

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 807 of 2017

- Dharamjeet S/o Bhajju, Aged About 35 Years Occupation Agriculturist, R/o Village Dadiya, Thana Chalgali, District Sarguja, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer Police Station Trikunda, District Sarguja, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Sanjay Patel, Advocate.
For Respondent	:	Shri V.A. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement

P. Diwaker, J

09/10/2017

1. This appeal arises out of the judgment of conviction and order of sentence dated 21.12.2010 passed by the Additional Sessions Judge, FTC, Pratappur, District Sarguja (CG) in S.T. No.442/09 convicting the accused/appellant under Section 302/34 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo imprisonment for life & fine of Rs.1000/-, in default to undergo additional RI for 02 months.
2. The prosecution story, in short, is that on 3.7.2009 at about 7.30 p.m. FIR (Ex.P-6) was lodged by Ramsurat (PW-7) alleging in it that on the same day when he was resting in his house, Bagarsai (PW-11) came and informed that Somariya Bai is beating his brother Aklu Gond (since deceased) near the river. On this, he reached the spot along with Bagarsai and saw that his sister-in-law Somariya Bai is beating the

deceased by a wooden log. He has further stated that he intervened and separated his sister-in-law & the deceased. He noticed injuries on the back side of head of the deceased from which blood was coming out and that he has expired. Based on this report, the offence under Section 302 of the IPC was registered against accused Somariya Bai. Immediately thereafter at 7.45 p.m. merger intimation (Ex.P-7) was registered at the instance of Ramsurat (PW-7). Inquest was conducted on 4.7.2009 vide Ex.P-5 and thereafter dead body was sent for post-mortem examination which was conducted by Dr. Govind Singh (PW-5) on 4.7.2009 vide report Ex.P-10. The doctor conducting post-mortem examination noticed following injuries;

- Lacerated split wound on head at occipital area of 8x2x1cm.
- Lacerated split wound above 3cm from the first wound, vertically placed, size 3x1x1cm. 8 cm away from right ear. Blood clot was present.
- Lacerated wound on the right side of skull at parietal region, 3cm above from 2nd wound, horizontal & irregular shape.
- Horizontal split lacerated wound on left side of skull of 4x1x1cm of size.
- Bruise on back of body with abrasion. Horizontal and oblique.
- Bruise with abrasion on back at the level of 12th rib and on left side horizontal, size 17cm x 3cm.

He opined that cause of death is shock due to haemorrhage from severe head injury i.e. skull, and the death was homicidal in nature. During the course of investigation, statements of witnesses under Section 161 of Cr.P.C. were recorded in which they have stated about the involvement of present appellant & co-accused Rambilas and therefore they have also been taken into custody. After the investigation, challan was filed under Section 302/34 of IPC followed by framing of charge accordingly.

3. In order to prove the complicity of accused persons in the crime in question, the prosecution has examined 15 witnesses. Statements of the

accused persons were recorded under Section 313 Cr.P.C. in which they denied their guilt and pleaded innocence & false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused persons as described above.

5. Counsel for the accused/appellant submits that;

- in the FIR (Ex.P-6) lodged by Ramsurat (PW-7), brother of deceased, name of accused Somriya has only been mentioned and thus under no circumstances accused/appellant can be convicted for commission of any offence.
- evidence of so-called eye-witnesses namely Ramsurat (PW-7), Rajmat (PW-9), Birmati (PW-10) & Bagar Sai (PW-11) do not inspire confidence and they being relatives of the deceased, possibility of false implication of accused/appellant cannot be ruled out.
- even if the evidence of Ramsurat (PW-7), Rajmat (PW-9), Birmati (PW-10) & Bagar Sai (PW-11) are accepted in its entirety, it is apparent that it is accused Somriya who could have taken part in the incident and other two accused persons i.e. accused/appellant & co-accused Rambilas have been falsely implicated in crime in question.
- even taking the entire prosecution as it is, accused/appellant herein cannot be convicted under Section 302 of IPC and at best he can be convicted under Section 304 Part I or II of IPC.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that;

- FIR (Ex.P-6) is not an encyclopaedia. Name of present accused/appellant finds place in the statement of Ramsurat (PW-7) recorded under Section 161 of Cr.P.C. on 4.7.2009 and the same is sufficient to show his involvement in commission of crime in question.
- There is no reason for this Court to disbelieve the statements of

Ramsurat (PW-7), Rajmat (PW-9), Birmati (PW-10) & Bagar Sai (PW-11), in particular Rajmat (PW-9) who remained very firm in the Court and stated as to the manner in which the deceased was done to death by the accused persons.

