

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 558 of 2012**

1. Jogendro Mahkul, aged about 57 years, son of Bhadro Mahkul,
2. Topi Ram, aged about 50 years, son of Shri Bhadro Mahkul,
3. Narayan Prasad Mahkul, aged about 33 years, son of Shri Bhadro Mahkul,
4. Jageshwar @ Jogeshwar, aged about 61 years, S/o Shri Bhadro Mahkul,

All are agriculturist, R/o Vill. Sagarpur, PS Dharamjaigarh, Distt. Raigarh (CG)

---- Appellants**Versus**

- State of Chhattisgarh Through - Station House Officer, P.S. Dharamjaigarh, Distt. Raigarh C.G.

---- Respondent**And****CRA No. 557 Of 2012**

- Manbodh Ram Yadav, aged about 33 years, S/o Jageshwar Prasad Mahkul, R/o Vill. Sagarpur, P.S. Dharamjaigarh , Distt. Raigarh C.G.

---- Appellant**Vs**

- State Of Chhattisgarh Through - The Station House Officer, P.S. Dharamjaigarh , Distt. Raigarh C.G.

---- Respondent

For Appellants	:	Shri AN Bhakta and Shri Vivek Bhakta, Advocates.
For Respondent/State	:	Shri Ashish Shukla, GA.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board By Justice Pritinker Diwaker

24/05/2017

As these two appeals arise out of the common judgment of conviction and order of sentence dated 29.6.2012 passed by the II Additional Sessions Judge, Raigarh in ST No.55/2010 convicting and sentencing the appellants under Sections 147, 148 and 302/149 of IPC, they are being disposed of by this common judgment.

02. Brief facts of the case are that about three months prior to the date of incident i.e. 19.12.2009 deceased Rajkumar Gupta had assaulted accused Jogendro Mahkul for which he was arrested. On 18.12.2009 i.e. a day prior to the date of incident deceased Rajkumar was released on bail. On 19.12.2009 at about 3.30 pm accused persons committed murder of the deceased by causing him several injuries by club and stone near bus stand of Village Aamapali and thereafter threw his body in the nearby pit. The incident was witnessed by number of witnesses and at the instance of PW-7 Damrudhar Gupta, brother of the deceased, on 19.12.2009 itself at about 6.45 pm FIR (Ex.P/16) was registered against all the accused persons under Sections 147, 148, 149, 302 of IPC. Immediately thereafter at 7 pm merged intimation Ex.P/15 was registered. Inquest on the dead body was conducted on

20.12.2009 vide Ex.P/4 and thereafter the body was sent for postmortem which was conducted on the same day by PW-12 Dr. BL Bhagat vide Ex.P/24 wherein the doctor noticed multiple injuries on his person including fracture of occipital and frontal bones. In his opinion, the cause of death was coma as a result of head injury caused by hard and blunt object and the death was homicidal in nature. After filing of charge sheet, the trial Court framed charges under Sections 147, 148, & 302/149 of IPC against the accused/appellants.

03. So as to hold the accused guilty, the prosecution examined 20 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.

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 mentioned above.

05. Counsel for the appellants submits as under:

(i) that statements of so-called eyewitness PW-14 Setram Gupta, PW-15 Keshav Pradhan and PW-20 Kumarsai are self-contradictory. Further, PW-14 being relative of the deceased is an interested witness and has falsely implicated the appellants on account of previous enmity.

(ii) that PW-15 Keshav Pradhan has been planted as an eyewitness though he is a resident of different Tahsil. Likewise, PW-20 Kumar Sai

is also not consistent while deposing in the Court and therefore, he ought to have been disbelieved by the trial Court.

(iii) that PW-1 Vidhuti Mandal is, in fact, the best witness but the trial Court has not relied upon his statement.

(iv) that in the FIR lodged by PW-7 Damrudhar, name of the so-called eye-witness PW-20 Kumar Sai has not been mentioned as an eyewitness and therefore, PW-20 is to be disbelieved.

(v) that the incident had taken place in the market and thus Section 147 of IPC would not attract.

(vi) that it is the deceased who was aggressor and when he quarreled with the appellants, it appears that some incident had taken place, which unfortunately resulted in his death. Therefore, considering the facts and circumstances of the case giving rise to the incident, the appellants can at best be convicted under Section 304 Part-I or II of IPC as the incident had occurred all of a sudden in the heat of passion without there being any premeditation on the part of the appellants.

(vii) that the appellants have already remained in jail for about seven years and therefore, after conversion of their conviction into Section 304 Part-I or II, they may be sentenced to the period already undergone by them.

Reliance has been placed on the decisions in the matters of ***Bhimappa Jinnappa Naganur Vs. State of Karnataka, 1993 Suppl. (3) SCC 449*** and ***Ghanshyam Verma Vs. State of CG, 2012 (2) CGLJ 327***.

06. On the other hand, State counsel supporting the impugned judgment has submitted as under:

- (i) PW-14 & PW-20 are consistent while deposing in the Court against the appellants and have categorically described as to the manner in which the deceased was done to death by the appellants.
- (ii) that except two accused i.e. Topiram and Manbodh, even PW-15 has consistently deposed against the rest of the accused persons. According to the State counsel, it appears that PW-15 has been won over by the defence in respect of these two accused persons.
- (iii) that it is not a thumb rule that if the incident takes place in the market, Section 147 of IPC would not be attracted. All the accused persons were present at the place of occurrence with weapons and predetermined mind in order to take revenge from the deceased and as soon as they could find him, they committed his murder by brutally assaulting him.
- (iv) that there is no evidence on record to show that it is the deceased who was the aggressor and even no witness to this effect has been examined by the defence.
- (v) that statements of the eyewitnesses also find due support from the medical evidence.
- (vi) that the FIR has not been lodged by the eyewitness, but by one Damrudhar (PW-7), brother of the deceased, and therefore, non-mentioning of the name of PW-20 as an eye-witness to the incident therein hardly makes any difference.
- (vii) that considering the nature of injuries suffered by the deceased and the manner in which he was done to death, it is apparent that the appellants assaulted him with intention to cause his death and also had the knowledge that such bodily injuries would result in his death. As

such, they have rightly been convicted under Section 302 of IPC.

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

08. PW-14 Setram Gupta has stated that on the date of incident there was a weekly market at Village Aamapali and he was returning after completing his agriculture work along with his father. At about 3 pm when he was in the vegetable market, he saw the deceased Rajkumar and accused Jogendro quarreling over some matter and immediately thereafter, other accused persons Jageshwar and Narayan also reached there carrying club in their hands and they all started assaulting the deceased. He states that the beetle shop owner had asked the accused persons to go away from his shop and then the accused persons took the deceased towards Bartapali road and during that accused Jogeshwar, Jogendro and Narayan were assaulting the deceased. He states that in the meanwhile other two accused Topi and Manbodh also reached there carrying clubs and they also assaulted the deceased and thereafter, all of them threw the deceased near left side of the road. In para-2 he admitted to have seen all the accused persons assaulting the deceased. In the lengthy cross-examination, but for minor contradictions this witness remained firm and reiterated as to the manner in which the deceased was done to death by the accused persons.

09. PW-15 Keshav Pradhan, another eyewitness to the incident, has stated that initially but for accused Topi and Manbodh, the other accused persons were having some discussion with the deceased and

then they started beating him by club. Thereafter, from the other side accused Manbodh and Topi also reached the place of occurrence carrying club in their hands and they were exhorting the other accused persons to kill the deceased and thereafter they also assaulted the deceased by club as a result of which deceased Rajkumar fell unconscious. He states that the accused persons dragged the dead body up to some distance and they threw the dead body which was seen by him in the evening. In his lengthy cross-examination, but for minor contradictions in respect of holding of weapon by different accused and in respect of a particular assault made by the individual accused, he remained firm and nothing material could be elicited from him by the defence to its advantage. PW-20 Kumar Sai is the other eyewitness to the incident, who has duly supported the prosecution case. He has stated that all the accused persons assaulted the deceased by club and thereafter, threw his dead body near the road.

10. PW-1 Vidhuti Mandal was also an eyewitness to the incident but in the Court he has not supported the prosecution case and has been declared hostile. PW-2 Bhadro Sarkar, PW-3 Subodh Sikdar and PW-4 Devsingh, witness of memorandum and seizure, have not supported the prosecution case and been declared hostile. PW-5 Shivkumar Vishal is also an eyewitness to the incident and has partially supported the prosecution case but has been declared hostile on the point of seizure. However, if para-11 of this witness is seen, he does not appear to be a reliable witness. PW-6 Mukesh has turned hostile. PW-7 Damrudhar, brother of the deceased, who lodged FIR and merged intimation, has proved the same. He was informed about the incident

by father of the deceased. PW-8 Bhajoram is a hearsay witness who reached the place of occurrence after the incident had taken place. He has stated that earlier the accused persons had chopped the hand and leg of father of the deceased for which they were punished and after undergoing the sentence, they were set free. He has also stated that there was an old enmity between the accused persons and the family of the deceased. PW-9 Babulal, Patwari, prepared the spot map Ex.P/17.

11. PW-12 Dr. BL Bhagat conducted postmortem on the body of the deceased on 20.12.2009 vide Ex.P/24 and noticed lacerated wound on occipital region of scalp, lacerated wound in left forehead, contusion in post aspect of left abdomen and right forearm. He also found fracture of occipital and frontal bones. In his opinion, the cause of death was coma as a result of head injury caused by hard and blunt object and the death was homicidal in nature.

12. PW-16 Tejram, father of the deceased, has stated that since 1987 there is a land dispute between the accused persons and himself and earlier his right hand and left leg were chopped by the accused persons Jageshwar, Narayan and one Kahru. He has stated that in the sessions trial all these three were convicted, however, after being released from jail, they committed murder of his son Rajkumar. PW-17 Ramdas Kurre and PW-19 HR Chandra, police personnel, helped in the investigation. PW-18 Indrapal Singh, investigating officer, has duly supported the prosecution case.

13. Close scrutiny of the evidence makes it clear that there was old

enmity between the accused/appellants and the family of the deceased. In the past also, accused Jageshwa and Narayan along with one Kahru had assaulted the father of the deceased Tejram (PW-16), chopped his hand and leg and were convicted and sentenced therefor. The evidence on record goes to show that about three months prior to the date of incident deceased Rajkumar Gupta had assaulted accused Jogendro Mahkul for which he was arrested and released on bail on 18.12.2009 i.e. a day prior to the date of incident. Eyewitnesses to the incident PW-14 Setram Gupta, PW-15 Keshav Pradhan & PW-20 Kumar Sai while supporting the prosecution case have categorically described as to the manner in which the deceased was assaulted by the appellants by club. Though some minor contradictions are there, but considering the overall statements of these witnesses, which finds due corroboration from the medical evidence, according to which corresponding injuries were noticed on the body of the deceased, and the fact that they are rustic villagers and have remained firm on material particulars, such minor contradictions are required to be ignored. We find no reason to disbelieve the evidence of the aforesaid eyewitnesses. In view of above, ocular and medical evidence on record, complicity of the appellants in commission of the offence stands proved beyond all reasonable doubt.

14. As regards the argument of the appellants that the evidence of PW-14 Setram Gupta being interested witness cannot be relied upon, it is well settled principle of law the evidence of an interested witness should not be equated with that of a tainted evidence or that of an approver so as to require corroboration as a matter of necessity. All

that the Courts required as a rule of prudence, not as a rule of law, was that the evidence of such witness should be scrutinized with a little care. It has to be realized that related and interested witness would be the last persons to screen the real culprits and falsely substitute innocent ones in their places. In the present case, as discussed above, the evidence of PW-14 inspires confidence and finds support from the evidence of other eyewitnesses as also the medical evidence and therefore, merely on account of he being relative of the deceased, his evidence cannot be discarded.

Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (***See Anil Rai Vs. State of Bihar, (2001) 7 SCC 318; State of U.P. Vs. Jagdeo Singh, (2003) 1 SCC 456; Bhagalool Lodh & Anr. Vs. State of U.P., (2011) 13 SCC 206; Dahari & Ors. Vs. State of U. P., (2012) 10 SCC 256; Raju @ Balachandran & Ors. Vs. State of Tamil Nadu, (2012) 12 SCC 701; Gangabhavani Vs. Rayapati Venkat Reddy & Ors., (2013) 15 SCC 298; Jodhan Vs. State of M.P., (2015) 11 SCC 52.***)

15. We also find no substance in the arguments of the appellants that it is the deceased who was the aggressor and the incident occurred all of a sudden in the heat of passion without there being any premeditation on the part of the appellants and therefore, they are liable to be convicted under Section 304 Part-I or II and not under Section 302 of IPC. There is no evidence whatsoever on record to

suggest that the deceased was aggressor. It has come in the evidence of the prosecution witnesses that there was old land dispute between the appellants and the family of the deceased, in the past some of the accused persons had brutally assaulted the father of the deceased, chopped his hand and leg and that earlier the deceased had also assaulted accused Jogendro Mahkul for which he was arrested. Thus the prosecution has successfully proved motive on the part of the appellants for commission of the crime. From the evidence of eyewitnesses it is apparent that on the date of incident, all the accused persons with the common object of eliminating the deceased formed themselves into an unlawful assembly and assaulted him with club brutally which resulted in his instantaneous death and threw his dead body near the road. Thus, considering the nature and extent of injuries suffered by the deceased and the manner in which the appellants killed the deceased, it can safely be inferred that they assaulted him with intention to cause his death and while causing such bodily injuries were also having the knowledge that it would result in his death. As such, the finding recorded by the trial Court holding them guilty under Section 302 of IPC can not be faulted with and the same is hereby affirmed. The judgments cited on behalf of the appellants being distinguishable on facts from the present case are of no help to them.

16. For the reasons stated above, we are of the opinion that the prosecution has successfully proved guilt of the appellants beyond all reasonable doubt on the basis of evidence adduced by it and the trial Court has rightly convicted and sentenced the appellants under Sections, 147, 148 & 302/149 of IPC by just and proper appreciation of

the evidence so adduced.

17. In the result, the appeals being bereft of any substance are liable to be dismissed and are dismissed as such. Appellants are reported to be in jail, therefore, no order regarding their arrest etc. is required.

Sd/

(Pritinker Diwaker)
Vacation Judge

Sd/

(Sanjay K. Agrawal)
Vacation Judge