

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 06-10-2017

Judgment delivered on 08-11-2017

Criminal Appeal No. 464 of 2012

Vidhunsai Paikara, son of Raghunathsai Paikara, aged about 40 years, Occupation Agriculturist, R/o. Village Bamba, P.S. Bagicha, District Jashpur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Bagicha, District Jashpur (C.G.)

---- Respondent

And

Criminal Appeal No. 911 of 2012

Jageshwar Sai @ Jage son of Chain Sai Paikara, aged 23 years, Occupation- Agriculturist, R/o. Village Bamba, P.S. Bagicha, District Jashpur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Bagicha, District Jashpur (C.G.)

---- Respondent

For the Appellants : Ms. Hamida Siddiqui, Advocate

For the Respondent/State : Ms. Smita Ghai, 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 Criminal Appeals arise out of a common judgment passed by the Sessions Judge, Jashpur (C.G.), in Sessions Trial No. 32 of 2011, 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 11.04.2012 passed by the Sessions Judge, Session Division, Jashpur (C.G.), in Sessions Trial No. 32 of 2011 whereby the trial Court, after holding the appellants guilty for commission of murder of deceased Chhatar Sai, convicted them under Section 302 read with Section 34 of the IPC and sentenced them to undergo imprisonment for life and to pay fine of Rs. 1,000/-, with default stipulation.
3. In the present case, name of the deceased is Chhatar Sai. As per prosecution case, on 06.11.2010 at about 8.00 pm, people of village Bamba were celebrating Diwali festival. Deceased Chhatar Sai and one Jagsai consumed some intoxicating liquor in the house of Dashrath. While they were returning from the house of Dashrath deceased Chhatar knocked the door of house of appellant Vidhun Sai. At the

same time, Vidhun Sai and Jagsai came out of the house with club and assaulted the deceased on his head as a result of which he fell down and succumbed to the injuries.

4. Dashrath who is the son of deceased had informed the police about the incident, thereafter First Information Report Ex.P-1 was registered against both the appellants. After registration of First Information Report (Ex.P-1), Police swung into action and inquest was prepared as per (Ex.P-14) and the body was sent for postmortem, certain articles were seized during the investigation, statements of the witnesses were recorded under Section 161 of the Cr.P.C. After completion of the investigation, charge sheet was filed against the accused/appellants in the Court of Judicial Magistrate, First Class, Bagicha, who, in turn, committed the case to the Court of Sessions Judge, Jashpur. The appellants were charge-sheeted under Section 302 read with Section 34 of the IPC 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 and after completion of trial, the trial Court considering the material available on record by the impugned judgement convicted and sentenced the accused/appellants as mentioned above.

5. Learned counsel appearing for the accused/appellants submits as under:

- (i) That there is no eye-witness account to the incident and the case of the prosecution is based on circumstantial evidence and the evidence adduced by the prosecution is weak type of evidence and the conviction cannot rest on the basis of such evidence.
- (ii) That the so-called eye-witness (PW-1) Dashrath Kumar Paikara and (PW-2) Farsu Sai are not the eye-witnesses of the incident because they reached on the spot after receiving information of death of the deceased, therefore, their testimony are not credible.
- (iii) That the independent witnesses have not supported the case of the prosecution and there is material contradictions and omissions in the statement of the witnesses which makes prosecution story highly improbable.

6) *Per contra*, learned State counsel supporting the impugned judgement has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

- 7) We have heard counsel for the parties and perused the material on record.
- 8) To substantiate the charge prosecution has examined as many as 8 witnesses. Appellants had examined Kuldeep (DW-1) in their defence.
- 9) Dr. C.D. Bakhla (PW- 6) conducted autopsy on the dead body of the deceased on 08.11.2010 at about 7.30 am, the dead body of the deceased was brought by Constable No. 248, Shivnandan Sai Paikara of Police Station Bagicha. After examination of the body of deceased Chhatar Sai, he found the following injuries:-

(I) Lacerated wound $4\frac{1}{2} \times 1\frac{1}{2} \times 2\frac{1}{2}$ cm on left mid parietal region blood clot with fracture gross haematoma on C.S.

