

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1157 of 2013

Shyam Kumar Bhardwaj @ Raigarhiya S/o Devram Bhardwaj Aged About 44 Years R/o Village Chote Gumdha, Indra Awas, PS Gharghoda, Civil And Rev. Distt. Raigarh C.G. , Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh Through PS Gharghoda Civil And Rev. Distt. Raigarh C.G. , Chhattisgarh

---- Respondent

For Appellant	:	Shri J. K. Shastri, Advocate
For State	:	Shri K. K. Singh, Govt. Advocate

CRA No. 134 of 2014

1. Dharam Singh Kurre @ Mundu S/o Panbudi Aged About 48 Years R/o. Vill. Chottegumad, P.S. Gharghoda, Distt. Raigarh C.G., Chhattisgarh
2. Ramcharan Kurre @ Dhodhi, S/o Panbudi, aged about 38 years, R/o Vill. Badegumda, Thana-Gharghoda, District- Raigarh
3. Dindayal Kurre, S/o Dharam Singh, aged about 24 years, R/o Vill. Badegumda, Thana Gharghoda, District- Raigarh
4. Dujram Kurre @ Bodki , S/o Jairam Kurre, aged about 34 years, R/o Vill. Chottegumda, Thana Gharghoda, Distt. Raigarh
5. Nanu @ Ramprasad Kurre, S/o Panbudi Ram Kurre, aged about 29 years, R/o Vill. Badegumda [Darrabhata] Thana Gharghoda, District- Raigarh

---- Appellants

Versus

State Of Chhattisgarh Through Sho,p.S. Gharghoda, Raigarh C.G., Chhattisgarh

---- Respondent

For Appellants	:	Shri N. K. Malviya, Advocate
For State	:	Shri K. K. Singh, Govt. Advocate

**D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Rajani Dubey**

Judgment On Board

08/02/2019

Per Manindra Mohan Shrivastava, J.

1. These two appeals are directed against the judgment of conviction and order of sentence dated 30.10.2013 passed by learned Additional Sessions Judge, Fast Track Court, Raigarh in ST No.28 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 302 IPC	Imprisonment for life and fine Rs. 5000/-, in default of payment of fine, additional RI for 6 months
under Section 147 IPC	RI for 1 year and fine of Rs.1000/-, in default of payment of fine, additional RI for 2 months
under Section 148 IPC	RI for 2 years and fine of Rs.2000/-, in default of payment of fine, additional RI for 3 months
under Section 307 IPC	RI for 10 years and fine of Rs.4000/-, in default of payment of fine, additional RI for 5 months

2. According to the prosecution case, an FIR in Ex. P-21 was lodged in police station by Suresh Kurre (PW1), who stated in the FIR that on 14.09.2011 at about 9:00 pm, Ram Prasad @ Nanu came to purchase a goat on loan basis which was denied by his father Bhuru Ram, whereafter Ram Prasad went back and then Mundu, Bodki, Kotbihin, Deendayal and Ramcharan came to their house and again asked for goat, which was again denied by his father, whereafter all went back and after about 1 hour, again Ram Prasad @ Nanu came and started hurling abuses that he was not given goat and then he

threatened of dire consequences. When his father opened the door, Nanu and his associates Mundu, Borki, Kotbihin, Deendayal and Ramcharan were standing with *danda* (club) *gainti* (pick axe) and *rampa* (shovel) and they started hurling abuses and assaulted. After hearing the noise, his uncle Hetram (the deceased) came out of his house and inquired from these appellants as to why they were abusing and fighting. At this instance, Nanu and his associates said that as the goat is not being given by Bhuru Ram, they will kill all of them, hastened to assault his father. Mundu assaulted his father Bhuru Ram on chest and back with the help of pick axe. Ramprasad @ Nanu assaulted his father Hetram with the help of pick axe due to which he fell down and died. Thereafter, Nanu and his associates ran away. He stated that the incident was seen by his mother Neera Bai, Shyam Bai, Gulbadan. A morgue intimation was also recored in Ex. P-22. Dead body was sent for postmortem. The postmortem was conducted by doctor P. L. Bodalkar (PW8) who, after conducting postmortem and examining multiple injuries found on the body of the deceased Hetram, opined that cause of death was due to cut on the heart and excessive bleeding which was homicidal in nature.

3. Dr. Vijay Kumar Lakda (PW9) examined the injuries sustained by Bhururam and found as many as three injuries which were found to be grievous. Upon completion of investigation charge sheet was filed and appellants were tried for commission of offence of assaulting Bhuru Ram with intention to cause death and also for committing murder of Hetram. The prosecution led number of witnesses including five eyewitnesses to the incident. The appellants were examined under Section 313 Cr.P.C. and denied having committed offence. Three defence witnesses were also examined. The learned trial Court, however, disbelieved the defence version and relying upon the eyewitness account of five eyewitnesses, held all the appellants guilty of commission of offence, giving rise to present two appeals.
4. Learned counsel appearing for appellant Shyam Kumar Bhardwaj @ Raigarhiya would argue that as far as Shyam is concerned, he has been falsely implicated. He would argue that FIR was lodged by Suresh Kurre (PW1) who is the eyewitness to the incident and the manner in which he has narrated the incident in his FIR, he neither talks of presence of Shyam

nor any overt act. Similarly, in the morgue intimation also, nothing is stated against Shyam. Learned counsel for the appellant would further argue that with regard to the presence of Shyam, there are contradictory statements given by the prosecution witnesses. Out of five eyewitnesses, two of them namely, Suresh (PW1) and Madan Pal Kurre (PW4), son of Hetram, have not stated regarding presence of Shyam. Therefore, as far as Shyam is concerned, it is argued, the prosecution has failed to prove its case beyond reasonable doubt and the benefit of doubt should go to appellant Shyam.

5. For remaining appellants, it has been argued that the entire case of the prosecution is nothing but false implication. He would argue that Bhururam and deceased Hetram who were brothers had strained relations and there were dispute with regard to the property. Bhuru Ram had two wives which was objected to by Hetram which led to quarrel between them. He would argue that two defence witnesses have stated that when they were passing nearby, they heard and saw quarrel between Bhuru Ram and deceased Hetram. This renders plausible and possible defence story that it was not appellants but Bhuru Ram who killed his own brother Hetram and the appellants have been falsely implicated because incidentally at around that time, they had come demanding a goat. Learned counsel for the appellants would further argue that the evidence of eyewitnesses are liable to be disbelieved because they all are family members of the injured witnesses and deceased and no independent villager or nearby neighbour has been examined to corroborate the evidence of relatives. Learned counsel for the appellants would further argue that the witnesses have stated regarding certain weapons held by the appellants but the nature of weapons which are said to be seized from the possession of individual appellant are not of the same nature and therefore, these weapons were not put for query of the doctor nor were produced during trial and for this reason also, the evidence of eyewitnesses are liable to be disbelieved. The seizure witnesses have also not fully supported the case of the prosecution with regard to the recovery of alleged weapon.
6. On the other hand, learned counsel for the State would argue that the prosecution case is fully proved beyond reasonable doubt from not only one but as many as five eyewitnesses who have stated regarding the incident as also the background of the incident in which it happened. He

would argue that each of the appellants has been specifically named by the witnesses and specific overt act committed by them has also been stated by these witnesses. He would next argue that as far as Shyam is concerned though, initially, in the details of the FIR, his name is not mentioned but in the FIR, he is enlisted as one of the suspected accused, therefore, it could not be said that it is a case of false implication. He would next argue that merely because two of the eyewitnesses have missed the name of Shyam, the case of the prosecution does not become doubtful because the other three witnesses have clearly stated regarding presence of Shyam and criminal overt act committed by him. Learned State counsel would argue that as far as defence witnesses are concerned, they are interested and moreover, their evidence does not prove that there was any fight with weapons, going on between Bhuru Ram and his brother Hetram, the deceased. He would next argue that Madan (PW4) is the son of deceased Hetram and there is no reason why he being an eyewitness to the incident would falsely implicate others and would allow to go scot free the real culprit who assaulted his father. He would submit that when number of eyewitnesses have reliably stated regarding the assault given by the appellants, the aspect of seizure of weapon is not very relevant and that alone could not be made a basis to disbelieve the reliable eyewitnesses account.

7. We have heard learned counsel for the parties and perused the records of the Court below.
8. Lodging of FIR has been proved by Suresh (PW1) who is the son of injured eyewitness Bhuru Ram (PW2). He has proved his signature also. The Investigating officer Deepak Kumar Paswan (PW12) says that on the basis of report given by Suresh, he had recorded the FIR. We find from the contents of the FIR that in the entire FIR and the details of the incident, name of Shyam is neither mentioned nor any overt act alleged against him. On the first page of the FIR, which is a printed form, in the column- "suspected accused", along with other accused, the name of Shyam has not been mentioned. Similar is the case with the morgue intimation (Ex.P-22). However, as far as all other accused are concerned, their names have been very specifically mentioned in the FIR in which it has been stated that they all had come in the house of Bhuru Ram in the background that Bhuru Ram

had refused to give on loan, goat to Ram Prasad and then Ram Prasad along with other accused came to his house, armed with weapons and assault was opened on Bhuru Ram and when his brother Hetram came, Hetram was also assaulted due to which he fell down. Suresh (PW1) son of Bhuru Ram (PW2) has stated regarding the incident. A background has been given that earlier Ram Prasad had come asking for a goat on loan which was refused by his father and in the night at about 9:00 pm, the appellants came, caught hold of his father and then Shuru, Mundu, Ram Prasad, Deen Dayal and Dhodhi assaulted his father. He stated that they all were holding club, pick axe, and shovel. He then deposed that after hearing the noise, when Hetram came, he was first assaulted by Ram Prasad and thereafter, other assaulted him due to which Hetram fell down. Thereafter, all ran away. He has been subjected to cross-examination and suggestion have been given that there were other neighbours who did not come to rescue anybody which has been admitted. Suggestion that there was a quarrel between his father and Hetram has been denied.

9. Bhuru Ram (PW2) is an injured witness. The evidence of doctor Vijay Kumar Lakra (PW9) clearly shows that this person has sustained number of incised wound. This witness (PW2) has given the background of the incident that earlier Ram Prasad and Dharmsingh had come asking for giving a goat on loan which was denied and thereafter, in the night at about 9:00 pm, all the appellants rushed in, entered the house and then this witness was assaulted, dragged out of his house and then Dharm Singh assaulted on his head with the help of an axe. Ram Prasad gave an assault by an axe on his chest. He further deposed that Ramchandra and Deendayal also assaulted with the help of axe on the back. He then deposed that when his wife Neera and son started crying for help, his brother Hetram came in and when he asked the appellants why they are assaulting Bhuru Ram, the appellants declared that Hetram was favouring his brother and then they left Bhuru Ram and turned towards Hetram and assaulted in which Ram Prasad gave an assault on the chest of his brother due to which his brother fell down and all appellants started giving assault and after killing his brother, they ran away from the spot. This witness has also been subjected to detailed cross-examination and it has been elicited that, though, there are number of neighbours, nobody came to the spot. Suggestion has been given

regarding dispute between Bhuru Ram and his brother Hetram that there used to be quarrel between them which has been denied. He also admits that the relationship with the villagers are also strained.

10. Neera (PW3), the wife of Bhuru Ram (PW2) has also supported the version of the two eyewitnesses in the same background that earlier, during the day when Ram Prasad and Mundu had come to request for giving goat, it was refused by her husband and thereafter, the appellants came to the house, caught hold of her husband who was taking meals and then her husband was assaulted by axe by Mundu @ Dharamsingh, Nanhu @ Ramprasad, Dhodhi @ Ramchandro and Deendayal, When other members of the family cried for help, at that time, Hetram arrived at the spot and when he asked as to why they were assaulting Bhuru Ram, appellants started assaulting Hetram. Nanhu @ Ramprasad gave assault on the chest due to which, Hetram fell down. Then all the accused started assaulting Hetram. Hetram died at the spot and accused persons ran away. In the cross-examination, similar suggestions have been given regarding neighbours not arriving at the spot and there being a dispute between Hetram and Bhuru Ram.
11. Madan Pal Kurre (PW4), who is the son of deceased Hetram, stated that at about 9:30 pm., when they heard noise of cries for help from the house of his uncle Bhuru Ram, his father went and behind him, he also went there and saw that the appellants were assaulting his uncle by axe and when his father intervened, they left the uncle and started assaulting his father in which, Ram Prasad gave assault on the chest due to which, his father fell down and all the appellants, thereafter, started giving assault to his father also. He has been given suggestion which he denied that when he went to the house of his uncle, his father and Hetram were quarreling. Similar suggestion has been given to other witnesses regarding dispute between his father and uncle which has been denied.
12. Syam Bai (PW5), the fifth eyewitness, is the daughter of Bhuru Ram who has also supported the prosecution case and has involved all the appellants that they all had come in the night at about 9:00 pm and that her husband was dragged near the door and Dharam Singh gave assault with the help of axe on the head, Ram Prasad gave assault on the chest with the help of axe

and thereafter, Dujram and Deendayal assaulted with the help of axe on the back and further that appellant Shyam and Kotbahin caught hold of her husband Bhuru Ram. According to her, when they cried for help, Hetram came in and Madan Pal also came. When Hetram asked as to why they were assaulting Bhuru Ram, they left Bhuru Ram and started assaulting Hetram with the help of axe on the chest due to which he fell down. All the appellants then ran away. This witness has also been given similar suggestion regarding there being number of neighbours, none coming to the spot, that there was a quarrel between her husband and brother-in-law i.e. Bhuru Ram and Hetram and that Hetram and his son Madan Pal assaulted her husband and then her husband and son killed Hetram, has been denied.

13. From the evidence of these prosecution eyewitnesses, who are five in number, the arrival of the appellants (except appellant Shyam) armed with weapons is clearly proved. Each of the witnesses have very clearly stated regarding arrival and assault on Bhuru Ram, followed by assault on Hetram. However, out of five eyewitnesses, two of them namely Suresh (PW1) and Madan Pal (PW4) have not stated regarding presence of Shyam.
14. The appellants have examined three defence witnesses in order to make out a case that the appellants have been falsely implicated and that, in fact, there was a fight and assault given by Bhururam and Hetram on each other and not by the appellants. Resham Lal Kurre (DW1) has deposed in para-two of his evidence that when in the evening, he was returning from his field, he heard some noises near the door of the house of Bhuru Ram but he does not know as to who were creating noise and thereafter, he went to his house. According to this witness, he had not seen anything. In his cross-examination also, he affirms that he could not see as to who were creating noise.
15. Vijay Kurre (DW2) has stated that when he was passing through, at about 9:00 pm in the night, there was altercation between Bhuru Ram and Hetram but he did not go to the spot. He also states that Bhuru Ram and Hetram used to quarrel and on that day also, quarrel was going between them. In his cross-examination he has admitted that the relationship amongst him, Setram, Bhuru Ram and Hetram are strained and they are

not in talking terms. He admits that appellants Mundu, Dharam Singh, Ramprasad and Ramchandro are his nephews. He further states that he did not disclose the incident of quarrel between Hetram and Bhuru Ram to anyone in the village and he went to his house. A suggestion has been given that since the appellants are his nephew, he is trying to save them. The third defence witness Bhokoram (DW3) has deposed in para-two of his evidence that when he was returning to his house at about 6:30, he heard voice of Bhururam who was abusing someone but he did not see anyone else.

16. Samaylal (PW4) has deposed that at about 8:00 PM near the house of Bhuru Ram, there was a quarrel between Bhuru Ram and Hetram whereafter he came back and next day he came to know that Hetram died. This witness not only claims to be the brother of the witness Bhuru Ram and deceased Hetram but also states that all the appellants are his nephew. He stated that long back, with regard to the partition of trees, some dispute has arisen between him and Bhuru Ram and Hetram and also that Bhururam lodged the report, case was registered and proceedings were drawn against him at Gharghora. He has been given suggestion which he denied that as Bhuru Ram has lodged report against him, he has given statement against Bhuru Ram.

17. Out of four defence witnesses, two of them have stated regarding incident of quarrel having taken place on the date of incident between Bhuru Ram and Hetram. Remaining two defence witnesses have only stated regarding certain noises, quarrel and nothing else. Out of remaining two witnesses, the evidence of Samaylal (DW4) appears to be doubtful because he admits that there is lot of dispute between him and his brother Bhururam. Moreover, according to him, the incident of quarrel between Bhuru Ram and Hetram had taken place at about 8:00 pm and he did not go there and proceeded to his house. Moreover, none of the defence witnesses states that either at 6:30 pm or at 8:00 pm., quarrel between Bhururam and Hetram was followed by any assault or that Bhuru Ram was seen with any weapon in his hand.

18. We have weighed the evidence led by the prosecution and that of the defence on the scale of probability. In this case, Madan Pal (PW4) has been

examined as an eyewitness. He is the son of deceased Hetram. We have considered his evidence and nothing could be elicited from his cross-examination to doubt the testimony of this witness both with regard to the assault given on his uncle Bhuru Ram and assault given on his father Hetram. The evidence of this witness is corroborated in all material particulars, except involvement of Shyam, with the evidence of remaining witnesses with regard to the time and place of incident, weapon used, assault given and the genesis of the dispute as also the time of arrival of Hetram in the house of Bhuru Ram. The story of the defence that firstly Hetram along with his son Madan Pal assaulted his brother Bhuru Ram and then it followed assault by Bhururam and his son Suresh on Hetram appears to be highly improbable. If that was so, there was no reason why Madan Pal, son of Hetram, would falsely implicate others and will allow to go scot free, the real assailants on his father. Likewise, if Bhuru Ram was assaulted by his brother Hetram and his nephew Madan Pal, there is absolutely no reason or logic to believe that Bhururam, instead of making allegation against the deceased brother and nephew as also his son Suresh and all other lady members of the family would falsely implicate the appellants and exonerate the real culprits who had given assault on Bhuru Ram, particularly when Bhuru Ram was badly assaulted and has sustained multiple cut injuries and the evidence clearly shows that the assault given on him were made with intention of causing his death. Moreover, it appears improbable that in order to falsely implicate, the witness would falsely implicate a group of villagers. The evidence of the prosecution witnesses that the appellants had come to the house of Bhuru Ram asking for goat on loan which was refused and thereafter, the accused had come more than once has been repeatedly stated in the evidence of witnesses.

19. The argument of learned counsel for the appellants that according to the witnesses, what kind of weapon was held by the appellants is not coherent with what has actually been seized, must pale into insignificance because witnesses have repeatedly stated use of axe and club. Suresh (PW1), the son of Bhuru Ram has stated regarding pick axe, shovel and club. The shovel, pick axe, axe are therefore, said to be used in commission of offence, stated by the witnesses. Merely because these weapons were not produced during trial, the evidence of the eyewitnesses cannot be thrown

away and discarded. Deceased Hetram and injured witness Bhuru Ram sustained multiple injury caused by sharp as well as blunt object which render probable that in the assault not only axe but shovel, pick axe, axe and club was used.

20. We, however, find that there is a doubt with regard to the involvement of appellant Shyam in the alleged commission of offence. In the FIR (Ex. P-2) lodged by Suresh Kurre (PW1), the story of the incident as narrated and recorded in FIR does not whisper presence of Shyam at all. We are not oblivious of the legal position that the FIR is not an encyclopedia and the law does not expect that every minute details of commission of offence must be scrupulously stated in the FIR. If name of the assailant is not stated in the FIR, particularly when the FIR has been lodged by one of the eyewitnesses to the case, certainly it assumes importance and renders doubtful, involvement of one who has not been named in the FIR. Suresh (PW1) is one of the eyewitnesses to the incident and FIR was lodged promptly soon after the incident. In the entire narration as to how incident happened throughout the day, culminating in assault on Bhuru Ram and his brother Hetram, there is no mention of the name of Shyam. Though learned counsel for the State highlighted that on the first page of FIR, along with the name of other accused, the name of Shyam has also been mentioned, in our opinion, this will not clear the doubt. The column in which the names of the accused has been mentioned is of suspected accused. Bhoko Ram (DW3) admits that appellants- Dharam Singh, Ramprasad, Bodki, Ramcharan, Shyamkumar and Deendayal are all related to him. He admits that Shyam is his son-in-law. That means Shyam is related to the appellants. Therefore, involvement of some other relatives at the time of lodging FIR by including his name as one of the suspected accused cannot be ruled out because if Shyam was present at the spot, in the prompt FIR lodged by Suresh, the eyewitness, there was no reason why his name would not have been mentioned in the details of the offence. Even his presence is not stated. At the time when FIR was lodged, the memory of the witness was fresh. Moreover, when he was examined in the Court then also he has not involved Shyam nor Shyam being present much less giving any assault to Bhuru Ram or deceased Hetram. True it is that Bhuru Ram (PW2), Neera Kurre (PW3) and Shyam Bai (PW5) have stated

regarding involvement of Shyam. Madan Pal Kurre (PW4) has again not stated regarding presence of Shyam at the incident. Therefore, we are of the considered opinion that the involvement of Shyam in the alleged commission of offence appears to be doubtful. The benefit of doubt should surely go in favour of the appellant- Shyam.

21. In the result, while Criminal Appeal No.1157 of 2013 filed by appellant – **Shyam Kumar Bhardwaj @ Raigarhiya** is allowed, Criminal Appeal No.134 of 2014 filed by other accused-appellants is dismissed and their conviction is affirmed. Appellant – **Shyam Kumar Bhardwaj @ Raigarhiya** be set at liberty forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge