

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 641 of 2006

1. Gopichand, S/o Sukalu Satnami, aged about 30 years.
2. Sunil Kumar, S/o Mohan Lodhi, aged about 25 years.
3. Durga Prasad, son of Premlal Lodhi, aged about 38 years.

Appellant No.1 to 3 are R/o Village Gajmarra, P.S. Dongargarh, District Rajnandgaon.

4. Parmanand, S/o Vishal Ram Lodhi, 45 years, R/o Ghumka, P.S. Ghumka, Distt. Rajnandgaon.

---- Appellants

Versus

- State Of Chhattisgarh, through District Magistrate Rajnandgaon.

---- Respondent

CRA No. 654 of 2006

1. Phool Bai, D/o Bodhram Satnami, aged about 25 years.
2. Narayan, S/o Bodhram Satnami, aged about 37 years

---- Appellants

Versus

- State Of Chhattisgarh, through Station House Officer, P.S. Dongargarh, District Rajnandgaon.

---- Respondent

&

CRA No. 740 of 2006

- Alias John, S/o I. Vilikat, aged about 31 years, resident of Village Gajmarra, Police Station Dongargarh, District Rajnandgaon (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Dongargarh, District Rajnandgaon.

---- Respondent

For Appellants	:	Mr. Akash Pandey, Miss Sharmila Singhai, & Mr. Arvind Dubey, Advocates.
For Respondent	:	Mr. Ravindra Agrawal, Panel Lawyer.

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

Judgement

Per P. Diwaker, J

04/05/2017

1. Since the above appeals have been filed against the judgment dated 31.7.2006 passed in S.T. No.74/05 by which the Special Judge (SC ST Prevention of Atrocities Act), Rajnandgaon convicted the accused/ appellants herein under Sections 148, 302/34 & 201 of the Indian Penal Code (for short 'the IPC') and sentenced each of them to undergo R.I. for 1 year & fine of Rs.100/-; R.I. for Life & fine of Rs.100/- and RI for 3 years & fine of Rs.100/-, with usual default clauses, respectively, the same are being disposed of by this common judgment.
2. In the present case name of deceased is Mayaram.
3. The prosecution case, in brief, is that accused/appellant Phoolbai after maintaining illicit relationship with deceased Mayaram for the last about 10-12 years had developed illicit relation with accused/appellant Alias John which was not liked by deceased Mayaram. It is further case of the prosecution that the deceased used to visit the house of accused/appellant Phoolbai often. On 13.8.2005 also the deceased had gone to the house of accused/appellant Phoolbai where he had quarrelled with her. On the same day at about 9-10 pm all the accused persons assaulted the deceased by stick etc. and when he became unconscious on account of injuries sustained by him, they took him along with them in a

jeep. On 14.8.2005 at 5.15 a.m. the Station Master (PW-1) received an information that a dead body of a male lying on the railway track near Down Line Pole No.930/020. He immediately forwarded the said information to the police station based on which merg (Ex.P-2) was registered. During inquest, the headless body was recovered from the railway truck, whereas the trunk was recovered from the field of one Dumar. The identity of dead body was revealed as that of the deceased. Trunk Panchnama was prepared vide Ex.P-21 and body panchnama of body was prepared vide Ex.P-26. Trunk was sent for post-mortem examination vide Ex.P-11 on 14.8.2006 which was conducted by Dr. Vipin Jain (PW-6) and he noticed that right shoulder & arm are crushed, soft tissue was blackened, upper part of humerus bone was fractured, contusion of 2x5cm in size on the sternum & chest wall. No other injury was present over the body. The doctor has opined that no definite opinion regarding cause and nature of death could be given.

The trunk was also sent for post mortem examination which was conducted by the doctor (PW-6) and he noticed following injuries;-

- one lacerated wound of 1" x 1.5" in size over the eyebrow,
- one deep abrasion of 1" below eyelid
- three abrasions of half inch on the chin.
- Wound of 3x1x1.5" in size at the back side of the head. Some part of occipital bone was broken. Covering of brain also ruptured.
- Fracture and clotted blood in the frontal side of the skull.

According to the doctor, the injuries found on the head & face of the deceased may be caused from heavy & blunt object and the injury present on the neck could be possibly from some sharp edged weapon. However, he has expressed his inability to tell the cause and nature of death.

4. Meanwhile, memorandum statements of accused/appellant Narayan,

accused/appellant Sunil Kumar, accused/appellant Alias John, accused/appellant Durga Prasad were recorded vide Ex.P-29, 30, 31 & 32 respectively and based on their disclosure statements, axe, shirt & button were recovered at the instance of accused/appellant Narayan vide seizure memo of Ex.P-37; rod and jeep vide at the instance of accused/appellant Sunil Kumar vide seizure memo of Ex.P-36; clubs from accused/appellant Alias John & Parmanand vide seizure memos of Ex.P-35 & P-36 respectively. On the basis of merg enquiry, FIR (Ex.P-47) was registered on 16.8.2006 for commission of offence under Sections 302, 201, 147, 148, 149 IPC and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. On completion of investigation, charge sheet was filed against the accused persons and the trial Court at the time of framing of charge framed the charges under Sections 148 & 302/34 IPC & Section 3 (2) (v) of the Act, 1989 against them. The prosecution in order to bring home the charges levelled against the accused/appellants had examined 17 witnesses in all. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
6. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, convicted and sentenced the accused/appellants in the manner as described above.
7. Learned counsel for the accused/appellants submits that
 - there is no evidence that the trunk and the head belonged to the body of the deceased.
 - though Jagdish (PW-1) saw the accused beating the deceased and taking him along with them, but he did not see the accused persons committing murder of deceased.

- conduct of PW-1 Jagdish in not disclosing the incident either to police or to anyone in the village creates a suspicion and renders his version of the incident is doubtful. It has come in the evidence that after seeing the incident Jagdish (PW-1) had gone to his work place and did not inform the police or anyone about the incident. Reliance is placed on. For this submission, reliance is placed in the matter of **Babu @ Sebastian vs. Circle Inspector of Police** reported in **AIR 2016 SC 3671** and **Shankarlal vs. State of Rajasthan** reported in **2004 AIR SCW 3437**.
- there is contradiction between the medical and the ocular evidence because according to Jagdish (PW-11) he saw the accused persons severely beating the deceased but the doctor who had conducted post-mortem examination did not notice any injury on the body of deceased. Reliance is placed on the judgment delivered in the matter of **Krishnegowda & ors vs. State of Karnataka by Arkalgud Police** reported in **AIR 2017 SC 1657**.
- Though human blood is said to have been found on the articles seized at the instance of appellants, but in absence of report of serological department opining the group of the blood found on the seized articles as that of the deceased and thus the prosecution has utterly failed to connect the alleged recovered articles with the commission of the offence.
- In the post mortem the doctor has not given any opinion regarding cause and nature of death and for the first time in the Court he has opined that the death was homicidal in nature and therefore this statement of the doctor cannot be used against the appellants.
- As per inquest (Ex.P-26), one suicide note was found in the wallet of the deceased wherein it has been stated by the deceased that he was

having relation with appellant for the last 13-14 years, however, all of a sudden his life has changed and under the compelling circumstances he is committing suicide. Considering this suicide note, the possibility cannot be ruled out that after sustaining some beating the deceased might have committed suicide.

8. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that the burden to explain as to what point of time and where they had left the deceased but they failed to do so. There is no reason for this Court to disbelieve the evidence of PW-1 who had last seen the deceased alive in the company of the accused and this witness has categorically stated that he saw the accused/appellants beating the deceased. He further submits that as the trunk and headless body of the deceased were not sent for post-mortem examination together, therefore, the doctor was not in a position to give definite opinion regarding cause and nature of death. He further submits that report of FSL is good enough to link the accused in committing murder of the deceased and non-production of report of serology will not adversely affect the case of the prosecution.
9. We have carefully considered the evidence, materials on record and the rival contentions and gone through the judgment of the trial Court.
10. Vishwanath Yadav (PW-1), Station Master, Railway Station Dongergarh, is the person who informed the police that a headless body of a male person is lying on the railway track.
11. Mahadev (PW-2) & Sher Singh (PW-3) have not supported the prosecution case and as such declared hostile.
12. Mapachand Dante (PW-4) is the Patwari who had prepared the spot map

of Ex.P-5. Kumar Mangalam (PW-5) is the police person who helped in the initial investigation.

13. Dr. Vipin Jain (PW-6) is the person who conducted post-mortem examination of the trunk and body of the deceased. He has deposed that he did not notice any injury on the body of the deceased. He has not given any opinion regarding cause of death of the deceased, however, he has admitted that injuries present on the head and shoulder may come in an accident by train. He has admitted that for the first time in the Court he has stating that the death was homicidal in nature. He has also expressed his inability to opine as to which injuries the deceased had suffered first.
14. Dhannalal (PW-7), Anil Kumar (PW-8) & Prakash Gunawant Rao (PW-9) have not supported the prosecution case and as such declared hostile.
15. Jagdish (PW-11) is the star witness of the prosecution. He has stated that his house is situated adjacent to the house of accused/appellant Phoolbai. About 6-7 months ago, mother of accused/appellant Phoolbai screamed by saying '*chor-chor*' whereupon he came out of his house and saw that mother of accused Phoolbai was returning to village. He has further stated that on 13th the incident of quarrel took place, the accused persons were beating the deceased and while continuing to beat them, took the deceased along with them. At that time the deceased was asking accused Fulbai to save him once. He has further stated that the accused persons, by beating the deceased took him towards the culvert of the village and he followed them. He has further stated that he has identified the accused persons in the light of the shop of one Sitaram. He has further stated that the street light was on and he saw the incident in the street light. He has further stated that Kotwar of the village also asked the accused not to beat the deceased to the extent that he may die. Subsequently he came to

know that the deceased died due to running over the train. He has further stated that deceased Mayaram and Phoolbai were having illicit relation. In Para-10 he has admitted that he did not inform about the incident to any panch or Sarpanch or to the police. From the cross-examination of this witness it appears that there are material contradictions in his statement from that of his diary statement.

16. Barelal (PW-12) & Vijay Kumar Verma (PW-13) did not support the prosecution case and turned hostile.
17. Lekhram (PW-15) is the witness of inquest (Ex.P-21), memorandum and seizure memos. He did not support the prosecution case and turned hostile. However, he has identified the headless body and trunk as that of the deceased. This witness has categorically stated that nothing was recovered from his presence and he was asked to sign some documents which he did without going through the contents thereof.
18. C.S. Uikey (PW-16) is the police person who did initial investigation in the matter. Emil Lakda (PW-17) is the investigating officer who has duly supported the prosecution case.
19. Close scrutiny of the evidence available on record makes it clear that the conviction of accused/appellants is solely based on the testimony of Jagdish (PW-11), who had deposed that on 13.8.2005 the accused persons, by beating deceased Mayaram took him towards the village culvert and next morning he came to know that the deceased died due to running over the train, but the testimony of this witness does not inspire confidence for accepting and acting upon it. According to Jagdish (PW-11), on the fateful day he saw the accused/appellants taking the deceased by beating in front of his house towards the culvert of village, he followed them and saw the incident in the light of shop of one Sitaram and in the street light as well. From the above evidence of PW-11 it is clear that

though he had witnessed the incident but he did not disclose this fact to anyone that he had seen the accused/appellants by beating the deceased took him along with them. Even after discovery of the trunk and headless body of the deceased, he did not disclose the aforesaid fact to the police and it is for the first time he discloses about the incident to the police on 17.8.2005 i.e. the day on which his statement under Section 161 CrPC was recorded. Conduct of this witness seems to be unnatural in not informing anyone else in the village that he had seen the accused/appellants by beating took the deceased with them. This casts a serious doubt on the credibility of the evidence given by Jagdish (PW-11). This witness has offered an explanation that since the parents of the deceased were also present on the spot, he did not disclose about the incident to anyone. Had it been true that the parents of deceased were present on the spot at the time of incident, they would have lodged the named report against the accused persons on 13th itself. It has also come in the evidence of PW-111 that village Kotwar Suklu had also reached the spot and asked the accused persons not to beat Mayaram (deceased) too much to die. The prosecution had cited said Suklu as a witness in the list of witnesses annexed to the final report, but, for the reasons best known, the prosecution did not examine him in the trial. Material corroboration to the sole testimony of PW-11 which could have come from this witnesses is, therefore, not available in the present case. Medical evidence also does not corroborate the evidence of Jagdish (PW-11) in respect of injuries sustained by the deceased. According to PW-11, he saw the accused/appellants taking the deceased by beating in front of his house, but the doctor conducting post-mortem examination over the body of deceased has categorically stated that there was no marks of any injury on the body of the body of deceased. This apart, it has come in the

evidence of PW-11 that due to village election, the relation between him and the accused/appellants were strained and thus the possibility of false implication of accused/appellants in the crime in question by this witness cannot be ruled out. It is, therefore, very difficult to accept the uncorroborated testimony of Jagdish (PW-11), who was on inimical terms with the accused/appellants.

Even assuming that on the fateful day PW-11 Jagdish saw the accused/appellants taking the deceased by beating in front of his house, this alone is not sufficient to connect the accused/appellants with the murder of deceased for the reason that as per Inquest (Ex.P-26) a suicide note was recovered from the wallet of the deceased wherein it has been specifically stated by him that sudden breakdown of 13-14 years relationship with accused/appellant Fulkunwar compelled him to put an end to his life. Strange enough this suicide note is not on record of the trial Court and no explanation has been offered by the prosecution for not producing this suicidal note before the Court. In these circumstances, the possibility of deceased committing suicide due to desertion by accused/appellant Fulkunwar cannot be ruled out.

As regards the recovery of axe & clothing from the appellant which were subsequently found to be stained with human blood in the report of FSL is concerned, the prosecution had cited Sukalu & Lekhram as the recovery witnesses in the list of witnesses annexed to the final report, however, out of these two, only one person has been examined for the reasons best known to the prosecution, who even did not support the prosecution case and turned hostile, which itself make the recovery of articles from the accused/appellants doubtful. According to Lekhram (PW-15), nothing was recovered in his presence and on being asked by the police, he had signed some documents without going through the contents

thereof. In our opinion, when the witnesses of recovery are not supporting the prosecution case to prove the recovery of weapon and turned hostile then it creates serious doubt upon the prosecution case. Furthermore, there is no report of Serologist that the group of blood, which was found on the articles seized at the instance of accused/appellant and blood group of the deceased was same. Therefore, the recovery of bloodstained axe & stick from the accused/appellants are also of no help to the prosecution and this can not connect the complicity of accused/appellants with the crime.

As regards the conviction of accused/appellants under Sections 148 & 201 IPC, when the evidence of Jagdish (PW-11) regarding the main incident relating to the assaults on the deceased is disbelieved, conviction of the accused/appellants under Sections 148 & 201 IPC on the basis of the same evidence cannot be sustained and therefore, they are also entitled to acquittal under Sections 148 & 201 IPC.

20. For the foregoing reasons, we are of the opinion that complicity of the appellants in the crime in question has not been established by the prosecution beyond reasonable doubt and consequently they are entitled to be acquitted of the charges under Sections 148, 302/34 & 201 IPC by extending them benefit of doubt.
21. In the result, all the three appeals are allowed. Conviction and sentence of the appellants under Sections 148, 201, 302/34 of the IPC are hereby set aside and they are acquitted of those charges by extending them benefit of doubt. The appellants are in custody. They be set-free forthwith if not required to be detained in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

roshan/-