- Post-mortem report (Ex.P-5) of the deceased makes it clear that he was brutally assaulted by the accused persons and therefore they have been rightly convicted for committing homicidal death, amounting to murder.
- Statements of Rajmat (PW-9), Birmati (PW-10) & Bagar Sai (PW-11) are fully reliable and cannot be disbelieved on the ground that they are relatives of the deceased.

7. Heard learned counsel for the parties and perused the evidence available on record.
8. Bhramar Pradhan (PW-1) is the Patwari who prepared the spot map (Ex.P-1).
9. Babulal (PW-2) is the witness of seizure memo (Ex.P-3) by which piece of wood was seized. He is also witness to the inquest (Ex.P-5).
10. Alongo Kumar Das (PW-3) is the Head Constable who registered FIR (Ex.P-6) and recorded merg intimation (Ex.P-7).
11. Dr. Govind Singh (PW-5) is the witness who conducted post-mortem examination on the body of deceased and gave his report (Ex.P-5). According to this witness, he noticed as many as six injuries on the body of deceased and opined cause of death as shock due to haemorrhage from severe head injury and the death was homicidal in nature.
12. Ramsurat (PW-7), is the first informant, however, he is not an eyewitness. According to him, while he was resting in his house, Bagar Sai (PW-11) came and informed him that the accused persons have assaulted his brother Aklu Gond near the *nala*. On this, he rushed to the spot and saw

that the deceased was lying with injuries and was bleeding. At the time nobody was there. Though this witness has been declared hostile but in the cross-examination by the prosecution he has stated that being informed by Bagar Sai that accused Somariya Bai is assaulting the deceased by stick at the bank of river, he went there along with Bagar Sai and saw that Somariya was assaulting the deceased by stick. He has further stated that Bagar Sai told him that present appellant and co-accused Rambilas had assaulted the deceased first as a result of which he had fallen down and thereafter accused Somariya assaulted him.

13. Bhola (PW-8) has not supported the prosecution case and has been declared hostile. However, in the cross-examination by the prosecution this witness has stated that on the date of incident at about 12.00 noon he was in his house. On hearing commotion, he came out of his house and saw that after committing maarpeet with the deceased, co-accused Rambilas & husband of Somariya Bai residing in village Alkadiha, fell him down. Thereafter, accused Somariya Bai came on the spot and assaulted the deceased by wooden log.

14. Rajmat (PW-9) is the first person who had witnessed the incident. She has stated that on the date of incident when she was passing from near the house of the deceased, she saw that accused/appellant herein & co-accused Rambilas were chasing the deceased, they caught hold of him and threw him on the ground. After assaulting the deceased, they first went towards *nala* and thereafter came to her house and told that they have killed the deceased. After their departure, accused Somariya Bai armed with stick came near the deceased and started assaulting him. Thereafter her father had gone to the house of brother of the deceased and narrated the entire incident to him. In the cross-examination this witness has clarified that as she did not remember the names of accused

Rambilas & Dharamjeet, therefore, she had not disclosed their names.

15. Birmati (PW-10) is the mother & wife of Rajmat (PW-9) & Bagarsai (PW-11) respectively. She has stated that being informed by her daughter Rajmat (PW-9) that the deceased is being assaulted, she came out from her house and saw that accused Somariya was assaulting the deceased by stick. After the incident, accused Somariya was sitting on the spot itself whereas accused Rambilas & Dharamjeet (appellant herein) were going towards their respective houses. Thereafter her husband had gone to the house of Ramsurat, brother of deceased, to inform him about the incident. Later on, this witness has also been declared hostile.
16. Bagar Sai (PW-11) has stated that on the date of incident at about 12.00 noon while he was working in his kitchen-garden, his daughter Rajmat came and informed that accused/appellant herein and co-accused Somariya are quarrelling with the deceased. He informed about the incident to Ramsurat, brother of deceased, and thereafter came on the spot along with Ramsurat and saw the deceased lying in injured condition. He has further stated that accused Rambilas is brother of his brother-in-law (Samdhi), he was not present on the spot and has been falsely implicated at the instance of Ramsurat, brother of deceased. At this stage this witness has been declared hostile and in the cross-examination by the prosecution he has reiterated that accused Rambilas was not present on the spot. However, in the statement recorded under Section 161 Cr.P.C. this witness has stated that it is the accused persons who had caused grievous injuries to the deceased.
17. Ramkewal (PW-12) is the witness of disclosure statement (Ex.P-2) of accused Somariya by which a wooden log was seized vide Ex.P-21. He is also witness of seizure memos of Ex.P-23, P-24 & P-25. This witness has not fully supported the prosecution case, however, admitted his signature

over the aforesaid documents.

18. Rajeshwar (PW-13) is the witness of inquest (Ex.P-5) & seizure memos of Ex.P-21 & Ex.P-23 to P-25. This witness has partially supported the prosecution case and also admitted his signature over the aforesaid documents.
19. F. Kerketta (PW-15) is the Investigating Officer and has duly proved the prosecution case.
20. In this case the prosecution has cited Rajmat (PW-9), Ramsurat (PW-7), Birmati (PW-10) & Bagar Sai (PW-11) as eye-witnesses to the incident, but except Rajmat (PW-9) others have not supported the prosecution case in its entirety and have been declared hostile. True it is that Ramsurat (PW-7), Birmati (PW-10) & Bagar Sai (PW-11) have not supported the case of prosecution and have been declared hostile yet in their cross examination they have not denied the occurrence as a whole and have admitted the scuffle at the place of incident. Being so, their version cannot be set at naught and can be taken support to corroborate the statement of Rajmat (PW-9) who has pin-pointedly stated about the active involvement of the accused/appellant and other accused persons in the commission of crime in categorical terms.
21. Minute scrutiny of the evidence, particularly of Rajmat (PW-9), makes it clear that on the date of incident while she was passing from near the house of deceased Aklu, she saw that accused/appellant & Rambilas were chasing the deceased, they caught hold of him and threw him on the ground. After committing *maarpet* with Aklu, both of them came to her house and told that they have killed Aklu. Thereafter co-accused Sumariya Bai came on the spot and started assaulting the deceased by wooden log. This witness remained consistent throughout her cross-examination and nothing substantial was elicited to discredit her version. Testimony of

Rajmat (PW-9) also finds corroboration from the statement of Beermati (PW-10) who has stated that having been informed by Rajmat, she came out of the house and saw that accused Sumariya was assaulting the deceased and accused/appellant herein and co-accused Rambilas were going towards their house from the spot. This apart, Bhola (PW-8), a hostile witness, has also admitted in his cross-examination that on hearing commotion, he came out of his house and saw that co-accused Rambilas & husband of Somariya Bai residing in village Alkadiha, committed *maarpeet* with the deceased and fell him down and thereafter co-accused Somariya Bai came on the spot and assaulted the deceased by wooden log. Since nothing has been brought on record by the defence to controvert the stand of the prosecution, this Court does not find any reason to disbelieve the statement of Rajmat (PW-9) who has described the incident in a lucid manner.

Furthermore, the shirt worn by the accused when he was arrested and seized by the investigating officer, contained blood stains. No explanation in the statement recorded under Section 313 CrPC has been offered by accused/appellant as to how the blood stains are there in the shirt seized from him. This is an additional link to connect the accused/appellant with the crime in question.

As regards the non-mention of the names of accused/appellant in the FIR, it is settled legal position that FIR is not meant to be an encyclopaedia nor it is expected to contain all the details of the prosecution case. It may be sufficient if the broad facts of the prosecution are stated in the FIR. In the present case, the report was lodged by Ramsurat (PW-7), brother of deceased, just after the incident and it cannot be expected from him to narrate everything in the FIR when he himself was in agony due to death of his own brother. This apart,

Ramsurat (PW-7) is not an eyewitness to the incident and it is but natural for a man recording FIR, if not an eyewitness, to expect incorporation of the further details in it. Unless there are indications of fabrication and concoction, the prosecution version cannot be doubted merely on the ground that FIR does not contain name of accused/appellant, particularly in a case where the entire incident was proved by the eyewitness account, which was found to be trustworthy and inspires confidence.

22. Further, we find no substance in the argument of counsel for the accused/appellant that act of the accused/appellant would fall under Section 304 Part-I or II of the IPC. From the facts it is apparent that the accused/appellant along with co-accused persons had caused injuries on vital parts of the body of the deceased including fracture in the right side of skull. Thus, looking to the manner in which the accused persons have assaulted the deceased with such a force on his vital part resulting in his instantaneous death, it is apparent that they assaulted the deceased with intention to cause his death and they had every knowledge that the injuries being inflicted by them on the deceased were sure to result in his death. Therefore the act attributed to the appellant herein does not come fall under any of the Exceptions to Section 300 of IPC.

23. Thus, findings of the Court below convicting the appellant under Section 302/34 of the IPC is based upon proper appreciation of evidence and convincing reasons and we find no ground warranting interference with the conviction of the appellant.

24. In the result, the appeal being without any substance is liable to be and is accordingly dismissed. Since the appellant is already in custody, no further direction regarding his surrender etc. is needed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RP Sharma)
Judge