

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 514 of 2011**

1. Rameshwar S/o Late Shri Sonu Pahadi Korawa, aged about 45 years
2. Ratiya S/o Late Shri Sonu Pahadi Korawa, aged about 29 years
3. Chikaru S/o Sukhan Ram Pahadi Korawa, aged about 35 years

All are R/o Pampapur, Gajarbhawana (Harraghat), Police Station- Darima,
District Sarguja (C.G.)

---- Appellants**Versus**

State of Chhattisgarh, Through – Police Station – Darima, District Sarguja
(C.G.)

---- Respondent

For Appellants : Shri R.R. Soni, Advocate

For Respondent/State : Shri Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Sanjay K. Agrawal****Judgment On Board By Justice Pritinker Diwaker****23/05/2017**

1. This appeal arises out of impugned judgment and order dated 23.3.2011 passed by the 4th Additional Sessions Judge (FTC), Ambikapur, District Sarguja in Sessions Trial No. 314/2006 convicting the appellants under Section 302/34 of IPC and sentencing them to undergo imprisonment for life and pay a fine of Rs. 1,000/- and Section 201/34 sentencing them to undergo rigorous imprisonment for two years and pay a fine of Rs. 500/- with default stipulation.

2. In the present case, name of deceased is Budhanram, brother of accused/appellant No.1 Rameshwar, accused/appellant No. 2 Ratiya and

accused/appellant No.3 Chikaru is a cousin brother of two other appellants and the deceased. Case of the prosecution is that Bandhani Bai (PW-8) was the sister-in-law of deceased Budhanram and was residing with him. This apart, Dasmi Bai (PW-2), mother of Budhanram was also residing with him. On 20.4.2006 some ritual function was there in the house of Budhanram which was organised by Bandhani Bai. The said function was attended by PW-10 Sukwari Bai, wife of Bisun, and PW-11 Bisun. All the persons were present in the function including accused persons and who had consumed liquor. PW-11 Bisun was beaten by his wife PW-10 Sukwari Bai which was objected to by Bisun saying that though he has been invited but is being beaten by a female. During this quarrel, accused Rameshwar asked PW-10 Sukwari Bai not to beat her husband. Thereafter, deceased Budhanram also intervened and caused injury to Rameshwar by the handle of the axe. The present appellants/accused persons i.e. Rameshwar, Ratiya and Chikaru in retaliation caused injuries to Budhanram by axe and club, as a result of which Budhanram died. Further case of the prosecution is that after sustaining injuries, Budhanram went towards jungle where he succumbed to his injuries. His body was noticed by PW-8 Bandhani Bai, but, on the second day, it was not there and it is said that all the three accused persons took the same near the brook and burnt off. After seeing the body of the deceased, Bandhani Bai (PW-8) lodged the *Dehatinalishi* Ex.P/22 on 23.4.2006 at 1.00 PM. Immediately thereafter *Dehati merg* Ex.P/23 was recorded at 1.20 PM and in both *Dehatinalishi* and *Dehati merg* names of the accused persons find place. On 23.4.2006 itself at 8.30 PM after inquiry, First Information Report (FIR) Ex.P/24 was registered against all the accused/appellants under Sections 302, 201 read with Section 34 of IPC. At the same time, merg intimation Ex.P/30 was also recorded. On 24.4.2006, memorandums of accused persons were recorded vide Ex.P/9, Ex.P/10 and Ex.P/11, based on that from Rameshwar, one *loongi* has been seized vide Ex.P/14; from Ratiya, one club and *loongi* have been seized vide Ex.P/13 and from Chikaru,

one club, *loongi* and *baniyain* have been seized vide Ex.P/12. As per FSL report Ex.P/30, blood has been found on *loongi* (Article-D) of accused Rameshwar and *baniyain* (Article-F) of Chikaru. However, there is no serological report confirming blood group and the origin of the blood. On 24.4.2006, though certain bones have been seized from the place of occurrence i.e. near the brook vide Ex.P/18. But, no DNA profiling has been conducted by the prosecution and thus, it is not established beyond all reasonable doubt that the bones so collected were of the deceased or even human bones. The bones were sent for medical examination which was conducted on 24.4.2006 vide Ex.P/5 by PW-3 Dr. B.L. Kaushal. However, nothing could be ascertained by Autopsy Surgeon on the basis of bones produced before him. While framing the charges, the trial Judge framed the charge against the accused persons under Sections 302/34 and 201/34 of IPC.

3. So as to hold the accused persons guilty, the prosecution examined 13 witnesses in all. Statements of the accused persons 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.

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

5. Counsel for the appellants submits as under:-

(i) that the prosecution has failed to prove that the bones so collected were of the deceased as no DNA profiling has been done by the prosecution. Thus, it can not be said that the bones so collected were of the deceased or even they were bones of the human beings.

(ii) that the eye-witnesses to the incident i.e. PW-2 Dasmi Bai, PW-4

Dhani Ram, PW-6 Sahdeo, PW-7 Mangas Ram, PW-8 Bandhani Bai, PW-10 Sukwari Bai and PW-11 Bisun have not supported the prosecution case and they have been declared hostile.

(iii) that as per FSL report Ex.P/30, in certain seized articles blood has been found but in absence of serological report, the prosecution utterly failed to prove the blood group and the origin of the blood and the FSL report loses its significance.

(iv) that the appellants have already remained in jail for more than 7 years and they may be set free forthwith by reducing the sentence to the period already undergone if conviction is not going to be disturbed.

6. On the other hand, counsel for the respondent/State supports the judgment impugned. It has been argued by the State counsel that the conviction of the appellants is in accordance with law and there is no infirmity in the same. He submits that undisputedly there was a quarrel between the accused persons and Budhanram and in the said quarrel Budhanram sustained injuries and succumbed to the same.

7. We have heard the counsel for the respective parties and perused the evidence on record.

8. PW-1 Rahul Kumar Singh is a Patwari, who prepared the spot map Ex.P/1 and *Panchnama* Ex.P/2. PW-2 Dasmi Bai is a mother of the accused/appellants Rameshwar and Ratiya and she is also the mother of the deceased Budhanram. She has been declared hostile. PW-6 Sahdeo, PW-7 Mangas Ram, PW-8 Bandhani Bai, PW-10 Sukwari Bai and PW-11 Bisun are the other eye-witnesses of the incident but all of them have been declared hostile. PW-3 Dr. B.L. Kaushal is a witness before whom the bones collected by the prosecution were produced.

According to him, the bones so collected could be human bones. PW-4 Dhani Ram and PW-5 Budhram are the witnesses of memorandum and seizure, who have also been declared hostile. PW-12 M.P. Gupta is the investigating officer and PW-13 Santosh Singh is also participated in the investigation of the case.

9. On the memorandum of the accused persons, certain seizures have been made and in FSL report Ex.P/30 blood has been found on certain articles but there is no serological report confirming the origin of the blood. Further, though certain bones have been produced before PW-3 Dr. B.L. Kaushal, but it is not established by the prosecution that those bones were of the deceased.

10. Close scrutiny of the evidence makes it clear that all the important eye-witnesses of the prosecution have not supported the prosecution case and they have been declared hostile. Prosecution has also failed to prove that the bones so collected were the human bones. Even the DNA profiling has not been conducted to find out whether the bones were the human bones. Likewise, the prosecution has also failed to prove that the bones were of male or female.

11. DNA profiling technique has now been expressly included among various forms of medical examination in amended Explanation to Section 53 of CrPC. DNA profile is different from a DNA sample which can be obtained from bodily substances. A DNA profile is a record created on the basis of DNA samples made available to forensic experts. Creating and maintaining DNA profiles of offenders and suspects are useful practices since newly obtained DNA samples can be readily matched with existing profiles that are already in the possession of law-enforcement agencies. Matching of DNA samples is emerging as a vital tool for linking suspects to specific criminal acts. (See:- ***Selvi and Others vs. State of Karnataka, (2010) 7 SCC 263***).

12. Thus, taking cumulative effect of evidence collected by the prosecution, we are of the view that the prosecution has utterly failed to prove the involvement of the accused/appellants in complicity of the crime beyond all reasonable doubt, therefore, the accused/appellants are entitled to benefit of doubt.

13. Consequently, the appeal is allowed, judgment impugned is set aside and the accused/appellants are acquitted of the charges levelled against them. They are in jail. They be set free forthwith, if not required in any other case.

Sd/-

(Pritinker Diwaker)
Vacation Judge

Sd/-

(Sanjay K. Agrawal)
Vacation Judge