

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 21-09-2017

Judgment delivered on 12-10-2017

Criminal Appeal No. 85 of 2012

1. Salik Ram S/o Chamar Singh aged about 42 years, Occupation, Agriculture.
2. Anand Ram S/o Ogar Singh, aged about 28 years, Occupation Agriculture, Both- R/o Village Nawapara, P.S. Gharghoda , District- Raigarh C.G.

---- Appellants

Versus

State of Chhattisgarh, through Station House officer, Police Station, Gharghoda, District Raigarh (CG)

---- Respondent

And

Acquittal Appeal No. 95 of 2012

State of Chhattisgarh, Through PS Gharghoda, District Raigarh (CG)

---- Appellant

Versus

1. Maniram S/o Harichand, aged about 27 years, Occupation Agriculturist R/o Village Nawapara, P.S. Gharghoda, District Raigarh (CG)
2. Chunnilal S/o Salikram aged about 21 years, Occupation Agriculturist, R/o Village Nawapara , P.S. Gharghoda , District- Raigarh C.G.

---- Respondents

For Appellants	:	Mr. Maneesh Sharma, Advocate in Cr. Appeal No. 85/2012.
For Respondent/State	:	Mr. Ravindra Agrawal, Panel Lawyer.
For Appellant/State	:	Mr. Ravindra Agrawal, Panel Lawyer.
For Respondents	:	Mr. Ashish Gupta, Advocate in Acquittal Appeal No. 95/2012.

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

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. Both the appeals are being disposed of by this common judgment, as they arise out of the judgment dated 13.12.2011 passed by the 1st Additional Sessions Judge, Raigarh, Sessions Division Raigarh (CG) in Sessions Trial No. 28/2010, wherein the trial Court had convicted appellants of Cr. Appeal No.85/2012 namely- Salik Ram and Anand Ram @ Gudda under Sections 452, 302 r/w Section 34 IPC and sentenced them to undergo imprisonment for 2 years and imprisonment for life respectively.
2. The State has preferred Acquittal Appeal No. 95/2012 against the respondents Maniram and Chunnilal who have been acquitted by the trial Court.
3. In the present case, name of the deceased is Kartik Ram s/o Nankuram Rathiya. As per case of the prosecution, on 5.11.2009, at about

8.00- 9.00 pm in the night, when deceased Kartik Ram was taking his meals in his house, Salik Ram, Guddu, Maniram and Chunnilal forcibly threw him out of the house, used filthy language and assaulted him by leg and fists. His wife Ganeshi Bai, PW3 tried to rescue her husband, but failed and after some time, injured Kartik Ram succumbed to the injuries. FIR (Ex. P/43) was lodged by Ganeshi Bai on 6.11.2009 at Police Station Gharghoda. Inquest was prepared as per Ex.P/2 and dead body of Kartik Ram was sent for postmortem to Community Health Center, Gharghoda, where Dr. SN Keshari, PW13 conducted autopsy. After examination he found that the death is caused due to the injuries and cardio respiratory failure; it was homicidal in nature and caused since 24 hours of the examination. During investigation, statements of the witnesses were recorded and after completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Gharghoda, who in turn, committed the case to the Court of Sessions. The trial Court framed charges against the 4 accused persons under Sections 452, 302 r/w Section 34 IPC to which they did not plead guilty and trial was conducted. After examination of the prosecution witnesses, statements of the accused persons were recorded and after hearing both the parties, the trial Court convicted the 2 accused/appellants and had acquitted the other 2 accused persons.

4. Learned counsel for the appellants in Cr. Appeal No. 85/2012 submits as under :

(I) That there is inherent weakness in the testimony of the prosecution witnesses and the same has been overlooked by the trial Court.

(ii) That on the same set of evidence, the trial Court had acquitted the other 2 accused persons and committed error of law in convicting the other 2 accused/appellants.

(iii) That any of the appellant had not used any kind of weapon and therefore, it cannot be held that there was pre-mediation to kill the deceased Kartik Ram and the case does not fall under Section 300 IPC.

(iv) The prosecution has failed to establish any motive and looking to the postmortem report, the accused/appellants are not guilty of causing murder of the deceased.

Learned counsel has placed reliance on 1960 CrLJ 827, *Urmese Vs. State of Kerala*, 1992 Supp (2) SCC 218, *Ms. Formina Sebastio Azardeo and Others Vs. State of Goa, Daman and Diu*, 1993 Supp (1) SCC 217, *Patel Rasiklal Becharbhai and Others Vs. State of Gujarat*, (2005) 10 SCC 597, *Adu Ram Vs. Mukna and Others*.

5. *Per contra*, learned State counsel submits that the judgment of conviction passed against Salik Ram and Anand Ram is strictly in accordance with law and the same is not liable to be interfered with by this Court and acquittal of the respondents in Acquittal Appeal No.95/2012 namely- Maniram and Chunnilal is bad in law as the trial Court has convicted rest of the 2 accused persons on same set of evidence. Version of the eye-witnesses is natural and truthful and there is no reason for the trial Court to acquit these 2 accused persons.

6. We have heard counsel for the parties and perused the material on record.

7. Dr. S.N.Keshari, PW13 conducted autopsy on the dead body of the deceased Kartik Ram on 7.11.2009 brought by Police Constable No. 545, Anil Sahu of Police Station Gharghoda. After examination at 2.00 pm, the expert noticed following injuries:

- (I) Contusion on right cheek with abrasion of 4.5 x 3 cm
- (ii) Contusion with abrasion – red colour on forehead of 3 x 1cm
- (iii) Contusion on left side chin of 4.5 x 2 cm
- (iv) Contusion on right temporal 4.5 x 3 cm Ecchymosis present below injury

- (v) Contusion on middle suprasternal area. Ecchymosis with blood clot present – 5 x 3.5 cm
- (vi) Contusion over chest, midline sternum 5 x 2 cm. Blood clot present behind sternum after opening
- (vii) Fracture of right 3rd and 4th ribs

Dr. found that cause of death is cardio respiratory failure and nature of death is homicidal. He further opined that the deceased died since 24 hours of the examination. Dr. has been subjected to lengthy cross examination, but nothing could be elicited from him and he remained firm on his opinion. There is no other expert report in the record and the opinion is unrebutted. Therefore, the conclusion of the trial court is right that the death of the deceased is homicidal.

8. Ganeshi Bai, PW3 is wife of the deceased who lodged FIR (Ex.P/43) at Police Station Gharghoda on 6.11.2009. As per the FIR, 4 persons namely- Salik Ram, Gudda, Chunniram and Maniram were named as assailants of the deceased. As per statement of Ganishi Bai, PW3 on the date of incident at about 10.00 pm, deceased Kartik Ram was taking his meals in the house and at the same time, appellant Anand Ram @ Gudda came in the house and dragged him to the court yard and thereafter, Salik Ram and Ogar Singh assaulted the deceased severely and he died on the spot. This witness has been subjected to lengthy and searching cross

examination, but she has remained firm in her version and there is nothing to disbelieve the testimony of this witness. Smt. Chaitmati, PW5 deposed that appellant Salik Ram, Gudda, Chunnilal, Ogar and Paitram have assaulted his father Kartik Ram by fists and legs and he succumbed to the injuries caused by these persons. She has also been subjected to detailed cross examination, but the facts narrated in the examination in chief are not rebutted. Ratthoram, PW12 is son of the deceased Kartik Ram. He deposed that appellant Salik Ram, Anand Ram @ Gudda Chunnilal and Maniram entered into his house and assaulted his father by leg, stone and club and he died due to the injuries caused by the accused persons. Puniram, PW1 and Ghuraaram, PW2 are the witness of inquest. Smt. Fulkuvvari, PW4 is a Patwari, who prepared the spot map. Sukhdev, PW6 and Budhudas PW7 are the witnesses of inquest. Vishwanath, PW8, Naresh Kumar Agrawal PW9 and Rajendra Gupta PW10 are the persons to whom Ganeshi Bai wife of the deceased had informed about the incident. Chandrashekhar Dhruv, PW15 is the Police Inspector who has investigated the matter. Naveen Kumar Rathiya, DW1 and Vinod Sharma, DW2 are the persons who have visited Police Station during investigation.

9. Upon careful scrutiny of the evidence adduced by the prosecution, it appears that though the appellants were more in number but they all were without arms and from the evidence of the prosecution, it is established that the injuries have been caused by fists and leg. As the injuries were caused

only by kick and fist blows, we find it difficult to hold that the appellants had intended to commit murder of the deceased and in our view they wanted to severely assault the deceased. However, in causing the injuries, as noticed in the postmortem report, the appellants must be attributed the knowledge that by their acts they were likely to cause death of the deceased or such bodily injury as is likely to cause his death. The offence in this case would therefore be culpable homicide not amounting to murder as per third clause of Section 299 IPC, punishable under Section 304 Part II of IPC.

10. The appellants are in jail since 7.11.2009 and they have undergone the sentence of 7 years and 10 months. In view of the above, Cr. Appeal No. 85/2012 is partly allowed. The conviction of the appellants- Salik Ram and Anand Ram for the offence under Section 302 r/w Section 34 IPC is altered to Section 304 Part II r/w Section 34 IPC and they are sentenced to the period already undergone. The judgment of conviction and order of sentence under Section 452 IPC is maintained, for which the Trial Court has sentenced them for imprisonment for 2 years and they have already suffered the same. In addition to that each of the appellant will pay a fine of Rs.3000/- (Rs.3000/- + 3000/- total Rs.6000/-) before their release before the trial Court and the amount of Rs.6000/- will be paid to the wife of the deceased, Kartik Ram, legal representatives of Kartik Ram failing which

each will suffer imprisonment for one year. With the above modification of the sentence, the appeal is partly allowed.

Acquittal Appeal No.95/2012

11. So far as Acquittal Appeal No. 95/2012 is concerned, Ganeshi Bai, PW3, who is wife of the deceased and lodged FIR has not stated that the respondents Maniram and Chunnilal had entered into her house. Ganeshi Bai, PW3 is the natural and real witness of the incident as she was present in the house at the time of incident. When this witness has not stated anything in her statement regarding the presence of these 2 respondents, version of other witnesses namely Smt. Chaitmati, PW5 and Ratthoram, PW12 is contradictory to the version of this eye-witness. Looking to the material contradictions regarding these 2 respondents, the trial Court came to the conclusion that it is not safe to convict these respondents for commission of the offence.

12. It is a settled law that if two views are possible, then the view supporting version of the defence side should be accepted. The view taken by the trial Court regarding these 2 respondents is one of the plausible view and we are not in a position to interfere with the same. As per settled principle of law that greater the offence, stricter the proof and when anyone is charged for heinous crime, the evidence must be to the satisfaction of

the Court. As the scope in appeal against acquittal is limited, we are of the view that the judgment of acquittal regarding these 2 respondents is not liable to be interfered with and the same is affirmed.

13. Accordingly, the Acquittal Appeal filed by the State is liable to be and is hereby dismissed.

Sd/
(Pritinker Diwaker)
JUDGE

Sd/
(Ram Prasanna Sharma)
JUDGE