

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 839 of 2010

1. Ram Kumar S/o Sukhdeo Prasad Suryavanshi, aged about 42 years,
2. Santosh S/o Dukhu Ram Suryavanshi, aged about 35 years,
3. Ramadhar, son of Awadh Ram Satnami, aged about 45 years
4. Nanki Ram S/o Kariya Lal Suryavanshi, aged about 45 years,
All R/o Daija, P.S. Takhatpur, Distt.-Bilaspur, C.G.
5. Bhagirathi S/o Jethu Satnami, aged about 48 years, R/o Vill. Dhangar, P.S. Takhatpur, Distt.-Bilaspur, C.G.

(Accused Sukhdeo Son of Shiv Prasad Suryavanshi R/o Village Daija died after acquittal (27.11.02 in ST No.279/02)

---- Appellants

Versus

- State Of Chhattisgarh through P.S. Thakhatpur, District Bilaspur (CG)

---- Respondent

For Appellants No.1, 2 & 4	:	Smt. Kiran Jain, Advocate.
For Appellant No.3	:	Shri Alok Bakshi, Advocate.
For Appellant No.5	:	Shri SC Verma, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board By Justice Pritinker Diwaker

24/04/2017

This appeal arises out of the judgment of conviction and order of sentence dated 29.10.2010 passed by the Fifth Additional Sessions Judge, Bilaspur in ST No.279/2002 convicting each of the appellants

under Sections 302/149, 147 of IPC and sentencing them to undergo imprisonment for life, pay a fine of Rs.500/- and RI for two years, fine of Rs.500/- with default stipulations respectively.

02. As per prosecution case, on account of previous enmity, on 15.1.2002 at about 5 pm the accused/appellants, deceased accused Sukhdev and two others caused injuries to deceased Kartikram by means of club resulting in his instantaneous death. First the incident was witnessed by PW-2 Ramdas who immediately called Ramphal, Ramvilas, Shyamkali and Narayan who were in adjacent house and then all of them reached the place of occurrence and saw the accused persons assaulting the deceased. After commission of the offence, the accused persons fled from the spot. FIR (Ex.P/3) was lodged on 15.1.2002 at 11 pm by the eyewitness Ramdas (PW-2) against the accused persons under Sections 147, 148, 302 of IPC. Inquest over the dead body was conducted on 16.1.2002 vide Ex.P/4 and thereafter, the body was sent for postmortem which was conducted on the same day vide Ex.P/1 by PW-1 Dr. Kiran Nahrel, who noticed as many as seven injuries on the person of the deceased and opined that the cause of death was shock caused by internal and external hemorrhage.

The police filed charge sheet against six accused persons including the appellants and deceased accused Sukhdev. Vide judgment and order dated 27.11.2002 the trial Judge acquitted all the accused persons of all the charges. The said judgment was subjected to challenge by complainant Ramdas (PW-2) by filing criminal revision and vide judgment and order dated 10.11.2009 passed in CRR

No.13/2013 this Court had set aside the judgment of acquittal dated 27.11.2002 and directed for re-trial of the accused persons. Pursuant to order passed by this Court, six accused persons were re-tried by the trial court and by the impugned judgment dated 29.10.2010, the trial Court has convicted the appellants herein and one Sukhdev, who died during pendency of the appeal. It is this judgment dated 29.10.2010 which has been assailed by the appellants on the following grounds:

03. Counsel for the appellants submits as under:

- that in the earlier statements made by the eyewitnesses the deceased was caused injuries by a club and tabbal (crowbar) whereas after judgment of this Court dated 10.11.2009 passed in CRR No.13/2013, in re-trial all the witnesses have stated that the injuries were caused by the accused persons by club.
- that earlier Sukhram, from the side of the accused persons, had lodged a report against Rajkumar, Kartikram, Ramphal, Ramdas and Ramnarayan under Sections 147, 294, 506 Part-II and 323 of IPC and in retaliation, the present case has been registered against the accused/appellants in which the persons who were named earlier as accused have become eyewitness to the incident.
- that only one club is said to have been seized from the possession of accused/appellant Ramkumar whereas as per eyewitnesses injuries have been caused by all the accused persons and that no weapon has been seized from other accused persons.
- while referring to the statement of autopsy surgeon, it has been

argued that the injuries sustained by the deceased could have been caused only by one club, meaning thereby that the other accused persons have been falsely implicated.

- that as per statement of Ramdas (PW-2) when he informed the other witnesses about the incident and they reached the place of occurrence, they saw the accused/appellants fleeing from the spot, however, while deposing in the Court, those persons who reached the place of occurrence subsequently also became the eyewitnesses and just to implicate the entire family, leveled false allegations against all the accused persons.
- that even as per statements under Section 161 of Cr.P.C. of the witnesses they had not seen the actual occurrence and reached the spot after the incident had taken place.
- that though as per the prosecution case itself the incident occurred at the eve of Mela and number of independent persons were there, but no such independent witness has been examined.
- that no specific over act has been attributed to the individual accused.

Reliance has been placed on the decisions in the matters of ***Nadodi Jayaraman etc. Vs. State of T.N., 1993 Cri.L.J. 426 (SC); Sarman and others Vs. State of M.P., 1993 SCC (Cri.) 554; Shaji and others Vs. State of Kerala, (2011) 2 SCC (Cri.) 857; Badal Murmu and others Vs. State of West Bengal, (2014) 2 SCC (Cri.) 179*** and decision of this High Court in the matters of ***Ramkeshra @ Rameshwar Vs. State of CG, 2008(3) C.G.L.J. 86 (DB)***.

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

- that after order of re-trial being passed by this Court, the witnesses were examined again and categorically stated as to the manner in which the deceased was done to death by the accused/appellants.
- That earlier Sukhram had lodged a report against five persons but out of those five persons, only two namely Ramphal and Ramdas were cited as witness and in the facts and circumstances of the case, they appear to be natural witness. These two witnesses have not implicated Sukhram and that itself shows that they had no intention to falsely implicate anyone and only the actual assailants have been arrayed as accused.
- that the incident took place near the house of the witnesses where all of them were present and immediately after coming to know from Ramdas that Kartikram is being beaten, they all rushed to the spot and saw the accused persons assaulting the deceased.
- that minor contradictions in the statements of the witnesses are required to be ignored considering the fact that they are rustic villagers and their evidence was recorded after about eight years of the incident.
- that once all the accused persons have brutally assaulted the deceased, even if no overt act has been specifically alleged against them, they have rightly been convicted under Section 302 with the aid of Section 149 of IPC.

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

06. PW-2 Ramdas is an eyewitness to the incident and is also lodger of FIR. He has stated that on the date of incident when he was sitting in his house on a pillar, he saw the accused/persons beating his brother Kartikram by club. He has stated that though the accused persons were also carrying crowbar, but he did not see any of them assaulting by crowbar. After hearing the cries of his brother when he reached the place of occurrence, he was abused and threatened by accused Ramkumar and out of fear he returned towards his house and narrated the entire incident to Narayan (PW-6), Ramphal (PW-3), Ramvilas (PW-4) and Shyamkali (PW-5) and then all these persons ran towards the place of occurrence and seeing them, the accused persons started fleeing from the spot. All of them found the deceased to be dead lying in the field. He has further stated that earlier daughter of the deceased Kartikram was eve-teased by Bedram, for which a report was lodged by Kartikram. In his cross-examination this witness has remained firm and reiterated as to the manner in which the deceased was done to death by the accused persons. He has clarified that he could not say as to which of the accused was carrying crowbar and whether any assault was made by the said crowbar.

07. PW-3 Ramphal has stated that on the date of incident when he was in his at about 5 pm, his uncle Ramdas (PW-2) came running to his house and informed that Kartik is being assaulted and then he alongwith Ramvilas, Shyamkali and Narayan immediately rushed to the

spot and saw the accused persons, who were carrying club and crowbar, assaulting the deceased. He states that he too was abused by the accused persons and thereafter all of them fled from the spot. Though there is some variation in his Court statement from that of his case diary statement, but that has not been properly confronted by the defence.

08. PW-4 Ramvilas has also been examined by the prosecution as an eyewitness to the incident. While supporting the prosecution case he has stated that as soon as he, Ramdas, Ramphal, Shyamkali and Narayan came to know about the incident, they rushed to the spot and saw the accused/appellants assaulting the deceased and thereafter, they fled from the spot. When he was confronted with his diary statement, he has stated that he did inform the police that he saw all accused persons assaulting the deceased and had not stated that only accused Ramkumar was assaulting the deceased by club.

09. PW-5 Shyamkali, daughter of the deceased, has stated that at the time of incident she was in her house along with Ramphal, Ramvilas and Narayan when Ramdas came there and informed that Kartik is being beaten by the accused persons. When they reached the place of occurrence, they saw the accused persons assaulting the deceased and thereafter, all the accused ran away from the spot. In her cross-examination she has admitted the fact that when she reached the place of occurrence, the deceased was lying on the ground after sustaining injuries.

10. PW-6 Narayan, another eyewitness to the incident, too has

stated that after receiving information from Ramdas when he along with others reached the place of occurrence, which was just near to his house, they saw the accused persons beating the deceased by a club and after seeing them, the accused persons fled from the spot. In cross-examination he has, however, admitted the fact that when he reached the place of occurrence, the accused persons had fled from the spot.

11. PW-1 Smt. Kiran Nahrel conducted postmortem on the body of the deceased on 16.10.2002 vide Ex.P/1 and noticed following injuries:

- (i) Lacerated injury in the size of 2.5 cm x 1.5 cm over left ear pinna.
- (ii) Lacerated injury in the size of 2.5 x 1 cm over left mastoid skin deep oblique.
- (iii) Lacerated injury in the size of 1 x 1/2 cm x skin deep over left occipital region.
- (iv) Lacerated injury in the size of 7 x 1 cm x skin deep over left frontal parietal region.
- (v) Lacerated injury in the size of 3 x 1 cm x skin deep over left side of vault of skull.
- (vi) Lacerated injury in the size of 5 x 1.5 cm x scalp deep over right side of head.
- (vii) Lacerated injury in the size of 1.5 x 1/2 cm x 1/2 cm in posterior compartment over upper third of forearm.

Apart from above injuries, two linear fracture on left side scalp and one linear fracture on right side scalp were also there. Bones of right forearm were broken, which was of the nature of compound fracture. In her opinion, the cause of death was shock caused by internal and external hemorrhage. After examination of the weapon of offence club seized from accused/appellant Ramkumar, the doctor

opined that the injuries found on the person of the deceased could be caused by the said weapon. Though she has stated that seven injuries sustained by the deceased could have been caused by one person by repeated lathi blows and it is not necessary that those injuries were caused by different persons.

12. PW-7 Gavkaran Shrivasa, PW-9 Raghuvar Das Vaishna, PW-11 Bhagvat Patle & PW-13 Rajkumar, have not supported the prosecution case and been declared hostile. PW-8 Ramnarayan is a witness to inquest. PW-10 Ravikumar conducted inquest over the body of the deceased vide Ex.P/4. PW-14 J. Toppo, investigating officer, has duly supported the prosecution case.

13. Close scrutiny of the evidence makes it clear that on 15.1.2002 deceased Kartikram was beaten by the accused persons by club leading to his instantaneous death. PW-2 Ramdas, lodger of the FIR and eyewitness to the incident has duly supported the prosecution case. According to him, after seeing the accused persons assaulting the deceased he immediately informed about the same to Ramphal (PW-3), Ramvilas (PW-4), Shyamkali (PW-5) and Narayan (PW-6). All these witnesses have categorically stated that when they reached the place of occurrence, they saw the accused/appellants fleeing from the spot carrying club and crowbar in their hands. Ramphal and Ramvilas have though stated that they also saw the accused persons assaulting the deceased, however, even assuming that they have exaggerated a bit in their statements, they have not been cross-examined properly to prove the fact that they had not seen the incident at all. Most importantly, all these witnesses (Pws 3 to 6) have unequivocally stated

that they saw the accused persons at the spot carrying weapons in their hands, immediately after seeing them the accused persons ran away from the spot and that the deceased was found lying dead on the field with injuries all over his body. This apart, a very prompt report was lodged by Ramdas (PW-2) narrating the entire incident and showing involvement of the accused/appellants. The above ocular evidence also finds due corroboration from the medical evidence, according to which corresponding injuries were noticed on the person of the deceased.

Though there are some minor contradictions in the statements of the witnesses, however, the same are required to be ignored, considering the background of the witnesses who are rustic villagers and the fact that they have been examined again eight years after the incident on order of re-trial being passed by this Court.

14. We find no substance in the arguments of the appellants that since a report was earlier lodged by one Sukhiram against some of the prosecution witnesses, in retaliation they have become eyewitness in the present case because Sukhiram had lodged a report against five persons but out of them, only two namely Ramphal and Ramdas were cited as witness and as discussed above, they appear to be natural witness and their evidence inspire confidence of the Court. Furthermore, these two witnesses have not implicated said Sukhiram, which goes to show that they had no intention to falsely implicate anyone. Even otherwise, it is not conceivable that the witnesses, who are close relatives of the deceased, would spare the real culprits merely for settling the old scores with the accused persons.

15. We further find no substance in the arguments of the appellants that in view of the evidence of the autopsy surgeon that the injuries suffered by the deceased could have been caused by one person by making repeated club blows, all the accused/appellants cannot be convicted for offence under Section 302 of IPC without there being any specific and overt act alleged against each of accused individually. It is to be taken note of that the appellants herein have been convicted under Section 302 with the aid of 149 of IPC. Section 149 prescribes for vicarious or constructive criminal liability for all members of an unlawful assembly where an offence is committed by any member of such an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object. From the evidence on record it stands proved beyond all reasonable doubt that all the accused/appellants formed themselves into an unlawful assembly with a common object of doing away with the deceased, all of them were armed with club and crowbar and in that eventuality, even if one of them has committed the offence, the others cannot escape from the criminal liability and were also liable to be convicted for the said offence with the aid of Section 149 of IPC.

As regards the judgments cited on behalf of the appellants, the same being distinguishable on facts from the present one are of no help to the appellants.

16. On the basis of aforesaid analysis, we are of the view that the trial Court after proper appreciation of the entire evidence, ocular and medical, was fully justified in convicting and sentencing the appellants

under Section 302/149 and 147 of IPC. We find no illegality or infirmity in the findings arrived at by the trial Court and the same are hereby affirmed.

17. Resultantly, the appeal fails and is, accordingly, dismissed. As the appellants are reported to be in jail, no order regarding their surrender etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge