

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 813 of 2011**

1. Ganguram, aged about 48 years, Son of Late Dukhwa Ram Khare, R/o Dhowr, PS Nandini, District Durg, CG
2. Yogesh Kumar, son of Ganguram Khare, aged about 25 years, R/o Dhowr, PS Nandini, District Durg, CG

---- Appellants**Versus**

1. State of Chhattisgarh through PS Nandini Nagar, District Durg, CG

---- Respondent

For Appellant	:	Shri Dhurandhar, Advocate
For Respondent/State	:	Shri Adil Minhaj, PL

Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board by Pritinker Diwaker, J

25/05/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 02.8.2011 passed by the Sessions Judge Durg in Sessions Trial No. 151/2009 convicting the accused/appellants under Section 302 IPC and sentencing each of them to undergo imprisonment for life with fine of Rs. 500/- plus default stipulation. Accused/appellant Ganguram has also been convicted under Section 25 of the Arms Act and sentenced to undergo RI for two years and pay fine of Rs. 500/-, in default of payment of fine to further undergo SI for two months.

2. According to the case of the prosecution, on 8.6.2009 some tree had fallen in the field of deceased Maheshwar and in order to remove the same he had gone to call his servant Raja Ram Sen

(PW-1) to his house. Thereafter, Raja Ram Sen and the deceased went to the house of Dhan Singh to have the bullock cart followed by Ahilya Bai (PW-6) - the mother of the deceased. While the bullock cart was being taken out, the accused/appellants reached there and accused Yogesh first gave a lathi blow and thereafter accused Gangu a sword blow to the deceased. Thereafter, Rupu (PW-4) also came there, intervened in the matter and asked accused Gangu to get away. Both the accused/appellants are further said to have assaulted the deceased with axe causing as many as 15 injuries which resulted in his instantaneous death. *Merg* Ex. P-1 was recorded on the same day at 8.25 AM at the instance of Raja Ram naming both the accused persons and based thereon FIR Ex. P-2 was registered at 8.30 AM against them for the offences punishable under Section 302/34 IPC. After inquest Ex. P-5 the body of the deceased was sent for postmortem examination which was conducted by Dr. Yashwant Rao Tumde (PW-11) who gave his report Ex. P-20. On *challan* being laid by the police, the Court below framed the charge against the accused/appellants under Sections 302, in the alternative 302/34 IPC and Sections 25 and 27 of the Arms Act.

3. In order to prove the complicity of the accused/appellants in the crime in question, the prosecution has examined 16 witnesses. Statements of the accused/appellants under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case. This apart, one Tiger Singh (DW-1) has also been examined by the defence in support of its case.

4. After hearing the parties, the Court below has convicted and

sentenced the accused/appellants as mentioned above. Hence this appeal.

5. Counsel for the accused/appellants submits that the eyewitness namely Raja Ram Sen (PW-1) is not reliable and being the servant of the deceased he is an interested witness. He submits that conduct of this witness is doubtful because though he was present at the place of incident, yet he did not make any effort to save the deceased while being assaulted by the accused/appellants. According to the counsel for the appellants, Ahilya Bai (PW-6) has been cited as a chance witness whose case diary statement was recorded ten days after the incident, and that she being the mother of the deceased also becomes an interested witness and her statement cannot be made a basis of conviction of the accused/appellants. According to him, though the incident had taken place in a densely populated area, not even a single independent witness has been examined by the prosecution and therefore also the involvement of the accused/appellants becomes doubtful. As argued further, even the motive has not been established by the prosecution.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that in a case of murder motive is not required to be proved, but in this case from the statement of Smt. Ramvati Bai (PW-16) it appears that few days prior to the incident, she was teased by the deceased and he has been killed for that. He further submits that apart from Raja Ram Sen (PW-1) and Ahilya Bai (PW-6) – the two eyewitnesses to the incident, on the memorandum

of accused Gangu Ex. P-7 seizure of blood stained sword was made under Ex. P-10 and on the basis of memorandum of accused Yogesh Ex. P-8 seizure of blood stained axe and club was made under Ex. P-9 and vide FSL report Ex. P-20 the presence of blood thereon was confirmed. State counsel submits that though in the serological report Ex. P-23 nothing adverse has come but considering the evidence of the eyewitnesses the FSL report becomes relevant and can be used against the accused/appellants.