(ii) Lacerated wound $3\frac{1}{2} \times 1\frac{1}{2} \times 1\frac{1}{2}$ cm on left ear and pinna from right and left blood clot there.

(iii) Bruise with blackish colour on left occipital region and left upper cheek.

The doctor opined that the cause of death is haemorrhage and neurogenic shock due to trauma and nature of death is homicidal and time of death is 36 hours since examination. Version of this witness is unshaken during cross examination and there is no other expert's opinion in this regard to rebut the same and there is no reason to disbelieve the same.

- 10) Dashrath Kumar Paikara (PW-1) and Farsu Sai (PW-2) both deposed that the appellants have assaulted the deceased with club but their statements are shaky in nature looking to the FIR lodged by Dashrath Kumar Paikara (PW-1), in the FIR, he mentioned that at about 9 pm Appellant Jagsai came to his house with club and informed him that he had assaulted the deceased and due to the assault the deceased succumbed to the injuries and thereafter they reached to the spot and saw the body of Chhatar Sai lying dead. If both Dashrath Kumar Paikara (PW-1) and Farsu Sai (PW-2) are eye-witnesses then there was no need to go to the spot to see Chhatar Sai at 9.00 pm when incident took place at 8.00 pm and they were present on the spot, and that creates doubt of their being eye-witnesses. On 6.11.2010 Dashrath Kumar Paikara (PW-1) lodged the FIR in which it is clearly mentioned that just after the incident appellant Jageshwar confessed that he assaulted Chhatar Sai with club but Dashrath Kumar Paikara (PW-1) deposed before the Court that Appellants Jageshwar and Vidhunsai have confessed before him. In the FIR it is not mentioned that Vidhunsai confessed that he assaulted the deceased.
- 11) In the present case, just after the incident Jageshwar Sai confessed before this witness voluntarily and there was no scope for tutoring him. Looking to the voluntarily confession

of appellant Jageshwar Sai the same inspires confidence of this Court and it can be acted upon. So far as the appellant Vidhusai is concerned, he has not confessed just after the incident as his name is not mentioned in the FIR that he confessed about the crime. Dashrath Kumar improved in the Court and the same does not inspire confidence of this Court. It is also doubtful that they are the eye-witnesses to the incident.

- 12) Considering all the facts and circumstances of the case and the evidence available on record, we are of the view that conviction of Vidhusan Paikara is not sustainable. Accordingly, Criminal Appeal No. 464 of 2012 preferred by appellant Vidhunsai is allowed, the findings recorded by the trial Court are set aside and he is acquitted of the charge framed against him. He is reported to be on bail, his bail bonds stand discharged.
- 13) As the confession of appellant Jageshwar Sai @ Jage inspires confidence, we hold that he assaulted the deceased with club. Now, further point for consideration is as to what offence is committed by him. From the evidence it appears that the incident occurred suddenly due to knocking of door of appellant Vidhusai and on this appellant Jageshwar Sai @ Jage assaulted him all of sudden without premeditation, therefore, the case of the appellant Jageshwar Sai falls under

Clause (3) of Section 299 of the IPC and the same is offence under section 304 part II of the IPC. Appellant Jageshwar Sai is reported to be in jail since 07.11.2010 whereby he has already served more than six years and 11 months jail sentence. Considering all the facts and circumstances of the case and further considering the detention period of the appellant, we are of the view that ends of justice would meet if his sentence is reduced to the period already suffered by him.

- 14) Consequently, the Criminal Appeal No. 911 of 2012 filed by the Appellant Jageshwar Sai @ Jage is partly allowed. Conviction and sentence of the appellant under Section 302 read with Section 34 of the IPC is altered into Section 304 part II of the IPC and sentenced to the period already undergone by him. However, as regards sentence of fine, the same is intact. The Appellant is reported to be in jail, he be set at liberty forthwith, if fine is paid and if not required in any other case.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE