

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 25-9-2017

Judgment delivered on 8-11-2017

CRA No. 315 of 2012

1. Parsu Ram s/o. Bhagirathi, aged about 40 years.
2. Rikhiram s/o. Brijram Sahu, aged about 20 years.
3. Toranlal s/o. Asharam Sahu, aged about 24 years.
4. Alakhram s/o. Tirithram Sahu aged about 20 years.
5. Brijram s/o. Firangi Sahu, aged about 45 years.
6. Santosh Sahu s/o. Aasharam Sahu, aged about 27 years.
7. Ram Gariba s/o. Thakur Ram Sahu, aged about 50 years.
8. Rakesh Sahu s/o. Ram Gariba aged about 19 years.

---- Appellants.

Versus

- State of Chhattisgarh through Station House Officer, Police Station Rajim, District Raipur (CG).

&

CRA No. 835 of 2011

1. Budhia Bai w/o. Tirathram Sahu, aged about 42 years.
2. Sunita Bai W/o Santosh Sahu, aged about 25 years.
3. Omin Bai W/o Toran Sahu aged about 24 years.
4. Kanti Bai W/o Parsuram Sahu aged about 30 years.
5. Ganga Bai W/o Aasharam Sahu aged about 50 years.
6. Aasho Bai W/o Ram Gariba Sahu, aged about 45 years.
7. Bedkunwar Bai W/o Brijram Sahu, aged about 45 years.
8. Rukhmani Bai W/o Rewaram Sahu R/o Village Urwa, P.S. Abhanpur, Distt.- Raipur, C.G.

All are R/o Village Sonesilli, P.S. Gobra Nawapara, Distt.-Raipur, C.G.

– Appellants.

Vs.

- State of Chhattisgarh through District Magistrate Raipur, District Raipur (CG).

For Appellants in : Mr. Y.C. Sharma, Advocate.

CRA No. 315 of 2012

For Appellants in : Mr. Awadh Tripathi, Advocate.

CRA No. 835 of 2011

For Respondent/State : Mr. Adhiraj Surana, Panel Lawyer.

**Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. As these two appeals arise out of common judgment dated 17-10-2011 passed in Sessions trial No. 38 of 2009, they are heard analogously and are being disposed of by this common judgment.
2. Challenge in both the appeals is to the judgment of conviction and order of sentence dated 17-10-2011 passed by the Additional Sessions Judge, Gariyaband Sessions Division Raipur, (CG), in Sessions Trial No. 38 of 2009 whereby the trial court after holding the appellants guilty for commission of murder of Bhagirathi Sahu, Kejai Bai and Heman, convicted them under Sections 148, 302 read with Section 149, 302 read with Section 149, 302 read with Section 149 of the IPC, 460, 323 read with Section 149 and Section 342 of the IPC and sentenced them to undergo RI for three years, life imprisonment and fine of Rs.1,000/-, life imprisonment and fine of Rs.1000/-, life imprisonment and fine of Rs.1000/-, RI for ten years and fine of Rs.1,000/-, RI for one year, RI for three months respectively with default stipulations.
3. In the present case, names of the deceased are Bhagirathi Sahu, Kejai Bai and Heman. As per prosecution case, father of Sukhram namely Bhagirathi have in all four brothers i.e., Aashram, Brijram, Tirathram. Sukhram is having three brothers and two sisters namely Parsu, Heman, Sukh Bai and Jalwanti Bai. There was some land dispute between Bhagirathi and his brother and for that reason Heman Lal caused injury to Tirath Ram Sahu

on 3-4-2009. On 5-4-2009 at about 10.00 pm all the accused/appellants committed house breaking at night and entered into the room of Bhagirathi with deadly weapons and committed murder of Bhagirathi, Kejai Bai and Heman and confined them in the house and assaulted Omprakash, Gopihand, Junia Bai, Tarachand Sahu, and Bhuneshwari Sahu after forming unlawful assembly.

4. The matter was reported by Sukhiram (PW/1) and on information Dehati Nalsi (Ex.p/1), Dehati merg, Ex.P/2, P/3 and P/4 were recorded. Thereafter, inquest of the deceased Bhagirathi, Kejai Bai and Heman was prepared vide Ex. P/5, P/6 and P/10. First information report was lodged against all the accused/appellants vide. Ex.P/75 and dead bodies of three deceased were sent for post-mortem. During investigation certain seizures were made on discovery statements of accused/appellants. Seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur.
5. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 and after completion of the investigation charge-sheet was filed before the Court of Judicial Magistrate First Class, Rajim, who in turn committed the case to the Court of Sessions (trial Court). The trial Court framed charges under Sections as mentioned above, to which they did not plead guilty, therefore, trial was conducted and after completion of evidence of the prosecution side, statements of the appellants under Section 313 of the Cr.P.C., were recorded. After completion of trial, the trial Court considering the material available on

record by the impugned judgment convicted and sentenced the accused/appellants as mentioned above.

6. In order to prove the complicity of the accused/appellant in commission of crime in question, the prosecution has examined 20 witnesses before the trial Court.
7. Learned counsels appearing for the accused/appellants submit as under:

(i)	That PW/3 Tarachand categorically stated that the lady members have not assaulted any of the deceased and they did not enter into the house of Bhagirathi even then the trial Court convicted them, therefore, their conviction is not sustainable.
(ii)	That the eye-witnesses account to the incident are not reliable and the trial Court arrived at conclusion against them on surmises and conjectures which is not permissible under the law.
(iii)	That the articles seized from some of the appellants are of no help to the prosecution as the FSL report is not determinative and the same cannot be taken as incriminating circumstance against the appellants.
(iv)	That the witnesses of seizure have not supported the prosecution case and the evidence regarding seizure is not legally admissible evidence and no conviction can rest on the basis of such seizure.

8. As against the aforesaid submissions, learned State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity warranting any interference by this Court.
9. We have heard counsel for the parties and perused the material on record.
10. To substantiate the charge, prosecution has examined 20 witnesses. Dr Pushpa Guru (PW/19) conducted post-mortem of deceased Heman @ Hemant on 6-4-2009 at 4.30 pm brought by Constable Ram Kumar Bharti No.1483 of PS Gevra, Navapara and after post-mortem he noticed the following injuries

i)	Multiple contusions in the size of 10 cm x 5 cm over left arm above elbow
ii)	Multiple contusions in the size of 5cm x 3 cm over left shoulder.
iii)	Multiple contusions in the size of 8 cm x 4 cm over right arm above elbow.
iv)	Multiple contusions in the size of 4cmx3cmx 2cm over left back.
v)	Multiple contusions in the size of 5cmx3cmx2cm over left side of back.
vi)	Multiple contusions in the size of 6cmx3cmx2cm over right back.
vii)	Multiple contusions in the size of 2cmx2cmx2cm over over right back.

viii)	Multiple contusions in the size of 3m x 2cm x 2cm over right shoulder.
ix)	Multiple contusions in the size of 4cmx3cmx2cm over left shoulder.
x)	Incise wound over left side of temporal region in the size of 3cm x 1 cm deep, bone fracture and clotted blood present.
xi)	Incised wound over skull in the size of 6cm x 1cm deep, bone fracture, clotted blood present.
xii)	Right parietal bone fractured
xiii)	Incised wound over occipital region in the size of 5cmx2cmx2cm.

He opined that all the injuries are caused by hard and blunt object and sharp cutting object. Death is caused due to injuries on vital organ of the body i.e., lung, spleen, liver, heart and brain tissue. He further opined that death is homicidal in nature and it is caused since 48 – 72 hours of the examination.

Again, he conducted post-mortem of deceased Bhagirathi on 6-4-2009 at 3.30 pm brought by Constable Ram Kumar Bharti No.1483 of PS Gevra, Navapara and after post-mortem he noticed the following injuries

i)	Multiple contusions in the size of 10 cm x 6 cm over right side of chest and nipple.
ii)	Multiple contusions in the size of 12cm x 6cm over left side of chest extended from nipple to abdomen.
iii)	Multiple contusions in the size of 4 cm x 2 cm over right

	arm above elbow.
iv)	Multiple contusions in the size of 4cmx2cmx 2cm over forearm.
v)	Lacerated wound in the size of 2cmx1cmx1cm over jaw and deep to bone fracture present in the 5 th , 6 th , 7 th , 8 th and mid clavicle bone fractured present in the right side 4 th and 5 th rib.
vi)	Contusion on thigh above knee in the size of 4cm x 2cmx2cm on left side.
vii)	Contusion on thigh above knee in the size of 4cm x 2cmx1cm on right side.
viii)	Contusion on foreleg below knee in the size of 3cm x 2cmx2cm on right side.
ix)	Incised wound over left parietal bone to occipital bone in the size of 5cm x 2cm deep, bone fractured and clotted blood present

He opined that all the injuries are caused by hard and blunt object and sharp cutting object. Death is caused due to injuries on vital organ of the body i.e., lung, spleen, liver, brain tissue, stomach and excessive haemorrhage. He further opined that death is homicidal in nature and it is caused since 48 – 72 hours of the examination.

Again, he conducted post-mortem of deceased Kejai Bai on 6-4-2009 at 3.00 pm brought by Constable Ram Kumar Bharti No.1483 of PS Gevra, Navapara and after post-mortem he noticed the following injuries.

i)	Multiple contusions present over outer side of left arm above the elbow in the size of 15 cm x 10 cm x 2 cm.
ii)	Multiple contusions in the size of 15 cm x 10 cm over right arm outer side
iii)	Multiple contusions in the size of 10 cm x 8cm x 2cm over right shoulder.
iv)	Multiple contusions in the size of 4cmx2cm over left side of inguinal region
v)	Multiple contusion in the size of 10cmx10cmx2cm over right arm joint.
vi)	Multiple contusion on left thigh in the size of 10cm x 10cmx2cm.
vii)	Multiple contusion on foreleg in the size of 15cm x 10cmx2 cm .
viii)	Incised wound in the size of 10cm x 3cm deep to bone right parietal bone to occipital region, middle skull 2 cm x2cm deep bone
ix)	Incised wound deep to bone left forehead in the size of 4cmx1cm

He opined that all the injuries are caused by hard and blunt object and sharp cutting object. Death is caused due to injuries on vital organ of the body i.e., lung, spleen, liver, brain tissue, stomach and excessive haemorrhage. He further opined that death is homicidal in nature and it is caused since 48 – 72 hours of the examination.

11. From the opinion of the expert, it is established that the death of all three persons is homicidal in nature. Version of this witness is unshaken after searching cross examination and there is no other expert opinion in rebuttal of the same and we have no other view regarding the death of all the three persons. It is established that all the three persons died homicidal death.
12. PW/1 Sukhram who is son of deceased Bhagirathi, PW/2 Jhuniya Bai who is wife of Sukhram, PW/3 Tarachand who is son of Sukhram, Omprakash (PW/4) who is nephew of Sukhram, PW/9 Gopichand who is son of Sukhram, PW/10 Bhuneshwari Sahu who is daughter of Sukhram are eye-witnesses to the incident. As per version of Sukhram (PW/1), all the accused/appellants came to his house at about 9.00 - 10.00 pm on the date of incident situated at village Sonesilly and abused him and they bolted the door of his house and thereafter entered into adjoining room of the house where his father Bhagirathi, mother Kejai Bai and brother Heman were residing. As per version of this witness, some of the appellants were armed with axe, some were armed with clubs and they assaulted Bhagirathi, Kejai Bai and Heman.
13. PW/2 Jhuniya Bai who is wife of Sukhram has supported the version of Sukhram. PW/3 Tarachand who is son of Sukhram has partially supported the version of Sukhram but he has categorically stated that all the lady accused/persons had gone to the house of his father Sukhram and they did not assault his grand-father, grand-mother and uncle in the house of Bhagirathi. From the statement of this witness it is established that no lady accused/persons have assaulted Bhagirathi, Kejai Bai and

Heman. Omprakash (PW/4) who is nephew of Sukhram, and PW/9 Gopichand who is son of Sukhram deposed that accused persons were armed with pick-axe, clubs, axe and other deadly weapons like Kudal. PW/10 Bhuneshwari Sahu who is daughter of Sukhram deposed that appellants have bolted the door of her house and no one came to rescue them even after their cries.

14. Now the point for consideration is as to who can be treated as member of unlawful assembly and who can be held vicariously liable for the act of others. Hon'ble the Supreme Court in the matter of **Chanda and others vs. State of UP and another, reported in (2004) 5 SCC 141** has observed as under.

“Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in [Section 141](#)”.

15. Inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before or after the actual commission of the crime. True it is that it is not necessary as to which of the accused persons forming part of unlawful assembly inflicted injuries in the course of occurrence, but it must be established that the persons roped with charge of member of unlawful assembly acted infurtherence of common object of the assembly. In the present case, when one of the eye-witness namely PW/3 Tarachand has clearly stated that lady accused persons have not assaulted any of the deceased Bhagirathi, Kejai Bai and Heman, then it would not be safe for us

to conclude that the appellants in Criminal Appeal No. 835 of 2011 namely Budhia Bai, Sunita Bai, Omin Bai, Kanti Bai, Ganga Bai, Aasho Bai, Bedkunwar Bai and Rukhmani Bai have common object to kill any of the deceased. As the complicity of all the appellants in Criminal Appeal No. 315 of 2011 namely Parsu Ram, Rikhiram, Toranlal, Alakhram, Brijram, Santosh Sahu, Ram Gariba and Rakesh Sahu is established by direct evidence of eye-witness Sukhiram (PW/1), Jhuniya Bai (PW/2), Tarachand (PW/3), Omprakash (PW/4), Gopichand (PW/9) and Bhuneshwari Bai (PW/10) and they were present in one part of the house of Sukhiram where the incident occurred, therefore, all the witnesses are natural witnesses and there is nothing on record to discard the testimony of any of the eye-witnesses. As all the accused/appellants and the deceased are relatives, therefore, there is no question of identity of any of the appellants and all the witnesses have known to the accused persons and from their evidence, their involvement in commission of crime is sufficiently proved.

16. It is settled law that accused persons forming part of unlawful assembly are vicariously liable and it is not necessary to determine as to which of the accused persons inflicted what particular or specific injury in the course of occurrence. PW/17 G.D. Soni who is the Investigating Officer seized club, axe, shirt, soil and other articles and arms from the appellants Parsu Ram, Rikhiram, Toranlal, Alakhram, Brijram, Santosh Sahu, Ram Gariba and Rakesh Sahu and the same were sent for chemical examination to FSL and Doctor opined that injuries may be caused by these seized articles and as per report thereof human

blood was found in certain articles but when there is abundant evidence of eye-witnesses, seizure of articles is of no much importance and when there is nothing on record to discard the testimonies of natural eye-witnesses, we are of the considered opinion that prosecution has established charges under Section 148, 302 read with Section 149 (three charges), 460 and 342 of the IPC.

17. So far as offence under Section 323 read with Section 149 of the IPC, is concerned, there is no medical evidence regarding injuries on the body of Om Prakash, Gopichand, Jhuniya Bai and Bhuneshwari Bai and from their evidence also assault to these persons is not sufficiently established. Looking to the shaky oral evidence and in absence of medical evidence, charge under Section 323 read with Section 149 of IPC is not established and all the accused persons are acquitted of the charge under Section 323 read with Section 149 of IPC.
18. In view of the above, Criminal Appeal No. 835 of 2011 preferred by the appellants namely Budhia Bai, Sunita Bai, Omin Bai, Kanti Bai, Ganga Bai, Aasho Bai, Bedkunwar Bai and Rukhmani Bai is allowed. The findings recorded by the trial Court against these appellants are set aside and they are acquitted of all the charges framed against them. They are reported to be on bail and their bail bonds stand discharged.
19. So far as Criminal Appeal No. 315 of 2012 preferred by the appellants namely Parsu Ram, Rikhiram, Toranlal, Alakhram, Brijram, Santosh Sahu, Ram Gariba and Rakesh Sahu is concerned, considering all the facts and circumstances of the case, evidence available on record and as role of

accused/appellants is established in commission of murder of Bhagirathi, Kejai Bai and Heman, this Court is of the considered opinion that the findings recorded by the Court below do not suffer from any legal flaw warranting inference in this appeal. Resultantly, their appeal being without any force is liable to be dismissed and it is dismissed as such with the affirmation of the judgment impugned.

20. Appellants/accused are reported to be in jail, therefore, no fresh order of their arrest etc., is required.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju