

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 600 of 2013**

- Rajendra @ Rajkumar S/o Khuburam Aged About 27 Years R/o Bodsara , P.S. Jaijaipur , Distt. Janjgir Champa C.G.

**---- Appellant****Versus**

- State Of Chhattisgarh S/o Through - Sho., Jaijaipur , Distt. Janjgir Champa C.G.

**---- Respondent**


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| For Appellant        | : | Shri Neeraj Mehta, Advocate |
| For Respondent/State | : | Shri Anil Pillai, Dy. A.G.  |

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**Hon'ble Shri Justice Manindra Mohan Shrivastava**  
**Hon'ble Smt. Justice Rajani Dubey**

**Judgment on Board by Rajani Dubey,J.**

**25/10/2018**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 14.06.2013 passed by the Second Additional Sessions Judge, Sakti, District Janjgir-Champa in Sessions Trial No. 25/2013 whereby and whereunder, the appellant has been found guilty of the commission of offence under Section 302/34 IPC and sentenced to undergo imprisonment for life with fine of Rs. 1,000/- or default sentence.

2. Prosecution case, in brief, is that on 08.10.2002, at about 5.00 p.m. at village Bodsera near the canal adjacent to the field of Agardas, co-accused Bharat and the present appellant had, in furtherance of

their common intention to commit murder of Ramcharan, assaulted him with club and Gandasa (a poleaxe-for chopping fodder). As there was previous animosity between Ramcharan and the family of Bharat and Rajendra on account of murder of Parasram, it is alleged that the present applicant and accused Bharat committed the murder of Ramcharan. As per the postmortem examination conducted by Dr. K.L.Uraon, deceased sustained fractures of parieto-occipital and temporal bone. The doctor opined that the cause of death of Ramcharan was hemorrhagic shock due to homicidal incised wounds resulting in cutting of the scalp bones with damage of the brain matter, cutting of the great vessels and nerves and the death was homicidal in nature. Appellant was declared absconding under Section 299 of the Cr.P.C. and did not face trial. However, on 25.07.2012, appellant surrendered before the court and, thereafter, the court below proceeded for trial. A separate judgment has been passed by this Court vide order dated 17.03.2009 in the CR.A. filed by co-accused Bharat Lal whereby the conviction and the sentence awarded to him was maintained.

3. In order to prove its case, the prosecution examined in all 23 witnesses. The appellant was thereafter examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him in the evidence lead by the prosecution. The appellant denied having committed the offence and pleaded innocence. This apart, One defence witness has also been examined. Relying upon the evidence lead by the prosecution the trial court held the appellant guilty of commission of the offence and sentenced as prescribed above.

4. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant contended that it is the main accused Bharat who assaulted the deceased with *gandasa* and the present appellant was only standing there along with other villagers. He submits that, though, there existed enmity between the family of the deceased and the appellants but the eyewitnesses have nowhere stated the involvement of the appellant. Learned counsel for appellant submits that his mere presence at the place of occurrence along with other co-accused was not sufficient to infer common intention. The fact that they may have come together to the place of occurrence was also not sufficient. No overt act had been attributed to him and neither was he possessed of any weapon. The accused pleaded innocence and false implication due to previous animosity. It is further argued that Panchram Satnami (PW-21), an eyewitness to the incident has stated before the trial judge that it is the co-accused Bharat who had assaulted Ramcharan with club on the back of the head as a result of which he fell on the ground. Sehtaru Satnami (PW-20) is also an eyewitness to the incident, has also deposed that he saw the co-accused Bharat inflicting blow of lathi on the head of Ramcharan as a result of which, he fell down. There was no material on record to show that any injury was caused by the present appellant on Ramcharan.

5. On the other hand, State counsel while supporting the judgment impugned has submitted that the findings recorded by the Court below convicting the accused/appellant under Section 302 are strictly in accordance with law and may not be interfered with.

6. We have heard counsel for the parties and perused the records.

7. Sahetaru (PW-3) is the witness who has stated that on the date of incident, at about 5.00 p.m., while he along with Ramcharan and Panchram was coming to the village, on the way near the rivulet, accused Rajendra and Bhart were standing, they also accompanied them and after going upto some distance, accused Bharat assaulted Ramcharan with club blow on the back of his head but the present appellant Rajendra did not give any assault. He has stated that as Ramcharan got injured, he fell down and Panchram ran away in the fear that they might assault him also. He has further stated that they went to the village and informed about the incident to village Kotwar, panch-sarpanch and then they went to the place of occurrence and saw Ramcharan in injured condition, lying on the ground. This witness has nowhere stated about the present appellant assaulting the deceased except that at the time of incident, he was standing there along with other persons. In his cross-examination, this witness has stated that as there was some enmity between their families, report has been lodged against the present appellant and 13 of his family members. He has also stated that except co-accused Bharat, no one has done *maarpeeth* (fight) with Ramcharan.

Pancharam (PW-4) is also an eyewitness to the incident, has also given similar statement as to that of Sahetaru (PW-3). He has also stated that co-accused Bharat had given a club blow on the head of Ramcharan and that Rajendra was only present at the place of occurrence.

8. In the matter of **Chandra Kaur Vs. State of Rajasthan** reported

in **AIR 2016 SC 2926**, in almost similar circumstances, the role of the accused was examined to find out whether he shared common intention. it has been held in para 10 of the judgment which is as under :

10. On going through the evidence on record, we find that there was admitted enmity between the family of the deceased and that of accused Gurdeep Singh. In such a situation, where the eyewitnesses have not narrated any specific role of appellant Chandra Kaur, rather the specific role of assaulting with the sword has been given to Gurdeep Singh, it cannot be ruled out that the name of the appellant has been added due to enmity with the main accused.....

As such, since it is the duty of the court to separate chaff from the grain, on re-appreciating the evidence on record, we find that it cannot be said that charge as against appellant Chandra Kaur that she had common intention with her husband to commit the crime, is proved on record beyond reasonable doubt, and her false implication with her husband, due to enmity with family of the deceased cannot be ruled out.

9. The essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. Undoubtedly, it is difficult to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention. Therefore, in order to find whether a person is guilty of common intention, it is absolutely necessary to carefully and critically examine the entire evidence on record. The common intention can be spelt out only from the evidence on record.

Even so, there must be material to show that the overt act or acts of one or more of the accused was or were done in furtherance of the

common intention of all the accused or in prosecution of the common object of the members of the unlawful assembly.

10. Common intention is a state of mind. It is not possible to read a person's mind. There can hardly be direct evidence of common intention. The existence or non-existence of a common intention amongst the accused has to be deciphered cumulatively from their conduct and behavior in the facts and circumstances of each case. Events prior to the occurrence as also after, and during the occurrence, are all relevant to deduce if there existed any common intention. There can be no straight jacket formula. The absence of any overt act of assault, exhortation or possession of weapon cannot be singularly determinative of absence of common intention.

11. Further, as per the statement of the witnesses, the appellant was not carrying any weapon in his hand. It has been stated that he did not cause any injury to the deceased and therefore, it cannot be said that he acted in furtherance of a intention. Admittedly, he did not assault which has been proved by PW-3 and PW-4, who were also present at the time of incident. In their statement, they have not specifically disclosed nor attributed individual role of the accused in the commission of the murder. Reliance can also be placed on the judgment of the Apex Court in '**State of Andhra Pradesh Vs. Pullagummi Kasi Reddy Krishna Reddy alias Rama Krishna Reddy & Others**' [AIR 2018 SC 3277], wherein it has been held by the Apex Court that the point regarding the involvement of the accused/respondents to decide whether they are guilty of the offence punishable under Section 302 IPC though accused were named by eyewitness, and no specific overt

act was attributed to them. It has been held that they are entitled to the benefit of doubt. In the present case, eyewitnesses PW-3 and PW-4 have not stated anything against the appellant which would involve the appellant in the commission of the murder. Accordingly, no material is found against the appellant herein to convict the appellant for the offences under Section 302 IPC inasmuch as he had not played any role in the murder of the two deceased.

12. In view of the foregoing reasons as discussed above, we are inclined to allow the appeal. The same is accordingly allowed. Appellant is acquitted of the charge levelled against him. Appellant is in jail. He be set free forthwith if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)  
Judge

Sd/-

(Rajani Dubey)  
Judge