheshyam Dewangan @ Neetu S/o Pardeshi Ram Dewangan,
Both are at present R/o Dabrapara, South Bhilai, Bajrang Chowk, P.S. Purani Bhilai, Distt.-Durg, C.G.
3. Ghanshyam Patel @ Bodu S/o Brijlal Patel, At Present R/o Dabrapara, Bhilai-3, South Bazar Chowk, P.S. Purani Bhilai, Distt.-Durg, C.G.

---- Appellants

Versus

- State of Chhattisgarh through Station House Officer, Police Station, Purani Bhilai, District Durg (CG).

---- Respondent

For Appellants : Mrs. Renu Kochar, Advocate.
For Respondent/State : Mr. Vaibhav A. Goverdhan, Panel Lawyer.

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

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 27-9-2009 passed by the Sessions Judge, (FTC), Sessions Division Durg (CG), in Sessions Trial No. 153 of 2008 whereby the trial Court, after holding the appellants guilty for commission of offence, convicted the appellants under Sections 302 read with Section 34, 323 & 294 of the IPC and sentenced them to undergo life imprisonment and fine of Rs.1000/- in default of payment of fine to undergo further RI for six months, RI for six

months and RI for 3 months respectively with a direction to run all the sentences concurrently.

2. In the present case, name of the deceased is Gulab Singh. As per the prosecution case, when deceased Gulab Singh, Mahendra Kumar, Santosh Das and Santosh Tiwari were sitting at Dabrapara Railway line, Bhilai and were talking together, at that time all the three accused/persons came there with club, raft (balli) and due to their previous enmity used abusive language against them and thereafter all the three appellants assaulted the deceased Gulab Singh brutally. Santosh Das reported the matter to Police Station Bhilai-3 where first information report (Ex,P/15) was registered. Deceased Gulab Singh was taken to Government hospital, but declared brought dead by the Doctors. Merg intimation was registered. Post-mortem of the deceased was conducted by PW/9 Dr. Anil Agrawal on 26-6-2008 at about 11.40 a.m. at District Hospital. Statements of the witnesses were recorded and certain seizures were made.
3. After completion of investigation, charge-sheet was filed before the court of Judicial Magistrate First Class, Pathan, who in turn committed the case to the court of Sessions. The trial Court framed charges under Sections 302 read with Section 34, 323, 294 and 506 Part II of the IPC against all the appellants to which they did not plead guilty. Trial was conducted and after recording the evidence of prosecution witnesses, statements of the appellants under Section 313 of the Cr.P.C were recorded and after hearing both parties, the trial Court convicted and sentenced the appellants as mentioned above.

4. In order to prove the complicity of the accused/appellants in commission of crime in question, the prosecution has examined 13 witnesses before the trial Court in support of its case.
5. Learned counsel appearing for the accused/appellant submits as under:

- (i) That the trial court has ignored material inconsistencies in the statement of alleged eye-witness Santosh Tiwari (PW/1) and other witnesses adduced by the prosecution and their version is unreliable;
- (ii) That there is inordinate delay in sending the report to Magistrate after registration of first information report which makes the prosecution case doubtful;
- (iii) That the seizure of the articles is of no help to the prosecution as there is no serological report regarding the blood group;
- (iv) That the injuries caused to the deceased were not sufficient in ordinary course of nature to cause death..

She placed reliance on **Balakrushna Swain vs. State of Orissa**¹
Ganesh Bhawani Patel and another vs. State of Maharashtra² **State of UP vs. Gambir Singh**³ **State of UP vs. Srikrishna**⁴ **Marutirama Nayak vs. State of Maharashtra**⁵ and **Lallan Prasad vs. State of MP**⁶

¹ AIR 1971 SC 804
² AIR 1979 SC 135
³ 2006 SCC (Cri) 125
⁴ AIR 2005 SC 762
⁵ AIR 2003 SC 3884
⁶ 2011 Vol 2 CGLJ 463

6. Per contra, State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law 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. In order to appreciate the arguments on behalf of the parties, we have examined the evidence of the witnesses:
9. PW/1 Santosh Kumar Tiwari is eye-witness to the incident who has deposed that he was sitting with Gulab Singh, Santosh Das, and Mahendra Kumar at about 5.30 – 6.00 pm and at the same time all the three accused persons Devnath Dewangan, Radheshym Dewangan and Ghanshyam Patel came there from behind and hurled abusive language upon them and started assaulting the deceased Gulab Singh. At that time appellant Devnath Dewangan was having a club, appellant Ghanshyam was having one raft (balli) and appellant Radheshyam was having plank and assaulted on the head of Gulab Singh, on the back side of this witness (Santosh Kumar Tiwari) and on the leg of Santosh Das. As per this witness, he and Mahendra Kumar tried to intervene but all the three appellants mercilessly assaulted the deceased Gulab Singh and left him in a pool of blood. Deceased was taken to Police Station and thereafter he was taken to Government Hospital, Durg, where Doctor declared him brought dead. He further deposed that next day Police interrogated him regarding the incident and after 2-3 days all the three accused/appellants made discovery statement before the Police Station and on

discovery statement articles of offences as mentioned above were seized from them.

10. This witness has been subjected to searching cross examination but nothing could be elicited from his cross examination to discredit his testimony and he is firm in his version. True, it is that there are minor contradictions in the statement of this witness, but the same is bound to occur because this witness is not reproducing the words as tape-recorder.
11. PW/2 Ganesh Ram Sahu & PW/4 Chetan Singh are Police Constables who assisted in the investigation. PW/3 P.C. Deshmukh preserved dead body of the deceased at Mortuary. PW/5 is a Patwari, who prepared spot map. PW/6 Santosh Das deposed that when he was sitting with Gulab Singh, Mahendra Kumar and Santosh Tiwari, at that time four persons came there and assaulted them. PW/7 Gajraj Singh is a witness of inquest. Dr. B.P. Tiwari (PW/8) examined Santosh Tiwari and found pain between scapula bone and middle of the thigh in his body.
12. PW/9 Dr. Anil Agrawal conducted post-mortem of the deceased and found the following injuries.

i)	Brown blackish, rigor mortis present and genesis present, right eye closed and block. Left eye open, blood seen in ear, nose and mouth;
(ii)	Bruise on left palm in the size of 1"x 1/4" and swelling 3" in size;
(iii)	Bruise on left forearm 1" in size inducted reddish blue in colour;

(iv)	Bruise on left 1/2" along with swelling 4" in size reddish blue in colour;
(v)	2 abrasions 1/2" in side skin blackout, middle & index finger.
(vii)	Bruise in right side face 2 1/2" in size and abrasion right side face 3/12 in size.
(viii)	Back side multiple bruise and abrasion 2" to 6" in size multiple one to another;
(ix)	Bruise over right and left scapular region 2 to 4 in no. 2" to 3" in size..
(x)	Lacerated wound over chin 1/2"x in size transversely placed.
(xi)	Lacerated wound over right parietal region of skull 2 1/2" x1" and right parieto-occipital region 3/12"x1/2".
(xii)	Bony deep transversely and right occipital region the skull 3 1/2"x1/2". Body deep transversely planted and vertex of the skull 4 1/2" x 1 1/2". Bony deep verticality situated. And
(xiii)	Left parietal region of skull 5" x 2" and body deep obliquely situated. Margins and crushed in all lacerated wound injuries. Multiple haematoma in brain present. Inside stomach undigested food materials and blood present.

After examination he opined that cause of death is due to cardio respiratory failure due to haemorrhagic and neurogenic shock due to head injury and multiple injuries and all the injuries were anti-mortem in nature and death occurred since 24 hours of the

examination. He opined that death is homicidal in nature. Version of this witness is unrebutted in formal cross examination and there is no other expert opinion in the record. From the statement of the expert, it is established that death of deceased is homicidal.

13. PW/10 P.C. Tiwari, was Police Inspector who assisted in the investigation. PW/11 T.R. Nagwanshi was Sub Inspector in old Bhilai Police Station at the time of incident and investigated the matter. PW/12 Mahendra Thakur deposed that some people assaulted the deceased and due to fear he fled away from the spot and after sometime he received information about murder of deceased and thereafter he reached to the spot and took the deceased who was in pool of blood to Police station. PW/13 A.R. Khan, Sub Inspector who assisted in investigation.
14. On careful scanning of the evidence of the prosecution witnesses, it is clearly established that all the three appellants have caused injuries to the deceased mercilessly and as many as 13 injuries were found in his body which led to his instantaneous death. There may be some flaw during investigation, but the same is not sufficient to throw away the prosecution case. Statement of eye-witness Santoh Kumar Tiwari (PW/1) is convincing and inspires confidence of this Court and we have no reason to disbelieve the same.
15. Looking to the injuries caused to the deceased, it is clear that all the three appellants were well prepared and came there with pre-meditation and their intention was to kill the deceased. We are satisfied that the case of the appellants falls under Section 300 of IPC and they are equally liable for commission of murder of the

deceased. The trial Court has also rightly appreciated the evidence regarding other offence under Sections 323 and 294 of the IPC. After going through the record, we are convinced that same is not liable to be interfered and we are in agreement with the judgment of conviction and order of sentence passed by the trial Court. The case law cited by the defence side is distinguishable on the facts and circumstances of the present case.

16. Thus in the aforesaid view of the matter 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 this appeal. Resultantly, the appeal being without any force is liable to be dismissed and it is dismissed as such with the affirmation of the judgment impugned. As all the appellants are already reported to be behind the bars, no further order for arrest etc is necessary.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju