

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 22 of 2017**

- Mazruddin Ansari, son of Riyazuddin Ansari, aged about 35 years (Teacher panchayat), resident of village Bhanvrahi, Police outpost Basdei PS & District Surajpur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through – The Police Station Ajak Surajpur, District Surajpur (Chhattisgarh)

---- Respondent

For Appellant	:	Shri Surendra Singh, Sr. Advocate assisted by Shri V.K. Pandey and Ms. Neha Verma, Advocates.
For Respondent/State	:	Shri Vaibhav Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board**By Pritinker Diwaker, J****06/08/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 24.11.2016 passed by Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Surajpur, in Special Sessions Trial No.34/2013 convicting the accused/appellant under Sections 148 and 302/149 IPC & sentencing him to undergo R.I. for one year with fine of Rs.500/- and imprisonment for life with fine of Rs.2000/- plus default stipulation respectively.

02. Brief facts of the case are that fishing right of Gangoti Dam near

Bilaro pond was given to one Parvati Mahila Multi Purpose Society on lease up to year 2018. The members of the said society used to work jointly and keep guard on the pond. On 28.05.2012 at about 12.00 in the night deceased Sukhlal Gond was keeping guard on the said pond. When he heard some noise and reached near the pond, he was abused by the accused persons who entered the said area for committing theft of fishes. It is said that the deceased was assaulted by club, battleaxe, chain, axe and rod as a result of which he sustained number of injuries on his body. After hearing his cries, his wife Tilaso Bai and other persons of the said society reached there, some of them saw the accused persons assaulting the deceased and fleeing from the spot. Injured Sukhlal Gond was lifted on a cot, brought in a hut and taken to Primary Health Center, Baikunthpur from where he was shifted to Mission Hospital, Ambikapur where he was hospitalized for further treatment. The injured was medically examined on 29.05.2012 by Dr. G.D. Baghel who gave his MLC noticing following injuries.

- (i) Incised wound over upper part of occipital region in the size of 5 cm x .5 cm x .5 cm caused by sharp cutting object.
- (ii) Incised wound on left side of lower part of occipital region in the size of 4 cm x 0.5 cm x 0.5 cm caused by sharp cutting object.
- (iii) Incised wound on left side of lower part of occipital region in the size of 2 cm x 0.5 cm x 0.5 cm.
- (iv) Contusion on back of neck in the size of 10 cm x 5 cm caused by hard and blunt object.
- (v) Multiple contusions in the size of 22 cm x 5 cm, 20 cm x 4 cm and 15 cm x 5 cm over back of chest below

left scapular region caused by hard and blunt object

- (vi) Contusion over back of chest and abdomen in the size of 25 cm x 5 cm caused by hard and blunt object.
- (vii) Contusion over lumbar region in the size of 5 cm x 5 cm.
- (viii) Multiple contusions in the size of 5cm x 4cm, 5cm x 5cm and 4cm x 4cm over right supra scapular region caused by hard and blunt object.

03. After about four days, on 01.06.2012 the deceased succumbed to his injuries in the Mission Hospital, Ambikapur. On the basis of information received from the hospital, unnumbered merg (Ex.P/5) was recorded on 01.06.2012 and Numbered merg (Ex.P/19) was recorded on 12.06.2012. In the meanwhile, on the basis of written report (Ex.P/1) dated 29.05.2012 lodged by Tilaso Bai, wife of the deceased, initially unnumbered FIR was registered on 29.05.2012 followed by numbered FIR on 30.05.2012 against accused Bokhi Miyan, Majruddin, Rasid Miyan and Kallu under Sections 294, 506 (B), 307 IPC and 3 (1) (x) & 3 (2) (v) of the Act. After the death of the deceased and recording merg intimations, inquest on the dead body was conducted on 01.06.2012 and dead body was sent for postmortem examination which was conducted on the same day by Dr. Sanjay Singh who gave his report (Ex.P/18) noticing following injuries/symptoms:-

- (i) Eyes and mouth were closed, body was cold, nails were bluish.
- (ii) Rigor mortis were present all over the body.
- (iii) Stitched wound three in numbers were present on head (posterior part).
- (iv) Abrasion of 7 x 4 cm on posterior part of neck.

- (v) Abrasions of 5 x 2 cm and 3 x 2 cm on right scapular region.
- (vi) Contusion of 14 x 5 cm on right side of neck, posterior and interior to right ear.
- (vii) Multiple contusion on back.

The autopsy surgeon opined the cause of death of deceased to be head injury and mode of death was coma.

04. Memorandum of accused Amin Raza, Mohd. Mustakim and Gous Mohammad were recorded on 03.06.2012, 06.07.2012 and 16.07.2012 vide Ex.P/13, P/6 and P/11, based on which clubs were seized vide Ex.P/14, P/7 and P/12 respectively. However, there is no FSL report on record in respect of the seized articles. It is relevant to note here that no seizure was effected from the possession of the present appellant.

05. After filing of charge sheet, in Sessions Trial No.34/2013, the trial Court framed the charge against the accused/appellant under Sections 148, 302/149 IPC and 3 (2) (v) of the Act.

06. So as to hold the accused/appellant guilty, the prosecution examined as many as 13 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him 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 while acquitting accused/appellant of the charge under Section 3 (2) (v) of the Act has

convicted and sentenced him as mentioned in para-1 of this judgment.

Hence, this appeal.

08. Learned counsel for the appellant submits as under:

(i) That the statement of Ramfal (PW/3), eye-witness to the incident, is not reliable and trustworthy because this witness had not seen the actual occurrence and when he reached the place of occurrence, the accused/appellant had already fled away from the spot. It has been argued that PW/3, in para 11, has admitted the fact that merely on the basis of suspicion he disclosed the name of accused/appellant as assailant.

(ii) That the incident occurred in the dark night and this fact has been admitted by PW/3.

(iii) That other eye-witness Balmukund (PW/5) has not supported the prosecution case in respect of the present appellant.

(iv) That the factum of so called oral dying declaration made by the deceased before Tilaso Bai (PW/2) is totally incorrect because immediately after sustaining injuries the deceased became unconscious and remained in the said condition till he died. Even otherwise, in the written report (Ex.P/1) lodged by PW/2 there is no mention of any such dying declaration made by the deceased.

(v) That Dr. G.D. Baghel (PW/8) has not found any grievous injury on the body of deceased and there was no damage to the brain. Learned counsel has placed his reliance on the decisions of the Apex Court in the matter of **State of Uttar Pradesh V. Ashok Kumar & Anr. reported in AIR 1979 SC 874, Harish Kumar V. State (Delhi Administration) reported in AIR 1993 SC 973, Panda Nana Kare V. State of**

Maharashtra reported in AIR 1979 SC 697, Bali Ahir & Ors. V. State of Bihar reported in AIR 1983 SC 289 and State of Madhya Pradesh V. Nisar reported in AIR 2007 SC 2316.

09. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same.

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

11. Ramfal (PW/3), eye-witness to the incident, has stated that on the date of incident at 11.00 PM, he, deceased Sukhlal, Balmukund and Ramjatan were keeping guard on the fishing pond, whereas Tilaso Bai, wife of the deceased, was in hut. After hearing some noise, he along with the deceased had gone to the place of occurrence and deceased told him (this witness) to go near dam as somebody might have spread fishing net. On this, he jumped in the pond and went to other direction. He has further stated that after hearing the cries from opposite side when he reached the place of incident, he saw 4-5 persons including Rashid, Kallu, Bokhi and others assaulting the deceased and thereafter the accused persons fled away from the spot. After the incident, injured Sukhlal was brought in the hut where he made oral dying declaration to his wife Tilaso Bai naming the accused persons to be the assailant. This witness, in para 9, has stated that everybody was in the hut and after hearing the noise, the deceased had gone towards the said area first and when he did not return for

quite some time, he and other persons went there. In para 10, this witness has further stated that it was dark night and when he reached the place of occurrence, the accused persons had already fled away from the spot. In para 11, it has also been stated that as the accused/appellant Mazruddin was former Secretary of Fish Farming Society, therefore, they had suspicion and named him as accused.

12. Balmukund (PW/5) is other eye-witness to the incident. He has not made any allegation against the present appellant, has not named him as assailant and turned hostile.

13. Dr. G.D. Baghel (PW/8) medically examined injured Sukhlal on 29.05.2012 and gave MLC (Ex.P/8) noticing (i) Incised wound over upper part of occipital region in the size of 5 cm x .5 cm x .5 cm caused by sharp cutting object, (ii) Incised wound on left side of lower part of occipital region in the size of 4 cm x 0.5 cm x 0.5 cm caused by sharp cutting object, (iii) Incised wound on left side of lower part of occipital region in the size of 2 cm x 0.5 cm x 0.5 cm., (iv) Contusion on back of neck in the size of 10 cm x 5 cm caused by hard and blunt object, (v) Multiple contusions in the size of 22 cm x 5 cm, 20 cm x 4 cm and 15 cm x 5 cm over back of chest below left scapular region caused by hard and blunt object, (vi) Contusion over back of chest and abdomen in the size of 25 cm x 5 cm caused by hard and blunt object, (vii) Contusion over lumbar region in the size of 5 cm x 5 cm, and (viii) Multiple contusions in the size of 5cm x 4cm, 5cm x 5cm and 4cm x 4cm over right supra scapular region caused by hard and blunt object. In cross-examination, he has stated that when the injured was brought in the hospital, he was unconscious and injury Nos. 5, 6, 7 and 8 were

not sufficient in ordinary course of nature to cause death of the deceased. He has further stated that death of injured could have been avoided if adequate and timely treatment had been made available to him. This witness has also stated that he did not define the nature of injury Nos. 1, 2 and 3 though it should have been.

14. Tilaso Bai (PW/2), wife of the deceased, has stated that after the incident, the deceased was brought in the hut in unconscious condition and that even he had passed stool and urine. This witness has further stated that after sprinkling water on his face, he gained consciousness and disclosed the name of accused persons including the present appellant to be the assailants. It is relevant to note here that the fact of oral dying declaration made by the deceased has not been stated by this witness while lodging the FIR.

15. Dr. Sanjay Singh (PW/9) conducted postmortem examination on the body of deceased and gave his report Ex.P/18 opining the cause of death of deceased to be head injury and mode of death coma.

16. Prafull Kispotta (PW/10) - Investigating Officer, has duly supported the prosecution case. This witness, in para 8, has categorically stated that eye-witness Ramfal (PW/3) had nowhere disclosed the name of present appellant to be assailant in his diary statement (Ex.D/2). It has also been stated by this witness that Tilaso Bai, wife of the deceased, in her diary statement (Ex.D/1), had disclosed the fact that after sprinkling water on his face, the deceased gained consciousness, made oral dying declaration naming four accused persons to be the assailants and not the present appellant.

17. Close scrutiny of the evidence makes it clear that Ramfal (PW/3), eye witness to the incident, though initially named the accused/appellant to be the assailant but in cross-examination he admits that it was dark night and when he reached the place of occurrence, the accused persons including the present appellant had already fled away from the spot. He has further admitted that the accused/appellant was former Secretary of the Fish Farming Society and, therefore, merely on the basis of suspicion he was named as accused. Further, Balmukund (PW/5), another eye-witness to the incident, has not uttered even a single word against the accused/appellant with regard to his participation in the commission of offence and had turned hostile. Thus, considering the statements of these witnesses, they cannot be treated as eye-witnesses to the incident and their statements do not inspire much confidence of this Court. That apart, there is oral dying declaration made by the deceased before his wife Tilaso Bai (PW/2), but the evidence on record reflects that immediately after sustaining the injuries, the deceased had become unconscious and remained in the said condition throughout. Even in the written report lodged by Tilaso Bai (PW/2), she has not disclosed the fact of any dying declaration being made by the deceased before her. Further, Investigating Officer (PW/10), in para 8 of his cross-examination, has specifically stated that PW/2, in her diary statement (Ex.D/1), had disclosed the fact that the deceased had named 4-5 persons only and not the present appellant. There are material contradictions in her court evidence as compared to her diary statement (Ex.D/1) and being so, she is also not a reliable witness.

18. To sum up, this Court is of the considered opinion that the prosecution has not led enough evidence to prove the complicity of the accused in the crime in question and for that the benefit of doubt has to go to the accused. The trial Court while convicting and sentencing the accused/appellant has not considered the evidence of the prosecution in its true perspective and thereby committed error in convicting him.

19. In view of what has been discussed above, the findings recorded by the Court below cannot be sustained in the eye of law and are liable to be set aside. The appeal is thus allowed, judgment impugned is set aside and the accused/appellant stands acquitted of the charge levelled against him by extending him benefit of doubt. The accused/appellant is reported to be in jail. He be set at liberty forthwith if not required in any other case.

20. Appeal is thus allowed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge