

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 609 of 2013

- Ajit Bada S/o Ramlal Bada, Uraon, aged about 30 years, R/o Turga Sanchar Ghatpara, Police Station - Lakhanpur, District - Sarguja (C.G.) Civil and Revenue District - Sarguja (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through : P.S. Lakhanpur, District Sarguja (C.G.) Civil & Revenue District - Sarguja (C.G.).

---- Respondent

And

CRA No. 576 of 2013

- Naiharsai, aged about 35 years, S/o Sohan Pando, R/o village Tirga Sanchar, Ghatpara, P.S. Lakhanpur, District Sarguja (C.G.), Civil & Revenue District Sarguja (C.G.)

---- Appellant

Vs

- State of Chhattisgarh Through - P.S. Lakhanpur, District Surguja (C.G.)

---- Respondent

For Appellant in CRA No.609/2013	:	Shri A.K. Prasad, Advocate.
For Appellant in CRA No.576/2013	:	Shri B.L. Dembra, Advocate.
For Respondent/State	:	Shri Rahul Tamaskar, P.L.

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

Judgment On Board

By Pritinker Diwaker, J

20/06/2017

As these two appeals arise out of the common judgment dated 20.03.2013 passed by 1st Additional Sessions Judge, Ambikapur District Sarguja (C.G.), in S.T. No.424/2010 convicting the accused/appellants under Sections 450/34, 302/34, 323/34, 324/34 IPC and Section 4 of the Chhattisgarh Tonhi Pratadana Nivaran

Adhiniyam, 2005 & sentencing them to undergo R.I. for ten years with fine of Rs.500/-, imprisonment for life with fine of Rs.500/-, R.I. for one year, R.I. for one year and R.I. for one year respectively, plus default stipulation. In addition to this, accused/appellant Naiharsai in Cr.A.No.576/2013 has been convicted under Section 25(1B) (b) of the Arms Act and sentenced to undergo R.I. for two years with fine of Rs.500/-, plus default stipulations, they are being disposed of by this common judgment.

02. Brief facts of the case are that on 22.07.2010 at 9.30 am FIR (Ex.P/13) was lodged by Somar Sai (PW/12), son of deceased Bund Kunwar @ Fulkunwar alleging in it that on the previous night i.e. 21.07.2010 at about 8.00 pm, the accused/appellants and the juvenile accused Dhaniram Pando came to his house, took out the deceased outside the house, thereafter, appellant Naiharsai in Cr.A.No.576/2013 assaulted her by sword, appellant Ajit in Cr.A.No.609/2013 and juvenile accused Dhaniram Pando assaulted by club resulting in her death. Based on this FIR, offence under Sections 450 and 302/34 IPC was registered on 22.07.2010 against the appellants and juvenile accused Dhaniram Pando. On the same day at about 9.45 am, merger intimation Ex.P/12 was also recorded at the instance of Somar Sai (PW/12). On 22.07.2010 inquest on the body of deceased was conducted vide Ex.P/9 and body was sent for postmortem to Community Health Center, Lakhanpur vide Ex.P/18 where Dr. P.S. Kerketta (PW/15) conducted postmortem on the body of deceased and gave his report Ex.P/15 opining the cause of death to be hemorrhagic shock due to cut-off of major vessels of neck and death was homicidal in nature.

After investigation, charge sheet was filed against the accused/appellants under Sections 450, 302, 324, 34 IPC, Sections 25 and 27 of the Arms Act & Sections 4 and 5 of the Tonhi Pratadana Nivaran Adhiniyam, 2005. However, while framing the charge, the trial Court has framed the charge against the appellants under Sections 450/34, 302/34, 323/34, 324/34 IPC and Section 4 of Chhattisgarh Tonhi Pratadana Nivaran Adhiniyam, 2005. In addition to this, charge under Section 25 (1B) (b) of the Arms Act was also framed against the appellant Naiharsai. The juvenile accused Dhaniram Pando has been tried separately.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 16 witnesses, out of which Sukanti (PW/8) is the injured eye-witness and Sunita (PW/9) is the eye-witnesses to the incident. Statements of the accused/appellants 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 has convicted and sentenced the accused/appellants as mentioned in para 1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellants submits as under:-

- That the accused/appellants have been falsely implicated in the crime in question.
- That Sukanti (PW/8) and Sunita (PW/9) being relative of the

deceased are not reliable witnesses and no motive has been proved by the prosecution.

In addition to above argument, it has been argued on behalf of appellant Ajit in Cr.A.No.609/2013 as under:-

- That the appellant Ajit was carrying club in his hand and even if accepting the prosecution case as it is, he cannot be convicted for committing murder of the deceased. Learned counsel further argued that Section 34 of IPC is not attracted in relation to accused/appellant Ajit.

06. On the other hand supporting the impugned judgment it has been argued by the State counsel as under:-

- That the accused persons have committed the murder of the deceased as they used to suspect the deceased to be practicing witchcraft.
- That both the accused persons have rightly been convicted with the aid of Section 34 IPC as the evidence on record goes to show that the crime was executed with their common intention.
- That presence of Sukanti (PW/8) and Sunita (PW/9) at the place of occurrence has been duly proved by the prosecution and that PW/8 has been assaulted by both the accused persons.
- That the fact of suffering injuries by PW/8 has been duly proved by her medical report Ex.P/16 and thus her presence at the place of occurrence cannot be questioned.
- That appellant Ajit in Cr.A.No.609/2013 entered the house of deceased carrying club in his hand, whereas appellant Naiharsai in Cr.A.No.576/2013 was having sword/battleaxe and thus both the

accused persons were aware that they are entering the house of deceased by carrying deadly weapon. Learned State counsel further submits that now accused/appellant Ajit in Cr.A.No.609/2013 cannot take defence that he was not aware that Bundkunwar @ Fulkunwar would be killed. It has been also argued that vide Ex.P/4 sword has been seized from appellant Naiharsai and vide Ex.P/2 one club has been seized from appellant Ajit, and as per FSL report Ex.P/26, blood has been found on the seized articles and clothes of deceased. Likewise, Gamcha seized from appellant Naiharsai was also bloodstained and this has been proved by FSL report.

07. We have heard counsel for the parties and perused the material available on record.

08. Sukanti (PW/8) - injured eye-witness to the incident while supporting the prosecution case has stated that on the date of incident when she was in her house along with her mother Bundkanwar @ Fulkanwar, all the three accused persons entered her house and asked for tobacco which she had given and thereafter they went back. After some time, accused/appellant Ajit and Dhaniram (juvenile) again came to her house, appellant Ajit caught hold of her hand and made an attempt to take her outside the house. She has further stated that she somehow managed to escape from the clutches of appellant Ajit and while she (this witness) was waiting for her husband along with her mother and sister-in-law Sunita (PW/9), the accused persons again came there. Appellant Naiharsai entered her house brandishing sword and took out her mother Fulkunwar holding her hand. Thereafter, all the three accused persons assaulted her mother with club, sword, hands

and fists by calling her tonhi. Accused/appellant Naiharsai assaulted her mother by sword, and accused/appellant Ajit and juvenile accused Dhariram assaulted her mother by club. It has been further stated that when she (this witness) tried to intervene in the matter, she too was assaulted by the accused persons. She has also stated that number of injured were caused by the accused persons on the body of her mother resulting her death. This witness also went on to state that the report of incident was lodged by her brother Somar Sai. In cross-examination, this witness remained very firm and reiterated as to the manner in which her mother was done to death by the accused persons and she was injured by them.

9. Sunita (PW/9) is daughter-in-law of the deceased. She too has duly supported the prosecution case and has described as to the manner in which the accused/appellants committed murder of the deceased and caused injuries to Sukanti (PW/8). Defence has cross-examined this witness at length but has not been able to elicit anything in her cross-examination to discredit her testimony especially to the fact that the appellants have not committed murder of the deceased.

10. Dr. P.S. Kerketta (PW/15) conducted postmortem on the body of deceased vide Ex.P/15 and found following injuries:-

- (i) Sharp cut wound of 5" x 3" over lateral aspect of left side of neck.
- (ii) Sharp cut wound over (a) left wrist joint in the size of 3" x 2" (b) right palm in the size of 4" x 1".
- (iii) Bruise plus swelling over right scapular to hip part region in the size of 12" x 2" and right scapular region in the size of 6" x 2". Both side of neck, major

muscles, vessels and trachea cut-off.

According to him, all the injuries were antemortem in nature and sufficient to cause sudden death in ordinary course. The Doctor has opined that the cause of death of deceased was hemorrhagic shock due to cut-off of major vessels of neck and death was homicidal in nature.

11. Dr. P.S. Kerketta (PW/15) has also medically examined Sukanti (PW/8) vide Ex.P/16 and noticed following injuries:-

- (i) Two abrasions of 1" x 1" over right elbow.
- (ii) Sharp cut wound of 1" x 1/4 " over left palm.
- (iii) Pain on back of chest.

12. Nohar Sai (PW/1) and Chhatru Ram (PW/3) turned hostile. Triveni (PW/2) has admitted the fact that the accused persons used to call deceased as Tonhi. This witness has also admitted the factum of injuries sustained by Sukanti (PW/8). Lalchand (PW/10) is witness to inquest made under Ex.P/9. Ram Naresh Lakra (PW/11) took the seized articles to FSL. Somar Sai (PW/12) is the lodger of FIR (Ex.P/13) and merged intimation (Ex.P/12). He has also stated that the accused/appellants used to call the deceased as Tonhi and on account of this reason they have committed murder of the deceased. R.S. Kushwaha (PW/16) is Investigating Officer who has duly supported the prosecution case.

13. Close scrutiny of the evidence makes it clear that on 21.07.2010 it is the accused/appellants who entered the house of the deceased carrying deadly weapons in their hands and committed her murder. In the same incident, while Sukanti (PW/8) tried to intervene in the matter she too was assaulted by the accused person resulting in injuries on her

hand, palm and pain on back side and this fact has also been proved by her medical report Ex.P/16 as well. Sukanti (PW/8) natural eye-witness to the incident and Sunita (PW/9), who was also present at the time of occurrence, have duly supported the prosecution case and nothing could be elicited from their cross-examination to discredit their testimonies. Thus, we have no reason to disbelieve the statements of these witness. Postmortem report Ex.P/15 also supports the statements of eye-witnesses where they have categorically stated that deceased was done to death by the accused/appellants by causing injuries by sword and club. That apart, memorandums of accused/appellant Ajit and Naiharsai were recorded vide Ex.P/1 and Ex.P/3, based on which one club and sword were seized under Ex.P/2 and Ex.P/4, and as per FSL report Ex.P/26, blood has been found on the seized article but there is no explanation on the part of accused/appellants as to how the said weapons contained blood. The questions in this regard were put to the accused/appellants during their statements under Section 313 Cr.P.C., but except vague denial, they said nothing more. We find no substance in the argument of learned counsel for the appellant Ajit in Cr.A.No.609/2013 that as he was carrying only club with him, he cannot be convicted with the aid of Section 34 IPC. As per the evidence available on record, the accused/appellants twice had gone to the house of deceased carrying weapons in their hands and at the time of commission of offence, accused/appellant Ajit was having club, whereas appellant Naiharsai was having sword. It is not a case of appellant Ajit that he was not having knowledge that appellant Naiharsai was carrying sword in his hand while entering the house of the deceased. Both the

accused persons were aware about the weapon carried out by them and both of them have caused injuries to the deceased as also to Sukanti (PW/8). Thus, the conviction of the accused/appellant Ajit in Cr.A.No.609/2013 with the aid of Section 34 is in accordance with law and there is no infirmity in the same. Taking the cumulative effect of the evidence adduced on behalf of prosecution, we are of the view that appellants have rightly been convicted by the Court below.

14. Thus, considering the evidence collected by the prosecution, this Court is of the opinion that the trial Court while convicting and sentencing the appellants has not committed any error of law. Consequently, the appeals preferred by the appellants are bereft of any substance, the same are liable to be and are hereby dismissed. Appellants are reported to be in jail and therefore no further order regarding their arrest etc. is required.

15. Appeals are thus dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(R.C.S. Samant)
JUDGE