

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 178 of 2013

1. Prasad Pradhan S/o Sankirtan Pradhan Aged About 65 Years R/o Village Paterapali, P.S. Saraipali, Distt. Mahasamund C.G. , Chhattisgarh
2. Lingraj Pradhan S/o Prasad Pradhan Aged About 50 Years R/o Village Paterapali, P.S. Saraipali, Distt. Mahasamund C.G. , District : Mahasamund, Chhattisgarh
3. Soudagar Pradhan S/o Lingraj Pradhan Aged About 18 Years R/o Village Paterapali, P.S. Saraipali, Distt. Mahasamund C.G. , District : Mahasamund, Chhattisgarh

---- Appellants

Versus

State Of Chhattisgarh Through - The Saraipali, Distt. Mahasamund C.G. , Chhattisgarh

---- Respondent

For Appellants	:	Shri V.K. Pandey, Advocate
For State	:	Shri Anand Verma, Dy. Govt. Advocate

D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava & Hon'ble Mrs. Vimla Singh Kapoor

Judgment On Board

20/02/2019

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 30.11.2012 passed by learned 1st Additional Sessions Judge, Mahasamund in ST No.33 of 2012 whereby and whereunder the appellants/accused have been held guilty of commission of offence alleged against them and sentenced as described below:

Conviction	Sentence
under Section 323 read with Section 34 IPC	RI for 6 months
under Section 302 read with Section 34 IPC	RI for life and fine of Rs.1000/-, in default of payment of fine, to further undergo RI for 2 months

2. Case of the prosecution is that the appellants and the deceased Vrindawan were cousins. Allegation is that on 28.2.2012, in the afternoon, when deceased Vrindawan was getting his land levelled through a JCB machine, the appellants arrived at the spot and assaulted Vrindawan. Vrindawan sustained injury. He was taken to hospital and was medically examined by Dr. Bhageshwar Patel (PW11). As Vrindawan had sustained grievous injury in his head, he was operated upon by Dr. K.N. Madhariya (PW15). He, however, could not survive and finally succumbed to death on 22.3.2012. Thereafter, postmortem was conducted by Dr. S.K. Bagh (PW14) who prepared his report in Ex.P-28. Doctor's opinion being that death was due to injury sustained by the deceased in his head, the police registered a case of commission of offence under Section 302 read with 34 IPC against all the appellants on the basis of FIR lodged by Ku. Aarti Pradhan (PW1) the daughter of the deceased. In the FIR (Ex.P-1), it was stated that the appellants had arrived at the spot, abused the father of the informant and then assaulted. The allegation against appellant No.1- Prasad Pradhan was that he had come with an axe and gave an assault on the head. The allegation against appellant No.2-Lingraj Pradhan was that he had also come along with an axe and gave an assault in the legs. As far as appellant No.3- Soudagar Pradhan, grand-son of Prasad Pradhan and son of Lingraj Pradhan is concerned, it is alleged that he had also come at the spot and it is alleged that he caught hold of the deceased. After filing of charge sheet, learned trial Court framed charges against all the appellants of sharing common intention and then committing murder of Vrindawan. The appellants having abjured guilt were put to trial. The prosecution examined as many as 15 witnesses. Ku. Aarti Pradhan (PW1), Narrotam (PW2), Safed Pradhan (PW3), Rukni (PW4), Ayodhya Bai (PW5) and Navin Sahu (PW6) are relatives of the deceased. The appellants examined two defence witnesses. The learned trial Court, however, relying upon the eyewitness account and the medical evidence, held all the appellants guilty of commission of offence alleged against them and sentenced them as described above.
3. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellants would argue that the prosecution evidence is liable to be discarded and disbelieved. All the

so called eyewitness are related to the deceased and their statements otherwise suffer from material contradictions and omissions and inherent improbability. It is next submitted that the allegation of sharing common intention is not made out because the dispute arose all of sudden at the spot when the deceased -Vrindawan started getting land levelled due to which the appellants who are also resident of the same locality in adjacent houses, came out and are said to have assaulted. Therefore, in these circumstances, it is argued, the appellants are liable only to the extent of their individual overt act. It is also submitted that the incident happened all of sudden and without premeditation. There was no intention to cause death but it was only to deter Vrindawan from doing any activity on the disputed land. Therefore, the conviction of the appellants may not travel beyond Section 304 Part-II IPC. Learned counsel for the appellants also argue that the death of Vrindawan took place after about 20 days of the incident on account of complication in the surgery and it cannot be said that cause of death was injury nor the prosecution could prove that injury caused to the deceased, in ordinary course of nature, was sufficient to cause death. Therefore, as the appellants have already undergone 6 years of imprisonment, the sentences may be reduced to the period already undergone by them.

4. We have heard learned counsel for the parties and perused the records of the Court below.
5. The FIR lodged by Ku. Aarti Pradhan (PW1), the daughter of the deceased, has been proved by her. The contents of FIR (Ex.P-1) are that the appellants arrived at the spot, hurled abuses and then Prasad Pradhan and Lingraj Pradhan gave assault with the help of axe. The allegation against Soudagar is that he caught hold of Vrindawan.
6. Aarti (PW1) an eyewitness has stated in her evidence that while her father was engaged in getting the land levelled, appellants, whose houses are adjacent, separated by a wall only, started hurling abuses in front of their house and when her father asked them not to abuse, they started giving him threat to kill and then Prasad who was holding axe, Lingraj who was also holding an axe and Soudagar who was holding a club arrived at the spot. Soudagar caught hold of her father and then Prasad gave an axe blow on the neck, Lingraj gave blow on the legs. She further stated that when

she reached the spot to save her father, Prasad gave her a blow from blunt side of the axe on her left leg. Thereafter, number of persons came to the spot. In para-6 of her cross-examination, she however states that she does not recollect whether Soudagar caught hold of her father or not. She further states that she had reached the spot when the appellants were abusing her father. She also says that she could not see whether Soudagar was holding any lathi or not and she also cannot say how Soudagar caught hold of her father. To the extent of role played by Prasad and Lingraj, this witness has remained firm in her cross-examination and nothing could be elicited to doubt her testimony in so far as the role of appellants -Prasad and Lingraj is concerned.

7. The other prosecution eyewitness is Narrotam (PW2), the younger brother of deceased Vrindawan. He has also deposed that when he was standing at about 15-20 steps away from the spot, Vrindawan was getting the cleaning work done near toilet. Then, the appellants arrived at the spot. Prasad and Lingraj were holding axe, Soudagar was holding a club. They hurled abuses which was followed by assault. This witness alleges that Prasad had given an axe blow on the neck and Lingraj had given a blow on the leg and Soudagar gave a lathi blow. In his cross-examination, he has stated that Vrindawan was not holding anything in his hand and he was only engaged in cleaning.
8. The third eyewitness Safed Pradan (PW3), the wife of the deceased, deposed that when her daughter- Aarti called for help, she went to the spot. She saw that Prasad, Lingraj and Soudagar assaulted her husband by an axe. However, she states that she did not see them giving assault but saw the appellants holding axe. From her cross-examination also, it becomes clear that by the time she arrived at the spot, her husband had already sustained injury and was lying on the ground.
9. The fourth witness Rukni (PW4) sister-in-law of Safed Prasad (PW3) has stated that while Vrindawan was engaged in cleaning work near septic tank, he was assaulted by Prasad, Lingraj and Soudagar. Prasad and Lingraj assaulted by axe whereas Soudagar gave assault by club. She also states that when Aarti went to the spot to save her father, she was also assaulted but she cannot say who assaulted Aarti. In her cross-examination, she has admitted when she reached the spot, by that time, Vrindawan was found

lying on the ground and she cannot say what happened before he fell on the ground. Though she states that even after Vrindawan fell down, the appellants were assaulting him. The fifth eyewitness Ayodhya Bai (PW5) has also deposed that while Vrindawan was engaged in cleaning work behind septic tank, Prasad came at the spot and started abusing him. When Vrindawan resisted not to abuse, Prasad gave an assault on the neck, Lingraj on the leg and according to him, Soudagar caught hold of Vrindawan and was having a club in his hand. When Aarti went to save her father, she was also assaulted but this witness could not see who assaulted Aarti. In her cross-examination, she could not see how Vrindawan was assaulted.

10. Naveen Sahu (PW6), son-in-law of the deceased, claiming him to be an eyewitness, deposed that while Vrindawan was getting the open land levelled, the appellants came hurling abuses and then Prasad and Lingraj who had come with the axe, gave blow. This witness does not talk of any overt act committed by Soudagar. According to him, assault was given by Prasad and Lingraj. According to this witness, Prasad and Lingraj were involved in assaulting even after Vrindawan fell down. Even in his cross-examination, he does not make any allegation of assault given by Soudagar.

11. From the evidence of aforesaid witnesses in so far as Prasad, Lingraj are concerned, there is overwhelming evidence of reliable nature led by the prosecution which clearly proves that when Vrindawan was getting his land levelled, appellants- Prasad and Lingraj arrived at the spot along with axe, abused Vrindawan and then gave him axe blow one on the neck and other on the leg due to which Vrindawan fell down.

However, as far as the role alleged to be played by Soudagar is concerned, there is discrepancy in the prosecution evidence. According to Aarti (PW1) Soudagar who is grand-son of Prasad and son of Lingraj was holding a club but she does not say that he gave any lathi blow when he caught hold of Vrindawan. But in her cross-examination, her evidence in this regard is shaken because she says that she cannot say as to whether Soudagar caught hold of her father. One witness has stated regarding lathi blow given by Soudagar whereas the other witnesses did not allege any overt act on the part of Soudagar. Navin Sahu (PW6) does not even talk of presence

of Soudagar at the spot.

12. The evidence which has come is that the appellants were residing in adjacent houses and they arrived at the spot when Vrindawan started getting the land levelled with the help of machines and when he was involved in cleaning work near septic tank. Soudagar being grand-son of Prasad and son of Lingraj, appears to have come on the site but what role he played is doubtful because of contradiction in the eyewitness account of different witnesses.
13. MLC of the deceased was conducted by Dr. Bhageshwar Patel (PW11) who prepared report in Ex.P-21. Surgeon Dr. S.N. Madhariya (PW15) has also deposed that back skull was broken and was operated upon. Dr. S.K. Bagh (PW14) who conducted postmortem has clearly stated regarding cause of death being injury sustained by the deceased. Nothing could be elicited from evidence of this doctor that the injury caused to the deceased in ordinary course of nature was not sufficient to cause death or that the death occurred due to surgical complication and not because of injury. Therefore, we have no doubt that the cause of death was injury sustained by the deceased.
14. Though an argument has been raised that present is not a case of sharing common intention, looking to the overt act that Prasad and Lingraj both had arrived at the spot with axe and thereafter assaulted the deceased with the help of an axe, in so far as sharing of common intention is concerned, their conduct, overt act, use of deadly weapon, fully corroborates the prosecution story of these two appellants- Prasad and Lingraj having shared common intention to kill the deceased.
15. It is not a case that a free fight took place at the spot or that Vrindawan also started giving any assault and in the heat of passion and without any intention of causing death, assault was made. Prasad and Lingraj had seen that Vrindawan was getting land levelled and cleaning near septic tank, thereafter, they started abusing and arrived at the spot with weapons and also assaulted.
16. However, as we have considered herein-above, the prosecution evidence does not inspire confidence with regard to presence of appellant- Soudagar at the time when assault was given or even if it is held that he had also

come, there is doubt as to what overt act was played by him to involve him with the aid of Section 34 IPC. In the circumstances, we are inclined to give benefit of doubt to appellant -Soudagar, particularly taking into consideration that the residence of appellants and deceased were adjacent to each other and at the time of dispute and assault, there may be possibility of presence of appellant- Soudagar at the spot, though, without any overt act of assault.

17. In the result, the appeal of appellant No.1-Prasad Pradhan and appellant No.2-Lingraj Pradhan is dismissed whereas appeal of appellant No.3- **Soudagar Pradhan** is allowed.

18. Appellant No.3 – **Soudagar Pradhan** be set at liberty forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge