

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 522 of 2011**

1. Setram son of Khemoram, aged 46 years.
2. Omprakash son of Set Ram, aged 20 years.

Both Resident of Village - Kurdi, Police Station - Malkharoda,
District - Janjgir-Champa (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through : Police Station-Jaijaipur, District -
Janjgir Champa (C.G.)

---- Respondent

For Appellants.	:	Ms. Sangeeta Misha, Advocate.
For Respondent.	:	Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgment on Board**By Pritinker Diwaker, J****29/01/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 13.05.2011 passed by the Additional Sessions Judge, Sakti, District Janjgir-Champa (C.G.), in S.T. No.26/2010 convicting the accused/appellants under Sections 341, 324/34 (on two counts), 302/34 of IPC and sentencing them to undergo S.I. for one month, R.I. for two years with fine of Rs.500/-, imprisonment for life with fine of Rs.2,000/- plus default stipulations respectively.

02. As per the prosecution case, on 24.10.2009 at about 9.30 am, when complainant Basant Kumar (PW/3) was going on his bicycle along with his wife Vimla Bai (deceased) and minor son Sameer aged 5 years, near Kachanda Nala Pool, accused/appellants, who are the

uncle and cousin of Basant Kumar (PW/3), stopped him over land dispute, started abusing him and caused injuries to Basant Kumar (PW/3) by a club and when Vimla Bai tried to intervene, she and her minor son Sameer were also brutally beaten by the accused persons. Basant Kumar (PW/3) somehow escaped from the place of occurrence and rushed to police station where he lodged FIR (Ex.P/6) on 10.30 am against the accused/appellants under Sections 341, 294, 506 Part-II, 323 and 307/34 of IPC. After lodging the report, when Basant Kumar (PW/3) and police party reached the place of occurrence, they found Vimla Bai to be dead and thereafter dehati merg (Ex.P/19) was recorded at 11.30 am. On the same day at 11.45 am, injured Basant Kumar (PW/3) was medically examined vide Ex.P/10 by Dr. S.L. Banjare (PW/8) and found following injuries:-

- (i) Lacerated wound of 1 x 1cm x 1/2 cm on frontal area.
- (ii) Incised wound of 2 x 1 x 1/2 cm on right elbow joint.
- (ii) Lacerated wound of 1 x 1 x 1/2 cm on left index finger. All the injuries were simple, caused by hard and blunt object.

03. Injured Sameer was medially examined on 24.10.2009 at 12.00 noon vide Ex.P/12 by Dr. S.L. Banjare (PW/8) and found following injures:-

- (i) Lacerated wound of 6 x 1 cm on chest.
- (ii) Lacerated wound of 2 x 1 x 1/2 cm on right side of mouth
- (iii) Lacerated wound of 6 x 1/2 x 1/2 cm on neck.
- (iv) Lacerated wound of 8 x 1 x 1 cm on parietal region.
- (v) Lacerated wound of 4 x 1 x 1 cm over skull. All the injuries were caused by hard and blunt object.

Injured Sameer was referred to Chhattisgarh Institute of Medical Science, Bilaspur where he was again medically examined vide Ex.P/25 noticing (A) clear cut wound of 12 cm x 1 cm along sagittal suture on right side with periosteal injury, (B) clear cut wound of 10 cm x 1 cm along coronal suture on left side with periosteal injury, (C) cut incised wound of 5 cm x 2 cm with loss of skin on left sub-mandibular region and (D) cut lacerated wound of 2 x 1 cm on right lip

04. Thereafter, on the same day at 8.10 pm, numbered merg (Ex.P/20) was also recorded. Inquest on the body of deceased was conducted on 24.10.2009 and dead body was sent for postmortem examination to Govt. Hospital, Jaijaipur vide Ex.P/7 which was conducted by Dr. S.L. Banjare (PW/8) who gave his report (Ex.P/8) noticing following injuries:-

- (i) Incised wound in the size of 8 x 3 x 3 cm on back of neck.
- (ii) Incised wound in the size of 2 x 1 x 1/2 cm on left zygomatic area.
- (iii) All fingers of left hand were chopped off.
- (iv) Abrasions in the size of 8 x 4 cm and 6 x 3 cm on right and left knee respectively.
- (v) Abrasions in the size of 2 x 2 cm and 3 x 2 cm on both ankle.

Autopsy Surgeon opined the cause of death of deceased to be hemorrhagic shock due to injuries caused to vital organ.

05. On 15.11.2009, memorandum of accused/appellant No.1-Set Ram and accused/appellant No.2-Om Prakash were recorded vide Ex.P/15 & P/17, based on which, one battle-axe and club were seized from their possession vide Ex.P/16 and P/18 respectively. Seized

articles were subjected to chemical examination and as per FSL report (Ex.P/26), presence of blood on the seized articles was confirmed, however, there is no serological report on record to confirm its origin. After filing of the charge sheet, the trial Judge has framed the charge against the accused/appellants under Sections 341, 506 Part-II, 324/34 (on two counts) and 302/34 of IPC.

06. So as to hold the accused/appellants guilty, the prosecution examined as many as 14 witnesses. 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.

07. 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 above. Hence, this appeal.

08. Learned counsel for the appellants submits :

(i) That Battulal (PW/4) and Thandaram (PW/5) have infact not seen the incident and they have falsely implicated the accused/appellants. It has been argued that the identity of the accused/appellants by these witnesses are doubtful.

(ii) That Basant Kumar (PW/3) also appears to be improved witness and infact he too had not seen the incident.

(iii) That in absence of serological report, FSL report is of no significance.

09. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that present is a case where

husband of the deceased Basant Kumar (PW/3), an injured eye-witness to the incident, has duly supported the prosecution case. He further argued that even medical report (Ex.P/12) of PW/3 confirms the presence of this witness at the place of occurrence and after sustaining injuries, somehow he escaped from the place of occurrence and lodged the report. Immediately, after lodging the report, PW/3 and police party reached the place of occurrence and found the body of deceased. He has also argued that postmortem report (Ex.P/8) of the deceased also confirms the act of the accused/appellants and though there is no serological report on record but considering the statements of eye-witnesses, FSL report (Ex.P/26) can be treated as an additional evidence in support of the prosecution case.

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

11. Basant Kumar (PW/3) is husband of the deceased and injured eye-witness to the incident. He has stated that on the date of incident when he was returning from his in-law's house along with the deceased and his minor son Sameer, on the way his bicycle was stopped by accused/appellant Setram (A-1), who is uncle, and accused/appellant Omprakash (A-2), son of A-1. He has further stated that all of a sudden accused persons started beating them and caused grievous injuries by battle-axe and club. When his wife intervened in the matter, accused/appellant Omprakash (A-2) gave blow by battle-axe on her neck as a result of which her neck was literally chopped. Thereafter, the said accused/appellant (A-2) caused injury on the head of his son and other accused Setram (A-1) had also caused injury to them by club. This

witness has also stated that he lodged the FIR (Ex.P/6). In cross-examination, but for minor contradictions this witness remained firm and nothing could be elicited by the defence to discredit his testimony.

12. Battulal (PW/4), another eye-witness to the incident, has stated that on the date of incident when he was working in his field, which is about 100 meters away from the place of occurrence, after hearing the cries of woman when he reached the place of occurrence, he saw the accused persons assaulting a lady and a boy. After committing the maarpeet, accused persons fled from the spot towards village Kachanda. This witness has also stated that he had also followed them and informed the incident to Motichand and Badrika of village Kachanda. In cross-examination, this witness admits that he did not know the accused persons that time, however, in the Court he has categorically stated that these accused persons were there and it is they who caused injuries.

13. Thandaram (PW/5) is also another eye-witness to the incident and while supporting the prosecution case he has narrated as to the manner in which the assault was being made by the accused persons. In the Court, he too has identified the accused persons.

14. Dr. S.N. Banjare (PW/8) is a witness who conducted postmortem examination on the body of deceased vide Ex.P/8, did MLC of injured Basant Kumar (PW/3) vide Ex.P/10 and Sameer vide Ex.P/12. The cause of death of deceased was opined to be hemorrhagic shock due to injuries caused to vital organ. That apart, vide Ex.P/25 injured Sameer was also medically examined at Chhattisgarh Institute of Medical Science (CIMS) and his MLC report has been proved by D.R. Gandharv

(PW/11), Inspector.

15. D.R. Gandharv (PW/11) - Investigating Officer, has duly supported the prosecution case.

16. Thadiyus Kujur (PW/13) - Head Constable, assisted in the investigation.

17. Munibaba Maitri (PW/14) is a Patwari who prepared spot map vide Ex.P/7.

18. Close scrutiny of the evidence available on record, makes it clear that on 24.10.2009, when complainant Basant Kumar (PW/3) was going on his bicycle along with his wife Vimla Bai (deceased) and son Sameer aged 5 years, near Kachanda Nala Pool, he was stopped by accused/appellants and caused injuries to him on right elbow joint, left index finger and his minor son Sameer on right side of mouth, neck and parietal region by battle-axe and club. When his wife Vimla Bai (deceased) tried to intervene, she too was brutally beaten by the accused persons till her death. The accused persons caused injuries on vital parts of deceased i.e. back of neck, left zygomatic, on both ankles and all fingers of left hand cut by battle-axe. The incident was witnessed by Basant Kumar (PW/3), husband of deceased, Battulal (PW/4) and Thandaram (PW/5) who have categorically stated that it is the accused/appellants who caused injuries to the deceased by battle-axe and club, and on the memorandum of the accused/appellants, one battle-axe and club have been seized from them vide Ex.P/16 and P/18 respectively and as per FSL report (Ex.P/26), presence of blood was confirmed thereon. The defence has cross-examined these witnesses at length but has not been able to elicit anything in their cross-

examination to discredit their testimonies especially to the fact that the accused/appellants have not committed murder of the deceased and not caused injuries to PW/3 and minor son Sameer. Evidence of these witnesses gets corroboration from medical evidence according to which injuries on vital parts of the deceased were noticed and the same were caused by hard and blunt object. The Autopsy Surgeon in his query report (Ex.P/14) has opined that the injuries sustained by the deceased, PW/3 and minor son Sameer could have been caused by club and battle-axe. Considering the statements of the eye-witnesses coupled with the medical evidence, the complicity of accused/appellants in crime in question stands proved beyond reasonable doubt and we have no reason to disbelieve the statements of these witnesses.

19. True it is that there is no serological report on record to confirm the origin of blood found on the seized articles, but considering the statements of eye-witnesses PW/3, PW/4 and PW/5, FSL report can be treated as an additional evidence. Even in the case of conviction based on evidence of eye-witness, this could be an additional link to point towards the guilt of the accused.

20. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.

21. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellants are reported to

be in jail and therefore no further order regarding their arrest etc. is required.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE

Vijay