

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 974 of 2013**

Judgment Reserved On : 05/07/2019

Judgment Delivered On : 11/12/2019

1. Mulchand @ Bablu S/o Ram Prasad Ratre, Aged About 20 Years R/o. Village Kuraili, P.S. Hirri, Distt. Bilaspur C.G.
2. Fagulal Lahre S/o. Khelauram Lahre Aged About 52 Years R/o. Vill. Rajpur, P.S. Takhatpur, Distt. Bilaspur C.G.
3. Ram Kumar @ Ram Ratre S/o Pardeshi Ratre Aged About 32 Years R/o. Vill. Kuraili, P.S. Hirri, District Bilaspur C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through District Magistrate, Bilaspur, District Bilaspur C.G.

---- Respondent

For Appellant No.1 : Shri Hemant Gupta, Advocate.
For Appellants 2 & 3 : Shri R.K. Jain with Mrs. Kiran Jain, Advocates.
For Respondent/State : Shri Rajesh Singh, Deputy Govt. Advocate.

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Smt. Rajani Dubey, JJ**

C A V JUDGMENT

The following judgment of the Court was delivered by **Prashant Kumar Mishra, J.**

1. The appellants have been convicted for committing offence under Section 302/34 of the IPC and sentenced to undergo imprisonment for

life and fine of Rs.5000/- each, with default stipulations vide judgment dated 26th September, 2013 passed by the 2nd Additional Sessions Judge, Bilaspur in ST No.71/2012.

2. The appellants have allegedly committed murder of deceased Teraslal during the intervening night of 26th/27th December, 2011 at the kitchen shed of middle school of village Bade Medpar, PS Hirri, District Bilaspur, by assaulting him with lathi/club and thrashing his head over the wall.
3. According to the prosecution case, deceased Teraslal had an affair with Rajeshwari Bai, wife of accused No.1 Ram Kumar @ Ram Ratre. In the evening of 26.12.2011, deceased Teraslal had gone to attend the function in connection with Guru Ghasidas Jayanti at village Kureli along with Mahendra Sahu (PW-1) and (PW-14) Amin Khan. Near the village pond (Nala), the accused persons assaulted deceased Teraslal by lathi and club. Amin Khan fled from the spot to save his life. Injured Teraslal was taken to village Bade Medpar on the motorcycle of Mahendra Sahu. Accused Ram Kumar jumped out of the motorcycle due to which injured Teraslal and Mahendra Sahu fell down. Mahendra Sahu fled and hid himself in the agricultural field, after which the accused persons took Teraslal to the kitchen shed of the middle school and thrashed his head over the wall and fled therefrom leaving Teraslal at the middle school. On the next day Teraslal died on his way to the hospital.

4. Merg intimidation (Ex.-P/34) was recorded at the instance of constable Narendra Patre. FIR (Ex.-P/37) was also lodged against unknown persons. Postmortem was conducted vide Ex.-P/31 finding external injuries over head with multiple lacerated wounds over skull and posterior part of the head. Massive intra-cranial bleeding was found indicating that the head injury was caused by hard and heavy object which may be sharp and blunt. Cause of death is head injury. In the final postmortem report (Ex.-P/30), multiple lacerated wounds were found on the skull (scalp). Three lacerated wounds were in vertical direction and one lacerated wound horizontally placed over posterior occipital region was also found. Haematoma was also found beneath scalp and over intra-cranial region. The injuries were ante-mortem, caused by hard and blunt object and cause of death was stated to be on account of injuries to vital organs like brain due to head injury and massive intra-cranial bleeding. Nature of death homicidal.
5. In course of further investigation, memorandum statement of Ram Kumar was recorded vide Ex.-P/3, consequent to which club and cycle were recovered from his house vide Ex.P/6. Memorandum statement of Fagulal was recorded vide Ex.-P/4, consequent to which club was recovered from his house vide Ex.-P/7. Similarly, memorandum statement of Moolchand @ bablu was recorded vide Ex.-P/5, consequent to which blood stained T-shirt was recovered vide Ex.-P/8.
6. During Test Identification Parade, Mahendra Sahu identified accused

Moolchand @ Bablu and Fagulal whereas Amin Khan identified Fagulal but could not identify Moolchand. Since Ram Kumar was named in the case diary statements of witnesses, he was not sent for test identification parade. Since witnesses Amin Khan and Mahendra Sahu were also assaulted when they were moving along with the deceased, they were also sent for medical examination on which Amin Khan was found to have sustained one contusion caused within 3-4 days which corresponds to the date of incident vide MLC report (Ex.-P/35), whereas Mahendra Sahu was found to have sustained one abrasion and one contusion, again caused within 3-4 days as per MLC report (Ex.-P/36). Case diary statements of witnesses including Mahendra Sahu, Amin Khan, Lalaram Kurrey, Shyamlal Kurrey and Narmada Bai Kurrey were recorded on 30.12.2011.

7. In course of trial, the prosecution examined as many as 30 witnesses and proved 41 documents to bring home the charges. On the basis of evidence, the trial Court has convicted the present appellants while acquitting the 4th accused Dharamlal Kaushik.
8. Challenging the conviction and sentence, learned counsel for the appellants would submit that eyewitnesses have been planted to falsely implicate the appellants, which is proved by their non-disclosure of the incident for a good 4 days. It is also argued that the accused persons were not named in the FIR and their identification has not been established, therefore, the prosecution has failed to prove that the crime

in question was committed by the present appellants.

9. Per contra, learned State Counsel would submit that delayed disclosure has been properly explained by the eyewitnesses. The said delay is not enormous but is within 3 days of the incident, therefore, it does not affect the prosecution case. The appellants have been identified by the eyewitnesses, therefore, their participation in commission of crime is fully established.
10. Considering the evidence of eyewitnesses, it is seen that (PW-1) Mahendra Sahu has clearly deposed that he and Amin Khan (PW-14) had gone to village Kureli with deceased Teraslal at about 10 pm on 26.12.2011. At village Kureli, Teraslal wanted to attend the nature's call near a river on which he and Amin waited near their motorcycle. At this time, the accused persons reached there and started making enquiries as to which village they belong. When this witness informed the appellants that they have come from village Choti Koni, they started assaulting him due to which he sustained injuries over his right hand finger. Amin Khan was also assaulted but he ran away. The accused persons also started assaulting the deceased Teraslal due to which he became unconscious. The appellants made the deceased to sit over his motorcycle and accused Ram Kumar sat behind him and directed this witness to ride. A little later, Ram Kumar jumped from the motorcycle due to which the vehicle became unbalanced and both he and deceased Teraslal fell down. Finding opportunity this witnesses ran away.

Appellant Moolchand @ Bablu chased him over his TVS Champ motorcycle. The appellants had threatened that if the incident is disclosed to anybody, he would be killed. When he hid himself in the agricultural field, he left the vehicle in the field itself. The appellants reached near his motorcycle but not finding him, they moved away and took the deceased with them. After their departure from the place, he came to his house at Nutan Chowk, Sarkanda on his motorcycle. In his detailed cross-examination, he remained firm in his statement and there is no material contradiction or omission diluting or impeaching his credibility. He explains in his cross-examination that delayed disclosure to the police is on account of threat extended by the appellants. He denies that he has named Ram Kumar on suspicion explaining that Ram Kumar has worked with him at Krishna Public School, therefore, he has prior acquaintance with him. In further cross-examination, he identifies all the appellants in the Court as the persons who committed the crime.

11. The other star witness Amin Khan (PW-14) is also an eyewitness. He along with PW-1 had accompanied the deceased to village Kureli for witnessing the function relating to Guru Ghasidas Jayanti. In dock identification he has identified the appellant Fagulal. According to the witness, when deceased Teras went to attend the nature's call, they were standing near his motorcycle and at this juncture, the accused persons came and started assaulting him while accused Fagulal caught hold of him and started making enquiries as to which village they belong. He

somehow managed to escape from the place and reached Mangla Chowk to inform Lalaram (PW-21), brother of deceased Teras, about the incident. In the next morning, he read in the newspaper that one dead body has been found near village Kureli, on which he along with (PW-1) Mahendra, (PW-21) Lalaram and the father of Teraslal went to the hospital from where the police took them to the Police Station. They identified the dead body vide inquest (Ex.-P/1). During cross-examination, he remained firm in his basic statement in the examination-in-chief stating that accused Fagulal had caught hold of him but since he was acquainted with Fagulal only by his face and not by his name, he had mentioned in the case diary statement (Ex.-D/2) that one person had caught hold of him. He also says that one accused was carrying axe whereas others were carrying club/Danda. He denies that he could not identify any of the accused. He denies that he had not informed about the incident to (PW-21) Lalaram. He denies that Mahendra Sahu fled from the spot with him. He fails to recollect as to whether identification was conducted at Police Station or in the jail.

12.(PW-2) Ramakant and (PW-3) Mukesh Kumar Yadav are witnesses to the memorandum and seizure, however, they have been declared hostile. (PW-4) Shyamlal Yadav is the Patwari. He has prepared the map (Ex.-P/2). (PW-7) Dr. A.K. Kaushik has sent the memo (Ex.-P/17) to the police informing that a dead body has been kept in mortuary.

13.(PW-8) Chiranjiv Rathore, (PW-9) Hanuman Mishra, (PW-10) Surendra

Kaushik and (PW-11) Mohammed Ramjan are the police constables. They were involved at different stages of investigation. (PW-16) Jaipal Singh and (PW-17) Sandeep Yadav have also taken part in the investigation. (PW-19) Narendra Kumar Patre is the constable and has played some role during investigation. (PW-25) Naresh Kumar Garg, (PW-26) Narendra Kumar Dixena & (PW-27) Rajesh Kumar Suryavanshi were involved at different stages of investigation.

14.(PW-12) Ashok Kumar Upadhyay is the Naib Tehsildar, who conducted identification vide Ex.-P/27. (PW-15) Arjmani Das is the village Kotwar. (PW-18) Dr. C.S. Uike has proved the postmortem report (Ex.-P/32) and query report (Ex.-P/31). (PW-20) Hariram is a witness to the seizure of TVS Champ motorcycle.

15.(PW-21) Lalaram Kurrey is the brother of deceased Teraslal. He is also related to appellant Ram Kumar. He states that deceased Teraslal had developed illicit relations with the wife of Ram Kumar. The deceased had eloped with Ram Kumar's wife for about 3 days and on another occasion he had kept Ram Kumar's wife for 3 days in his house. He states that (PW-14) Amin Khan had informed him in the night on the date of the incident that several persons are beating his brother deceased Teraslal. Thus this witness corroborates the evidence of (PW-14) Amin Khan. (PW-22) Shyamlal is the father of the deceased and (PW-23) Narmada Bai is the widow of the deceased. They also speak about the illicit relations between the deceased and the wife of Ram Kumar.

- 16.(PW-24) Amit Kumar is the labour. (PW-28) Dhurvadas Dhritlahre is the agriculturist. (PW-29) Dr. Prakash Ghodeswar has conducted MLC of (PW-1) Mahendra Sahu and (PW-14) Amin Khan. He has proved MLC (Ex.-P/35) in respect of Amin Khan and Ex.-P/36 in respect of Mahendra Sahu.
- 17.(PW-30) Ishak Khalkho is the I.O. He admits that eyewitnesses have not informed the police on their own and they had no prior acquaintance with the accused. He has proved the entire investigation.
- 18.From the above evidence adduced by the prosecution, it appears, (PW-1) Mahendra Sahu and (PW-14) Amin Khan had accompanied the deceased to village Kureli for witnessing the celebration relating to Guru Ghasidas Jayanti and in the mid way the incident happened. Their presence with the deceased is very natural and there is no evidence that they had any prior enmity with the accused so that they would falsely implicate them. The evidence of the brother, mother and widow of the deceased would clearly prove a very strong motive for accused Ram Kumar to commit murder of the deceased Teraslal. (PW-1) Mahendra Sahu has identified all the accused persons in the Court apart from identification vide Ex.-P/27 wherein Mahendra Sahu has identified Moolchand and Fagulal whereas, Amin Khan has identified Fagulal. Thus there is cogent evidence proving involvement of the 3 appellants in commission of crime. (PW-1) Mahendra Sahu vividly describes the sequence of events in which the appellants have assaulted not only the

deceased but both eyewitnesses. The injuries on the person of eyewitnesses have also been proved vide their MLC reports Ex.-P/35 & Ex.-P/36 proved by (PW-29) Dr. Prakash Ghodeshwar.

19. The only argument worth consideration is delayed disclosure about the incident by the witnesses to the police. However, firstly the delay is not enormous. The delay is only of 2 days as their diary statement was recorded on the 3rd day after the incident. They have properly explained that the delay in disclosure was due to threat extended by the accused persons that if the incident is disclosed, they would also be killed. Thus non-disclosure for 2 days is not fatal for the prosecution in the facts and circumstances of the case. There being a strong motive for committing murder and the incident having been proved by eyewitnesses, present is a case where the prosecution has fully proved the guilt of the accused persons beyond any reasonable doubt.

20. For the foregoing, the trial Court's judgment convicting the accused and sentencing them as stated supra is affirmed. The Appeal is liable to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Rajani Dubey)