

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 595 of 2011

- Sonsai S/o Late Bandhan Rohidas, aged about 38 years, R/o Village – Auraikala, Outpost Naila, P.S. Janjgir, District Janjgir-Champa (CG)

---- Appellant

Versus

- State Of Chhattisgarh through Police Station – Baloda, District Janjgir-Champa (CG)

---- Respondent

For Appellant	:	Shri VC Ottalwar, Advocate.
For Respondent/State	:	Shri Rahul Tamaskar, P.L.

And

CRA No. 800 Of 2011

- Raju Das S/o Agar Das Mahant, aged about 23 years, R/o Village – Oraikala, Chowki-Naila, Thana-Janjgir, Distt. Janjgir-Champa (CG)

---- Appellant

Vs

- State Of Chhattisgarh through Station House Officer, Police Station – Balouda, Distt. Janjgir-Champa (CG)

---- Respondent

For Appellant	:	Shri Sanjay Patel, Advocate.
For Respondent/State	:	Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

28/07/2017

As these two appeals arises out of the common judgment of conviction and order of sentence dated 6.7.2011 passed by Additional Sessions Judge, Janjgir in ST No.160/2010 convicting the appellants and one Dhansai under Sections 450/34, 302/34, 323/34 of IPC and sentencing them to RI for 10 years, fine of Rs.1000/-; life imprisonment, fine of Rs.1000/- and RI for one year with default stipulations respectively, they are being disposed of by this common judgment.

02. In the present case, name of the deceased is Shantibai, wife of accused Dhansai whereas appellant Sonsai is her brother-in-law (Jeth). It is alleged that there was matrimonial dispute between Shantibai and her husband Dhansai and the Court proceedings were going on. For the last about three years of the incident, deceased Shantibai was residing in her parental house. In the night intervening 21/22nd July, 2010 accused Dhansai and appellant Sonsai entered the house of Budhwar (PW-5), brother of the deceased, after breaking open the door and dragged Shantibai out from the house and then both of them caused her injuries by means of axe and stone as a result of which she died. On 22.7.2010 at 7.35 am merg intimation Ex.P/23 was lodged by PW-5 Budhwar, brother of the deceased and an eyewitness to the incident. Immediately thereafter at 7.40 am FIR (Ex.P/24) was lodged by PW-5 against accused Dhansai and appellant Sonsai under Section 302/34 of IPC. Inquest on the dead body was conducted vide Ex.P/6 on 22.7.2010 and thereafter the body was sent for postmortem which was conducted on the same day by PW-4 Dr. UK Markam vide Ex.P/1 who noticed incised wound on occipital region of size 9 cm x 2 cm x bone deep, bone was cut of size 5 x 0.3 cm and lacerated wound over left parietal region of size 2 cm x 1 cm. In his opinion, the cause of death was cardio-respiratory arrest due to asphyxia as also due to head injury. During investigation, diary statements of the witnesses were recorded wherein it has come that some third person was also involved in commission of the crime. One pair of slippers was found at the spot, which was identified to be of accused/appellant Rajudas. Accordingly, charge sheet was filed against all the three accused namely Dhansai, Sonsai and Rajudas. While framing charge, the trial

Judge framed charge against the accused persons under Sections 450, 323, 302, 34 of IPC.

03. So as to hold the accused persons guilty, the prosecution examined 12 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 two witnesses.

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 also accused Dhansai as mentioned above. Accused Dhansai has not preferred any appeal against his conviction whereas accused/appellants Dhansai and Sonsai have preferred the aforesaid appeals.

05. Counsel for appellant Sonsai submits as under:

- (i) that there is inordinate delay of about six hours in lodging the FIR and the said delay has not been explained by the prosecution.
- (ii) that as per PW-5 Budhwar it was dark at the place of occurrence and therefore, the question of seeing the incident by eyewitnesses does not arise.
- (iii) that incriminating article has also been seized from accused Dhansai and not from appellant Dhansai and therefore, the case of the prosecution becomes doubtful in respect of this appellant.
- (iv) that as per postmortem of the deceased fatal injury was caused by axe whereas it is the prosecution case that appellant Sonsai caused injury to the deceased by stone. Once the postmortem report itself is not consistent with the statements of the eyewitnesses, benefit of

doubt should be extended to appellant Sonsai.

(v) that even if the entire prosecution case is taken as it is, appellant Sonsai cannot be convicted under Section 302/34 of IPC and at best he can be convicted under Section 304 Part-I or II of IPC and further considering his detention period i.e. about seven years, after conversion of his conviction, he may be sentenced to the period already undergone by him.

06. Counsel for appellant Raju Das submits that in the FIR and merger intimation lodged by eyewitness PW-5 Budhwar, there is no mention of name of appellant Raju Das. His name also does not figure in the statements of the witnesses recorded under Section 161 of Cr.P.C. wherein they have merely stated that there was some third person also at the time of commission of the crime. He submits that no TIP has been conducted in respect of this appellant and he has been roped in this offence only on the basis of seizure of pair of slippers from the spot allegedly belonging to him. He submits that there is no legally admissible evidence against this appellant and therefore, he may be acquitted of the charges by giving him benefit of doubt.

07. On the other hand, State counsel supporting the impugned judgment submits as under:

(i) that distance between the place of occurrence and the police station is about 10 km, the incident took place in mid night, and in these circumstances, delay of about six hours cannot be said to be fatal to the prosecution case.

(ii) that deceased Shantibai had instituted a case against her husband accused Dhansai seeking maintenance and when that case

was at the final stage, the accused persons decided to eliminate her and with that common intention caused her injuries by axe and stones.

(iii) that on the fateful night appellant Sonsai and accused Dhansai entered the house of PW-5 Budhwar and PW-6 Budhwara after breaking open the door, dragged the deceased out and committed her murder by causing her injuries by axe and stone. Even assuming that appellant Sonsai had not caused any axe injury and had assaulted her by stone only, in the facts and circumstances of the case and the manner in which the incident occurred, it is evident that he was also sharing common intention with accused Dhansai of committing murder of the deceased and therefore, his conviction with the aid of Section 34 of IPC is in accordance with law.

(iv) that eyewitnesses PW-5 Budhwar, PW-6 Budhwara and PW-8 Bundkunwar have duly supported the prosecution case.

(v) that as per FSL report Ex.P/28, blood has been found on the Article C i.e. stone seized from appellant Sonsai, Article F i.e. stone seized from appellant Rajudas as also on Articles D & E i.e. stone and axe seized from accused Dhansai.

(vi) that the manner in which the deceased was brutally done to death by the accused Dhansai with the help of other accused persons, their conviction under Section 302/34 of IPC is just and proper, warranting no interference by this Court.

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

09. PW-5 Budhwar Ram, brother of the deceased, has stated that as the deceased was subjected to cruelty by her husband accused

Dhansai she lodged a report against him and she also instituted a case against her husband claiming maintenance from him. He has stated that on the date of incident deceased was in his house and was sleeping with his mother. In the mid night the accused persons entered his house by breaking open the door and thereafter accused Dhansai pressed the neck of the deceased, appellant Rajudas inserted a piece of cloth in her mouth and she was dragged out of the house. When his mother Budhwara Bai (PW-6) raised cries, he woke up and by that time Bundbai also came there and then he saw the accused persons beating the deceased by axe and stone. The accused persons also caused injuries to his mother Budhwara Bai by hands and fists. He has admitted the fact that at the time of incident there was dark and when they saw the deceased in the light of earthen lamp she had expired. There was injury on her head and blood was oozing therefrom. Thereafter, information about the incident was conveyed to Village Kotwar. At that time, one pair of slippers was lying near the door of his house, which was of appellant Raju Das. He has stated that he lodged FIR and merg intimation.

In cross-examination, he states that distance from his house to the police station is about 10 km and it takes 10 minutes to reach police station by motorcycle and about half an hour by bicycle and further states that at the time of incident it was raining. But for minor contradictions he remained firm in his cross-examination and described as to the manner in which the deceased was done to death by the accused persons. Considering the background of this witness who is a rustic villager, such minor contradictions are required to be ignored.

10. PW-6 Budhwara Bai, mother of the deceased with whom the deceased was sleeping in the fateful night, while supporting the prosecution case has stated that Court case was pending between the deceased and her husband Dhansai and in the fateful night, after 12 in the night, the accused persons entered her house by breaking open the door, appellant Sonsai pressed the neck of the deceased, accused Dhansai gagged her mouth and another accused pressed her leg and then all of them beat her and took her out of the house. She states that the accused persons assaulted the deceased by axe and stone. On her raising cries, her son Budhwar and one Bundkunwar came there. When she intervened, appellant Sonsai beat by her hands and fists on her back as a result of which she fell down. The incident was witnessed by her son Budhwar and Bundkunwar also. In her cross-examination she remained firm and nothing could be elicited from her by the defence to discredit her evidence. PW-8 Bundkunwar Bai, another eyewitness to the incident, has also supported the prosecution case and described as to the manner in which the deceased was done to death by accused persons.

11. PW-4 Dr. UK Markam conducted postmortem on the body of the deceased vide Ex.P/1 and noticed incised wound on occipital region of size 9 cm x 2 cm x bone deep, bone was cut of size 5 x 0.3 cm and lacerated wound over left parietal region of size 2 cm x 1 cm. In his opinion, the cause of death was cardio-respiratory arrest due to asphyxia as also due to head injury. He has stated that the injuries sustained by the deceased could be caused by the sharp edged weapon and Injury No.2 (lacerated wound) could have been caused by

some hard and blunt object.

12. PW-3 Pardshi Ram Patel, witness to memorandum of the accused persons and seizure effected in pursuance thereof, has not supported the prosecution case. He is also a witness of identification of slippers Ex.P/19. PW-7 Tukaram Yadav, Patwari, prepared the spot Ex.P/25. PW-9 Netram, witness of memorandum, seizure and identification proceedings, has turned hostile. PW-10 Sita Kumari, witness to identification of slippers has turned hostile. PW-11 Joseph Kujur, Police Constable, helped in the investigation. PW-12 Sushila Tekam, investigating officer, has duly supported the prosecution case.

13. Defence witnesses (DW-1 and DW-2) have stated that it was informed by relatives of the deceased that some unknown person has committed murder of the deceased.

14. Close scrutiny of the evidence makes it clear that there was matrimonial dispute between deceased Shantibai and accused Dhansai, a case for maintenance was also filed by the deceased against Dhansai and Court proceedings were pending between them. In the night intervening 21/22nd July, 2010 accused Dhansai and accused/appellant Sonsai entered the house of PW-5 Budhwar and PW-6 Budhwara Bai by breaking open the door, dragged the deceased out of the house and caused her injuries by axe and stones. The incident was witnessed by PW-5 Budhwar, PW-6 Budhwara Bai and PW-8 Bundkunwar, who have duly supported the prosecution case and described as to the manner in which the deceased was assaulted by these accused persons as a result of which she died. Postmortem

report of the deceased also supports the prosecution case. Though there is some contradictions in the statements of these witnesses, but considering the fact that they are rustic villagers and the incident occurred in the mid night, such contradictions are required to be ignored. As regards delay in lodging the FIR, considering the fact that the incident occurred in the mid night at about 12.30 - 1 o'clock, at that time it was raining as has come in the evidence of PW-5, distance from the house of the deceased to police station is about 10 km, delay of about 6 hours in lodging the FIR cannot be said to be inordinate or fatal to the prosecution case.

15. We find no substance in the argument of counsel for appellant Sonsai that since it was dark at the place of occurrence, there was no occasion for the eyewitnesses to see the assailants. But for PW-5 Budhwar, no other witness has stated that it was dark. Moreover, PW-5 has denied the suggestion that as it was raining there was dark at the place of occurrence and further stated that he took earthen lamp to see the injuries sustained by the deceased. This apart, accused Dhansai and appellant Sonsai are his relatives and therefore, even if it is assumed that there was not sufficient light at the place of occurrence, PW-5 could identify them from their voice, gait and appearance etc. No question was put to other eyewitnesses by the defence that it being dark at the place of occurrence they could not see the incident. Even as per the moon phases extracted from Internet for the month of July, 2010, the visibility was 81% on 21st July, 2010.

16. So far as other limb of argument of appellant Sonsai that injuries suffered by the deceased were caused by sharp edged weapon

whereas he is alleged to have assaulted by stone and therefore, cannot be convicted for the offence under Section 302 of IPC is concerned, appellant Sonsai has been convicted with the aid of Section 34 of IPC which says that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. In the present case, as discussed above, appellant Sonsai along with accused Dhansai entered the house of the deceased in the mid night, they dragged her out of the house and then though it is main accused Dhansai who assaulted the deceased by axe but at the same time appellant Sonsai also caused her injuries by stone. As per medical evidence, the injuries suffered by the deceased could also be caused by stone. Thus, in the overall facts and circumstances of the case, it can safely be inferred that appellant Sonsai was also sharing common intention with accused Dhansai of committing murder of the deceased and with that common intention he inflicted injury by stone on the deceased. As such, considering the manner in which the deceased was assaulted on her vital part head, which proved to be her cause of death, resulting in her instantaneous death, his conviction under Section 302 with the aid of Section 34 of IPC is strictly in accordance with law.

17. As for conviction of appellant Raju Das, there is no legally admissible and clinching evidence to prove his complicity in the crime in question and even his presence at the spot is doubtful. The FIR and merger intimation were lodged by the eyewitness PW-5 Budhwar, brother of the deceased, wherein he has stated about the assault being made by accused Dhansai and appellant Sonsai only. There is no mention of

appellant Raju Das or presence of any third person. He was arrayed as accused only when in the statements of the witnesses recorded under Section 161 of Cr.P.C. they stated about the presence of some third person also at the time of commission of the crime and a pair of slippers were seized from the spot which were allegedly belonging to this appellant. However, the witnesses to identification of the slippers have also not supported the prosecution case. This apart, no test identification parade has been conducted by the prosecution to ascertain involvement of this appellant in the crime. Thus, considering the nature and quality of evidence adduced by the prosecution in respect of appellant Raju Das, we are of the opinion that the trial Court was not justified in convicting and sentencing him for the offence under Sections 450/34, 302/34, 323/34 of IPC and he is definitely entitled to be acquitted of these charges by giving him benefit of doubt.

18. In the result:

- ◆ Cr.A.No.595/2011 preferred by appellant Sonsai being devoid of any substance is hereby dismissed. He is reported to be in jail, therefore, no further order regarding his arrest etc. is required.
- ◆ Cr.A.No.800/2011 filed by appellant Raju Das is allowed. He is acquitted of the charges under Sections 450/34, 302/34, 323/34 of IPC by giving him benefit of doubt. Since he is already on bail, his bail bonds stand discharged and he need not surrender.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(R.P. Sharma)
Judge