

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 705 of 2013**

1. Narendra @ Shailu Yadav, S/o Chhabi Yadav, aged about 22 years.
2. Chhabi Yadav S/o Tengnu Yadav, aged about 50 years.

Both occupation - Agriculturist, and resident of village Amgaon,
Police Station Tamnar, District Raigarh, Civil & Revenue District
Raigarh (C.G.)

---- Appellants

Versus

- State of Chhattisgarh Through : Police Station, Ajak, Raigarh,
Tahsil & District Raigarh (C.G.)

---- Respondent

For Appellants	:	Shri Ashish Gupta, Advocate.
For Respondent/State	:	Shri Santosh Bharat, P.L.

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

Judgment On Board

06.02.2019

Per Rajani Dubey, J

01. This appeal is directed against the impugned judgment of conviction and order of sentence dated 01.07.2013 passed by learned Special Judge, constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, District Raigarh (C.G.), in Special Case No.29/2012 whereby and whereunder, the appellants have been held guilty of commission of offence under Sections 302/34 of IPC and

sentenced them to undergo life imprisonment along with fine of Rs.10,000/-, in default of payment of fine amount to further undergo additional R.I. for three years.

02. Brief facts of the case are that on 19.07.2012 at about 21.05 PM, named report was lodged by one Vijay Bahadur (PW/9) in police station Tamnar stating therein that on 19.07.2012 at about 7.40 PM, a quarrel took place between his uncle Bhuneshwar, Shailu @ Narendra (A-1) and Chhabi Yadav (A-2) when they were celebrating 'Hareli' festival. Upon being objected by Shatrughan Sidar, Shailu (A-1) went to his house and came back with an axe and started assaulting Shatrughan by axe on his neck. Chhabi Yadav (A-2) assaulted him by club. Due to assault made by appellants, Shatrughan fell down on the ground and succumbed to his injuries. The incident is said to have been witnessed by Kalapram, Bhuneshwar and Teju Sidar. On the same day at about 07.30 PM, merger intimation was recorded, followed by un-numbered FIR (Ex.P/1) and then numbered FIR (Ex.P/16) by which, offence under Sections 302/34 IPC and 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was registered against them. Inquest over the dead body was prepared vide Ex.P/14 on 20.07.2012. The dead body was sent for postmortem, which was conducted on 20.07.2012 by Dr. Dhansingh Painkra (PW-13) vide Ex.P/23 who noticed homicidal wound on right side of the neck in the size of 10cm x 5cm x 10 cm and another homicidal wound on back side of neck in the size of 10cm x 5cm x 10cm. Internal carotid artery and vertebra were also found to be cut. In his opinion, the cause of death was cardio respiratory arrest due to hypovolemic

shock (excessive blood loss) and that the death was homicidal in nature. During investigation, memorandum of accused/appellant Narendra @ Shailu was recorded vide Ex.P/5, pursuant to which bloodstained axe was seized vide Ex.P/7. Memorandum of accused/appellant Chhabi Yadav was also recorded vide Ex.P/6, pursuant to which, one club was seized vide Ex.P/8, however, no FSL report could be obtained. After filing of charge sheet, the trial Court framed charges under Sections 302/34 IPC and 3 (2) (v) of the SC/ST Act.

03. So as to hold the accused persons guilty, the prosecution examined 14 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, convicted and sentenced the appellants as mentioned above. Hence this appeal.

05. Counsel for the appellants submits that in a sudden quarrel and in heat of passion, the incident took in which appellant Narendra @ Shailu gave single blow to the deceased by axe, resulting in unfortunate death of the deceased. He further submits that there was no intention on the part of appellant Narendra @ Shailu to cause his death, therefore, his case would fall within the ambit of Section 304 Part-II IPC. He also submits that even if the entire prosecution case is taken as it is, at least, no case is made out against appellant Chhabi

Yadav.

06. On the other hand, supporting the impugned judgment, it has been argued by the State counsel that the conviction of the appellants is strictly in accordance with law and there is no infirmity in the same. He further submits that the eye-witnesses to the incident PW/3, PW/4 and PW/8 have categorically stated that it is the appellants who caused injury to the deceased.

07. Heard counsel for the respective parties and perused the material on record.

08. In the instant case, there are three eye-witnesses to the incident whose name also find place in FIR (Ex.P/16) and they are Kalapram Chouhan (PW/3), Sanjay Sao (PW/5) and Bhuvneshwar Sidar (PW/8). Kalapram Chouhan (PW/3) has stated in his evidence that on the date of incident, when he was returning from market, he saw appellants and deceased quarreling. At the same time, appellant Narendra @ Shailu came from behind holding axe in his hand and assaulted deceased Shatrughan on his neck, as a result of which he fell down. This witness has also stated that when he tried to pacify the dispute, he (this witness) too was chased to assault by club by appellant Chhabi Yadav. In para 3 of his cross-examination, he has stated that appellant Chhabi Yadav (A-2) was quarreling with deceased Shatrughan and Chhabi Yadav was holding club in his hand. This witness also went on to state that upon being objected by him, he too was chased to assault. In para 7, this witness has stated that he had stated in his diary statement that he had seen the incident while returning from market, but if the same is not recorded, he could not tell the reason.

09. Sanjay Sao (PW/5) is another eye-witness to the incident, who has stated in his evidence that he saw appellant Shailu (A-1) and deceased quarreling in front of his shop and when he came out of his shop, appellant Shailu gave axe blow on the neck of the deceased as a result of which, deceased fell down on the ground. Thereafter, appellant Shailu again gave another blow by axe on his neck. He has also stated that appellant Chhabi Yadav (A-2) was also there holding club in his hand and he (this witness) has not seen him (A-2) causing any injury. In para 6 of his cross-examination, he has stated that on account of fear, he had given statement before police that he had not seen the incident.

10. Bhuwaneshwar Sidar (PW/8) has made almost similar statement as has been made by Kalapram Chouhan (PW/3) and Sanjay Sao (PW/5). This witness too has not stated anything specific against appellant Chhabi Yadav (A-2).

11. Dr. Dhansingh Painkra (PW/13) conducted postmortem on the body of the deceased on 20.07.2012 vide Ex.P/23 and noticed two homicidal wounds on the right side and the back side of the neck. In his opinion, the cause of death was cardio respiratory arrest due to hypovolemic shock (excessive blood loss) and that the death was homicidal in nature. He also examined the seized axe sent to him and opined that the injuries sustained by the deceased could be caused by the said weapon. K.L. Yadav (PW/14), investigating officer, has duly supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that on 19.07.2012, at about 07.30 PM, the accused persons were quarreling with

deceased Shatrughan and at that point of time, deceased Shatrughan was assaulted by appellant Narendra @ Shailu Yadav (A-1) on his neck resulting into his death. When the quarrel was taking place, one of the eye-witness Kalapram Chouhan (PW/3) tried to pacify the dispute, but he was chased by appellant Chhabi Yadav. The incident was witnessed by Kalapram Chouhan (PW/3), Sanjay Sao (PW/5) and Bhuvneshwar Sidar (PW/8) who have categorically and specifically stated that it is appellant Narendra @ Shailu Yadav who gave axe blow to the deceased on his neck. The defence has cross-examined these witnesses at length but has not been able to elicit anything in their cross-examination to discredit their testimonies especially on the point that appellant Narendra @ Shailu Yadav has not committed murder of the deceased. Evidence of these witnesses gets corroboration from medical evidence according to which, injuries on the right and back side of the neck of the deceased were noticed. Considering the statements of the eye-witnesses PW/3, PW/5 and PW/8, coupled with the medical evidence, the complicity of appellant Narendra @ Shailu Yadav in the crime in question stands proved beyond reasonable doubt and we have no reason to disbelieve the statements of these witnesses.

13. Now the question which arises for consideration of this Court is whether conviction of the appellant Chhabi Yadav (A-2) for the offence under Section 302 with the aid of Section 34 of IPC is in accordance with law and in conformity with the evidence on record.

14. The ingredients of Section 34 are that there should be criminal act i.e. either committing the act or omitting to commit the act, which is

an offence under IPC, that criminal act is done by more than one person and that criminal act is done in furtherance of common intention of all, meaning thereby that the persons should have decided in advance about the commission of the act and every one of them has acted keeping in mind that common intention.

15. In the present case, though all the eyewitnesses PW/3, PW/5 and PW/8 have stated in the Court that while axe injury was being caused by appellant Narendra @ Shailu Yadav on the neck of deceased Shatrughan, the other accused i.e. Chhabi Yadav (the appellant herein) was standing there, holding club in his hand but none of them have stated either in examination-in-chief or cross-examination that Chhabi Yadav, in any manner, assaulted the deceased. All the eyewitnesses have stated that they have not seen appellant Chhabi assaulting the deceased. Though the prompt and named FIR (Ex.P/1) was lodged just about half an hour of the incident by PW-1 Vijay Bahadur Sidar, but PW/1 in his Court statement has not stated anything specific against appellant Chhabi Yadav. PW-14 K.L. Yadav, investigating officer, in para 4 of his cross-examination, has admitted the fact that it is not mentioned anywhere in the FIR that on which part, appellant Chhabi Yadav assaulted the deceased by club. None of the witnesses had ever stated that appellant Chhabi Yadav was holding or assaulting the deceased when he was being assaulted by appellant Narendra @ Shailu with axe. The omission of this material fact right from the lodging of FIR till Court statements of the eyewitnesses, raises a serious doubt on the case of the prosecution in respect of involvement of appellant Chhabi Yadav in commission of murder of the

deceased.

16. Thus, if the act of appellant Chhabi Yadav (A-2) is seen in light of provisions of Section 34 of IPC, it is difficult to hold him guilty of commission of murder with the aid of this section for the reason that there is nothing on record to suggest that appellant Chhabi Yadav was sharing common intention with appellant Narendra @ Shailu Yadav (A-1).

17. Learned counsel for the appellants argued that the incident took place all of a sudden without premeditation when they were celebrating 'Hareli' festival and in the incident appellant Narendra gave single blow to the deceased which proved fatal to his life and, therefore, his case would fall within the ambit of Section 304 Part-II. We have given our anxious consideration to this submission of learned counsel for the appellants and are inclined to reject the same for the reason that as many as three eye-witnesses PW/3, PW/5 and PW/8 have stated regarding the incident and role played by appellant Narendra, whose evidence is well corroborated from the evidence of Doctor (PW/13) and postmortem report (Ex.P/23) in which two homicidal wounds, one on the right side and another on the back side of neck, were noticed and the cause of death was cardio respiratory arrest due to hypovolemic shock, which not only shows his grave intention but also knowledge to eliminate the deceased. Thus, by no stretch of imagination, the act of appellant Narendra @ Shailu Yadav (A-1) would fall under any Exception to Section 300 IPC.

18. In the result, while maintaining conviction and sentence of appellant Narendra @ Shailu Yadav (A-1) under Section 302/34 of IPC,

the conviction of appellant Chhabi Yadav (A-2) under Section 302/34 is set aside and he is acquitted of the said charge. Appellant Chhabi Yadav (A-2) is reported to be in jail, therefore, he be set free forthwith, if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge

vijay