

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 281 of 2012

- Brijlal Sirmour S/o Late Shri Sukalu Satnami , Aged about 48 years, R/o Village Basantpur , P.S. Dongargarh , Distt. Rajnandgaon C.G.
- Vishram Sirmour S/o Brijlal Satnami , Aged about 25 years, R/o Village Basantpur , P.S. Dongargarh , Distt. Rajnandgaon C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through - SHO., P.S. Dongargarh , Distt. Rajnandgaon C.G.

---- Respondent

For Appellants	: Shri Govind Dewangan, Advocate
For Respondent/State	: Shri Vaibhav Goverdhan, P.L.

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

Judgement on Board by Pritinker Diwaker,J.

26/04/2018

This appeal has been preferred against the judgment and order dated 13.08.10 passed by the Additional Sessions Judge, Dongargarh, District Rajnandgaon in Sessions Trial No. 18/2008 convicting the accused/appellants for the offence punishable under Sections 302 and 452 IPC and sentencing each of them to undergo imprisonment for life with fine of Rs. 500/- u/s. 302 and to undergo RI for three years with fine of Rs. 300/-plus default stipulations.

2. In the present case, name of the deceased is Durdeshiram

Sirmour, husband of Urmila Bai (PW-3). As per prosecution case, on 03.05.08 at about 10.00 p.m. deceased returned to his house from the market where he had some quarrel with his wife Urmila Bai (PW-3). It is alleged that while the deceased was abusing his wife, accused persons Brijlal, Vishram, Goutar Satnami and juvenile accused Ishwar entered the house of deceased carrying axe, crow bar and club by saying that deceased was indirectly abusing them and not to his wife. Further case of the prosecution is that the accused persons assaulted him and caused several injuries to the deceased with axe, crowbar and club resulting in his instantaneous death. The incident was witnessed by the wife of the deceased Urmila and Gopi (PW-4) son of the deceased. Immediately after the incident Urmila Bai along with his son Gopi rushed to the house of village Kotwar and narrated the entire incident to him and as the village kotwar refused to accompany her to the police station, in the next morning at 7.40 a.m. i.e. on 04.05.08, FIR Ex. P-24 was lodged by Urmila against four accused persons under Sections 302, 452, 294, 506-B, 34 IPC. Inquest on the dead body was prepared and body was sent for postmortem examination which was conducted on 04.05.08 by Dr. S.Choudhary (PW-5) vide Ex.P-25 and according to him, cause of death was head injury due to hypovolemic shock and the death was homicidal in nature. On the basis of memorandum of accused No.2 Vishram Ex.P-5, seizure of crow bar and clothes stained with blood was made vide Ex.P-10; on the basis of memorandum of accused Goutar Ram vide Ex. P-6 seizure of club and his clothes was made vide Ex.P-9 and on the basis of memorandum of Brijlal vide Ex. P-8 seizure of axe and his clothes were made vide Ex.P-11 and on the memorandum of juvenile accused Ishwar Ex.P-7 seizure of club and his clothes was made vide Ex.P-13.

As per FSL report Ex.P-29 blood has been found on the axe and clothes seized from accused Brijlal, clothes and club seized from accused Goutar Ram and club and clothes seized from accused Ishwar. After filing of charge sheet, the trial judge has framed charge against the appellants under Sections 302, 452, 294, 506 Part-II and in alternative 34 IPC.

3. In order to establish the guilt of the accused/appellants, prosecution has examined 11 witnesses. Statements of the accused/appellants were recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case. This apart two defence witnesses have also been examined.

4. After hearing the parties, the trial Court by judgment impugned, while acquitting accused Goutar Ram of charges under Sections 294,506 Part II 302 and 302/34 IPC, convicted and sentenced him under Section 452 IPC whereas the accused appellants Brijlal and Vishram have been convicted and sentenced as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellants is that :

- i) the accused/appellants have been falsely implicated.
- ii) in fact it is Urmila Bai (PW-3) who had killed her husband and to save herself she lodged the report against the accused persons.
- iii) the conduct of Urmila Bai (PW-3) appears to be unnatural where after the death of her husband she had gone to the village Kotwar and stayed in his house at night.

- iv) had the accused/appellants killed the deceased in presence of Urmila Bai (PW-3) she would have intervened and would have lodged the prompt report.
- v) In respect of other eyewitness Gopi it has been argued that he is a child witness aged 12 years and he has admitted the fact that he deposed in the court as tutored by his mother.
- vi) though as per FIR independent witnesses were present at the time of occurrence of the incident but they have not been examined by the prosecution.
- vii) on the same set of evidence co-accused Goutar Ram has been acquitted of the charge under Section 302 and therefore the appellants also deserve to be acquitted by granting them benefit of doubt.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that

- i) PW-3 and PW-4 are the natural eyewitnesses present in the court and they have duly supported the prosecution case.
- ii) as many as four accused persons entered the house of the deceased carrying deadly weapons with them and caused injury to the deceased and after seeing such brutality no prudent man/woman would intervene in such a situation and thus Urmila Bai (PW-3) was justified in not intervening and she immediately rushed to the village Kotwar for lodging the report.
- iii) while lodging the report it has been categorically explained by

Urmila (PW-3) that the report could not be lodged immediately after the incident as it was late night and therefore she had gone to the village Kotwar.

iv) Non-examination of village kotwar is of no help to the accused in view of the statement of the two eyewitnesses.

v) though PW-4 has stated that he is deposing in the court as has been intimated by his mother but if his court statement is compared with that of his diary statement it was rightly observed that PW-4 appears to be a natural witness.

vi) before coming to the court if Urmila Bai (PW-3) had refreshed the memory of PW-4, it does not mean that he was a tutored witness.

vii) apart from PW-3 and 4, from the accused persons weapons were seized along with their clothes and as per FSL report, blood has been found on these articles. He submits that no probable explanation has been offered by the accused/appellants under Section 313 Cr.P.C. as to how the blood has been found on the clothes. It has been argued that even in absence of serological report in a case where eyewitnesses are there, FSL report can be treated as additional evidence against the accused persons. In respect of acquittal of Goutar Ram it has been argued that his case is somewhat different from that of accused/appellants and therefore the appellants cannot claim any parity.

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

on record.

8. Urmila Bai (PW-3) is wife of the deceased and eyewitness to the incident. She has stated that on the date of incident at about 9-10 p.m. deceased returned from the market and there was some quarrel between them. She has stated that the deceased was abusing her and therefore after pacifying him she took him inside however at that moment all the four accused persons entered the house carrying axe, crow bar and club and assaulted her husband. She has stated that accused Vishram was carrying crow bar, accused Brij Lal was carrying axe whereas the other two accused persons were carrying clubs with them. She has stated that after committing the murder of her husband accused persons fled away from the spot. She along with her children went to village kotwar and narrated the entire incident to him. As the village kotwar refused to accompany her to police station at night, on the next day she went to the police station alone and lodged the report. In lengthy cross-examination she remained firm and nothing could be elicited by the defence to its advantage. Gopi (PW-4) is the son of the deceased aged about 12 years who too has stated as to the manner in which his father was assaulted and done to death and after the incident he along with his mother had gone to village kotwar where they stayed at night and on the next day report was lodged. In para 6 he has denied the fact that he had not seen the incident and that he was sleeping however he has stated that whatever was taught to him by his mother he narrated the same. Dr. S.Choudhary (PW-5) conducted postmortem examination on the body of the deceased vide Ex.P-25 and according to him, cause of death was head injury due to hypovolemic shock and the death was homicidal in nature. Manohar

(PW-1) is the witness to spot map, inquest, memorandum and seizure has partially supported the prosecution case and has admitted the signature on the documents. Kamlesh Verma (PW-2) is the constable who assisted in the investigation. Ganesh Kumar Naredi (PW-6) is a witness to memorandum, seizure and inquest has admitted his signatures. Bodhan Sahu (PW-7) is the Investigating Officer who has duly supported the prosecution case. Narad Verma (PW-8) is the patwari who prepared spot map. Behal (PW-9) has not stated anything and has been declared hostile. C.R.Thakur (Pw-10) and Praveen Chand Rai (PW-11) are the constables who assisted in the investigation.

Harbhajan (DW-1) has stated that a civil dispute was pending between the appellants and the deceased. Bhagwati Prasad (DW-2) has not stated anything specific.

9. Close scrutiny of the evidence makes it clear that on 3.5.08 accused appellants after entering the house of the deceased carrying deadly weapons, committed murder by causing several injuries to him with axe, crow bar and club. The incident has been witnessed by Urmila Bai (PW-3) and Gopi (PW-4) wife and son of the deceased who were present along with the deceased. Though Gopi (PW-4) in his last paragraph has stated that he is narrating in the court as was asked by his mother but that statement alone would not nullify his entire statement. If his entire statement is seen, he has stated again and again that he saw the accused persons causing injuries to the deceased and categorically denied the suggestion that at the time of incident he was sleeping.

10. Even assuming that Gopi (PW-4) has not narrated the truth in the court, we have no reason to disbelieve the court statement of Urmila Bai wife of the deceased. We find no force in the argument of the defence that conduct of Urmila Bai (PW-3) was unnatural where she did not intervene in the matter when her husband was assaulted. In a situation where the accused persons entered the house of the deceased carrying deadly weapons and cause several injuries to the deceased, conduct of Urmila Bai (PW-3) in not intervening the matter cannot be termed unnatural. Any prudent man/woman would be frightened in such situation and would keep herself/himself away from the incident that too when PW-3 was having two small children with her. Immediately after the incident, she rushed to the village kotwar and narrated the entire incident to him but as the village kotwar had refused to go to the police station in the late night Urmila Bai (PW-3) was again justified in not lodging the report at night and lodging the report on the next day. PW-3 has further stated that as they had shifted from Nagpur other persons residing in the vicinity were not known to her properly and therefore her conduct in not narrating the incident to them appears to be justified. Apart from the statement of PWs.-3 and 4, on the memorandum of accused persons seizures were given effect to and almost in all the seized articles blood has been found as per FSL report Ex.P-29.

11. True it is that there is no serological report on record but considering the statements of the two eyewitnesses FSL report can be treated as additional evidence against the appellants. We further find no force in the argument of the defence that as accused Goutar Ram has been acquitted the same treatment ought to have been given

to the present appellants also. Case of the appellants appears to be different from that of acquitted accused Goutar Ram. Moreover if some one has been acquitted wrongly, benefit cannot be given to the accused persons on the same ground.

12. Thus, in the light of the above discussion, we are of the view that the present appeal is devoid of merits and we, therefore, do not find any reason to interfere with the judgment of the trial court. Hence, the appeal is dismissed. The appellants are in jail and therefore no further order for their surrender or arrest is required.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge