

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 331 of 2012

1. Bagar Singh S/o Ajuram Rathiya, aged about 26 years, R/o Village Gitkuwari, P.S. Kartala, Distt. Korba C.G.
2. Sagar Singh S/o Ajuram Rathiya, aged about 35 years, R/o Village Gitkuwari, P.S. Kartala, Distt. Korba C.G.

**---- Appellants
In Jail**

Versus

- State Of Chhattisgarh Through – Station House Officer, Police Station - Kartala , Distt. Korba C.G.

---- Respondent

For Appellants	:	Shri Sanjay Agrawal, Advocate.
For Respondent/State	:	Shri Anill Pillai, Dy. A.G.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board by Justice Pritinker Diwaker

20/08/2018:

This appeal arises out of the judgment of conviction and order of sentence dated 15.3.2012 passed by the Sessions Judge, Korba (CG) in S.T.No.34/2011 convicting accused/appellant Bagar Singh under Sections 323 & 302 IPC and sentencing him to undergo RI for six months & imprisonment for life with fine of Rs.2000/- plus default stipulation respectively and accused/appellant Sagar Singh u/s 302 of IPC and sentencing him to undergo life imprisonment with fine of Rs.2000/- plus default stipulation.

02. As per prosecution case, the appellants and the deceased were

neighbours. On 20.3.2011 Bhagwati (PW-3), wife of PW-4 Mahadev Singh and daughter-in-law of the deceased Sukhdev Singh, had gone to jungle to collect *Mahua* where it is said that some dispute cropped up between her and the appellant Bagar as he asked her not to collect *Mahua* from there and also beat her. After returning home, Bhagwati narrated the said incident to deceased Sukhdev Singh, who came out from his house in between 4-5 pm and started questioning the appellants with a loud voice as to why his daughter-in-law was beaten. Hearing this the appellants came out from their house carrying axe and club in their hands and caused several injuries to deceased Sukhdev resulting in his instantaneous death. The incident was witnessed by PW-1 Raghuvir Singh, son of the deceased, and PW-3 Bhagwati, daughter-in-law of the deceased. At the instance of PW-1, FIR (Ex.P/2) was registered on 20.3.2011 at 10 pm against the appellants under Sections 302/34 of IPC. Soon thereafter at 10.20 pm mere intimation Ex.P/1 was also registered at the instance of PW-1. Inquest over the dead body was conducted vide Ex. P/14 on 21.3.2011 and thereafter, the body was sent for postmortem which was conducted on the same day by PW-5 Dr. Kumar Pushpesh. The autopsy surgeon noticed chop wound over frontal region extending over the left parietal bone; contusion over 2 cm below the chop wound and lacerated wound over zygomatic arch in front of left ear. In his opinion, the cause of death was coma due to shock as a result of hemorrhage on account of head injury and that the nature of death was homicidal.

On 22.3.2011 memorandum of accused/appellant Bagar Singh was recorded vide Ex.P/8 and pursuant to which one bloodstained club was seized under Ex. P/11. Likewise memorandum of

accused/appellant Sagar (Ex.P/9) led to recovery of bloodstained axe. As per FSL report (Ex.P/25), blood was found on both these articles. While framing charge, the trial Judge charged appellant Bagar Singh under Sections 302 & 323 (on two counts) of IPC whereas appellant Sagar Singh was charged under Sections 302 & 323 of IPC.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 11 witnesses. Statements of the accused 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.

04. 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 appellants as mentioned in para-1 of this judgment.

05. Learned counsel for the appellants submits as under:

(i) that the most important witness of the prosecution PW-1 Raghuvir Singh, who lodged FIR, has not fully supported the prosecution case and being so, the prosecution case itself becomes doubtful.

(ii) that PW-3 Bhagwati being a person at whose instance the entire incident occurred, is an interested witness and as such, not reliable.

(iii) the incident occurred in a spur of moment, on a sudden quarrel without any premeditation on the part of the accused/appellants, therefore, considering the nature of injuries, even if the entire prosecution case is taken as it is, at best the appellants are liable to be convicted under Section 304 Part-I of IPC.

(iv) that the appellants are in jail for the last more than 7 ½ years and therefore, after conversion of their conviction into one under Section 304 Part-I, they may be sentenced to the period already suffered by them.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

(i) that there is no reason for this Court to disbelieve the statement of PW-3 Bhagwati who has fully supported the prosecution case.

(ii) that PW-1 Raghubir Singh has also partially supported the prosecution case.

(iii) that the axe and club seized at the instance of the appellants bear blood as per FSL report Ex.P/25 and there is no explanation therefor by the appellants in their statements u/s 313 of CrPC.

(iv) that postmortem report of the deceased reveals the nature and extent of injuries caused by the appellants and thus considering the manner in which the deceased was subjected to such injuries, it can safely be inferred that the only intention of the appellants was to commit murder and therefore, they do not deserve conviction for any lesser offence.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-3 Bhagwati, daughter-in-law of the deceased, has stated that on the fateful day she had gone to jungle for collecting *Mahua* where she was assaulted by accused/appellant Bagar Singh by club saying as to why she is collecting his *Mahua*. She states that after returning

home in the afternoon she informed about the said incident to the deceased, who asked the appellants as to why they beat her (PW-3), on which accused/appellant Sagar with axe and appellant Bagar with club assaulted the deceased on his head and back. While she was offering water to the deceased, appellant Bagar Singh beat her also with club on her abdomen. In cross-examination this witness remained firm and nothing could be elicited from her by the defence to make her evidence shaky or doubtful.

09. PW-1 Raghubir Singh is the first informant. He has partially supported the prosecution case. He states that when he reached near his injured father, he saw the appellants fleeing from the spot. He states that he heard his father asking the appellants as to why they beat Bhagwati. He admits that he did not see the appellants causing injuries to the deceased but saw them running away from the spot leaving the weapons held by them at the spot itself. From his overall evidence it is seen that he supports the prosecution case insofar it relates to assault made by the appellants on the deceased but as regards seizure of weapon and causing of injuries by the appellants to himself, he does not support the prosecution case.

10. PW-2 Govind Singh, witness to memorandum (Ex.P/8 & P/9) and seizure (Ex.P/10 to P/12), inquest Ex.P/14, arrest memo Ex.P/15, has turned hostile. However, he has admitted his signature on these documents. PW-4 Mahadev Singh, son of the deceased, has stated that his wife Bhagwati was beaten by the accused persons when she had gone to collect *Mahua* and upon objection being raised by his father/deceased, the accused persons assaulted him with axe and

committed his murder. PW-5 Dr. Kumar Pushpesh conducted postmortem on the body of the deceased on 21.3.2011 and noticed chop wound over frontal region extending over the left parietal bone; contusion over 2 cm below the chop wound and lacerated wound over zygomatic arch in front of left ear. In his opinion, the cause of death was coma due to shock as a result of hemorrhage on account of head injury and that the nature of death was homicidal. PW-6 Jai Singh Paikra, Patwari, prepared the spot map Ex.P/5. PW-7 Shankar Das, witness to memorandum and seizure, has turned hostile. PW-8 Balakram witness to seizure Ex.P/12 and spot map Ex.P/4 has also turned hostile. PW-9 Kranti Singh, Police Constable, assisted in the investigation. PW-10 Sunder Singh Rathiya, witness to inquest Ex.P/14, has turned hostile. PW-11 KR Sahu, investigating officer, has duly supported the prosecution case.

11. Close scrutiny of the evidence makes it clear that on 20.3.2011 when Bhagwati (PW-3) had gone to jungle to collect *Mahua*, some dispute cropped up between her and appellant Bagar Singh as he objected to collection of *Maua* by her from there and after returning home when she narrated the said incident to the deceased and he asked the appellants as to why they beat her, the appellants armed with club and axe came out from their house and opened assault on the deceased which led to his on-the-spot death. When PW-3 intervened she was again beaten by appellant Bagar.

12. PW-3 Bhagvati has duly supported the prosecution case and described as to the manner in which the incident took place and her

father-in-law was done to death by the appellants. Defence has utterly failed to elicit anything from her which could make her evidence untrustworthy. We do not find any reason to disbelieve her version. Her testimony gets further support from the postmortem report of the deceased. According to the autopsy surgeon, PW-5 Dr. Kumar Pushpesh, the deceased had suffered chop wound over frontal region extending over the left parietal bone; contusion below the chop wound and lacerated wound over zygomatic arch in front of left ear and the cause of death was coma due to shock as a result of hemorrhage on account of head injury and that the nature of death was homicidal. Though another eyewitness to incident namely PW-1 Raghubir Singh has not fully supported the prosecution case but has categorically stated that when he reached near his injured father, he saw the appellants fleeing from the spot leaving the weapons held by them at the spot itself.

13. This apart, on the memorandum of the appellants, axe and club were seized and as per FSL report (Ex.P/25) blood was found on it. No explanation has been offered by them in their statements u/s 313 of CrPC as to how blood was found on the articles seized at their instance. Though the witnesses to memorandum and seizure have turned hostile, but the investigating officer (PW-11 KR Sahu) who effected such proceedings have duly supported the prosecution case. It is a settled principle of law that if testimony of a police officer is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer and may have some

interest in success of the case. In this case, there is nothing on record to show that the investigating officer was motivated by overzealousness to an extent of involving innocent people or was having any ill-will against the appellants. Even otherwise, present being a case of eyewitness account, the circumstance of seizure of incriminating articles at the instance of the appellants can be taken as an additional evidence.

14. Thus, from the above ocular evidence duly corroborated by medical evidence, complicity of the accused/appellants in the crime in question stands proved beyond all reasonable doubt.

15. We find no substance in the argument of counsel for the appellants that in the given facts and circumstances of the case, at best the appellants are liable for conviction u/s 304 Part-I of IPC. Considering the fact that the appellants came out from their house fully armed with deadly weapon axe and club and despite intervention by PW-3 Bhagvati, assaulted the deceased to such an extent on his vital part head with such a force which led to his instantaneous death, it can safely be inferred that while assaulting the deceased they not only had the intention to kill him but also had the knowledge that infliction of such injuries would certainly result in his death. Being so, their act definitely makes them liable for conviction under Section 302 of IPC.

16. On the basis of aforesaid discussions, we are of the considered opinion that the findings of guilt of the appellants recorded by the trial Court are based on proper appreciation of the entire evidence available on record. There is no illegality or infirmity in the judgment impugned warranting interference by this Court.

17. In the result, the appeal fails and is, accordingly, dismissed. Since the appellants are reported to be already behind the bars, no further order regarding their arrest/surrender etc. is required to be passed.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Smt. Vimla Singh Kapoor)
Judge