

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 100 of 2012

1. Vijendra, S/o Sainath Vishwakarma, aged 24 yrs.
2. Kanshilal S/o Sainath Vishwakarma, aged 26 yrs.

Both are residents of Inderpur, P.S. Khadgawan , Distt. Korea C.G.

---- Appellants (In Jail)

Versus

- State Of Chhattisgarh, through PS Khadgawan, District Korea (CG)

---- Respondent

For Appellants	:	Shri Azad Siddique, Advocate
For Respondent	:	Shri Adhiraj Surana, Dy. Govt.
Advocate		

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

Order On Board

Per P. Diwaker, J

21/06/2017

1. This appeal arises out of the judgment of conviction and order of sentence dated 28.9.2011 passed by the 2nd Additional Sessions Judge, Manendragarh, District Koriya (CG) in S.T. No.14/2011 convicting the accused/appellants under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo R.I. for life and pay fine of Rs.1,500/-, in default to further undergo RI for 4 months.
2. In the present case name of deceased is Rajkumar.
3. As per case of the prosecution, sometime in the year 2006 deceased Rajkumar had sold 7.18 acre of his land to Prithvi Pal (PW-4) which was

being claimed by cousins of deceased Rajkumar namely Parshu, Rama & Laxman as their land and in this way, a land dispute cropped up between them and accordingly, it was decided that demarcation of land would be done to resolve the dispute. On 22.10.2010 deceased Rajkumar along with his father-in-law Budhram and maternal father-in-law Babulal came to village Chirmi and demanded Rs.10,000/- from Prithvi Pal (PW-4), whereupon said Prithvi informed the deceased that the land sold by him is being claimed by his uncle. On this, the deceased asked said Prithvi to accompany him to see the actual land and thereafter they left for Inderpur on the motorcycle. While they were returning to Chirmi from Inderpur, on the way near the house of one Bhaiyalal the accused persons got stopped the motorcycle and started abusing the deceased and by saying that he has already sold the land of Parshu, Rama & Laxman and now he would also sold their land, they caused injuries to the deceased by hands, fists, club and stone as a result of which he died. Merg Intimation (Ex.P-1A) was recorded on 22.10.2010 at 7.40 p.m. at the instance of Prithvi Pal (PW-4). Un-numbered FIR (Ex.P-17A) was registered on the same day at 7.45 p.m. against the accused persons under Section 302/34 IPC. Numbered Merg and FIR (Ex.P-8A) were also registered. Inquest on the body of deceased was prepared vide Ex.P-1A on 23.10.2010. Body was sent for post-mortem examination which was conducted by Dr. R.P. Singh (PW-11) and he noticed following injuries;-

- Contusion of 1.5 x0.3" size oblique at left lower lateral orbital region to front of ear.
- Lacerated wound of 1x0.3" at left parietal region, bone deep.
- Contusion of 1.5x0.3" over left mid forearm posterior.
- Contusion of 1x0.2" over right upper arm laterally.
- Fracture in left parietal bone.

As per opinion of the autopsy surgeon, the cause of death was head injury. On 27.10.2010 memorandum statement (Ex.P-2) of accused Kanshiram was recorded and based on which one stone of about 4.5 kilogram was seized from the spot vide seizure memo Ex.P-3. Seized articles were sent for chemical analysis to the Forensic Science Laboratory and as per unexhibited report of FSL, blood has been found on Article C & D i.e. stone and piece of stone. Statements of witnesses were recorded in the course of investigation.

4. After investigation, charge sheet against the accused persons was filed. The Court below framed the charges under Sections 302/34 of IPC against the accused persons. The prosecution in order to bring home the charges levelled against the accused persons examined 15 witnesses in all. Statements of accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
5. During the pendency of trial, on 1.9.2011 accused Sainath expired and therefore the trial Court proceeded to decide the case against the present appellants. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment convicted & sentenced the accused/appellants in the manner as described above.
6. Counsel for the accused/appellant submits that;
 - conviction of appellants is solely based on the testimony of Prithvi Pal (PW-4) but the evidence of this witness is not of such quality that may be sufficient to sustain an order of conviction.
 - In the given facts and circumstances of case, the possibility of accidental death of the deceased cannot be ruled out.
 - Even if the entire prosecution is taken as it is, the act attributed to the

appellants does not travel beyond the purview of Exception IV of Section 300 of IPC and at best they can be convicted under Section 304 Part-I or II IPC.

- Lastly, he submits that the appellants are in jail for the last more than 6½ years, therefore, after converting their conviction into Section 304 Part-I or II, they be sentenced to the period already undergone by them.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that the manner in which injuries were caused to the deceased it is evident that the appellants had all the intention to commit murder of the deceased and under no circumstances their act would fall under any of the Exceptions to Section 300 IPC. He further submits that on the basis of memorandum of accused/appellant No.2, seizure of stone was made and report of FSL confirms the presence of blood on it.
8. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.
9. Manmohan (PW-1) is the witness of inquest (Ex.P-1). Sunder Sai (PW-2) & Sirdhan (PW-2) are the witnesses of inquest (Ex.P-1A) and seizure memo (Ex.P-3).
10. Prithvi Pal (PW-4) is the lodger of Merg Intimation & FIR. He is also an eyewitness of the incident. While supporting the prosecution case, he has stated that when they were returning from Inderpur on motorcycle, on the way accused Kanshiram got stopped their motorcycle and started abusing the deceased saying that he has already sold the land of Parshu, Rama & Laxman and now he has come to sell his land. Deceased Rajkumar

asked him not to abuse him and also tried to clarify that he has not come to sell any land rather he has come to show his land to him (present witness). Meanwhile, deceased accused Sainath assaulted the deceased on his temporal region by club and when he tried to save the deceased by intervention, he too was assaulted by deceased accused Sainath. He has further stated that accused Kanshi & Vijendra dragged the deceased towards other side of road and despite his request not to assault the deceased, they did not stop. Accused persons were assaulting the deceased by hands, fists, club and stone. He has further stated that the accused persons again tried to assault him, however, somehow he could save himself. He has further stated that he asked Sundari, wife of Bhaiyalal, to give water to the deceased, however, due to fear she refused to do so and asked him to go and give water to the deceased, however, by that time the deceased had expired. In the lengthy cross-examination this witness remained very firm and nothing incriminating could be elicited by the defence which makes his testimony untrustworthy or unreliable.

11. Budhram (PW-5) is the hear-say witness who reached on the spot after coming to know about the incident. Babulal (PW-6), Smt. Sundari Bai (PW-7), Praveen Franklin (PW-8), Hari Prasad (PW-9) have not supported the prosecution case and turned hostile. Sitaram (PW-10) is the another witness of inquest (Ex.P-1A). Dr. R.P. Singh (PW-11) is the doctor who conducted post mortem examination on the body of deceased and noticed the injuries as described above. This witness has opined that cause of death was head injury present on the body of deceased. Jagsai Paikra (PW-12) & Gond Sai Lakda (PW-15) are the police persons who helped in the investigation. Valmiki Mishra (PW-13) is the Patwari who prepared the spot map Ex.P-5. R.P. Sahu (PW-14) is the investigating officer who has duly supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that the accused persons were apprehending that the deceased would sell their land to Prithvi Pal (PW-4) as he had already sold lands of some persons to him and therefore on the date of incident when they could get the deceased and Prithvi Pal (PW-4), firstly they put certain queries to the deceased and thereafter they caused number of injuries on the vital parts of the body of deceased by hands, fists, club & stone which resulted in his instantaneous death. The incident was witnessed by Prithvi Pal (PW-4), who appears to be natural eyewitness of the incident and has described the manner in which the incident had taken place. He has categorically stated that after stopping the motorcycle in which he along with deceased was returning to Chirmi, the accused persons assaulted the deceased and caused grievous injuries to him by hands, fists, club & stone. When he tried to pacify this quarrel by intervention, he too was assaulted by accused persons. Statement of this witness finds corroboration not only from the facts stated in the promptly lodged FIR (Ex.P-8A) but also from the medical evidence wherein it has been stated that cause of death was head injury due to external violence. Further, on the memorandum (Ex.P-2) of accused/appellant No.2, seizure of 4.5 kg stone and a piece of stone was made under Ex.P-3 and as per un-exhibited report of FSL, the presence of blood thereon was confirmed. Of course, there is no report of serological confirming the blood found to be the group of deceased but considering the evidence of eye-witness, the FSL report becomes relevant, may be as an additional evidence.

True it is that some of material witnesses cited by the prosecution have not supported the prosecution and turned hostile, but Prithvi Pal (PW-4), eyewitness to the incident, has fully supported the case of the prosecution by stating that the deceased was assaulted by the

accused/appellants herein and since there appears no inconsistency in his statement, his testimony alone is sufficient to sustain the conviction of the accused/appellants. 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 entire reliable, there is no legal impediment to the conviction of the accused person on such proof.

13. As regards the submission of counsel for the appellants that the appellants case would fall within Exception 4 to Section 300 of IPC, to invoke this exception four requirements must be satisfied, namely (i) the act was done without premeditation, (ii) it was in a sudden fight, (iii) the assailant had not taken any undue advantage or acted in a cruel manner; and (iv) the act was done in a heat of passion. In the present case, the evidence shows that there was previous enmity between the accused/appellants and the deceased as the accused/ appellants were suspecting that the deceased would sell their land fraudulently. The available evidence would also show that it is the accused/appellants who reached the spot carrying stick in their hands, they stopped the motorcycle of deceased while he was returning to his village and caused grievous injuries to unarmed deceased resulting in his instantaneous death. No injury has been caused to the accused/appellants. Thus, it is apparent that the accused persons had acted in premeditated manner and it was not a case of sudden fight or quarrel in the heat of passion. It has also come in the evidence that after assaulting the deceased by hands, fists & club, they dragged him towards other side of road and there they caused injury

on his head by heavy stone (4½ kg) which was lying there, which, according to the post-mortem report, was the cause of death of the deceased. This conduct of accused persons goes to show that they had not only taken undue advantage of the situation but also acted in a cruel manner and they not only had the intention to cause death but also had the knowledge that the injuries being inflicted by them on the deceased were sure to result in his death. In these circumstances, we are of the considered opinion that Exception 4 to Section 300 IPC is not attracted in the instant case and the accused/appellants have been rightly convicted by the court below for commission of offence under Section 302/34 of IPC.

14. Thus, considering the totality of facts and circumstances of case, the un rebutted eyewitness's account which finds due corroboration from the medical evidence, this Court is of the considered opinion that the trial Court was fully justified in convicting and sentencing the accused/appellants under Section 302/34 of IPC for causing murder of the deceased.

15. In the result, the appeal being devoid of substance is liable to be and is, accordingly, dismissed. Since the accused/appellants are already in custody no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

roshan