

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 698 of 2011**

1. Hemlal, S/o Chaitram, aged about 30 years, R/o Patherapali, PS Baghbehra, District Mahasamund, CG
2. Chaitu alias Chaitram, S/o Milu Manjhi, aged 60 years, R/o Patherapali, PS Baghbehra, District Mahasamund, CG

---- Appellants**Versus**

1. State of Chhattisgarh through Police Station Bagbehra, District Mahasamund, CG

---- Respondent

For Appellants : Shri Janak Ram Verma, Advocate
 For Respondent/State: Shri Vaibhav Goverdhan, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Sanjay Agrawal****Judgment On Board by Pritinker Diwaker, J****18/05/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 02.09.2011 passed by Additional Sessions Judge Mahasamund in Sessions Trial No. 22/2011 convicting the accused/appellants under Section 302/34 IPC and sentencing each of them to undergo imprisonment for life and pay fine of Rs. 1000/-, plus default stipulation.

2. Case of the prosecution in short is that on 31.12.2010 at about 3 PM when deceased Purshottam Lal was returning home on motorcycle along with Baleshwar (PW-2) and by the time he reached near the house of the accused/appellants

herein who are the father and son, they apprehended him and caused several club injuries on his head on account of some old rivalry, as a result of which he fell down on the road. Incident was witnessed by the son of the deceased Tejram (PW-1) who at the relevant time was standing in front of his house. Incident was also witnessed by Baleshwar (PW-2) who was in the company of Purshottam, Premlal (PW-3) and Bhagat Ram (PW-8). As per FIR (Ex.P-2), Shankar Dhruv (PW-11) is also said to have seen the incident. After being taken to hospital, Purshottam Lal was declared to be brought dead. Prompt *merg* intimation Ex.P-1 was recorded on the same day at 3.50 PM where also it is specifically mentioned that it is the accused/appellants who caused injuries to the deceased. Thereafter at 4 PM, FIR (Ex.P-2) was registered at the instance of Tejram (PW-1) against both the accused/appellants for the offence punishable under Section 302/34 IPC. After drawing inquest Ex. P-3, the dead-body was sent for postmortem examination which was conducted by Dr. Sanjay Dave (PW-10) who gave his report Ex. P-17. On 1.11.2011 memorandums of accused/appellants Chaitu alias Chaitram and Hemlal vide Ex. P-7 and P-8 respectively were recorded, based on which seizure of plain as well as blood stained soil, clubs was made under Ex. P-9, P-10 and P-11. Further, on the memorandum (Ex.P-8) of accused Hemlal, one full pant and woolen sweator were also seized under Ex. P-12 and on the memorandum of accused Hemlal Bandhe, clothes of accused Chaitu alias Chaitram having blood like stains on it were seized under Ex.

P-13. FSL report marked as "C-1" shows the presence of blood on the club and the full pant so seized. However, serological report is not on record to prove that it was the human blood and that too of the blood group of the deceased. After completion of investigation, police filed the *challan* against the accused/appellants u/s 302/34 IPC followed by framing of charge accordingly by the Court below.

3. In order to prove the complicity of the accused/appellants in the crime in question, the prosecution has examined 12 witnesses. Statements of the accused/appellants under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellants as mentioned above.

5. Counsel for the accused/appellants submits as under:

(i) That except Tejram (PW-1), other witnesses have not made any allegation against accused/appellant Chaitu alias Chaitram.

(ii) That PW-1 being an interested witness is not reliable so as to hold the accused/appellants guilty of the offence alleged.

(iii) That Shankar Dhruv (PW-11) has not named any of the accused/appellants but surprisingly in the FIR he is mentioned as one of the eyewitnesses to the incident.

(iv) That the witnesses have admitted that in between the house of Tejram (PW-1) and the place where the incident had taken place, there were about 10-12 houses and thus the incident could not be seen from the place where PW-1 was standing. The fact that there are 10-12 houses in between the two ends, according to the counsel for the accused/appellants, has been admitted even by the Patwari (PW-9).

(v) That though on the memorandum of accused/appellants certain articles including clubs were seized and the FSL report is also positive yet in the absence of serological report, such seizure loses its evidentiary value.

(vi) That even if the statement of PW-1 is taken as it is against accused Hemlal it becomes apparent that there was no premeditation on his part to commit the murder of the deceased and thus merely for the fact that the club was used by him in assaulting the deceased, he cannot be convicted under Section 302 and at best his conviction would follow under Section 304 (Part-I) or 304 (part-II) IPC. His submission, therefore, is that after convicting accused Hemlal accordingly he may be sentenced to the period already undergone which comes to more than 7 years.

(vii) In support of his arguments, counsel for the accused/appellants placed reliance on the decision of the this Court in the matter of **Manrakhan and another v. State of CG and Itwari v. State of CG** reported in **2018 (1) CGLJ 221 (DB)**, on the decisions of Apex Court in the matter of

Ramkishan and others v. State of Rajsthan reported in **(1997) 7 SCC 518**; in the matter of **Golbar Hussain and others v. State of Assam and another** reported in **2015 SAR (Criminal) 611**; in the matter of **Joseph v. State of Kerala** reported in **(2003) 1 SCC 465**; in the matter of **Lallu Manjhi and another v. State of Jharkhand** reported in **(2003) 2 SCC 401**; in the matter of **State of Punjab v. Suchhe Singh and others** reported in **(2003) 3 SCC 153**; in the matter of **State of MP v. Kriparam** reported in **(2003) 12 SCC 675**; in the matter of **Preetam Singh and others v. State of Rajsthan** reported in **2004 SAR (Cr.) 103** and in the matter of **Motilal v. State of MP** reported in **(2012) 2 SCC 427**.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellants under Section 302/34 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that very prompt *merg* and FIR were recorded at the instance of Tejram (PW-1) and therefore merley on the ground of old rivalry between the two families, his testimony cannot be discarded. State counsel further submits that in *merg* and FIR, Tejram (PW-1) has categorically stated that both the accused persons have caused injuries to the deceased on head and being so the trial Court was justified in convicting the accused/appellants under Section 302/34 IPC. According to the State counsel, Tejram (PW-1), Premlal (PW-3) and Bhagat Ram (PW-8) have

categorically stated that they saw the accused/appellants assaulting the deceased with club. According to him, though Baleshwar (PW-2) who was riding the motorbike along with the deceased has been declared hostile yet he has categorically stated in his court statement that while they were returning, accused Hemlal first abused Purshottam, asked him to stop and then dealt a club blow to him. State counsel submits that Patwari (PW-9) has nowhere stated that the place of occurrence could not be seen from the house of the deceased where Tejram (PW-1) was standing, rather he has stated to the contrary that if one looks at minutely, it can be seen. In respect of the argument of the counsel for the accused/appellants that accused Hemlal can at best be convicted under Sections 304 (Part-I) or 304 (Part-II) IPC, Counsel for the State submits that brutality of the act can be seen by the nature of injuries where as many as three major head bones have suffered compound fracture and thus under no circumstance, he can be convicted for a lesser offence. State counsel argues that as per FSL report marked as "C-1" blood was present on the club and clothes seized on the memorandums of the accused/appellants, and though there is no serological report on record, looking to the other material on record clearly speaking about their overt act, the FSL report can be used as an addition evidence against them.

7. Heard counsel for the parties and perused the material available on record.

8. Tejam (PW-1) - son of the deceased has stated that he knew the accused/appellants, and that on 31.12.2010 at about 3-4 PM when his father (deceased) was returning from Bagbahra along with Baleshwar (PW-2) on motorcycle and as soon as he reached near the house of accused/appellants, they stopped him. At that time, according to this witness, he was standing in front of his house along with Shankar Dhruv (PW-11) from where the place of occurrence was visible. Clarifying further, this witness has stated that after stopping his father, the accused/appellants caused club injuries on his head and that on seeing this when he and PW-11 ran towards the spot, accused/appellants fled away. Thereafter, the deceased was taken to hospital at Bagbahra where the doctor declared him to be brought dead. This witness then went to police station where *merg* (Ex.P-1) and FIR (Ex.P-2) were registered at his instance. In cross-examination also this witness remained firm and has stated the same thing as in the examination-in-chief making it further specific that after being assaulted by accused Hemlal when his father fell down, another accused Chaitram also assaluted him with club. Baleshwar (PW-2) - another eyewitness to the incident who was the pillion rider on the motorcycle being ridden by the deceased has stated that he knew accused Hemlal. According to him, on the date of incident when they were about half a kilometer away from the house of the deceased, accused Hemlal abused the deceased, asked him to stop and gave a club blow to him as a result of which they both (deceased and

this witness) fell down. He has emphasized that it is accused Hemlal alone who assaulted the deceased. According to him, at the relevant time about 40-50 persons were present on the spot and asked accused Hemlal not to assault the deceased. As this witness did not stick to his diary version in respect of accused Chaitram, he has been declared hostile. Premlal (PW-3) - yet another eyewitness to the incident has stated that on the date of incident at about 3 PM he saw accused Hemlal assaulting the deceased with club and that on account of blow being dealt on head, he fell down and then was taken to hospital. Bhagat Ram (PW-8) - father of the deceased has stated that on the date of incident after hearing the cries he went to the spot and saw the accused/appellants assaulting the deceased with club. In the incident, the deceased is stated to have suffered injuries on head and hands. This witness has further stated that on being asked by him in the police station accused Hemlal disclosed that he assaulted the deceased on account of an old enmity. From the diary statement of this witness, he appeared to be just a hearsay witness but subsequently at the time of court statement he becomes an eyewitness to the incident. Meghnath (PW-4) - the witness to inquest and seizure though has been declared hostile, he has admitted his signature thereon. Radheshyam (PW-5) - the witness to inquest has stated that he noticed a lacerated wound on the head of the deceased and abrasions on his both hands. Hiralal (PW-6) and Sagar Betam (PW-7) are the police officials who assisted in the investigation. Leeladhar (PW-9) is

the *Patwari* who prepared spot map Ex.P-17. He has admitted that there are 10-12 houses in between the house of accused Chaitram and the deceased, and if looked at minutely, house of the deceased can be visible from the house of accused Chaitram close to which the incident had taken place. Dr. Sanjay Dave (PW-10) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-17 describing the injuries noticed by him, which are as under:

1. Lacerated wound on right fronto-parietal region, size 5 x 1 x 1 cm
2. Lacerated wound on left fronto-parietal region, size 2 x 2 cm
3. Lacerated wound on left fronto-parietal region, size 3 x 2 x 1 cm
4. Lacerated wound on left fronto-parietal region, size 4 x 3 x 3 cm
5. Left ear cut in two parts – depth of injury 3 cm and length 3 cm
6. Compound fracture was there on parietal bone, mastoid bone and right frontal bone.

Cause of death according to this witness was cardio-respiratory failure due to cerebral haemorrhage and the death was homicidal in nature.

9. We have heard counsel for the parties at considerable length and gone through the material collected by the prosecution inclusive of deposition of the witnesses, in depth up-to-root. The most important piece of evidence in regard to involvement of the accused/appellants is the deposition of Tejram (PW-1) who at the relevant time was standing in front

of his house and saw the accused/appellants inflicting club injuries on the head of his father. As soon as he along with PW-11 reached the spot, on seeing them the accused/appellants ran away. Court version of PW-1 conforms to the one contained in *merg* and the FIR where also names of both the accused/appellants have been mentioned to be the assassins of his father. Though Baleshwar (PW-2) who was sitting as pillion rider on the motorcycle ridden by the deceased at the relevant time has been declared hostile in respect of accused Chaitram yet he has categorically stated that while getting back home in the company of the deceased, accused Hemlal abused the deceased, asked him to stop and caused club injuries to him. Of course, in the Court statement PW-2 named only one accused namely Hemlal to be the assailant of the deceased but in his statement recorded under Section 161 of the Code of Criminal Procedure (Ex.P-6) he has taken the names of both to be involved in causing injuries to him. Premlal (PW-3) is also stated to have seen accused Hemlal inflicting club injury on his head. Bhagat Ram (PW-8) - father of the deceased and eyewitness to the incident has stated that on hearing the cries emanating from the spot, he went there and saw the accused/appellants inflicting injuries on head and hands of the deceased. On being asked by this witness in the police station accused Hemlal disclosed that he assaulted the deceased on account of old enmity. In the statement recorded under Section 161 Cr.P.C. also this witness has stated the same thing that on account of old enmity

accused/appellants assaulted his son (deceased herein). Statement of the doctor (PW-10) who conducted postmortem on the body of the deceased also reveals that there were lacerated wounds of varying size on the left and right fronto-parietal regions coupled with compound fracture at left parietal bone, mastoid bone and right frontal bone and the death was homicidal in nature. Further, on the memorandums of accused/appellants, clubs and clothes of the accused/appellants were seized which as per FSL report marked as "C-1" contained blood. There is no dispute that serological report is not there to prove the fact that the blood found on the seized articles was of human origin or of the blood group of the deceased. However, in the midst of other proved facts establishing the involvement of accused/appellants in the crime in question, mere absence of serological report cannot provide any benefit to them rather the FSL report showing blood on the seized articles would be an additional evidence in support of the case of the prosecution particularly when no explanation has been offered by the accused/appellants in this regard in their statements recorded under Section 313 of the Code of Criminal Procedure. Argument of the counsel for the accused/appellants that because of 10-12 houses falling in between the place of incident and the house of the deceased where Tejram (PW-1) was standing, the incident could not have been seen, has no force at all. It is for the reason that Patwari (PW-9) drawing the spot map has not stated that the spot was not visible from

the house of the deceased. Moreover, he has stated that if looked at minutely, it could be seen. Defence has not proved this aspect of the matter in a more analytic manner as to the situation of the houses in between the two ends – whether dotted straight or in a zig zag manner to prove the visibility of the spot.

10. Law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, in the event of there being a single witness, while appreciating his or her testimony the Court should be cautious enough and look for corroboration on material particulars before relying upon the same. It is not that if there is only one or two witnesses to prove the case of the prosecution, their testimony is discardable at the threshold. As regards the case in hand, evidence of Tejram (PW-1)- an eyewitness to the incident, has been subjected to minutest possible analysis but right from the *merg* and FIR upto the evidence stage in the Court, he has been firm on all the material particulars to prove the involvement of both the accused/appellants in assaulting the deceased which eventually resulted in his death. Testimony of PW-1 finds corroboration, may be partial, by Baleshwar (PW-2) though he did not speak specifically in respect of accused Chaitram. Bhagat Ram (PW-8) – another witness claiming to have seen the assault opened by the accused/appellants has also stood by PW-1. Being so, the decisions taken support of by the counsel for the accused/appellants, being ***Lallu Manjhi and another v.***

State of Jharkhand (supra) and that of ***Joseph v. State of Kerala (supra)*** in support of his argument that the testimony of limited number of witnesses is not enough to record a finding of conviction, do not help the accused/appellants herein. Evidence has to be qualitative and not quantitative to decide a criminal case, and being so, the case in hand stands on a different footing from the ones pressed in service by the counsel for the accused/appellants. Similarly, the decision relied upon by the counsel for the accused/appellants, being ***Golbar Hussain and others v. State of Assam (supra)*** is also of no help to the accused/appellants because PW-1 and PW-8 though happen to be son and father of the deceased have been very consistent in stating the sequence of events leading to assault of the deceased at the hands of accused/appellants resulting in his death and for that their testimony cannot be discarded merely for the reason that they being the relatives of the deceased are the witnesses interested in false implication of the accused/appellants. Their version does not appear to carry any exaggeration smacking of false implication of the accused/appellants. On the contrary, by adhering to the things spoken in the beginning uptill the conclusion of trial they have made a sincere effort so that the killers of the deceased could not go scotfree. Even from other sources i.e. the statements of PW-2 and PW-3, testimony of PW-1 and PW-8 gets corroborated, may be partially. This apart, if the evidence of PW-8 is seen, motive on the part of accused/appellants for killing the deceased is

also lurking. It has come in his deposition and the case diary statement as well that there was an old enmity between the two groups and for that the deceased was murdered. Evidence of PW-8 further shows that when he asked accused Hemlal as to why he assaulted the deceased, he disclosed to him that he did so on account of old enmity. Thus the decision of the Apex Court in the matter of ***State of M.P. v. Kriparam (supra)*** is also distinguishable on facts. Furthermore, from the evidence of PW-1 and PW-8 it gets crystalised that both the accused had clubs in their hands and they both opened assault on the deceased. Even assuming that as per the evidence of PW-2 and PW-3 only one accused namely Hemlal caused injury to the deceased but since it has not been proved by the defence by bringing in pin-pointed evidence that other accused Chaitram was not at all present there or he was somewhere else at the relevant time, he would also be liable for conviction under Section 302 with the aid of section 34 IPC, particularly when PW-1 and PW-8 have categorically stated that both the accused/appellants had actively participated in commission of the crime alleged. For this, the decision relied upon by the counsel for the accused/appellants in the matter of ***Ramkishan and others v. State of Rajsthan (supra)*** in support of his submission that which accused caused which injury to the deceased is not clear in this case, does not come to the rescue of the accused/appellants. In the same way, the decision of this Court in the matter of ***Manrakhan and another v. State of***

CG and Itwari v. State of CG (supra) relied upon by the counsel for the accused/appellants, also does not stand at par with the case in hand as far as the facts are concerned. It may be noted here as a gentle reminder of the observation of the Apex Court that the factual complexion of no two criminal cases tends to have the sameness. Situation is alike here also.

11. In view of the discussion on facts and law as above, this Court is of the considered opinion that the prosecution has succeeded in proving its case beyond reasonable doubt, and so also the Court below has rightly arrived at the conclusion holding the accused/appellants guilty under Section 302/34 IPC on the basis of evidence adduced by the parties. No infirmity or illegality in the judgment impugned is noticeable, and being so it deserves affirmation. Accordingly, the appeal being devoid of any substance is liable to be dismissed and it is dismissed as such. Since accused/appellants are already inside, no order for putting them in prison is needed.

12. Appeal dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge