

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 810 of 2010

1. Mohar Sai, son of Late Jaikaran, aged 36 years,

2. Heera Sai, son of Chhattarsai Gond, aged 38 years,

Both R/o Village Chhindiya, P.S. Karhipara, P.S. Patna, Distt. Koriya (CG)

---- Appellants

Versus

- State Of Chhattisgarh through P.S. Patna, Distt. Koriya (CG)

---- Respondent

For Appellants	:	Shri Ashok Kumar Shukla, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Pritinker Diwaker,
Hon'ble Shri Ram Prasanna Sharma, JJ

Per P. Diwaker, J

11/07/2017

This appeal arises out of the judgment of conviction and order of sentence dated 14.9.2010 passed by the Additional Sessions Judge, Manendragarh at Baikunthpur, Distt. Koria, in ST No.118/2009 convicting the appellants under Sections 341/34 & 302/34 of IPC and sentencing each of them to undergo RI for six months and imprisonment for life plus fine of Rs.1000/- with default stipulation respectively.

02. In the present case, name of the deceased is Balsai. It is alleged that on 18.10.2009 at about 7.30 pm on account of old land dispute the

appellants caused number of injuries to the deceased by means of club. FIR (Ex.P/1) was lodged at 8.15 pm immediately after the incident by PW-1 Pawan Kumar under Sections 341, 307, 34 of IPC against the appellants. Injured Balsai was taken to hospital, however, there he was declared brought dead. Intimation (Ex.P/12) was forwarded at 8.30 pm by the doctor to the concerned police station, based on which merged intimation (Ex.P/19) was recorded at 8.45 pm on 18.10.2009. Inquest over the dead body was conducted vide Ex.P/16 on 19.10.2009 and thereafter the body was sent for postmortem which was conducted on the same day by PW-4 Dr. AK Sharma vide Ex.P/14. The autopsy surgeon noticed lacerated wounds on the left parietal region and left side of the face, fracture of left parietal and right temporal bone, there was intra-cranial hemorrhage, swelling on the temporal region, and abrasions on both the knees. In his opinion, the cause of death was coma caused by multiple fracture of skull bone and intra cranial hemorrhage and that the death was homicidal in nature. On the memorandum of the accused/appellants (Ex.P/4 & P/5), clubs were seized vide Ex.P/6 & P/7. However, there is no FSL report on record. After filing of charge sheet, the trial Court framed charges under Sections 341/34 and 302/34 of IPC against the appellants.

03. So as to hold the accused/appellants guilty, the prosecution examined 07 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, they examined one Saroj as DW-1.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above.

05. Counsel for the appellants submits as under:

(i) that both the eyewitnesses to the incident (PW-3 Smt. Geeta Bai and PW-5 Dheer Sai) are not reliable witnesses.

(ii) in fact, present is a case where eyewitness (PW-5) committed murder of the deceased and that is why he was detained by the police for about three days, as has come in the evidence of the witnesses, but unfortunately, the appellants have been falsely implicated.

(iii) that as per autopsy surgeon (PW-4), the injuries could have been sustained by the deceased due to fall. Further, in the application for postmortem sent by the police it has been mentioned that the motorcycle was of one Pawan Kumar and not of Dheer Sai as alleged by the prosecution.

(iv) that DW-1 Saroj has categorically stated that it is Dheer Sai who killed the deceased.

(v) even if the entire prosecution case is taken as it is, the appellants cannot be convicted under Section 302 of IPC as there was no premeditation on their part to commit the offence and the incident occurred all of a sudden in the heat of passion. As such, they can, at best, be held guilty under Section 304 Part-I or II of IPC and further considering their detention period, which comes to about seven years, after alteration of their conviction into 304 Part-I or II, they may be set free by sentencing them to the period already suffered by them.

Reliance has been placed on the judgments of Supreme Court in

the matters of ***Dudh Nath Pandey Vs. State of UP, AIR 1981 SC 911*** and ***Gurdial Singh and others Vs. State of Punjab, (2011) 2 SCC 768***.

06. On the other hand, supporting the impugned judgment it has been submitted by the State counsel as under:

- (i) that right from the beginning PW-3 and PW-5 are eyewitnesses to the incident and they have duly supported the prosecution case.
- (ii) that diary statement of PW-5 was recorded on the next day of incident i.e. 19.10.2009 wherein also he has categorically deposed that he saw the appellants committing murder of the deceased.
- (iii) that in the facts and circumstances of the case, it appears that DW-1 Saroj has been examined just to falsely implicate PW-5 and create a doubt on the prosecution case.
- (iv) that considering the nature of injuries and the brutality in beating the deceased where he has been caused injuries on his face and head which led to his death just after an hour of the assault, conviction of the appellants under Section 302 of IPC cannot be faulted with.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-3 Smt. Geeta Bai, widow of the deceased, has stated that she knew the accused/appellants. On the date of incident, PW-5 Dheer Sai came to her house and invited her and other family members for dinner. She along with her two children and sister-in-law proceeded to the house of Dheer Sai on foot whereas her husband Balsai was coming on the motorcycle with Dheer Sai. As soon as they reached the house of Deer Sai, she heard a noise and when she reached that

place, she saw the appellants beating her husband Balsai with clubs. Though she raised hue and cry for help but nobody came to his rescue. The accused persons also threatened her to kill. Her husband was taken to hospital where he succumbed to his injuries. In cross-examination but for minor variation, she remained firm. She has admitted the fact that there was a rumour in the village that PW-5 was having illicit relations with her. She also admits that for about 3 days police had detailed Dheer Sai but she has denied the suggestion that she has implicated the appellants falsely with the help of Dheer Sai.

09. PW-5 Dheer Sai has stated that on the date of incident he brought meat from market. At about 4 pm, deceased Balsai came to his house and said that the accused persons had also meat in their house but they did not offer him the same, on which he (this witness) told Balsai to have meals with family in his house. Thereafter, Balsai went back to his house. He asked his wife to prepare food for everyone. At 4 pm he invited Balsai and his family members and at about 6-7 pm he again went to the house of Balsai. PW-3, her sister-in-law and children left for his house on foot whereas Balsai sat on his motorcycle. On the way the appellants met them and started abusing them. He states that thereafter Balsai was pulled down by the accused persons and they started beating him by clubs. He too was chased by the accused persons but he ran away from the spot. He gave information to the police on cell phone and within 10 minutes the police reached there; injured Balsair was taken to hospital but was declared brought dead. He further states that clubs were seized from the accused persons. In cross-examination there appears to be minor contradictions in his

statement regarding identity of the vehicle, however, if his statement is read as a whole, it is apparent that he is firm on the point of witnessing the appellants assaulting the deceased with club.

10. PW-4 Dr. AK Sharma conducted postmortem on the body of the deceased on 18.10.2009 vide Ex.P/14 and noticed lacerated wounds on the left parietal region and left side of the face, fracture of left parietal and right temporal bone, there was intra-cranial hemorrhage, swelling on the temporal region, and abrasions on both the knees. Both the lungs were congested. In his opinion, the cause of death was coma caused by multiple fracture of skull bone and intra cranial hemorrhage and that the death was homicidal in nature. He admits that if a person falls on concrete drain or metalled road, such injuries could come. He further admits that such injuries could also be caused by spanner.

11. PW-1 Pawan Kumar is lodger of FIR (Ex.P/1) and is also a witness of memorandum of the accused persons Ex.P/4 & P/5 and seizure Ex.P/6 & P/7 of clubs. He has proved the aforesaid documents. PW-7 CS Verma, investigating officer, has supported the prosecution case.

12. DW-1 Saroj has stated that he saw the deceased and Dheer Sai on a motorcycle, the manner in which the motorcycle was being ridden it appeared that Dheer Sai was drunk. The said motorcycle fell into one drain and Balsai also fell into the drain and sustained injuries. He has further stated that the deceased made allegation against Dheer Sai that he was having illicit relations with his wife and that was the reason why he (Dheer Sai) had fallen him down into the drain and was beating. He has stated that Dheer Sai thereafter picked up a spanner

and caused injury with it to the deceased, however, the matter was intervened by Jeevanlal, Nandlal and Babula. He has further stated that for about three days he along with Dheer Sai, Jeevanlal and Nandlal were detained by the police.

13. Close scrutiny of the evidence makes it clear that on 18.10.2009 it is the accused/appellants who wrongfully restrained the deceased Balsai while he was going on motorcycle with PW-5 Dheer Sai, inflicted club injuries on the head and face of the deceased as a result of which he died only after one hour of the incident. The incident has been witnessed by PW-3 Smt. Geeta Bai and PW-5 Dheer Sai. Diary statements of both these witnesses were recorded on the second day of the incident i.e. 19.10.2017 wherein they have categorically stated as to the manner in which the deceased was done to death by the accused/appellants. Though DW-1 Saroj has stated that it is Dheer Sai who killed the deceased but taking into account the eyewitnesses account duly supported by the medical evidence, according to which corresponding injuries were noticed on the person of the deceased and that PW-1 Pawan Kumar, witness to memorandum of the appellants and seizure of club, has also supported the prosecution case, the evidence of defence witness does not inspire confidence of the Court, rather he appears to be a planted witness to cast a shadow of doubt on the prosecution case. Considering all this, we are of the view that the trial Court has not committed any illegality in placing reliance on the statements of PW-3 and PW-5 for holding the appellants guilty. Being so, complicity of the appellants in commission of the offence stands proved beyond all reasonable doubt.

14. We find no force in the argument of counsel for the appellants that in the facts and circumstances of the case, the act of the appellants being covered by exception of Section 300 of IPC makes them liable for conviction either under Section 304 Part-I or II of IPC. Considering the nature and extent of injuries, the manner in which the deceased was assaulted which led to fracture of left parietal and right temporal bone, resulting in his death just after an hour of such assault, it is clear that while inflicting such injuries the appellants had not only the intention to cause death of Balsai but also had every knowledge that such injuries would result in his death. This being the position, conviction of the appellants under Section 302/34 of IPC is based on proper appreciation of the evidence on record warranting no alternation by this Court. The judgments relied upon by the appellants are of no help to them as the facts of the present case are quite different from the cases cited by them.

15. In the result, the appeal fails and is, accordingly, dismissed. Conviction of the appellants under Sections 302/34 and 341/34 of IPC and sentences imposed thereunder are hereby maintained. They are reported to be in jail, therefore, no further order regarding their arrest etc. is required.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(R.P. Sharma)
Judge