

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 806 of 2011**

1. Anil Singh @ Konda, S/o Chatur Singh Kuwar, aged about 23 years, by occupation labour.
2. Laxmi Singh @ Buchnu S/o Chatur Singh Kuwar, aged about 28 years, by occupation labour.

Both R/o village Korbapara Champa, Police Station Champa, District Janjgir, Champa (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through - Police Station Champa, District Janjgir-Champa (C.G.)

---- Respondent

For Appellants	:	Shri Tarun Dadsena, Advocate.
For Respondent/State:		Shri Avinash K. Mishra, P.L.

D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava
&
Hon'ble Smt Justice Rajani Dubey

Judgment On Board**03.05.2019****Per Rajani Dubey, J**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 21.09.2011 passed by learned Session Judge, Janjgir-Champa (C.G.), in S.T. No.110/2010 whereby and whereunder, the appellants have been held guilty of commission of offence under Section 302

read with section 34 IPC and sentenced them to undergo rigorous life imprisonment along with fine of Rs.1000/- each and in default of payment of fine, additional R.I. for three months.

02. Prosecution story, as unfolded from the impugned judgment and the records of the case, is that a dehati nalisi was given in the police station Champa in Ex.P/1 on 26.04.2010 at 23.00 hrs. by Ram Kumar Dewangan (PW/2) that in an incident of assault on 26.04.2010 at about 9.30 -10.00 PM, appellants assaulted Ganesh Ram Dewangan with sword-stick and wooden plank. After the incident, Ganesh Ram Dewangan was taken to Hospital in Champa where-from he was shifted to Chhattisgarh Institute of Medical Science (CIMS), Bilaspur and, thereafter, he was referred to Apollo Hospital, Bilaspur, where, on 27.04.2010, he was declared brought dead. A merg intimation in Ex.P/33 was recorded, followed by registration of FIR in Ex.P/20 in the Police Station Champa by Assistant Sub Inspector Bhuneshwar Prasad Tiwari (PW/13) on the report of Ram Kumar Dewangan (PW/2), brother of the deceased, wherein, it was stated that on the date of incident i.e. 26.04.2010, deceased Ganesh Ram Dewangan had gone to gym along with his friend Ved Prakash Dewangan. At about 10.00 PM, upon receiving an information that his brother was being assaulted by the appellants near a cinema hall (Trimurti talkies), he reached at the spot and the

people standing there informed him that two persons assaulted the deceased on his abdomen and head and the injured was taken to one B.D.M. Hospital, Champa. When the brother of the deceased reached to the B.D.M. Hospital, he came to know that the appellants have assaulted his brother and the incident was seen by Raj Kumar Dewangan (PW/1), Ved Prakash Dewangan (PW/3) and Ram Naresh Dewangan (PW/4) and other people present there. After having registered FIR, the police also prepared an inquest over the dead body and the dead body was sent for postmortem. Dr. P.C. Banerjee (PW/17) conducted postmortem and prepared a report in Ex.P/38, in which, on the basis of examination of injuries, it was opined that cause of death was hemorrhage and shock due to injuries on chest (penetrating). Police took the appellants in custody, their test identification parade was conducted, vide Ex.P/4 and P/5, and in the test identification parade, appellants were duly identified by Ram Kumar Dewangan (PW/2), Raju Dewangan (PW/1), Nokhelal, Pappu Dewangan and Ved Prakash Dewangan (PW/3). Memorandum of appellant Anil Singh (A-1) was also recorded in Ex.P/10 in the presence of witnesses namely Suresh Kumar Dewangan and Pawan Kenvat (PW/5) and thereupon, bloodstained T-shirt and sword-stick alleged to be used in commission of offence were seized vide seizure memo Ex.P/11 and P/12 respectively, in the presence of same witnesses. Memorandum of appellant Laxmi Singh (A-2) was also recorded in Ex.P/14 in the

presence of witnesses namely Uttam Dewangan (PW/6) and Jitendra Dewangan and thereupon, a wooden plank and bloodstained T-shirt were seized vide seizure memo Ex.P/13 and P/15 in the presence of same witnesses. Thereafter, the police recoded 161 Cr.P.C. statements of the prosecution witnesses and after completing usual investigation, filed charge sheet before the concerned jurisdictional Magistrate, who, in turn, committed the case for trial to the Sessions Court. On the basis of material contained in the charge sheet, learned trial Court framed charge against the appellants that on 26.04.2010, appellants assaulted Ganeshram Dewangan and murdered and thereby committed offence under Section 302/34 IPC, which the appellants abjured. They were put to trial. In order to prove its case, prosecution examined as many as 17 witnesses. The appellants were also examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against them in the evidence led by the prosecution. Appellants denied all the circumstances and stated that they are innocent and have been falsely implicated.

03. The learned trial Court, relying upon the evidence led by the prosecution, particularly eye-witness account of Raj Kumar Dewangan (PW/1), Ram Kumar Dewangan (PW/2), Ved Prakash Dewangan (PW/3) and Ram Naresh Dewangan (PW/4), postmortem report (Ex.P/38), evidence of Dr. P.C. Banarjee

(PW/17) as also recovery of weapon from the appellants, held the appellants/accused guilty of commission of offence under Section 302/34 IPC and sentenced as described above.

04. Assailing correctness and validity of impugned judgment of conviction and order of sentence, learned counsel for the appellants argues that the prosecution has failed to prove its case beyond doubt. He submits that the testimony of Raj Kumar Dewangan (PW/1), Ram Kumar Dewangan (PW/2), Ved Prakash Dewangan (PW/3) and Ram Naresh Dewangan (PW/4) are not reliable and trustworthy as they are interested witnesses. He also submits that as far as appellant Laxmi Singh (A-2) is concerned, considering the evidence against him and the role attributed to him, he is liable to be acquitted. He further submits that even if the entire case of the prosecution in respect of appellant Anil Singh (A-1) is taken as it is, the incident took place all of a sudden, in which, Anil Singh gave single blow to the deceased which proved fatal to his life, therefore, the conviction of appellant Anil Singh (A-1) may be altered to that under Section 304 Part-II and as the appellant has already undergone more than 9 years of RI, sentence may be reduced to the period already undergone by him.

05. On the other hand, learned counsel for the State supports the judgment of conviction and order of sentence and argues that present case is a full proof case where the

prosecution story has been duly proved by reliable testimony of Raj Kumar Dewangan (PW/1), Ram Kumar Dewangan (PW/2), Ved Prakash Dewangan (PW/3) and Ram Naresh Dewangan (PW/4), whose evidence find corroboration from each other. Their evidence do not suffer from any contradiction or omission. Their evidence is also corroborated from the medical evidence with regard to nature of injury, assault. He would lastly argue that the manner in which the appellants have brutally assaulted the deceased by dangerous weapon like sword-stick on most vital part of the body, can only lead to conclusion that the appellants had all the intention to murder the deceased. Therefore, conviction does not warrant any interference.

06. We have heard the rival submission made by learned counsel for the parties and perused the records of the Court below.

07. The prosecution case rests on the eye-witness account of Raj Kumar Dewangan (PW/1), Ram Kumar Dewangan (PW/2), Ved Prakash Dewangan (PW/3) and Ram Naresh Dewangan (PW/4).

08. Raju Kumar Dewangan (PW1) in his evidence has very emphatically stated regarding the incident by stating that he along with Pappu, Ved Prakash (PW/3), Nokhe, Ram Kumar (PW/2) and Ram Naresh (PW/4) were going to Parsuram Stadium to watch cricket. Ganesh (the deceased) and Ved

Prakash (PW/3) were walking ahead and he (this witness) and Pappu were lagging behind. Ganesh Ram Dewangan was intercepted by appellants. Appellant Anil Singh (A-1) was holding sword-stick and appellant Laxmi Singh (A-2) was holding wooden plank. He has further deposed that appellant Anil Singh (A-1) assaulted the deceased by sword-stick on his abdomen and appellant Laxmi by wooden plank. Upon seeing the assault, when he (this witness) and Pappu ran towards the deceased to save him, appellants fled away from the spot. As blood was oozing from the abdomen of Ganesh, this witness along with others took him to hospital from where Ganesh was referred to CIMS and then, from there, he was again referred to Apollo Hospital, where he was declared brought dead. This witness has also stated that he does not know as to what dispute was going on between the appellants and the deceased, but he had seen the appellants assaulting the deceased and running away from the spot. This witness has been subjected to detailed cross-examination wherein this witness remained emphatic on his statement regarding the manner in which the incident happened. In para 5 of his cross-examination, he has stated that he has no friendship or animosity with the appellants. Police had arrested them and, thereafter, he saw them in the police station. In para 6, he has stated that he had disclosed to the police that appellant Anil Singh (A-1) assaulted the deceased by sword-stick and appellant Laxmi (A-2) by wooden plank, but if the same is not

written in his statement (Ex.D/1), he does not know the reason. A suggestion that appellants tried to intervene in the matter, has been denied. Further a suggestion that his (this witness) friends assaulted the deceased, has also been denied.

09. Ram Kumar Dewangan (PW/2), Ved Prakash Dewangan (PW/3) and Ram Naresh Dewangan (PW/4) are other eye-witnesses to the incident. These witnesses have made almost similar statement as has been made by Raju Kumar Dewangan (PW/1). All these witnesses have stated that when they were going to stadium to watch cricket, appellants intercepted the deceased and assaulted him. Appellant Anil Singh (A-1) assaulted the deceased by sword-stick and appellant Laxmi (A-2) by wooden plank. Defence has cross-examined these witnesses at length but nothing could be elicited from their cross-examination to discredit their testimonies especially on the point that appellant Anil Singh (A-2) has assaulted the deceased by sword-stick on his abdomen and appellant Laxmi (A-2) by wooden plank. There is no reason why this Court should not place full reliance on the testimony of these witnesses.

10. Thus, evidence of Raj Kumar Dewangan (PW/1), Ram Kumar Dewangan (PW/2), Ved Prakash Dewangan (PW/3) and Ram Naresh Dewangan (PW/4) proves that it was appellant Anil Singh (A-1) who had assaulted deceased Ganesh with the

help of sword-stick and appellant Laxmi (A-2) by wooden plank. The ocular testimony of the aforesaid four eye-witnesses is fully corroborated from the medical evidence. Dr. P.C. Banarjee who conducted the postmortem has also proved his postmortem report in Ex.P/38. Before the Court, he has stated that dead body was brought to him and he conducted postmortem and following injuries were found by him:

- (i) Penetrating incised wound of 1 1/2 x 1/2 below right middle on chest. On dissection, the penetrating wound present on right 7th rib, right lung, upper border of right liver and arterial wall of stomach. Blood pilled on chest and abdominal cavity, food material came out from stomach, in abdominal cavity.
- (ii) Incised wound of 1- x 1/2 cm on lower 1/3 at right forearm.
- (iii) Stitch wound of 1 -1/2 long on right side of forehead.

The Doctor, in para 6 of his cross-examination, has stated that the weapon of offence sword-stick and wooden plank were produced before him and he gave his query report in Ex.P/40 stating therein that the injury Nos. 1 and 2 could be caused by sword-stick. Further, in para 7, this witness states that the deceased died due to injury No.1, and the cause of death, according to the Doctor, was hemorrhage and shock due to injuries on chest (penetrating).

From the Doctor's evidence, it is crystal clear that deceased died due to injury No.1 caused by sharp object, and

according to the evidence of eye-witnesses, appellant Anil Singh (A-1) was holding sword-stick.

11. The aforesaid evidence on record clearly proves that it is the appellant Anil Singh (A-1) who had assaulted the deceased by sword-stick on vital parts of his body and the deceased died due to injuries caused by appellant Anil Singh (A-1). Further, it is also found that appellant Anil Singh (A-1) inflicted as many as three injuries on vital parts of the body of the deceased like chest and abdomen. Therefore, it is clearly a case of brutal murder of deceased by appellant Anil Singh (A-1).

12. The memorandum of appellant Anil Singh (A-1) and seizure of sword-stick have also been duly proved by the prosecution with the help of evidence of seizure witness of memorandum and seizure namely Pawan Kenwat (PW/5).

13. In respect of appellant Anil Singh (A-1), though, learned counsel for the appellants sought to make out a case of commission of offence under Section 304 Part-II, the circumstances and manner in which appellant Anil Singh (A-1) assaulted the deceased, we are not at all convinced that the case would be covered under any of the Exception to Section 300 IPC.

14. So far as conviction of appellant Laxmi (A-2) is concerned, from the evidence of eye-witnesses namely Raj Kumar Dewangan (PW/1), Ram Kumar Dewangan (PW/2), Ved

Prakash Dewangan (PW/3) and Ram Naresh Dewangan (PW/4), it is clear that he was holding wooden plank, and according to Doctor's evidence and postmortem report, the injury No.1 caused by sword-stick was fatal. That apart, the aforesaid eye-witnesses have not stated that exactly on which part of the body of deceased, appellant Laxmi Singh (A-2) assaulted.

15. The Supreme Court in the matter of **Ezajhussain Sabdarhussain and another v. State of Gujarat** reported in **AIR 2019 SC 1525**, held in para 21 as under:-

“21. The judgment relied upon by the learned counsel for the respondents in Ramesh Singh's case (AIR 2004 SC 4545) (supra) was a case where as per the case of prosecution, there was a death in the family of A-2. They wanted certain 'Samagri' for the funeral. On 30th April, 1998 at about 11.00 am, since the deceased refused to give some samagri, they became annoyed and accused persons went away and came back together at about 11.45 a.m. and called the deceased out of the house and while the two accused persons were holding the hands of the deceased, the other accused stabbed the deceased on his chest. They came with a common intention and equally participated in the commission of crime. However, in the instant case, there was no pre-arrangement of mind and altercation took place between accused No.1 Iftekharhussain Sabdarhussain with the deceased Mohammad Shakil who was accompanied with accused No.2 Shefakathussain Sabdarhussain and family members of deceased and in furtherance thereof, accused No.1 Iftekharhussain Sabdarhussain and accused No.2

Shefakathussain Sabdarhussain brought a knife and gupti and stabbed the deceased. No presumption can be drawn of common intention by implicating the accused appellants under Section 34 IPC.”

16. Thus, in view of aforesaid judicial pronouncement of the Supreme Court in the matter of ***Ezajhussain (Supra)***, and considering the peculiar facts and circumstances of the case and the quality of evidence against appellant Laxmi Singh (A-2), he deserves acquittal by giving benefit of doubt.

17. In the result :-

(A) Appeal, so far as it relates to appellant Anil Singh @ Konda (A-1), is dismissed and his conviction under Section 302 IPC is maintained.

(B) Appeal, so far as it relates to appellant Laxmi Singh (A-2), is allowed and he is acquitted of the charge levelled against him by giving benefit of doubt. Appellant Laxmi Singh (A-2) is in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-

**(Manindra Mohan Shrivastava)
Judge**

Sd/-

**(Rajani Dubey)
Judge**