

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 11-09-2017

Judgment delivered on 10-10-2017

Criminal Appeal No. 229 of 2010

Ayodhya S/o. Baratu Kewat, Aged about 32 years, Resident of Bundela, Police Station Shivrinarayan, District Janjgir Champa (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Shivrinarayan, District Janjgir Champa (C.G.)

---- Respondent

For Appellant	:	Mr. V.C. Ottalwar, Advocate.
For Respondent/State	:	Mrs. Smita Ghai, Panel Lawyer.

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

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

- 1) This appeal is directed against the judgment of conviction and order of sentence dated 03.03.2010 passed by the Special Sessions Judge Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989, Sessions Division Janjgir Champa (C.G.), in Special Sessions Trial No. 100 of 2009, convicting the accused/appellant under Section 302 of the IPC and sentencing

him to undergo imprisonment for life and to pay fine of Rs. 2,000/-, with default stipulation.

- 2) As per the prosecution case, name of deceased is Surendra Singh Kanwar. It is alleged that on 07.02.2009 at about 20.30 PM in village Bundela, the deceased was sitting on a bench lying in front of the grocery shop of Ramswaroop Nai. At that time accused/appellant armed with rod came there and inflicted various blow over the head, throat and temple of the deceased as a result of which the deceased fell down on the spot and blood was oozing out and he succumbed to the injuries. The incident was witnessed by Munna Shrivastava, Murli Shrivastava, Harnarayan Shrivastava and Santosh Shrivastava. On the report of Baratu Singh Kanwar, merge Ex.P-2 was recorded and on the basis of merge, First Information Report Ex.P-1 was registered against the appellant in Police Station Shivrinarayan. Postmortem of the deceased was conducted at Civil Dispensary, Shivrinarayn. During investigation, statements of the witnesses were recorded under Section 161 of the Cr.P.C. After completion of the investigation, charge sheet was filed against the accused/ appellant in the Court of Judicial Magistrate First Class, Janjgir, who, in turn, committed the case to the Court of Sessions Judge, Janjgir Champa. The appellant was charge sheeted under Section 302 of the IPC to which he did not plead guilty, therefore, trial was conducted and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C., was recorded and after completion of trial, the trial Court considering the material available on record by the

impugned judgement convicted and sentenced the accused/appellant as mentioned above.

3) Learned counsel appearing for the accused/appellant submits as under:

- (i) That there was no sufficient light at the place of occurrence to identify anyone and therefore, statement of so called eye witnesses namely Baratu Singh (PW-1) and Harnarayan (PW-8) are not reliable.
- (ii) That there are inconsistencies between the ocular and medical evidence adduced by the prosecution and the evidence put forth by the prosecution is not reliable.
- (iii) That the weapon of assault discovered on the memorandum statement of the appellant is of no help to the prosecution in absence of serological report regarding blood group matching with the blood group of the deceased.
- (iv) That the prosecution has failed to establish motive behind commission of offence and the trial Court stretched its imagination for convicting the appellant which is not permissible under the law.

4) Learned counsel for the Appellant in support of his argument, placed reliance on **Hem Raj and others vs. State of Haryana 2005 Cri.L.J. 2152, Noorahammad and Others vs. State of Karnataka 2016 Cri. L. J. 1232 and Samghaji Hariba Patil vs.**

State of Karnataka (2007) 1 SCC (Cri) 113 and further submits that the appellant be acquitted of the charge levelled against him.

- 5) *Per contra*, learned State counsel supporting the impugned judgement has submitted that the judgement of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.
- 6) We have heard counsel for the parties and perused the material on record
- 7) To substantiate the charge prosecution has examined as many as 10 witnesses. The appellant did not examine any witness in his defence.
- 8) Dr. Anvita Dhruv (PW-4) conducted autopsy on the dead body of the deceased on 08.02.2009 at about 1.00 am, the dead body of the deceased was brought by constable No. 428, Tirathram, Police Station Shivrinarayan. The body of the deceased was identified by Uttara, Shohan Kumar and Chhotelal. After examination of the dead body doctor noticed the following injuries.
 - (i) Rigor mortis was present on lower and upper limb.
 - (ii) Swelling full on the face and hands.
 - (iii) Lacerated wound on both parietal region of the skull bone in the size of 3x4 cm irregular margin.
 - (iv) Lacerated wound on right side on the skull bone in the size of 4x5 cm.
 - (v) Contusion on left side of the parietal part of the skull bone in the size of 5x7 cm irregular margin.

- (vi) Lacerated wound in front of right ear in the size of 3x3 cm irregular margin.
- (vii) cut mark on the right ear lobule.
- (viii) Increased wound below the mandible in the size of 10x18 cm.
- (ix) Lacerated wound on great vessels, veins, trachea and learning muscles.
- (x) Fracture seen on left and right side of parietal bone.

Doctor opined that the cause of death is cerebral hemorrhage due to head injury and all injuries are antemortem in nature and time of death since 12 to 19 hours.

- 9) Baratu Singh (PW-1) is the witness of the incident. He deposed that deceased Surendra Singh Kanwar was sitting near the shop of Munna @ Ramswaroop at 8.30 PM in the night at the same time appellant came with iron rod and assaulted on the head, throat and ear of the appellant and left him in pool of blood and the appellant fled away from the spot and the deceased died instantaneously on the spot. Evidence of Baratu Singh (PW-1) is fully supported by the evidence of Harnarayan Shrivastava (PW-8). Harnarayan Shrivastava (PW-8) deposed that the deceased was sitting near the grocery shop of Ramswaroop and the appellant assaulted him with iron rod on the head. Both the witnesses have been subjected to incisive and searching cross-examination but nothing material could be elicited in their cross examination to discard their testimony. True it is, that witnesses have admitted that at the time of incident there was dark but from their statement it is clear that the deceased and the

appellant were visible to both these witnesses and both the witnesses were very close to the grocery shop of Ramswaroop Nai where the incident occurred. From the entire evidence it cannot be inferred that they were not in a position to witness the incident. There is nothing on record to show that they have any grudge against the appellant to rope him in the false charge and, therefore, we have no reason to disbelieve the testimony of both the witnesses.

- 10) Nandram (PW-2) is the patwari who prepared the spot map. Govindram (PW-3) is sainik of Police Station Shivrinarayan who assisted in prosecution. R.K. Shukla (PW-5) was the incharge of Police Station Shivrinarayan sent First Information Report to concerned Magistrate as per (Ex.P-11), Bhuwansingh Kanwar (PW-6) is the witness of inquest. Chhotelal Sahu (PW-7) is the witness of seizure of rod on the discovery statement of the appellant, the same is supported by the statement of Santosh Kumar Pathak (PW-10) and Assistant Sub Inspector Police Station Shivrinarayan. S.R. Bhagat (PW-9) is Sub Divisonal Officer(Police) who conducted the investigation.
- 11) Considering the facts and circumstances of the case all the judgment cited by the learned counsel for the appellant are completely distinguishable to the fact of the present case. On careful scrutiny of the evidence adduced by the prosecution it is clear that the accused/appellant had come with an iron rod and assaulted mercilessly to the deceased. From the act of the appellant it is clear that he was determined to kill the deceased

therefore, he assaulted on the vital part of the deceased repeatedly and brutally and caused instant death of the deceased. The act of the appellant clearly false under section 300 of the IPC and the same is the offence of murder for which the trial Court has convicted the appellant.

- 12) Thus in the aforesaid view of the matter this Court is of the considered opinion that the findings recorded by the trial Court do not suffer from any legal flaw warranting inference in this appeal. Resultantly, the appeal being without any force is liable to be and is hereby dismissed as such with the affirmation of the judgment impugned. As the appellant is already reported to be behind the bars, no further order for arrest etc is necessary.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE