

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 17-7-2017

Judgment delivered on 1-8-2017

CRA No. 444 of 2012

1. Jailal Thakur s/o. Sonsai, aged 39 years. R/o. Village Barkel PS Pithoura, District Mahasamund (CG).
2. Sakha Ram S/o Parau Bariha , aged 45 years, R/o. Village Barkel PS Pithoura, District Mahasamund (CG).
3. Kalesh Thakur S/o Sundar Lal , R/o Village Barekel , P.S. Pithoura , District Mahasamund C.G.

---- Appellants

Versus

- State of Chhattisgarh through District Magistrate, District Mahasamund (CG).

---- Respondent

For Appellant : Mr. B.N. Nande, Advocate.

For Respondent/State : Mr. Avinash K. Mishra, Panel Lawyer.

**Coram: 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 23-2-2012 passed by the 2nd Additional Sessions Judge, Mahasamund (CG), in Sessions Trial No. 79 of 2010 whereby the trial court after holding guilty for commission of offence punishable under Section 302/34 of the IPC convicted the accused/appellants under Section 302/34 of the IPC and sentenced

them to undergo life imprisonment and to pay fine of Rs.1000/- each, with default stipulations.

2. As per the prosecution case, all three appellants along with absconding accused persons have committed murder of one Lalit Yadav on 22-9-2010 at 7.00 pm at village Barekelkhurd Barbhata. It is alleged that while deceased Lalit Yadav had been in his old house at village Barekel Khurd, Barbhata, appellant Kalesh Thakur had come there, called him and took him on his bicycle. After some time people of the village started crying "run run", listening which Pushpa Bai, wife of deceased and her grand father-in-law Sunder went to the place of occurrence and then they saw that Lalit Yadav was caught hold by Kalesh, Sunder Gond, Jailal and son of maternal uncle of Jailal and appellant Sakharam was assaulting him with sharp edged weapon. The incident was witnessed by Ku. Krishna Marar and Ku. Naina Bhinjhvar. After seeing Pushpa Bai and her grand father-in-law, the accused/appellants fled away from the scene of occurrence. Injured Lalit Yadav was taken from the place of occurrence to home by his wife and grand father where he died. After some time wife of the deceased informed the incident to Police Station Pithoura. After registration of first information report, Police arrived at the spot and recorded merg intimation and Dehati Nalisi for commission of offence punishable under Sections 302 and 147 of the IPC and thereafter first information No. 390/2010 was recorded on 23-2-2010 against the appellants, Sudergond and Ajay Gond. Inquest report was prepared and body of the

deceased was sent for post mortem, memorandum of appellant Sakharam was recorded and pursuant to discovery statement, weapon allegedly used in crime was recovered and the same was sent for chemical examination to Forensic Science Laboratory, Raipur.

3. After completion of investigation, charge-sheet was filed against all three appellants. Other accused Sunder Gond and Ajay @ Chinta Ram have been declared absconded under Section 299 of the Code of Criminal Procedure, 1973.
4. The case was committed to the Court of Session and the trial Court after framing the charge, conducted trial and considering the material available on record by the impugned judgment convicted and sentenced the accused/appellants as mentioned above.
5. In order to prove the complicity of the accused/appellants in commission of crime in question, the prosecution has examined ten witnesses before the trial Court in support of its case and exhibited documents (P1 to P-20). Statement of the accused/appellants have also been recorded under Section 313 of the Code of Criminal Procedure in which they denied the allegations made against them and pleaded innocence and false implication in the case.
6. Learned counsel appearing for the accused/appellants submits as under:

(i)	As per statement of eye-witnesses Ku. Krishna Marar (PW/4) and Ku. Naina Bhinhvar (PW/5), they saw that accused Sakharam had caught hold the deceased and accused Sundergond had
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	assaulted the deceased by means of Chapad (a knife like weapon), therefore, the finding against appellants Jailal and Kalesh Thakur is without substance;
(ii)	There had been no enmity between Kalesh and deceased otherwise, deceased would not have been accompanied Kalesh in his bicycle. Nothing substantial is found showing participation of appellant Kalesh in the crime, except taking the deceased on his bicycle towards his home. His participation cannot be inferred by other witnesses.
(iii)	PW/1 Pushpa Bai has not stated anything to involve Kalesh in the crime in question, therefore, the judgment of the trial Court is without substance.
(iv)	Discovery statements have not been supported by independent witnesses, presence of blood stains itself cannot be taken as conclusive evidence because there is no evidence in order to prove that such blood stains were of human blood and same matched with blood group of deceased.
(v)	The version of the prosecution witnesses does not inspire confidence being contradictory as to participation of the appellants and the order of the trial Court is not in the fitness of factual matrix and legal aspect of the matter.

7. 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.
8. We have heard counsel for the parties and perused the material on record.
9. PW/1 Pushpa Bai, PW/2 Sunder, PW/4 Ku. Krishna and PW/5 Ku. Naina are the witnesses of the incident and rest of the witnesses are of investigation.
10. As per the statement of PW/2 Ku. Krishna, she had gone to the house of her friend Ku. Naina for bringing books on 22-9-2010 at

6-7 pm and both of them returned to her house and standing near the door of her house and saw that appellant/accused Sakharam caught hold of the deceased Lalit Yadav and Sundergond assaulted him by means of weapon known as "chapad". As per the version of Ku. Naina (PW/5), appellant/accused Sakharam caught hold of the deceased at the time of incident and Sundergond assaulted him by means of weapon known as "Khukri". As per statement of Pushpa Bai (PW/1) on 22-9-2010 people of locality cried that Kalesh was beating Lalit Yadav, on hearing cries she reached the spot and saw that the accused/appellant Sakharam was assaulting her husband Lalit Yadav by knife and Suder, Jailal and Ajay were also present and they were also beating her husband. PW/2 Sunder has deposed that he heard the voice "run run" and thereafter he reached the place of occurrence and saw the accused/appellants fleeing away after assaulting the deceased.

11. From close scrutiny of the evidence, it reveals that all three witnesses namely PW/1 Pushpa Bai, PW/4 Ku. Krishna and PW/5 Ku. Naina have established presence of appellant Sakharam, but from the evidence of PW/4 Ku. Krishna and PW/5 Ku. Naina, presence of appellants Jailal Thakur and Kalesh Thakur is not established. Though PW/1 Pushpa Bai deposed that Jailal was also beating her husband, but in her cross examination at para 4, she clearly stated that Jailal was not having any weapon in his hand while other eye-witnesses have not stated about Jailal regarding his presence at the scene of occurrence. No eye-

witness has stated about presence of appellant Kalesh Thakur. From over-all assessment of the evidence, it cannot be inferred that appellants Jailal Thakur and Kalesh Thakur were present during commission of offence, therefore, their participation is doubtful.

12. As per statement of PW/8 Gourav Tiwari, Sub-Inspector, who investigated the matter, he seized one Katta made of iron having 11 inches blade and one white banyan vide seizure memo Ex.P/7 and P/6 and the same were sent for chemical examination to FSL, Raipur and a report thereof has been received which shows that blood was found in article "C" Katta and article "B-1" - white banyan. As per post-mortem report conducted by Dr. L.K. Sahu (PW/8, he found the following injuries on the body of the deceased Lalit Yadav

i)	Incised wound transversely from right side of fitrah of nose to middle of right cheek in the size of 1.2 cm in length, 2.5 cm width and 3 cm deep.
ii)	Incised wound transversely from right angle of mouth to tragus of right ear in the size of 6.5 cm length, 2 cm width and 2.5 cm deep.
lii)	Incised wound transversally from middle of chin to right angle of mandible in the size of 13.5 cm length, 2cm width and 3 cm deep over right half of lower 4 teeth are extruded and excessive loss of blood; and
iv)	Incised wound over right side of neck below right angle of neck in the size of 5 cm in length and 2 cm in width.

The Doctor opined that cause of death was haemorrhagic shock due to excessive blood loss caused by sharp cutting object and death was homicidal in nature.

13. Looking to the injuries and as per opinion of the Surgeon, it can be inferred that the injuries were sufficient in ordinary course of nature to cause death and the same falls under Section 300 of the IPC and the same is the offence of murder. The trial Court charged the appellants under Section 120 of the IPC. It is defined in Section 120-A of the IPC which may be read as under:

“120A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation:- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object”.

14. From the evidence adduced by the prosecution, it is clear that there is no evidence to suggest that any of the accused/appellants had agreed for commission of the said offence and done anything in pursuance thereof. It is stated by the prosecution that appellant Kalesh Thakur had brought the deceased on his bicycle but there is no evidence as to what happened after the deceased was brought by Kalesh Thakur and the evidence on that count is totally missing, therefore, no conspiracy is established in this case and looking to the evidence, except for appellant Sakharam, offence is not made out in respect of other appellants Jailal and Kalesh Thakur.

15. Considering all the facts and circumstances of the case, evidence available on record and as independent role of accused/appellant Sakharam is established in commission of murder of Lalit Yadav, this Court is of the considered opinion that the findings of guilt recorded by the Court below in respect of appellant Sakharam do not suffer from any legal flaw warranting inference in this appeal. Resultantly, the appeal preferred by the accused/appellant Sakharam being without any force is liable to be dismissed and it is dismissed as such with the affirmation of the judgment impugned to that extent. As the appellant/accused Sakharam is already reported to be behind the bars, no further order for arrest etc is necessary.
16. So far as appellants Jailal Thakur and Kalesh Thakrur are concerned, the judgment of the trial Court insofar as it relates to conviction of these appellants is not sustainable and same is set aside. Accused/appellants Jailal Thaur and Kalesh Thakur are acquitted of the charges framed against them. They shall be set at liberty forthwith, if not required in any other case. Accordingly, the appeal is partly allowed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE

