

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 635 of 2012

1. Raja Mongre S/o Chandu Mongre, aged about 19 years, R/o In front of Silicate Factory, Bandhvapara, Hemunagar, Thana - Torwa, District Bilaspur, CG ----- **Appellant**

Versus

1. State of Chhattisgarh through Police Station Torwa, District Bilaspur, ----- **Respondent**

CRA No. 534 of 2012

2. Manharan Yadav, aged about 43 years, S/o Bhagela Yadav, R/o Bhadrati, Police Station Nandgath, District Durg, CG, at present R/o Barkhadan, Devrikhurd, Thana Torwa, District Bilaspur CG ----- **Appellant**

Versus

1. State of Chhattisgarh through Police Station Torwa, District Bilaspur, CG ----- **Respondent**

AND

CRA No. 936 of 2013

1. Ramprasad Yadav S/o Late Shri Nanki Ram Yadav, aged about 35 years, R/o Village Kamrid, PS Sargaon, Civil & Revenue District Janjgir Champa, CG, **Presently** - Diwridol, Manikpuri Mohalla, Torwa, PS Torwa, Civil and Revenue District Bilaspur, CG ----- **Appellant**

Versus

1. State of Chhattisgarh through Police Station Torwa, District Bilaspur, CG --- **Respondent**

For Appellants : Shri K.K. Dewangan, Shri Rakesh Sahu &
Shri Rajiv Dubey, Advocates
For Respdtd/State : Shri Vaibhav Goverdhan, PL

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri R.P. Sharma**

Judgment on Board by Pritinker Diwaker, J

05/10/2017

As the aforesaid three Criminal Appeals arise out of the same

judgment and order dated 01.06.2012 passed by Additional Sessions Judge Bilaspur in Sessions Trial No. 62/2011 convicting and sentencing the accused/appellants as detailed below, they are disposed of by this common judgment.

Accused	Conviction (U/s)	Sentence
Raja Mongre	302/34 IPC	Imprisonment for life with fine of Rs. 200 with default stipulation.
	201/34 IPC	RI for 01 year with fine of Rs. 200 with default stipulation.
	25 Arms Act	RI for 01 year with fine of Rs. 200 with default stipulation.
	27 Arms Act	RI for 03 years with fine of Rs. 200 with default stipulation.
Manharan Yadav	201/34 IPC	RI for 01 year with fine of Rs. 200 with default stipulation.
Ramprasad Yadav	201/34 IPC	RI for 01 year with fine of Rs. 200 with default stipulation.
	302/34 IPC	Imprisonment for life with fine of Rs. 200 with default stipulation.

2. Name of the deceased in the present case is Sunil Kumar alias Baba Yadav who is alleged to have been killed by the accused/appellants and the acquitted accused Vijay Mongre on 25.12.2010 at 10.30 PM. On 26.12.2010 FIR Ex. P-18 was lodged by Navin Kaithwas (PW-9) stating that on 25.12.2010 at 10.30 PM he received a telephonic information through his younger brother Alok Kaithwas (PW-10) from the cell phone belonging to Dinesh Wadekar (PW-8) that Vijay Sweeper, Raja Sweeper and Ram Yadav were assaulting Baba Yadav with knife. FIR further states that PW-10 was also caught hold of by the aforesaid three persons in order to assault but he somehow managed to get rid of them and went to the house of Dinesh Wadekar (PW-8) along with his friend Morad Ali (PW-3) and then informed the police immediately. Thereafter, he along with Morad Ali went to the house of Vijay but as nobody was

found there, they went behind his house in order to search Baba and noticed the movement of someone behind the bushes. On shout being raised by the lodger of FIR, first of all accused Manharan Yadav came out and then 3-4 persons ran away from there. Manharan Yadav then is stated to have informed him that Baba Yadav was killed by Vijay Sweeper, Raja Sweeper and Ram Yadav. Accused Manharan is also said to have informed the lodger of FIR that body of Baba Yadav was lying behind the bushes. The FIR was registered for the offences punishable under Sections 302, 34 IPC against Vijay Sweeper, Raja Sweeper and Ram Yadav. Immediately after lodging FIR, *merg* Ex. P-19 was recorded and inquest on the dead-body was conducted on 26.12.2010 vide Ex. P-4. Dead-body was sent for postmortem examination which was conducted by Dr. S.K. Chandel (PW-15) who gave his report Ex. P-31. On the memorandum of accused Raja Ex. P-5, seizure of knife was made under Ex. P-7 and that of clothes under Ex. P-10; on the memorandum of accused Ram Yadav Ex. P-6 seizure of clothes was made under Ex. P-11. However, there is no FSL report on record. As accused Vijay was absconding, charge-sheet was filed only against the present appellants followed by framing of charges under Sections 302/34 and 201/34 IPC. Accused/appellant Raja has also been charged under Sections 25 and 27 of the Arms Act.

3. In order to prove its case the prosecution has examined 16 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below, by the judgment impugned, has convicted and sentenced the accused/appellants as

mentioned in paragraph No.1.

5. During pendency of these appeals, accused Vijay Mongre was also arrested and put to trial but has been acquitted by the judgment and order dated 30.6.2016.

6. Counsel for the accused/appellants submit as under:

(i) That the accused/appellants have been convicted solely on the basis of statement of Alok Kaithwas (PW-10) who has projected himself to be the eyewitness to the incident though in his diary statement he has nowhere stated that he saw the accused/appellants committing the crime in question. For the first time he has made such statement, as if eyewitness to the incident, in the Court.

(ii) That Dinesh Wadekar (PW-8) is merely a hearsay witness and therefore his testimony cannot be given much weightage.

(iii) That on the memorandum of accused Raja and Ram Prasad certain seizure including that of knife has been made but in the absence of FSL report it is of no significance to the case of the prosecution.

7. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellants as described above are strictly in accordance with law and there is no infirmity in the same. He submits that PW-10 may not be an eyewitness to the incident as per the diary statement but once he has deposed in the Court that he saw the accused/appellants assaulting the deceased with knife, it can be made a basis for conviction and there is no reason to disbelieve his Court statement. State counsel further submits that from the evidence of PW-8 and

PW-9 it is clear that PW-10 was in fact the eyewitness to the incident though he has not stated so in his diary statement.

8. Subodh Jhaggar (PW-1) is the witness who assisted in the investigation. Anil Yadav (PW-2) – the brother of the deceased has categorically stated that he was not present at the place of incident nor did he see the occurrence. Morad Ali Ansari (PW-3) is the witness on whose mobile phone a call was made by PW-10 Alok Kathwas. Shyam Lal Netam (PW-4) has not stated anything specific against the accused/appellants. Bijju Ram (PW-5) is the witness to inquest Ex. P-4, memorandums Ex. P-5 and P-6 and seizure of certain articles including that of knife made under Ex. P-7. Indra Kumar Singh (PW-6) is the Patwari who prepared spot map Ex. P-15. Isfaq Qureshi (PW-7) is the witness to inquest Ex. P-4 and seizure made under Ex. P-8 and P-9. Dinesh Wadekar (PW-8) is a hearsay witness. According to him, he was informed by PW-10 that accused persons assaulted the deceased. Navin Kathwas (PW-9) – the brother of PW-10 Alok Kaithwas and lodger of FIR and *merg*. Alok Kaithwas (PW-10) – the prime witness to the case of the prosecution has stated that on 25.12.2010 as soon as he reached near the house of accused Ram Yadav falling on the way to his home, he called him inside where 2-3 persons were already consuming liquor. He is also stated to have been offered liquor but as it was already finished, he along with Ram Yadav went to the liquor shop to buy it and on return he too consumed the same. Meanwhile, accused Raja, Vijay and deceased Baba came there in a drunken condition and asked for getting some more liquor. Ultimately, after consuming liquor two persons namely Kanhaiya and one Musalman went away whereas accused Raja, Vijay, deceased Baba and he himself (this witness) remained there.

Meanwhile, on account of being under the uncontrolled influence of liquor, deceased Baba, as was asked by accused Vijay, was taken to his house on motorcycle and as soon as they reached near the house, Ram Yadav got down and Baba had fallen off the motorcycle. Thereafter, he was taken inside by this witness and made to lie on the heap of sand. Accused Vijay thereafter is said to have called this witness inside where on account of altercation between accused Vijay and his wife he took out knife and asked this witness not to attend the phone of Baba. Saying so, accused Vijay asked Raja to assault Baba. Accused Ram held hair of Baba and accused Raja inflicted 2-3 knife blows to him. While assaulting Baba, accused Vijay had told this witness not to get away but on the pretext of picking up his mobile phone from the ground, he left the spot. In cross examination, when this witness was confronted by his examination-in-chief, he has stated that whatever he has stated in the examination-in-chief was disclosed to the police as to who killed the deceased but if it is not recorded in diary statement Ex. D-4, he could not tell the reason for that. It is relevant to note that in the diary statement this witness has nowhere stated that he saw anyone assaulting the deceased and for the first time he has stated so in the Court. Shiv Nandan Sahu (PW-11) has not supported the case of the prosecution and has been declared hostile. Sandip Yadav (PW-12), Madhav Tandia (PW-13) and D.S. Dehari (PW-14) are the witnesses who assisted in the investigation. Dr. S.K. Chandel (PW-15) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-31 stating therein that he noticed number of incised wounds on face and neck extending from chin to larynx and that the trachea was also cut. Cause of death, as opined by this witness, was incised

wound at neck leading to cutting of great vessels of neck on right side leading to severe hemorrhage, and it was homicidal in nature. Kavita Dhurve (PW-16) is the investigating officer who has duly supported the case of the prosecution.

9. We have heard counsel for the parties and perused the material on record including the evidence of the witnesses very carefully. Though in the Court statement, Alok Kaithwas (PW-10) has stated that he saw accused Raja Mongre and Ram Prasad assaulting the deceased with knife, no such utterance finds place in his diary statement Ex. D-4. Not even a whisper is there in his diary statement indicative of the fact that the incident took place in his presence or he saw it happening. Further, in the cross-examination, PW-10 has stated that the things stated in the examination-in-chief about the incident of assault being seen by him, were disclosed to the police but how they were left out from his diary statement, he could not tell the reason. The improvement resorted to by this witness and suddenly becoming an eyewitness to the incident before the Court renders his testimony absolutely untrustworthy and unreliable to be made a basis for conviction. If the incident had really occurred in his presence, what prevented him at the earliest from bringing forth the same, is the biggest question to the reliability of his version made before the Court for the first time. The other piece of evidence relied upon by the trial Court is the testimony of Navin Kaithwas (PW-9) who lodged the report on the basis of information received from PW-10. He himself did not see the incident and therefore the things stated by him in the capacity of a hearsay witness cannot receive much attention to decide the culpability or innocence of the accused persons. Similarly, the statement of Dinesh Wadekar (PW-8) is also not worth

reliance because he too did not see the incident and just gave a mouth to the words fell to his ear from some other source. In other words, being hearsay witnesses, court statement of PW-8 and PW-9 is not worthy to be relied upon to base conviction. Likewise, the recovery of certain articles including knife made on the basis of memorandum of accused/appellants is not decisive for arriving at the conclusion of guilt of the accused/appellants for the reason that no FSL test much less the serological test was sought to be conducted by the prosecution. Thus the prosecution has utterly failed to prove its case beyond all reasonable doubt connecting the accused/appellants with the murder of the deceased and causing disappearance of the evidence. Court below has thus fallen in a gross error while appreciating the evidence and holding the accused /appellants guilty under sections 302/34, 201/34 and 25, 27 of the Arms Act. They, indeed, are entitled for benefit of doubt.

10. In the result, all the three appeals are allowed, judgment impugned is set aside and the accused/appellants are acquitted of the charges levelled against them. Accused/appellant Manharan Yadav is already on bail and therefore no order to set him free is necessary. However, accused Raja Mongre and Ram Prasad Yadav who are in jail be set free forthwith, if not called in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.P. Sharma)
Judge