

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 384 of 2011**

1. Danuram son of Chipduram, aged about 32 years, R/o village Nadichua, Police Station Badgaon, District Kanker, CG

--- Appellant**Versus**

1. State of Chhattisgarh through police station Badgaon, District Kanker, CG

--- Respondent**CRA No. 204 of 2013**

1. Chamru son of Aganuram, aged about 35 years, occupation - Agriculturist, R/o Village Nadichua, PS Badgaon (Partapur) District Kanker CG
2. Harsingh son of Raiysing, aged about 36 years, occupation - Agriculturist, R/o Village Nadichua, PS Badgaon (Partapur) District Kanker CG
3. Maharsingh son of Dayaram, aged about 37 years, Occupation - Agriculturist, R/o Village Nadichua, PS Badgaon (Partapur) District Kanker CG

--- Appellants**Versus**

1. State of Chhattisgarh through District Magistrate, Kanker (North Bastar) CG

--- Respondent**AND****CRA No. 365 of 2015**

1. Arjun Darro son of Devram Darro, aged about 26 years, Occupation - Agriculturist, resident of Sadakpara Nadichua, Police Station Badgaon, Civil and Revenue District Kanker, Chhattisgarh

--- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Badgaon, District Kanker, Chhattisgarh

---- Respondent

For Appellants : Smt. Indira Tripathi and Shri R.K. Pali, Advocates
For Respondent/State : Shri Vivek Sharma, GA

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Smt. Rajani Dubey**
Judgment on Board by Pritinker Diwaker, J

05/09/2018

As the judgments under assail dated 15.04.2011, 14.02.2013 & 21.11.2014 have been rendered in the same Sessions Trial No. 83/2010 and that the incident is also one and the same, the aforesaid three appeals are disposed of by this common judgment.

2. Conviction and sentence of the accused/appellants are as per the chart drawn below:

Accused/appellant(s)	Conviction (U/s)	Sentence
Danuram	147 IPC	RI for one year
	148 IPC	RI for two years
	364/149 IPC	RI for ten years with fine of Rs. 1000/-
	302/149 IPC	Life imprisonment with fine of Rs. 1000/-
	201 IPC	RI for five years with fine of Rs. 1000/-
	25/27 Arms Act	RI for three years with fine of Rs. 1000/-, (plus default stipulation) - All to run concurrently
Chamru, Harsingh & Maharsingh	148 IPC	RI for two years

	364/149 IPC	RI for ten years with fine of Rs. 1000/- plus default stipulation
	302/149 IPC	Life imprisonment with fine of Rs. 1000/- plus default stipulation. (All to run concurrently)
Arjun Darro	148 IPC	RI for two years
	364/149 IPC	RI for ten years with fine of Rs. 1000/- plus default stipulation
	302/149 IPC	Life imprisonment with fine of Rs. 1000/- plus default stipulation. (All to run concurrently)

3. Name of the deceased in the cases in hand is Ghasia alias Mangal Netam. It is alleged that on 17.08.2008 he was taken from his house by hundreds of Naxalites on the pretext that he was acting as informer to the police. On 19.08.2008 they are said to have committed his murder and handed over his dead-body to his family members for performing the last rites. While handing over the dead-body, those persons are also said to have asked his family members not to disclose about their act to anyone including the police. About a year thereafter i.e. on 09.07.2009 written report Ex. P-1 was lodged by the wife of the deceased namely Pramila Netam (PW-1) to the Superintendent of Police alleging that her husband was done to death by the Naxalites. In the said report she named Dipak, Mina, Jaimati, Danu, Harsingh and others. According to the case of prosecution, after receiving the written report (Ex.P-1) the matter was inquired into, the burial place was identified vide Ex. P-7, on 30.03.2010 skeleton of the deceased was exhumed from the field of Somaru, which was identified vide Ex. P-5 by (PW-1) on the basis of clothes found on it to be of her husband. After drawing inquest vide Ex. P-20 the skeleton was sent for postmortem

examination which was conducted by Dr. Sukhdev Shinde (PW-9) who gave his report (Ex.P-4). Doctor however could not give any opinion as to the cause of death and had sent the bones for Chemical Forensic Examination. As per the Forensic report (Ex. P-28) skeletal bones were the human bones of male in between 18 and 30 years of age. On 31.03.2010 *merg* intimation Ex. P-19 was recorded on 31.03.2010 at 10.35 AM followed by FIR (Ex.P-13) registered against Jaimati, Dipak, Mina, Danu, Harsingh, Maharsingh, Arjun, Chamru and 10-15 others. After arresting accused Danu, his memorandum (Ex. P-9) was recorded on 01.04.2010, based on which seizure of muzzle loader was made under Ex. P-10, however, the witnesses to memorandum and seizure (PW-6 and PW-10) have not supported the case of the prosecution. Initially, Sessions Trial only in respect of accused Danuram was conducted as according to the prosecution agency, at that stage, other accused persons were absconding. Subsequently, accused Harsingh, Chamru and Maharsingh were arrested and tried in the same Sessions Trial. Later on, another accused namely Arjun Darro was arrested on 16.08.2013 and he too was put to the same Sessions Trial. Court below framed the charge against accused Danuram under Sections 147, 148, 364/149, 302/149, 201, 506 (Part-II) IPC and sections 25/27 of the Arms Act; against accused Chamru, Harsingh, Maharsingh and Arjun u/s 148, 364 or 364/149, 302 or 302/149 and 201 IPC. As regards accused Danuram, the prosecution has examined 12 witnesses but subsequently relied upon the same in respect of other accused persons also by making necessary cross examination. Thus the evidence in relation to all the accused/appellants is almost identical barring certain variations in

the cross-examination.

4. In order to prove its case the prosecution has examined 12 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case.

5. After hearing the parties, the Court below has convicted and sentenced the accused/appellants as mentioned above by the judgments impugned, three in number.

6. Counsel for the accused/appellants submit as under:

(i) That there is un-explained inordinate delay of about one year in making the report as the deceased was allegedly murdered on 19.08.2008 whereas the written report (Ex. P-1) was lodged on 09.07.2009.

(ii) That identification of the dead-body is also disputed because though the written report was made on 09.07.2009, the skeleton was exhumed on 30.03.2010 and merely on the basis of clothes on the skeleton, it is said to be that of the deceased.

(iii) That the witnesses have admitted that the clothes found on the skeleton were common in nature and are available everywhere.

(iv) That unless the DNA test and other chemical tests confirm, the skeleton so exhumed cannot be said to be that of the deceased.

(v) That the eyewitnesses to the incident (PW-1, PW-2 and PW-3) being inconsistent are not reliable.

(vi) That conviction of accused/appellant Danuram under Section 25/27 of the Arms Act is not in accordance with law as even the

seizure witnesses have not supported the case of the prosecution.

(vii) That sanction to prosecute accused Danuram has not been obtained by the prosecution as required under the law.

7. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellants as described above are strictly in accordance with law and there is no infirmity in the same.

8. Heard counsel for the parties and perused the evidence available on record.

9. Pramila (PW-1) - the wife of the deceased has stated that in the year 2000 at the time of Rakshabandhan festival Naxalites Dipak, Mina, Arjun, Jaimati and about one thousand others had come to her house and took her husband (the deceased herein) with them holding him an informer to the police. Three days thereafter she was informed about the Naxalite meeting to be conducted in the village and when she along with her father-in-law, mother-in-law and brother-in-law went there, her husband was also present. Some people told her about her husband to be killed and in spite her request for not doing so, accused Danu, Harsingh, Arjun, Chamru and Maharsingh eliminated him by causing injuries with club and stones and then handed over the dead-body for the last rites. The Naxalites are also said to have asked this witness not to report the matter to the police but she made the written report Ex. P-1 to the Superintendent of Police. This witness has stated that after the skeleton was exhumed under Ex. P-5, she identified it to be that of her husband on the basis of shirt and full pant on it. In cross-examination she has admitted that she was not aware as to

by whom her husband was killed and that even her father-in-law, mother-in-law and brother-in-law, though remained present with her, they too did not see the deceased being assaulted.

While this witness was cross-examined in respect of accused Harsingh, Chamru and Maharsingh, she has stated that Jan Adalat meeting was called by the Naxalites where these three accused/appellants were also present. This witness however has admitted that she did not see these accused/appellants assaulting her husband. According to her, the deceased was not killed in the Jan Adalat but he was killed elsewhere. In respect of accused/appellant Arjun this witness has stated that he was also the part of Naxalites group yet she did not see anyone of them killing her husband.

10. Sukali Bai (PW-2) – the mother of the deceased has stated in her examination-in-chief that her son (deceased) was killed by the Naxalites in the meeting which was attended by accused/appellant Danuram also. However, in the cross-examination she has stated that the Naxalites took her son inside the jungle and killed him there. In respect of accused/appellants Maharsingh, Harsingh and Camru, this witness has not even identified them in the Court. In respect of accused/appellant Arjun Darro this witness has stated that on the date of incident the Naxalites had come to her house but the accused/appellant was not with them. She has further stated that in the meeting accused/appellant was also present but did not disclose his name to the police on account of fear. In respect of the present appellant, this witness has subsequently been declared hostile.

11. Ghassuram (PW-3) – the brother of the deceased has stated

that his brother (the deceased herein) was taken by the Naxalites but as at that time he was not at home, he could not say as to who did so. He has further stated that on being called by the Naxalites, he and his family members had attended the meeting where accused Danu was also present. He however has stated that he did not see as to who killed the deceased. Though in the examination-in-chief he stated that accused Danu was also involved in the killing but in the cross-examination he resiled from this version and stated that he did not see him doing that. As regards accused/appellant Arjun Darro this witness has stated that he had not come to his house but was present in the meeting called by the Naxalites, which the villagers do on account of fear.

12. Ram Singh (PW-4), Sannuram (PW-5) and Ganesh Ram (PW-6) have not supported the case of the prosecution and have been declared hostile. Rajesh Vishwakarma (PW-7) is the head constable who examined the weapon seized from accused Danuram. Vinod Kumar Dubey (PW-8) is the *Patwari* who prepared spot map (Ex.P-12). Dr. Sukhdev Shinde (PW-9) is the witness who conducted postmortem examination on the skeleton exhumed from the field and gave his report Ex. P-4 stating that the skeletal bones were connected to each other, there was no injury or fracture on the same. However, to ascertain the cause of death he sent the skeleton for chemical Forensic Examination. Mangluram (PW-10) – the witness to seizure has not fully supported the case of the prosecution. P.R.K. Singh (PW-11) is the investigating officer who has supported the case of the prosecution. Dr. Dhawal J.Patel (PW-12) is the Forensic Expert who examined the skeleton and found it to be that of male human in between 18 and 30 years of age.

13. This Court has gone through the evidence of the witnesses

carefully including the judgments under challenge. Incident is said to be of in between 17.08.2008 and 19.08.2008 where hundreds of Naxalites came to the house of deceased and branding him to be the informer of the police, took him in a secluded place and after committing his murder handed over the dead-body to his family members for performing the last rites and acting upon their instructions, they buried the same purportedly on account of fear of the Naxalites who had asked the witnesses not to disclose the incident to anyone including the police. It is on 30.03.2010 the skeleton of the deceased was exhumed, which was identified vide Ex. P-5 by his wife (PW-1) on the basis of clothes found on it to be of her husband. Identification of the dead-body merely on the basis of clothes cannot lead to an irresistible conclusion that it was of the deceased because it has come in the evidence of the witnesses that such things are commonly available in the market. Another factor which comes in the way of placing reliance on identification is that the cloth which remained beneath the earth for about one and a half year is not supposed to be in the same colour and texture as it might have been on the date of incident i.e. in between 17.8.2018 and 19.8.2018. The act of the witnesses in burying the dead-body two-three days after the incident; maintaining silence over it for about 12 months; then making the written report (Ex.P-1) about a year thereafter i.e. on 9.7.2009 and then ensuring its exhumation about a further period of six months weakens the case of the prosecution to a considerable extent. Secondly, though in the examination-in-chief the witnesses, to some extent, have tried to stand by the prosecution yet in cross-examination they have turned to a total denial mode stating that they were not aware as to who killed the deceased. Even presence

of some of the accused/appellants in the group of Naxalites has been denied by the witnesses. Postmortem report (Ex.P-4) merely says that the skeletal bones were connected to each other, there was no injury or fracture on it, but he did not give any opinion as to the cause of death and sent the dead-body for chemical Forensic Examination. Even the Forensic Expert (PW-12) who examined the skeleton and gave his report Ex. P-28 has not given any conclusive opinion about the identity of the deceased, except stating that it was male human skeleton in between 18 and 30 years of age. Furthermore, after arresting accused Danuram, his memorandum (Ex. P-9) was recorded on 01.04.2010 and based on which seizure of muzzle loader was made under Ex. P-10, but the witnesses to memorandum and seizure (PW-6 and PW-10) have not supported the case of the prosecution on this aspect of the matter. Thus looking to such a shaky evidence available on record it cannot safely be held that it is the accused/appellants herein who were the part of an unlawful assembly and shared the common object to commit the murder of the deceased.

14. Thus in view of the aforesaid discussion, this Court is of the considered opinion that the prosecution has utterly failed to adduce any cogent and conclusive evidence connecting the accused/appellants with the crime in question. So also the Court below has not given a thoughtful consideration to the material available before it while holding the accused/appellants guilty of commission of murder of the deceased by forming an unlawful assembly sharing the common object for the pursuit. The conviction of the accused/appellants of all the charges levelled against them is thus liable to be set-aside. Accordingly, the appeals are allowed, judgments impugned are set-aside and the

accused/appellants are acquitted of all the charges levelled against them. Accused/appellants are reported to be in jail, and therefore, they are directed to be set free forthwith, if not required in any other case.

15. All the aforesaid three appeals are allowed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Rajani Dubey)
Judge

Jyotishi