

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 27-7-2017

Judgment delivered on 28-08-2017

CRA No. 228 of 2016

- Chanesb Ram Sarthi S/o Shri Sanat Ram Sarthi Aged About 28 Years R/o Village Koylar, P.S. Dharamjaigarh, District Raigarh, Civil & Revenue District Raigarh, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Dharamjaigarh, District Raigarh, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Manoj Kumar Sinha, Advocate.
For Respondent/State	:	Mr. Ravindra Agrawal, Panel Lawyer.

**Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 13-1-2016 passed by the 3rd Additional Sessions Judge, Raigarh, District Raigarh (CG), in Sessions Trial No. 20 of 2014 convicting the accused/appellant under Section 302 read with Section 34 of the IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs. 1000/-, with default stipulation.
2. As per the prosecution case, on 15-11-2009 at about 5.30 pm at village Kiolar, when deceased Surit Ram Rathiya was returning to his home, on the way of pond, the appellant Chanesb Ram Sarthi and other two co-accused persons namely Panchram Sarthi and

Ashok Sarthi met him and some dispute arose between them and the appellant and other co-accused persons inflicted injuries over head and other parts of the body of the deceased Surit Ram Rathiya by stick/axe as a result of which he sustained grievous injuries and became unconscious. Sukh Singh and Gend Ram went to the house of deceased and informed about the incident to Devmati, daughter-in-law of deceased and then the wife of the deceased and other villagers along with deceased went to the hospital and first information report was lodged by Sukh Singh at Police Station Dharamjaigarh. During the course of treatment deceased Surit Ram Rathiya died.

3. After registration of first information report, Police agency swung into action, merg was registered vide Ex. P/15 and deceased was subjected to post-mortem. Autopsy of the deceased was conducted by Dr. B.L. Bagat (PW/9) wherein cause of death was found homicidal. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 and seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur. Appellant Chanesh Ram Sarthi was absconding that is why after his arrest, charge under Section 302 read with Section 34 of the IPC was framed by the trial Court on 5-7-2015 and trial was conducted and the evidence of the prosecution was recorded.
4. In order to prove the complicity of the accused/appellant in commission of crime in question, the prosecution has examined 11 witnesses in support of its case. Statement of the

accused/appellant has also been recorded under Section 313 of the Code of Criminal Procedure in which he denied the allegations made against him and pleaded his innocence and false implication in the case. Defence has examined DW/1 Chanesh Ram and DW/2 Mannu Ram in support of the case of the appellant.

5. 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 accused/appellant as mentioned above.
6. Learned counsel appearing for the accused/appellant submits as under.

- (i) That the appellant has not assaulted the deceased, therefore, he has not committed murder of the deceased;
- (ii) That as per report of Dr. B.L. Bhagat (PW/9), deceased died due to head injury and there is no evidence on record to show that the appellant had assaulted the deceased on his head, therefore, conviction of the appellant is illegal and without any evidence.
- (iii) That the trial court recorded its conviction on the basis of memorandum, conjectures and surmises.

7. *Per contra*, learned State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.

8. We have heard counsel for the parties and perused the material on record. In order to appreciate the arguments advanced by learned counsel for the parties, we have examined the evidence adduced on behalf of the parties.
9. PW/1 Devmati has stated in her deposition that at about 6.00 pm on the date of incident Sukh Singh (PW/2) informed her that three persons were assaulting Surit Ram Rathiya and after receiving the said information, she rushed to the spot and saw the appellant Chanesh Ram Sarthi, Panchram, and one other person running away from the spot after inflicting injuries on the body of Surit Ram Rathiya and found Surit Ram Rathiya lying unconscious on the ground.
10. PW/6 Smt. Chamarin Rathiya, wife of the deceased supported the version of the prosecution and deposed that on the date of incident at about 5.00 pm., she was going towards pond to bath and saw the appellant and other two persons Panch Ram and Ashok Sarthi assaulting her husband Surit Ram Rathiya. She further deposed that all the three persons assaulted the deceased by means of axe on his head. Version of this witness is also supported by the evidence of Suraj Bhan Rathiya (PW/4) who found appellant Chanesh Ram, Panchram and Ashok on the spot. PW/7 Gendram Rathiya deposed that he was informed by Sukh Singh that appellant Chanesh Ram Sarthi, Panchram and Ashok killed the deceased Surit Ram Rathiya. PW/5 Ram Kumar deposed that Chamarin Rathiya, wife of deceased Surit Ram Rathiya informed him that the appellant and two other persons namely

Panch Ram Sarthi and Ashok Sarthi killed Surit Ram Rathiya and he saw the dead body of Surit Ram Rathiya in Dharamjaigarh Hospital. Version of this witness is unshaken during cross examination and all the witnesses stood firm in their version.

11. DW/1 Chanesh Ram and DW/2 Mannu Ram have deposed that deceased sustained injuries due to fall near the pond of the village, but the same is not the case of the appellant. As per their statement recorded under Section 313 of the Cr.P.C., explanation of the appellant in his statement is bald denial and there is no specific plea of defence, therefore, the version of the defence witness is not acceptable in view of the statement recorded under Section 313 of the appellant.
12. PW/8 Dr. L.K. Soni examined Surit Ram Rathiya on 15-11-2009 at 9.50 pm brought by Constable of Police Station Dharamjaigarh and Dr. B.L. Bhagat (PW/9) conducted autopsy of the deceased Surit Ram on 16-11-2009 and found the injuries as under:
 - i) Stitch wound in upper part of frontal region of scalp 7 x 1" in size with fracture, clotted blood in and around wound.
 - ii) Stitch wound in upper part of left side of parietal region of scalp 5 x 1 cm in size clotted blood in and around wound and underlying bone was fractured
 - iii) Stitch wound in anterior aspect of left leg 3 x 1 cm in size, clotted blood in and around wound. No any other parietal injury seen on body.
 - iv) Fracture of fronto parietal region of skull bone, clotted blood inside the skull congested .
 - v) Cetridual, subdural and retrodural haemorrhage seen on left side of fronto parietal region of head of cortex and rest of the brain is congested.

13. PW/9 Dr. B.L. Bhagat who conducted autopsy on the body of Surit Ram Rathiya reported that all the injuries were ante mortem in nature and same were caused by hard and blunt object. He opined that the deceased died due to Coma as a result of head injury and death is homicidal in nature.
- 14 We have undertaken an arduous exercise of going through the entire material collected by the prosecution as also the evidence of the witnesses while deciding the fate of this appeal. It is clear that the version of experts is unshaken during cross examination and there is nothing on record contrary to version of experts cited by the prosecution before the trial Court. Version of prosecution witnesses is stable from the stage of investigation and there is nothing on record to show that the trial Court recorded its finding on the basis of surmises and conjectures and the case is based on direct and reliable evidence of Devmati, Chamarin Bai, wife of deceased, Gendram, Ram Kumar and Surajbhan and from their evidence, it is established that fatal injuries were caused to deceased Surit Ram Rathiya by the appellant. When the case of the prosecution is based on direct evidence, it cannot be said that the trial Court has recorded its finding on the basis of discovery statement or on the basis of any unproved fact.
15. It is contended on behalf of the defence side that the trial Court has over-looked contradictions and omissions in the statements of Devmati, Sukh Singh and other witnesses. In view of this Court, only material discrepancies or omissions may amount to

contradiction. Minor contradictions and inconsistencies are not sufficient to reject the prosecution evidence in its entirety. No statement of witness can be read in part or in isolation. Statement of a witness should be read along with statement of other witnesses in order to arrive at a rational conclusion.

- 16) In the case on hand, all the witnesses have deposed regarding participation of the appellant and other co-accused namely Panch Ram Sarthi and Ashok Sarthia and the same is unrebutted. From the evidence of the witnesses, it is established that the appellant and other co-accused have inflicted injuries on the head of the deceased in furtherance of common intention which caused his death. It cannot be said that material part of the evidence was ignored by the trial Court. From the statement of the witnesses it was established that there was a land dispute between the deceased and the appellant and the same is motive and *mens rea* for the offence committed by the appellant. Considering all the facts and circumstances of the case, evidence available on record and the role played by the accused/appellant, it is established that the appellant took active part in commission of murder of Surit Ram Rathiya. In view of this court, appellant is charge-sheeted with the help of Section 34 of the IPC and from the act of the appellant at the time of occurrence and the manner of indiscriminate assault a common intention is clearly perceived. Section 34 of the IPC provides for criminal liability, a common intention and no particular injury could be attributed to any particular accused of the crime in question. Section 34 of

the IPC makes liable for the ultimate criminal act done by several co-accused persons in furtherance of common intention of all of them. It does not require separate individual acts by all the accused persons to make them liable for the ultimate criminal act. No overt-act is needed on the part of the accused to attribute Section 34 of the IPC for sharing common intention with other in respect of the criminal act which may be done by any one of the accused sharing such intention.

17. In the case on hand, there is direct evidence of participation of the appellant in the crime in question and he is liable for the crime committed by all the three persons for murder of Surit Ram Rathiya. Looking to the nature of injuries and the manner of assault by three persons including the appellant established by evidence, Section 302 of the IPC has clear application.
18. Thus in the aforesaid view of the matter, this Court is of the considered opinion that the findings recorded by the Court below do not suffer from any legal flaw warranting inference in this appeal. Resultantly, the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed as such with the affirmation of the judgment impugned. As the appellant is already reported to be behind the bars, no further order for arrest etc is necessary.

Sd/-
(Pritinker Diwaker)
 JUDGE

Sd/-
(Ram Prasanna Sharma)
 JUDGE