7. Raja Ram Sen (PW-1) - the eyewitness to the incident has stated that on the date of incident at about 6 AM he was called by the deceased saying that in his field some tree had fallen down. Thereafter, he along with the deceased went to the house of one Dhan Singh to have the bullock cart from where on being asked by the deceased he went to the thrashing field to get the oxen. After taking out the cart when the deceased was closing the gate, accused/appellant Yogesh came there carrying club and assaulted him (deceased) and thereafter accused Gangu also came there carrying sword and then both of them assaulted him. Meanwhile, Rupu (PW-4) came there and asked the accused/appellants to get away but they again came and assaulted the deceased with axe and sword. Accused Yogesh used axe whereas accused Gangu used sword in the assault. This witness is also said to be chased by the accused/appellants for being assaulted. Thereafter, he went to the house of Nand Kumar (PW-2) and informed him about the incident from where they both went to the police station and lodged the merger Ex. P-1 followed by FIR Ex. P-2. He is also the witness to spot map prepared by the police Ex. P-3, spot map prepared by the Patwari Ex. P-4 and inquest Ex. P-5. Though this witness has been put to lengthy cross-examination but he remained firm on material

particulars. Ahilya Bai (PW-6) – the mother of the deceased and another eyewitness to the incident has fully supported the case of the prosecution stating that when the deceased and Raja Ram (PW-1) had gone to take bullock cart she also followed them and saw the accused/appellants assaulting the deceased. She has stated that first of all accused Yogesh assaulted her son with club, accused Gangu with sword and then again accused Yogesh with axe and thereafter they both chased Raja Ram (PW-1) who was sitting on the bullock cart. Cross-examination of this witness is also in conformity with the examination-in-chief and there is no disparity between the two on material particulars. Nand Kumar (PW-2) is the witness to whom the incident was informed by Raja Ram (PW-1) and he too has supported the case of the prosecution as a whole. Mangal Prasad Kurre (PW-3) and Khoman Lal (PW-7) - the witnesses to seizure and memorandum have duly supported the case of the prosecution. Rupu Satnami (PW-4) has not supported the case of the prosecution and has been declared hostile. Raj Kumar Chouhan (PW-5), Puranlal Sahu (PW-9), Deendayal (PW-10) and Lokesh Kumar (PW-12) are stated to have assisted in the investigation. Dr. Yashwant Rao Tumde (PW-11) is the witness who conducted the postmortem examination on the body of the deceased and gave his report Ex. P-20 stating that he noticed number of wounds – stab, incised and lacerated on various parts of his body including vital one like neck coupled with fracture of cervical bone and breakage of trachea. Cause of death, according to him, was hemorrhagic shock due to profuse bleeding. Sanjay Devesthle (PW-13) is the investigating officer who has duly supported the case of the prosecution. Smt. Priti Khare (PW-14) – the wife of accused Yogesh and daughter-in-law of accused Gangu has not supported the case

of the prosecution and has been declared hostile. Kailash Hirwani (PW-14) is the Patwari who prepared spot map Ex. P-4. Smt. Ramvati Bai (PW-16) has not supported the case of the prosecution and has been declared hostile. It is the same witness to whom a suggestion was put by the prosecution that two days prior to the date of incident she had gone to fetch water from the village boring and was teased by the deceased and it is thereafter the incident took place, however, she denied the same. Tigar Singh (DW-1) has stated that on the date of incident accused Yogesh was in his house. It is relevant to note that the house of this witness is in the same village where the incident took place.

8. Close examination of the material available on record including the evidence of the witnesses goes to establish that it is the accused/appellants who committed the murder of the deceased by causing number of injuries on his body with the help of sword and axe. Raja Ram Sen (PW-1) and Ahilya Bai (PW-6) - the eyewitnesses to the incident have fully supported the case of the prosecution by stating that the deceased was assaulted by the accused/appellants herein and since there appears no inconsistency in their statements, there is no reason for this Court to disbelieve the same. This apart, Nand Kumar (PW-2) to whom the incident was narrated by Raja Ram Sen (PW-1) has also supported the case of the prosecution to the hilt. Further, on the memorandum of accused Gangu Ex. P-7 seizure of blood stained sword was made under Ex. P-10 and on the basis of memorandum of accused Yogesh Ex. P-8 seizure of blood stained axe and club was made under Ex. P-9 and vide FSL report Ex. P-20 the presence of blood thereon was confirmed. Of course, in the serological report Ex. P-23 nothing adverse has come but considering the evidence of

the eyewitnesses the FSL report becomes relevant, may be as an additional evidence. Thus the findings recorded by the Court below holding the accused/appellants guilty under Section 302 IPC and 25 of Arms Act are based on due appreciation of the evidence on record and there is no legal flaw in the same.

9. In aforesaid view of the matter, this Court finds no substance in the appeal and being so it is hereby dismissed with the affirmation of the judgment impugned. Being already inside, the accused/appellants do not need any order from this Court for surrender etc.

10. Appeal dismissed.

Sd/-

(Pritinker Diwaker)
Vacation Judge

Sd/-

(Sanjay K. Agrawal)
Vacation Judge