

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2675 of 2000

Judgment Reserved on : 27.11.2017

Judgment Delivered on : 31.1.2018

1. Kalam Singh, son of Ghoor Sai, aged about 33 years, occupation Agriculture,
2. Ghoor Sai, son of Son Sai, aged about 70 years, occupation Agriculture,

----- **Appeal of above Appellants No.1 and 2 has been abated.**

3. Krishna Prasad, son of Harik Sai, aged about 25 years, occupation Agriculture,

All residents of Village Birim Kela, P.S. Batauli, District Surguja, M.P.
(now Chhattisgarh)

---- **Appellants**

versus

The State of M.P. (now Chhattisgarh) through the Police Station
Batauli, District Surguja

--- **Respondent**

and

Criminal Appeal No.745 of 2017

Khiru Badi, S/o Karam Singh Badi, aged about 55 years, R/o Village
Virimkela, P.S. Batauli, District Surguja, Chhattisgarh

---- **Appellant**

versus

State of Chhattisgarh through the Station House Officer Police Station
Batauli, District Surguja, Chhattisgarh

--- **Respondent**

For Respective Appellants	:	Shri A.K. Prasad and Shri Manoj Kumar Jaiswal, Advocates
For Respondent/State	:	Shri Ravindra Agrawal, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

Per Arvind Singh Chandel, J.

1. Criminal Appeal No.2675 of 2000 arises out of the judgment dated 20.12.1999 passed in Sessions Trial No.122 of 1998 by the 1st Additional Sessions Judge, Ambikapur, District Surguja and Criminal Appeal No.745 of 2017 arises out the judgment dated 3.2.2017 passed in Sessions Trial No.122 of 1998 by the Additional Sessions Judge (FTC), Ambikapur, District Surguja. Both the appeals are directed by this common judgment as they arise out of a common sessions trial.
2. Accused/Appellant No.1, Kalam Singh and accused/Appellant No.2, Ghoor Sai died during pendency of their appeal, being Criminal Appeal No.2675 of 2000, therefore, vide order of this Court dated 8.11.2017, their appeal has been abated. Now, Criminal Appeal No.2675 of 2000 is to be adjudicated in respect of accused/Appellant No.3, Krishna Prasad only.
3. By the impugned judgments, accused/Appellants Krishna Prasad and Khiru Badi have been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
<u>Appellant No.3, Krishna Prasad of Criminal Appeal No.2675 of 2000</u>	
Under Section 302/34 of the Indian Penal Code	Imprisonment for Life and fine of Rs.6,000/- with default stipulation
Under Section 323/34 of the Indian Penal Code	Imprisonment for 1 year
Under Section 324/34 of the Indian Penal Code	Rigorous Imprisonment for 2 years

<u>Appellant Khiru Badi of Criminal Appeal No.745 of 2017</u>	
Under Section 302/34 of the Indian Penal Code	Imprisonment for Life and fine of Rs.100/- with default stipulation
Under Section 323 of the Indian Penal Code (Two Counts)	On Both Counts, Imprisonment for 1-1 year and fine of Rs.100/- – Rs.100/- with default stipulation
Under Section 324 of the Indian Penal Code	Imprisonment for 1 year and fine of Rs.100/- with default stipulation

4. As per the prosecution story, Sukobai (PW6) is the wife of Hussaini (deceased). Accused Khiru is cousin of Hussaini. On 12.1.1998 at about 6:00 p.m., Chherta festival was being celebrated in the village. Accused Kalam and Khiru called Hussaini for participating in the festival. Sukobai, having heard shouts of her husband, went to the house of accused Ghoorsai along with her children. She saw there that the accused were assaulting her husband. Accused Khiru assaulted him on the leg and head and accused Krishna assaulted him with a danda. The occurrence was witnessed by Ajay (PW3), Sunderram (PW4), Udayram (PW5), Phoolbai (PW8) and Parshu (PW9). Phoolbai, Parshu, Sukobai and other witnesses tried to intervene. They were also assaulted by the accused as a result of which Phoolbai, Paras and Sukobai got injured. A named First Information Report (Ex.P13) was lodged by Sukobai (PW6). Inquest (Ex.P2) was prepared before panch witnesses. Post mortem examination was conducted by Dr. Roopsingh Parihar (PW11). He gave his report Ex.P31 in which he found ante mortem chop wounds, contusions, stab wounds and abrasions on the dead body. He opined that mode of death was coma caused by compression of brain that is extradural haemorrhage and subarachnoid haemorrhage, nature of death was homicidal and the time passed out since death was from 24 to 48

hours. Phoolbai, Parshu and Sukobai were also examined by Dr. Roopsingh Parihar. He gave his reports Ex.P19A, P20A and P21A in their respect. During investigation, memorandum statements of accused were recorded. On the basis of memorandum statement (Ex.P3) of accused Krishna, a danda and a lungi were seized from him vide Ex.P4. Based on the memorandum statement (Ex.P5) of accused Kalam, a tangi was seized from him vide Ex.P6 and on the memorandum statement (Ex.P7) of accused Ghoorsai, a danda was seized from him vide Ex.P8. Plain and blood stained soil were seized from the spot vide Ex.P9. Seized tangi was examined by Dr. Roopsingh Parihar. He gave his report Ex.P25A in which he opined that the injuries received by deceased Hussaini could be caused by the said tangi. Seized articles were sent to the Forensic Science Laboratory for chemical examination. FSL Report is Ex.P30 in which it is stated that tangi was stained with human blood and the blood stains present on rest of the articles were disintegrated and their origin could not be determined. On completion of the investigation, a charge-sheet was filed against accused Kalam, Ghoor Sai and Krishna under Sections 302, 323, 324, 34 of the Indian Penal Code. Charges were framed against them under Sections 302/34, 323 and 324 of the Indian Penal Code. Charge-sheet was also filed against absconded accused Khiru after his arrest under Sections 302, 323, 324, 34 of the Indian Penal Code. Charges were framed against him under Sections 302/34, 323 and 324 of the Indian Penal Code.

5. To rope in the accused, the prosecution examined as many as 12 witnesses. Statements of the accused were also recorded under Section 313 of the Code of Criminal Procedure in which they

denied the guilt and pleaded innocence. No witness has been examined in their defence.

6. After trial, the accused/Appellants have been convicted and sentenced as aforementioned in this judgment. Hence, these appeals.
7. Shri A.K. Prasad, Learned Counsel appearing for Appellant Krishna argued that there is no evidence against Appellant Krishna. He was not present on the spot at the time of occurrence. He has been falsely implicated in the case. Only Sukobai (PW6) has stated his name in her Court statement. Other eyewitnesses Ajay (PW3), Sunderram (PW4), Udayram (PW5), Phoolbai (PW8) and Parshu (PW9) have not stated his name in their Court statements. It was further argued that the testimony of Sukobai is not reliable.
8. Shri Manoj Kumar Jaiswal, Learned Counsel appearing for Appellant Khiru argued that Appellant Khiru was not present on the spot. The main culprit was accused Kalam. Appellant Khiru has been falsely implicated in the case. Ajay (PW3), Udayram (PW5) and Parshu (PW9) have not supported the case of the prosecution. Though other witnesses Sunderram (PW4) and Sukobai (PW6) have stated name of Appellant Khiru in their statements yet their statements are not reliable.
9. Per contra, Shri Ravindra Agrawal, Learned Panel Lawyer appearing for the State/Respondent, supporting the impugned judgments, argued that there is no infirmity in the judgments

passed by the Courts below. There is sufficient evidence available on record to convict Appellants Krishna and Khiru.

10. We have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgments with utmost circumspection.
11. Phoolsai (PW1) and Mahadeo (PW2) are the witnesses of inquest (Ex.P2). They have supported the case of the prosecution. Ajay (PW3) is one of the eyewitnesses. He has stated that when he reached the spot, he saw that Sukobai (PW6), wife of deceased Hussaini and her children were crying and accused Kalam was assaulting Hussaini with a lathi. He has further stated that Sukobai was telling Chowkidar that his husband was being assaulted by accused Khiru and Kalam. In paragraph 4 of his cross-examination, he has categorically stated that when he reached the spot, he did not see accused Khiru there. He has been declared hostile.
12. Sunderram (PW4) is another eyewitness of the occurrence. He has stated that having heard shouts, he went to the place of occurrence. He saw that Hussaini (deceased) was being assaulted by accused Kalam with a danda and by accused Khiru with a tangi. Wife and children of Hussaini were crying and running here and there. He has further stated that assailants Kalam and Khiru assaulted Hussaini and caused him to fall down. Hussaini sustained injuries on the head and other parts of the body. He has categorically stated that accused Ghoorsai and

Krishna were not present on the spot. On this point, he has been declared hostile. This witness has remained firm regarding his statement of assault given to Hussaini by assailant Khiru.

- 13.** Udayram (PW5) is also an eyewitness of the incident. He has stated that Sukobai (PW6), wife of the deceased came to him and informed that accused Kalam and Khiru were assaulting her husband. He went to the spot and saw that accused Khiru was assaulting Hussaini with a lathi and accused Kalam was standing-up there. Thereafter, he went away from there. In paragraph 8 of his deposition, he has categorically stated that accused Ghoursai and Krishna were not present at the place of occurrence. In paragraph 16 of his cross-examination, he has stated that when he reached the spot, he saw that Hussaini was lying down and accused Khiru was standing-up there with a lathi. In paragraphs 2 and 3 of his re-cross examination, he has stated that he was not present on the spot nor did he witness the occurrence and on being guided by Sukobai (PW6), wife of the deceased, he had stated before police and the Court that Hussaini was assaulted by accused Khiru.

- 14.** Sukobai (PW6), wife of deceased Hussaini, has stated that at about 5:00 p.m., she was at her home. Accused Khiru came her house and informed her husband Hussaini that accused Kalam was calling him. She has further stated that as soon as her husband reached at the door of their house, accused Kalam and Khiru caught him and dragging him out took near a mango tree. Accused Kalam was armed with a tangi and accused Krishna was armed with a lathi. She has further stated that accused Kalam

assaulted her husband with a tangi on the hands, legs and head. Accused Khiru assaulted him with a kodi (spade). She has further stated that Parshu (PW9), her brother-in-law came there. He was also assaulted by accused Kalam. On being intervened by her, she was also assaulted by the assailants. She has further stated that she tried enough to prevent the assailants from assaulting her husband, but they did not stop and continued to assault her husband. She has further stated that she has lodged the FIR (Ex.P13). This witness has remained firm during her cross-examination. Patwari Anshan Singh (PW7) is the witness who prepared spot-map.

15. Phoolbai (PW8) is one of the eyewitnesses. She has stated that having heard shouts, she went to the spot along with her husband Parshu (PW9). She saw that accused Khiru was assaulting Hussaini (deceased) with a tangi. When they tried to intervene, they were also assaulted by accused Khiru. In paragraph 3 of her deposition, she has categorically stated that other accused were not present there.
16. Parshu (PW9), who is also an eyewitness, has supported the above statement of Phoolbai (PW8). He has stated that when they reached the spot, they saw that accused Khiru was assaulting Hussaini with a tangi and other accused were not present there. During his re-cross examination, in paragraph 2, he has further stated that when he reached the spot, he saw that Hussaini was lying dead and no accused was present there. In paragraph 3 also, he has stated that Sukobai (PW6) and her Counsel had guided him about stating the names of accused before the Court.

In paragraph 4, he has further stated that he and his wife were assaulted by accused Kalam only.

- 17.** Assistant Sub-Inspector S.S. Patel (PW10), who was the Investigating Officer of the case, has stated that he recorded the FIR (Ex.P13) on 13.1.1998. He prepared inquest (Ex.P2) before witnesses. During investigation, he recorded memorandum statements of accused Krishna, Kalam and Ghoorsai vide Ex.P3, P5 and P7, respectively and seized the articles from them as mentioned in seizure memo (Ex.P4, P6 and P8). From the spot, he seized plain and blood stained soil vide Ex.P9. He sent the seized articles to the FSL for chemical examination vide Ex.P28. Report (Ex.P30) was received from the FSL. It is pertinent to mention here that in the FSL Report it is stated that tangi was stained with human blood and the blood stains present on rest of the articles were disintegrated and their origin could not be determined.
- 18.** Dr. Roopsingh Parihar (PW11) is the witness who conducted post mortem examination on the dead body of deceased Hussaini and gave his report Ex.P31. He has stated that he found following ante mortem injuries in the examination:

- | | |
|-----------------|--|
| “1. Chop wound: | Frontal area, left side hair line, 4x1 cm, upto bone surface |
| 2. Chop wound: | Parietal area, left side, 4x1 cm, upto bone surface |
| 3. Chop wound: | Midline parietal area, 2x1 cm, upto bone surface |
| 4. Contusion: | Below left ear 2 in No., parallel to each other, toward cheek, each size 4x½ cm, |

- reddish-bluish colour
5. Contusion: Right scapula, two in No., each size 10x1 cm, parallel to each other, reddish-bluish colour
 6. Contusion: Below right scapula, toward lateral, parallel to each other, each size 15x1 cm, reddish-bluish colour
 7. Contusion: Left chest, from shoulder to medially, two in No., each size 10x1 cm, reddish-bluish colour
 8. Chop wound: On right arm, 7 cm x 1 cm, two sides were triangular, size 5 cm and 7 cm, with fracture and dislocation of lateral epicondyle of humerus seen
 9. Contusion: Left arm upper 1/3rd, size 10x8 cm
 10. Stab wound: Left leg upper 1/3rd with fracture (compound), Tibia and Fibula with medially dislocation, size 3x1cm fracture deep upto bone
 11. Stab wound: Upper 1/3rd above to injury No.10, size 3x1 cm upto bone surface, left leg
 12. Abrasion: Between injuries No.10 and 11, size 5x3 cm, left leg
 13. Abrasion: Above to injury No.11, size 3x1 cm, left leg
 14. Abrasion: 3x1 cm, medially below patella in left leg
 15. Abrasion: Over patella, left leg, size 3x1 cm
 16. Stab wound: 2x1 cm, upto bone surface, below patella in right leg, upper 1/3rd
 17. Stab wound: Right leg, middle 1/3rd, medial, size 3x1 cm, upto bone surface
 18. Stab wound: Right leg, 5 cm, above medial malleolus, size 3x1 cm, upto bone surface
 19. Stab wound: Right leg, 2x1 cm, upto bone surface, 5 cm above injury

No.18

20. Stab wound: Right foot just below medial malleolus, size 4x1 cm x subcutaneous deep
21. Chop wound: Left temporal area, above ear, size 2x1 cm”

He opined that mode of death was coma caused by compression of brain that is extradural haemorrhage and subarachnoid haemorrhage, nature of death was homicidal and the time passed out since death was from 24 to 48 hours.

He also examined Phoolbai (PW8) and gave his report (Ex.P19A) in which he found following injuries:

1. Old healed abrasion: 2x½ cm with swelling present, middle 1/3rd, left frontal arm, welling size 5x5 cm, reddish-brown scab present; advice: x-ray of left frontal arm
2. Swelling: Right frontal arm, lower 1/3rd, size 11x 7 cm; advice: x-ray of right frontal arm
3. Abrasion: In right frontal arm, lower 1/3rd, two in No., healed abrasion present, size 1x½ cm in lower 1/3rd, reddish-brown scab present
4. Abrasion: Mid parietal region, size 2x½ cm, scab present

He has stated that injuries No.1 and 2 were referred to expert for opinion and injuries No.3 and 4 were simple in nature. He opined that the injuries could be caused by a hard and blunt object.

He also examined Parshu (PW9) and gave his report (Ex.P20A) in which he found following injuries:

1. Incised wound: Left ear middle part just above scaphoid fossa, size 1x ½ cm, deep just above scaphoid fossa, margin clean cut, reddish-brown scab
2. Cut-Lacerated Wound: Behind and just above left ear in skull temporal region over hair line, size 2x1 cm, reddish-brown scab present

He has stated that both the injuries were referred to expert for check-up. He opined that the injury No.1 could be caused by a sharp cutting object and injury No.2 could be caused by a hard and blunt object.

He also examined Sukobai (PW6) and gave his report (Ex.P21A) in which he found following injury:

1. Swelling: Left hand dorsal aspect involving upto index finger; advice: x-ray of left hand
2. Tenderness on lumbosacral region, no external injury seen
Advice: x-ray of lumbosacral region;
In remaining part of body, no external injury seen

He has stated that both the injuries were referred to expert for check-up. He opined that the injuries could be caused by a hard and blunt object.

He also examined the seized weapon tangi and gave his report

(Ex.P25A) in which he opined that the chop wounds could be caused by the said tangi.

19. Ajarsai (PW12) has stated that at about 10:00 a.m., wife of Hussaini, running, came to him and informed that her husband was being assaulted by accused Kalam and Khiru. When he reached the spot, he saw that accused Kalam was assaulting Hussaini with a danda. On being prevented, Kalam did not stop assaulting Hussaini. On this, he feared and returned from there. He has been declared hostile.

20. A minute scrutiny of the evidence available on record makes it very evident that death of Hussaini occurred due to the above-stated injuries sustained by him and the nature of death was homicidal. It further reveals that except Sukobai (PW6), wife of the deceased, none of the eyewitnesses, namely, Ajay (PW3), Sunderram (PW4), Udayram (PW5), Phoolbai (PW8), Parshu (PW9) and Ajarsai (PW12) have stated in their deposition the name of accused Krishna. Though Sukobai has stated his name in her statement, but as per her Court statement regarding accused Krishna, she saw that accused Krishna was standing-up on the spot with a lathi. She has not categorically stated that accused Krishna also participated in the assault given to her husband. All other eyewitnesses have categorically stated during their statements in the Court that accused Krishna was not present on the spot. In **(1992) 2 SCC 86 (State of U.P. v. Ashok Kumar Shrivastava)**, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must

be accepted. It was also pointed out that the circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. Thus, in the instant case, it is clear that the evidence adduced by the prosecution against accused Krishna is weak in nature and does not inspire confidence of this Court to convict him.

- 21.** Though eyewitnesses Ajay (PW3), Udayram (PW5), Parshu (PW9) and Ajarsai (PW12) have not supported the case of the prosecution and have stated that accused Khiru was not present on the spot at the time of occurrence yet Sukobai (PW6) has categorically stated that accused Khiru was present on the spot along with accused Kalam and both had given assaults to her husband Hussaini. During her cross-examination also, she has remained firm. Sunderram (PW4) and Phoolbai (PW8) have also supported the above statement of Sukobai (PW6) and have categorically stated that accused Khiru was present on the spot and had assaulted Hussaini along with accused Kalam. They have remained firm during their cross-examination and there is nothing on record to disbelieve their statements.
- 22.** As per the statement of Parshu (PW9), he was assaulted by accused Kalam only. Thus, charge under Section 324 IPC against accused Khiru is also not proved.
- 23.** From the foregoing, it is clear that the presence of accused Krishna is not proved beyond reasonable doubt. Even if for the sake of

argument, based on the statement of Sukobai (PW6), presence of accused Krishna is considered, there is nothing on record to establish that he assaulted Hussaini by any means. Therefore, he is entitled to get benefit of doubt and deserves to be and is accordingly acquitted of all the charges framed against him.

24. As regards accused Khiru, in view of the foregoing discussion, charges framed against him under Sections 302 and 323 IPC are proved. The findings arrived at by the Trial Court in this regard, being based on the material available on record, are proper and do not warrant any interference by this Court. Therefore, his conviction under Sections 302 and 323 IPC is affirmed. But, his conviction under Section 324 IPC deserves to be and is accordingly set aside and he is acquitted of the charge framed under Section 324 IPC. The sentences awarded to him for the offences under Sections 302 and 323 IPC are just and proper and do not call for any interference and, therefore, the same are accordingly affirmed. The sentences shall run concurrently.

25. In the result, Criminal Appeal No.2675 of 2000 preferred by Krishna is allowed and Criminal Appeal No.745 of 2017 preferred by Khiru is partly allowed to the extent indicated above.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Arvind Singh Chandel)
JUDGE