

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 183 of 2011**

- Gudram S/o Cherga Raut Aged About 19 Years R/o Village Sudhapal, Padaghat Para, Distt. Bastar Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh

---- Respondent

And**CRA No. 184 Of 2011**

- Shanker S/o Sukhdev Bhatara Aged About 19 Years R/o Village Sudhapal Gadthaghat Para, Thana Lohandigudha, Distt. Bastar Chhattisgarh.

---- Petitioner

Vs

- State Of Chhattisgarh

---- Respondent

For Appellants	:	Shri C. R. Sahu and Ms. Sofiya Khan, Advocates
For Respondent/State	:	Shri U.K.S. Chandel, Panel Lawyer

Division Bench: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on board by Pritinker Diwaker**23/05/2017**

The aforesaid two appeals i.e. Criminal Appeal No.183 of 2011 and Criminal Appeal No.184 of 2011 arises out of common judgment dated 31-12-2010 passed by the Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.73 of 2009. These two appeals are being disposed off by this common

judgment.

2. As per prosecution case, on 16-04-2009, deceased Mohan Muriya , after consuming liquor had abused the accused persons also slapped the accused Gudram. It is said that reacting to the act of the deceased, the accused persons also gave hand and fists blow to Mohan Muriya and then, strangled him and threw his dead body near the forest. The body of the deceased was noticed by Nilabati, PW-3 and Maniram, PW-4, who passed on the said information to Dibhuraam, PW-9, who in turn lodged merger intimation, Ex.P-13 on 18-04-2009. Immediately thereafter, FIR, Ex.P-17 was registered against the appellants under Sections 302, 201/34 of IPC. Inquest over the dead body was conducted on 18-04-2009 vide Ex.P/6 and the dead body was sent for postmortem. The postmortem was conducted on 18-04-2009 by Dr. N. S. Nag, PW-2 vide Ex.P/2 and as per postmortem report, following injuries were noticed:-

- (I) Ligature mark on throat, which was down below the tracheal region.
- (II) Depressed wound on right side of temporal region of skull and length and width of incised wound was 2x2 inches.
- (iii) Scratch mark on the right side of chest and length & width of scratch marks was 4 x 4 inches and blood stained.
- (iv) Lacerated wound on the occipital region of skull and size of that injury was 1 Inches long and 0.2 cm deep with blood stains.

As per the postmortem report, the cause of death was asphyxia due to strangulation and the death was homicidal in nature. On 19-04-2009, joint memorandum of the accused persons was recorded vide Ex.P-8 pursuant to which, Seizure vide Ex.P-9 and Ex.P-10 was effected, by which, certain burnt clothes and stones were seized. In the present case, neither there is a Forensic Science Laboratory Report nor Serological Report. The trial Court has framed charge against the accused persons under Sections 302 and 201/34 of IPC.

3. In order to prove the guilt of the accused persons, the prosecution has examined as many as 9 witnesses. The statements of accused persons were recorded under Section 313 of Cr.P.C. where they pleaded their innocence and false implication. Hence, this appeal.

4. Counsel for the appellant submits that the two appellants have been convicted solely on the basis of statement of Nilabati, PW-3, but she has not stated anything against the appellants. It has been argued by counsel for the appellants that in fact, Nilabati, PW-3 had not seen the actual occurrence, because, the incident had taken place in the night and Nilabati, PW-3 was confused as to whether the person being beaten was her husband or somebody else. It is also submitted that Maniram, PW-4 has also not supported the prosecution case, and that the conduct of Nilabati, PW-3 is very unnatural in keeping silence for about 24 hours and then making disclosure to her husband. It is submitted that the appellants had caused injury to the deceased by hands and fists and therefore, under no circumstance, they can be convicted under Section 302 of IPC. Lastly, it is argued that as the appellants are in jail since 19-04-2009 and thereby, they have already completed the jail sentence of 8 years, the sentence may be reduced to the period already undergone, in case, conviction is not going to be disturbed.

5. On the other hand, learned State counsel supported the impugned judgment and submitted that the conviction of the appellants are in accordance with law and there is no infirmity in the same. He submits that even if it is assumed that Nilabati, PW-3 has not seen the incident, this witness can be treated as a witness of last seen, who saw the accused persons in the company of the deceased. He further submitted that in addition to Nilabati, PW-3, Maniram, PW-4 and Bichha Bai, PW-6 have also supported the prosecution

case.

6. We have heard learned counsel for the parties and perused the records.

7. Nilabati, PW-3 is the main prosecution witness, who has stated that she knew the accused persons and also the deceased. She has also stated that from some distance, she had seen the appellants beating the deceased. However, on account of the distance, she could not see as to how the deceased was being beaten. She has further stated that on the date of incident, her husband was not at home and had returned at home in the midnight. Nilabati, PW-3 has stated that at that time, she did not disclose anything to him in the night but had informed him on the next day. According to this witness, after beating, the accused persons took the deceased to forest, where she noticed that the body of the deceased was covered by *murum*. She has further stated that her husband had disclosed about the incident to villagers. Thereafter, she states that the accused persons had beaten the deceased by club, however, she had seen the incident from a far off place. She thought that it is her husband, who was being beaten, but when she reached the place of occurrence, after hearing the sound, she came to know that it was not her husband. On account of fear, she went back to her house and thereafter saw the deceased lying on the ground. In cross-examination, she admits that the incident had taken place at about 8-9 PM in the night and she could not see as to by which weapon, the accused persons were beating the deceased. She has further stated that she had not seen the accused persons dragging the deceased nor had she seen the body of the deceased. She has further admitted the fact that this incident happened in the dark night. Though this witness was not confronted from her diary statement, but if her diary statement is seen, she has nowhere stated as to in what manner, the deceased was being beaten by

the accused persons. Maniram, PW-4, husband of Nilabati, PW-3, has stated that he had gone to forest along with Nilabati to collect firewoods and while returning home at about 4 PM in the evening, he saw the body of the deceased covered with *murum*. The dead body was also seen by his wife Nilabati, PW-3 and even she had informed about the quarrel between the deceased and the appellants. However, she did not disclose that the deceased was beaten by the accused persons. He has stated that his wife had informed him that the accused persons were beating the deceased and therefore, she thought that they were beating him. Thereafter, this witness was declared hostile. In cross-examination, he has stated that his wife had informed him that about 10-12 persons were quarreling on the date of incident but she has not disclosed him as to who had killed the deceased nor had she informed him as to who had dragged the body of the deceased. Dr. N. S. Nag, PW-2 has conducted postmortem of the deceased noticed various injuries as stated hereinabove. According to this witness, cause of death was asphyxia due to strangulation. Sinduram Mourya, PW-5 is a witness of inquest, in whose presence, the police officials examined the body of the deceased as well as certain articles were also seized from the place of incident. Ghanshyam Kashyap, PW-7 is a Patwari, who prepared the spot map, Ex.P-12, of the place of incident. D. P. Sahu, PW-8, is the Investigating Officer, who conducted necessary investigation in this matter, recorded the memorandum of the accused persons and made seizure of certain articles which were sent to Forensic Science Laboratory for examination. Dhibhram, PW-9 is the witness, who lodged the merg intimation, Ex.P-13, on the basis of which, First Information Report, Ex.P-17 was registered.

8. On the joint memorandum of the accused persons, seizure of burnt clothes has been made. However, there is no Forensic Science Laboratory or Serological report, which could connect the same with the commission of

offence. Close scrutiny of the evidence makes it clear that except the statement of Nilabati, PW-3 and Maniram, PW-4, there is nothing on record which could speak against the accused persons. If the evidence of Nilabati, PW-3 is seen minutely, it appears that she had not seen the actual occurrence because she herself has admitted that the deceased was dragged in the night. She has further stated that as initially, she thought that it is her husband, who was being beaten up, but when she reached the place of occurrence after hearing the quarrel like sound, she noticed that it was not her husband, but some one else.

9. Considering the statement of Nilabati, PW-3, which is replete of several contradictions and omissions, we are of the considered view that it will not be safe to convict the accused persons only on the basis of her testimony. The conduct of Nilabati, PW-3 is also required to be considered as to why she did not disclose the incident to her husband, after returning home in the night on the same day and disclosing the same to him on the next day, after returned home at 4 PM in the evening, after collecting firewoods from the forest. Maniram, PW-4 has not stated anything specific against the accused persons. If evidence of Nilabati, PW-3 is seen minutely, it appears that she has not seen the actual occurrence. Though, on the basis of joint memorandum of the accused persons, seizure of certain articles has been made but as the prosecution has utterly failed to connect the same with the complicity of the crime by obtaining Forensic Science Laboratory or Serological Report, such seizure cannot be used against the appellants.

10. Thus, after analyzing the overall evidence, we are of the view that the trial Court has erred in law in not granting the benefit of doubt to the accused persons. The prosecution has utterly failed to establish its case beyond reasonable doubt and therefore, we allow these appeals and set aside the

conviction and sentence of the appellants. The appellants, who are in jail, shall be set at liberty forthwith, if not required in any other case. The Registry is directed to take prompt steps for sending the copy of this judgment to the trial Court as well as to the concerned Jail Superintendent.

SD/-
(**Pritinker Diwaker**)
Judge

SD/-
(**Sanjay K. Agrawal**)
Judge