

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 482 of 2012

1. Tularam Nishad S/o Lachchiram Nishad, aged 24 years, R/o Vill. Rasedi PS Balodabazar Dist. Raipur Now Balodabazar Bhatapara (CG)

---- Appellant

Versus

1. State Of Chhattisgarh through the Station House Officer, P.S. Balodabazar, Distt. Raipur (Now Balodabazar-Bhatapara) (CG)

---- Respondent

CRA No. 481 of 2012

1. Lachchiram Nishad S/o Ramlal Nishad, aged 52 years,
2. Bhuwaneshwar Nishad S/o Lachchiram Nishad, aged 22 years,
3. Udayram Nishad S/o Lachchiram Nishad, aged 20 years,

All are R/o Vill. Rasedi Police Station-Balodabazar Dist.Raipur
Now Balodabazar Bhatapara (CG)

---- Appellants

Versus

1. State Of Chhattisgarh through the Station House Officer, P.S. Balodabazar, District-Raipur (Now Balodabazar-Bhatapara) (CG).

---- Respondent

For Appellants	:	Shri Janak Ram Verma, Advocate.
For Respondent/State	:	Shri Avinash K. Mishra, Panel Lawyer.

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

Judgment on Board by Justice Pritinker Diwaker

18.01.2018:

As both these appeals arise out of a common judgment of

conviction and order of sentence dated 18.5.2012 passed by the First Additional Sessions Judge, Balodabazar, Distt. Raipur (CG) in S.T. No.24/2011, they are being disposed of by this common judgment. By the said judgment, the trial Court has convicted the appellants under Sections 323/34 on two counts and sentenced them to undergo RI for one on each count. Appellants in CrA No.481/12 have been also convicted under Section 302/34 and appellant in CrA No.482/12 under Section 302 of IPC and each of them has been sentenced to undergo imprisonment for life and fine of Rs.200/-.

02. As per prosecution case, accused No.1 Lachhiram had encroached upon the thrashing field of Ramadhar (PW-7), on account of which there was dispute between their families. On 27.10.2010 Ramadhar (PW-7) had asked accused No.2 Tularam to vacate his thrashing field and to remain in his own thrashing field. Upon hearing this, accused No.2 Tularam abused filthily to Ramadhar and when Dhansingh (PW-8), son of Ramadhar, returned to his house, Ramadhar told him about the said incident. Ramadhar asked Dhansingh to go to the house of accused No.1 Lachhiram and make him understand. It is said that at about 7 pm Dhansingh (PW-8) went to the house of accused No.2 Tularam and asked him to vacate the thrashing field. As accused No.1 Lachhiram was not there, Dhansingh returned back. Immediately thereafter he again went to the house of accused persons and accused No.3 Bhuvneshwar pushed Dhansingh out of his house and quarrel started between them. It is said that accused No.3 Bhuvneshwar caught hold of neck of Dhansingh; the matter was intervened by Ramadhar; some injuries were caused to Dhansingh and seeing the quarrel Firantinbai, wife of Ramadhar, also reached there

and then accused No.2 Tularam having left Dhansingh, first threw Firantinbai on the field and then caused her knife injuries on the upper part of her thigh. It is further said that Ramadhar and Dhansingh also sustained injuries. Firantinbai was immediately taken to hospital where she was declared brought dead. In the meanwhile, on 27.10.2010 itself at 8.30 pm FIR (Ex.P/16) was lodged by PW-8 Dhansingh against all the accused persons under Sections 294, 506B, 307, 323, 34 of IPC. After death of Firantinbai, information was given to the police and merger intimation Ex.P/26 was recorded at 9.30 pm. PW-7 Ramadhar was medically examined vide Ex.P/19 on 27.10.2010 and the doctor (PW-9 Dr. Pramod Kumar Tiwari) noticed contusions and abrasions over forehead, knee, scapular region and chest, which appeared to have been caused by hard and blunt object. Likewise, as per medical report (Ex.P/20) of PW-8 Dhansingh which was conducted on the same day by PW-9, he had sustained incised wound over right thumb caused by hard and sharp cutting object, and abrasion on middle of neck caused by hard and blunt object. All these injuries were found to be simple in nature. As per MLC of the deceased vide Ex.P/9 conducted by PW-9, she had suffered contusions on nose and forehead and a penetrating wound of spindle shape over right thigh.

Inquest over dead body was conducted vide Ex.P/2 on 28.10.2010. Thereafter, dead body was sent for postmortem which was conducted on the same day by PW-9 Dr. Pramod Kumar Tiwari vide Ex.P/28 who noticed contusion over forehead & nose and incised wound (penetrating) of spindle shape, 3 cm x 1 ½ cm x muscle deep, on left inguinal region upper part of thigh. In his opinion, cause of death was hypovolumic shock caused by injury to femoral vessels resulting in

excessive bleeding and that the nature of death was homicidal.

On the memorandum of accused No.1 Lachhiram (Ex.P/5) recorded on 31.10.2010, seizure of club and gamchha was effected vide Ex.P/9; memorandum of accused No.2 Tularam (Ex.P/6) led to recovery of bloodstained knife, vest and full shirt vide Ex.P/10; pursuant to memorandum of accused No.3 Bhuvneshwar (Ex.P/3), a club and his clothings were seized vide Ex.P/7 and on the memorandum of accused No.4 Udayram (Ex.P/4), one battleaxe and vest were seized vide Ex.P/8. As per FSL report (Ex.P/C1), blood was found on all the aforesaid articles. However, there is no serological report to confirm origin and group of the blood so found. While framing charge, the trial Court framed charges under Sections 323/34, 324/34 and 302/34 of IPC against the accused persons.

03. So as to hold the accused persons guilty, the prosecution examined 17 witnesses in all. 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.

During pendency of Cr.A.No.481/2012, accused/appellant Lachchiram Nishad expired on 6.9.2012 and therefore, this appeal is now confined only to accused/appellants No. 2 & 3.

05. Counsel for the appellants submits as under:

(i) that eyewitnesses to the incident PW-7 Ramadhar and PW-8 Dhansingh are not reliable and they have exaggerated their version before the Court.

(ii) that there was no intention on the part of the accused persons to cause injuries to the deceased and PW-7 & PW-8, and when they came to the house of the accused persons and started quarreling, it appears that some incident of marpeet took place between two groups and which led to unfortunate death of Firantinbai.

(iii) that in absence of serological report, the FSL report loses its significance and cannot be used against the appellants.

(iv) even if the entire prosecution case is taken as it is, considering the fact that only a single injury has been caused by accused No.2 Tularam, that too on non-vital organ of the deceased, he cannot be convicted under Section 302 and at best, can be convicted under Section 304 Part-II of IPC. Further, as this appellant has been in jail since 31.10.2010, after conversion of the offence into Section 304-II, he may be sentenced to the period already undergone by him.

(v) that other accused persons cannot be convicted with the aid of Section 34 of IPC for the death of Firantinbai and at best, they would be liable to be convicted for causing simple injuries to PW-7 & PW-8 under Section 323/34 of IPC and further considering the fact that they have remained in jail for almost two years, they may be set free forthwith.

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

(i) that the injured eyewitnesses (PW-7 & PW-8) have duly supported the prosecution case and their evidence also finds corroboration from the medical evidence and as such, there is no reason to disbelieve their evidence.

(ii) that considering the manner in which accused No.2 Tularam assaulted the deceased by first throwing her on the ground and then causing her injuries with a sharp edged weapon which led to her death, his conviction under Section 302 of IPC cannot be faulted with.

(iii) that the other appellants have also been rightly convicted with the aid of Section 34 of IPC though the injuries have been caused by accused No.2 Tularam to the deceased but from the evidence it appears that they were also sharing common intention with accused No.2 of committing murder of the deceased.

(iv) that though serological report is not there on record, but in a case where conviction is based on eyewitness account, which is found to be trustworthy and cogent, non-availability of serological report is not fatal to the prosecution case and such reports, FSL or serological, can be considered as an additional evidence against the accused persons.

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

08. PW-7 Ramadhar, husband of the deceased, has stated that the accused persons had encroached upon his thrashing field and then he asked his son Dhansingh (PW-8) to go to the house of the appellants and make them understand. He states that when his son Dhansingh went to the house of the appellants, they first pushed him and then threw him in the lane. They also pressed neck of Dhansingh and upon

hearing his cries when his family members reached the place of occurrence including the deceased, he (this witness) was thrown on the floor by accused No.1 Lachhiram and accused No.4 Udayram. Accused No.2 Tularam threw the deceased on the ground and then caused a knife injury on her thigh. He states that the injured Firantinbai was taken to hospital where she died. In cross-examination this witness remained firm and nothing could be elicited from him by the defence to render his evidence untrustworthy or doubtful. He has categorically denied the suggestion that Dhansingh (PW-8) caused injury to deceased Firantinbai in intoxicated condition and stated that he never used to take liquor.

09. PW-8 Dhansingh is another injured eyewitness to the incident and son of the deceased and Ramadhar (PW-7). While supporting the prosecution case, he has stated that his father had asked the accused persons as to why they have encroached upon his thrashing field and thereafter, the accused persons started abusing his father and then they also beat him. When his mother/deceased came there, she was first chased by accused No.2 Tularam and then Tularam caused knife injury to the deceased. He states that he and his father were also beaten by the accused persons. He further states that he lodged the FIR (Ex.P/16). In cross-examination this witness also remained firm and nothing could be elicited from him by the defence to its advantage.

10. PW-9 Dr. Pramod Kumar Tiwari medically examined PW-7 Ramadhar vide Ex.P/19 on 27.10.2010 and noticed contusions and abrasions over forehead, knee, scapular region and chest, which appeared to have been caused by hard and blunt object. He also

examined PW-8 Dhansingh vide Ex.P/20 on the same day and noticed that he had sustained incised wound over right thumb caused by hard and sharp cutting object, and abrasion on middle of neck caused by hard and blunt object. All these injuries were simple in nature. Deceased was also medically examined by him vide Ex.P/9 and according to him, she had suffered contusions on nose & forehead and a penetrating wound of spindle shape over right thigh. He conducted postmortem on the dead body on 28.10.2010 vide Ex.P/28 and noticed contusion over forehead and nose and incised wound (penetrating) of spindle shape of size 3 cm x 1 ½ cm x muscle deep on left inguinal region upper part of thigh. In his opinion, the cause of death was hypovolumic shock caused by injury to femoral vessels resulting in excessive bleeding and that the nature of death was homicidal.

11. PW-1 Kutaili has turned hostile. PW-2 Manharan is a witness to inquest. PW-3 Dinesh Kumar Sahu is a witness to memorandum and seizure, but has turned hostile. However, he has admitted his signature on the documents. PW-4 Mahendra Kumar, PW-5 Shyamlal, PW-6 Lekhram, PW-11 Smt. Bela & PW-14 Smt. Sukrit Bai are formal witnesses. PW-10 Bulluram Dahariya, Patwari, prepared the spot map Ex.P/23. PW-12 Totaram Dhruv has turned hostile. PW-15 Ramgopal Devdas, Village Kotwar, is a witness to memorandum and seizure, though he has turned hostile but admitted his signature on the documents. PW-16 BB Mishra assisted in the investigation and PW-17 Lalchand Mohle, investigating officer, has duly supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that upon thrashing

field of Ramadhar (PW-7) being encroached by the accused persons, it was objected to by Ramadhar and his son Dhansingh (PW-8). On account of this dispute, the accused persons assaulted Ramadhar and Dhansingh by hands, fists and club. When deceased Firantinbai reached the spot, she was first thrown by accused No.2 Tularam and then caused knife injury which ultimately resulted in her death.

Injured eyewitnesses to the incident namely PW-7 Ramadhar and PW-8 Dhansingh have categorically stated as to the manner in which the incident took place where they were assaulted by the accused persons and Firantinbai was done to death by accused No.2 Tularam. Their evidence inspire confidence of the Court and nothing could be elicited from them by the defence which could suggest that they have falsely implicated the accused persons. This apart, their evidence finds due corroboration from the medical reports of the deceased according to which corresponding injuries were noticed on her person. The treating doctor/autopsy surgeon (PW-9 Dr. Pramod Kumar Tiwari) has duly proved the medical reports of the deceased as well as the injured persons (PW-7 & PW-8).

13. Thus, from the aforesaid ocular and medical evidence, it stands proved beyond all reasonable doubt that it is accused No.2 Tularam who committed murder of Firantinbai and that all the accused persons with common intention voluntarily caused simple injuries to PW-7 & PW-8. As such, conviction of accused No.2 Tularam under Section 302 of IPC and conviction of all the accused persons under Section 323/34 of IPC on two counts cannot be faulted with and the same are hereby affirmed.

14. Now the question which arises for consideration of this Court is whether conviction of the appellants, excluding accused/appellant Tularam, for the offence under Section 302 with the aid of Section 34 of IPC is in accordance with law and in conformity with the evidence on record.

15. The ingredients of Section 34 are that there should be criminal act i.e. either committing the act or omitting to commit the act, which is an offence under IPC, that criminal act is done by more than one person and that criminal act is done in furtherance of common intention of all, meaning thereby that the persons should have decided in advance about the commission of the act and every one of them have acted keeping in mind that common intention.

16. In the present case, there is no evidence on record to show that the other accused/appellants also caused injury to deceased Firantinbai in any manner. Even the injured eyewitnesses have not stated so. Thus, if the act of the other accused/appellants is seen in light of provisions of Section 34 of IPC, it is difficult to hold them guilty of commission of murder with the aid of this section for the reason that there is nothing on record to suggest that they were sharing common intention with accused No.2 Tularam. This being the position, their conviction under Section 302/34 of IPC is not in consonance with the overall evidence available on record and as such, liable to be set aside. As already discussed above, they are definitely liable to be convicted under Section 323/34 of IPC on two counts for voluntarily causing simple hurt to PW-7 Ramadhar and PW-8 Dhansingh.

17. In the result,

- Cr.A.No.482/2012 preferred by accused No.2 Tularam Nishad being without any substance is liable to be dismissed and is dismissed as such. He is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required to be passed.
- Cr.A.No.481/2012 insofar as it relates to accused/appellants Bhuwaneshwar Nishad and Udayram Nishad, is allowed in part. While maintaining their conviction under Section 323/34 of IPC on two counts, they are sentenced to period already undergone by them which comes to about one year and nine months. However, they are acquitted of the charge under Section 302/34 of IPC. They are reported to be on bail, therefore, their bail bonds stand discharged and they need not surrender.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(Sanjay Agrawal)

Judge