

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 276 of 2007

- Shammi Kappor, S/o. Tarachand Satnami, aged about 34 years
- Krishna Kumar S/o Tarachand Satnami, aged about 35 years
- Tarachand S/o Chhotku Satnami, aged about 50 years,

All residents of Bakarkuda, Outpost Malhar, Police Station Masturi District-Bilaspur,

---- Appellants

Versus

- State Of Chhattisgarh Through Police Station Masturi, District Bilaspur

---- Respondent

For Appellants	: Shri Uttam Pandey, Advocate
For Respondent/State	: Shri Neeraj Mehta, P.L.

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

Judgement on Board by P. Diwaker

01/02/2017

This appeal arises out of judgment and order dated 19.02.2007 passed by Additional Sessions Judge and Special Judge, (Atrocities) Bilaspur, in S.T. No. 317/2004 convicting the accused/appellants under Section 302 of IPC and sentencing them to undergo imprisonment for life with fine of Rs. 1,000/- each plus default stipulation.

2. In the present case, name of the deceased is Laxman Yadav. Laxman Yadav was a labour contractor and in the year 2004 he gave

advance amount to the accused persons and some other villagers and took them to Uttar Pradesh to work in a brick kiln. Accused/appellants instead of working there came back to their village at Bilaspur. Further case of the prosecution is that deceased asked the accused persons to return the advance amount which was taken by them and on account of which some dispute arose between the accused persons and the deceased. It is said that on 30.06.04 at about 8.30 p.m. accused persons along with some villagers went to the house of deceased and started abusing him. When the deceased and his father Chhahura Yadav objected, they assaulted them with club and battle-axe. When the matter was intervened by his mother Puniya Bai (PW-9) and wife of deceased Santoshi Bai (PW-10) they too were assaulted by the accused persons. In the incident, deceased Laxman is alleged to have suffered number of injuries and likewise Chhahura Yadav, his daughter Hirmani and Santoshi Bai have also suffered injuries. This incident was witnessed by Basant (PW-1), Nanki (PW-2), Amrit Lal (PW-3) and Johan Das (PW-11). Santoshi Yadav (PW-10) wife of the deceased lodged FIR Ex.P-43 which was registered at police station Malhar against the accused/appellants except accused Shammi Kapoor at police station Malhar under Sections 147, 148,307/149 IPC. Injured Laxman Yadav, Chhahura Yadav, Santoshi Bai and Hirmani were taken for medical examination to Primalry Health Centre, Malhar where Dr. Pradeep Kumar Ghosh had examined and noticed six injuries on the body of Chhahura Yadav, 4 injuries on the body of Laxman Yadav, two injuries on the body of Santoshi Yadav and two injuries on the body of Hirmani Bai. On 30.06.04 itself all the injured were referred to CIMS Bilaspur. However in the intervening night of 30.06.04-01.07.04 at about 1.10 a.m. Laxman Yadav succumbed to the injuries. Merg

intimation Ex.P-42 was recorded at the instance of ward boy. Inquest on the body of deceased was prepared vide Ex.P-45 and body was sent for postmortem examination which was conducted by Dr. A.K.Shukla (PW-15) vide Ex.P-34 on 01.07.04 who opined that the cause of death was shock due to head injury, chest injury and hemorrhage and death was homicidal in nature. After investigation, charge sheet was filed against the accused/appellants under Sections 147, 148, 302, 302/149, 307, 307/149, 323 and 323/149 IPC and accordingly charges were framed.

3. In order to establish the guilt of the accused/appellants, prosecution has examined 20 witnesses. Statement of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case. This apart two defence witnesses were examined.

4. After hearing the parties, the trial Court by judgment impugned, has acquitted Ram Kapoor, Dilip Kumar and Leela Ram of the charges levelled against them whereas convicted and sentenced the accused/appellants as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is that

i) a counter case was lodged by Chhahura Yadav (PW-8) against Tara Chand and Sukhchand and they were tried in S.T. No. 132/04.

ii) it is the other party who was aggressor and thus the accused/appellants cannot be convicted for committing the murder of

the deceased.

iii) on the same set of evidence the trial court has acquitted three accused persons and therefore the present appellants ought to have been acquitted.

iv) there are material contradictions in the statement of the eyewitnesses namely Chhahura Yadav (PW-8), Puniya Bai (PW-9) and Santoshi (PW-10) and considering their statements the appellants deserve to be acquitted.

v) the genesis of the case has been suppressed and this has been admitted by the Investigating Officers K.L.Nayak (PW-13) and C.Kerketta (PW-17).

vi) though the independent witnesses were available but the investigating Officer has not made any effort to record their statement and then to examine them before the court.

vii) the name of appellant No.1 Shammi is not there in the FIR or in the diary statement of the witnesses.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that

i) the eyewitnesses Chhahura Yadav (PW-8), Puniya Bai (PW-9) and Santoshi (PW-10) are very consistent and there is no reason to disbelieve them.

ii) merely because Chhahura Yadav (PW-8), Puniya Bai (PW-9), Santoshi (PW-10) and Johan Das (PW-11) are the relatives, their statement cannot be discarded.

iii) in the incident Laxman Yadav has died and thus liability on someone is to be fixed and that the accused persons have assaulted the

deceased and they have been rightly convicted.

iv) Chhahura Yadav (PW-8), Puniya Bai (PW-9) and Santoshi (PW-10) are the injured eyewitnesses and their statement carries very wide importance than the statement of normal eyewitnesses,

7. Heard counsel for the parties and perused the material on record.

8. Basant (PW-1) is a witness to memorandum of Ex.P-1, P-3,P-5, P-7,P-9 and seizure Ex.P-2, P-4, P-6, P-8 and P-10 has been declared hostile. He however has admitted his signature on these documents. Nanki (PW-2) and Amrit Lal (PW-3) reached the place of occurrence after the incident had taken place. Dr. Pradeep Kumar Ghosh (PW-4) examined injured Chahura vide Ex. P-12 and noticed six injuries, examined Laxman vide Ex.P-13 and noticed four injuries, examined Santoshi (PW-10) vide Ex.P-14 and noticed two injuries, examined Hirmani daughter of deceased and noticed two injuries. He has stated that the injuries sustained by them could have been caused by the seized club which was shown to him on 26.04.04. He has stated that the injuries sustained by deceased Laxman could have been caused to him with the battle-axe. Dr. Gopal Singh Kanwar (PW-5) examined injured Chhahura and noticed fracture of ulna bone. In his opinion the injuries could be caused due to fall. Bishun (PW-6) is the witness to seizure Ex.P-23, has not supported the prosecution case. He however admits his signature. Kumar Bhaskar (PW-7) is also a witness to memorandum and seizure Ex.P-22 and P-23 has not supported the prosecution case and has been declared hostile. Chhahura (PW-8) is the injured eyewitness while supporting the prosecution case has stated that he knew all the accused persons and they are from his village and deceased Laxman was his son. He has stated that on the date of

incident, at about 7.00 p.m. when he was sitting in the house of one Dhajju accused persons came there and started abusing his son. He has stated that accused Tara Chand was carrying battle-axe whereas other accused persons were carrying clubs. He has stated that they took his son along with them to the roadside and started assaulting him, when he intervened, he too was beating him as a result of which his right elbow got fractured and suffered injuries on his head. He has further stated that his son was beaten by Tarachand, Shammi, Krishna, Godal, Chhunni and he was injured severely on his testicles, chest and head. He has stated that the incident took place near the house of one Bhuneshwar Yadav and when he raised his cries Johan and Nanki Yadav came to his rescue and Tarachand was running away from the spot however he fell on the stone and suffered injury. He has stated that thereafter the villagers took him and his son to home and at that time his son was alive but was unconscious. He has stated that later on they went to the police station for lodging the report. He has stated that he remained in the hospital for about 18-19 days whereas his son expired on the date of incident itself. He has further stated that Santoshi Bai and Hirmani wife and daughter of the deceased were beaten by accused Krishna. In cross examination through there are contradictions in their statement but the fact remains that he is the injured eyewitness and his medical report also supports his version that in the incident he had suffered injuries and the deceased died after sustaining the injuries. Puniya Bai (PW-9) mother of the deceased while supporting the prosecution case has stated that the accused persons came to her house and asked his son Laxman to return the money and after hearing the cries, her daughter-in-law Santoshi and son Chhahura went to the place of occurrence and thereafter other family members followed them

and saw the accused/appellants assaulting her son. She has stated that accused Dilip was carrying battle-axe whereas other accused were carrying clubs with which they assaulted her son as a result of which he suffered injuries on his body and fell unconscious. She has stated that when she and her daughter-in-law intervened, they too were assaulted by the accused. She has further stated that her husband Chhahura also intervened in the matter and he was also beaten. She has stated that with the help of the villagers, her son was taken home and from there to the police station to lodge the report. In cross-examination there appears to be some contradictions in the statement of this witness but she remained firm so far as the allegations made against the accused persons and causing injuries to deceased Laxman, herself and her daughter-in-law. Though from para 18 of the cross-examination it also appears that she had weak eyesight but she reiterates that it is the accused persons who caused injury to her son/deceased. Santoshi (PW-10) is the wife of the deceased and in the incident she also suffered injuries and her statement is almost similar to that of her mother-in-law and father-in-law. Johan Das (PW-11) has not supported the prosecution case and has been declared hostile. Sunil Kumar Jangde (PW-12) is the formal witness who helped in the investigation. K.L.Nayak (PW-13) is the Investigating Officer. In para 20 he admits that he did not make any effort to enquire as to who was the aggressor party and later on he stated that he had not done so because the initial investigation was done by his predecessor. Dr. A.K.Shukla (PW-15) had conducted postmortem examination on the body of deceased Laxman vide Ex.P-34 and opined that the cause of death was cause of death was shock due to head injury, chest injury and hemorrhage and death was homicidal in nature. C.Kerketta (PW-17) SI did part of the

investigation. In para 15 he has admitted that during investigation he came to know that accused Tarachand, Shammi Kapoor and Ram Kapoor had also suffered injuries. However he could not get any intimation as to which party was the aggressor. T.R. Sidar (PW-19) and N.K.Tiwari (PW-20) had done part of the investigation.

Sanjay Bhargav (DW-1) has deposed in respect of acquitted accused Dilip. Shishupal (DW-2) has stated that accused Tarachand also suffered injuries and there was some quarrel between the two parties.

9. Close scrutiny of the evidence makes it clear that in the FIR Ex.P-43 there is no mention of accused Shammi. Likewise in the diary statement of Chhahura (PW-8) Puniya (PW-9) Santoshi (PW-10) and Hirmani (not examined) name of Shammi has not been mentioned as one of the assailant. Considering this aspect of the case, possibility of false implication of Shammi Kapoor cannot be ruled out. Thus considering the facts and circumstances of the case and the entire evidence as adduced by the prosecution, we are of the view that appellant No.1 Shammi Kapoor deserves to be acquitted by giving benefit of doubt. Accordingly, the conviction and sentence awarded to him under Section 302 IPC is set aside. He is acquitted of the charges framed against him.

10. So far as the role of other accused persons namely Tara Chand and Krishna Kumar is concerned all the injured eyewitnesses i.e. Chhahura (PW-8) Puniya (PW-9) Santoshi (PW-10) and Hirmani (not examined) have categorically deposed that both these accused persons came there carrying battle-axe and club. The eyewitnesses have also stated as to the manner in which these two appellants have caused

injuries on them. Medical report of the injured witnesses confirms that they were assaulted by these accused persons and likewise the autopsy report of the deceased Laxman also confirm the fact that he died after sustaining injuries caused by the appellants. Thus conviction of these accused/appellants cannot be faulted with.

11. Yet another important aspect of the case is that accused persons reached the house of Laxman Yadav, took along with them, assaulted him and then caused his death. In the counter case i.e. S.T. No. 132/2004, Chhahura, Sukhchand and Daduram have been acquitted by the trial court under Section 325/34. Even assuming that in the incident the appellants have suffered some injuries but merely on the basis of it they cannot be acquitted for committing the murder of deceased. There is no evidence on record that it is the deceased party who was the aggressor and had first caused injuries to the accused persons. In absence of any evidence to this effect we find no substance in the argument of the counsel for the appellants that it is the accused party who was the aggressor and therefore the appellants cannot be convicted for convicting the murder of the deceased.

12. In the result, appeal is partly allowed. As regards the conviction of appellant Nos. 2 & 3 are concerned, the same are maintained. They are reported to be on bail. Their bail stand cancelled. They be taken into custody to serve out the remaining part of their sentence.

Sd/-

Pritinker Diwaker
Judge

Sd/-

R.C.S.Samant
Judge