

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 427 of 2010**

1. Bulu Ram, S/o Govindram Kumhar, aged about 21 years, Occupation Agriculturist, Labour (As per H. C. order date- 27.02.2020 name of appellant No.- Bulu Ram deleted)
2. Kishun Ram, S/o Gururam Kumhar, aged about 23 years, Occupation Agriculturist, Labour
3. Kulu Ram, S/o Govindram Kumhar, aged about 19 years, Occupation Labour
4. Vishnu Ram, S/o Gururam Kumhar, aged about 25 years, Occupation Agriculturist, Labour

All resident of Village Manora Kumhar Tohli, P.S. & Distt. Jashpur (C.G.)

---- Appellants

Versus

- The State Of Chhattisgarh, through the Police Station, Jashpur Chhattisgarh (C.G.)

---- Respondent

For appellants : Ms. Parwati Suryawanshi, Advocate on
behalf of Mr. Arun Shukla, Advocate
For Respondent/State : Shri Vikash Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board

13/02/2020

01 This appeal arises out of the judgment of conviction and order of

sentence dated 31.03.2010, passed by Sessions Judge, Jashpur, Distt. Jashpur (C.G.) in Sessions Trial No. 31/2009 convicting the accused/appellants under Section 304 Part – II read with Section 34 of Indian Penal Code (henceforth “IPC”) and sentencing each of them to undergo rigorous imprisonment for seven years.

02. During pendency of the appeal, appellant No. 1- Bulu Ram died on 22.07.2012 and that fact is supported by an affidavit alongwith death certificate of appellant- Bulu Ram given by the appellants' counsel.

03. Considering the fact that the appellant 1- Bulu Ram died during pendency of the appeal, the appeal is abated in respect of accused/appellant No. 1- Bulu Ram. Thus, this appeal is now confined to only three accused persons namely Kishun Ram, Kulu Ram & Vishnu Ram.

04. Case of the prosecution in brief is that on 29.10.2008 at about 7.00 O' clock in the evening on the eve of Diwali festival, the villagers were celebrating the festival after consuming local liquor. One Goverdhan, who is son of deceased -Thukru Ram, was standing near Bazardand, at that time, the appellants came there and started beating him with hand & fist and after hearing his cries, mother of Goverdhan namely Etwari Bai (PW-1) reached at the place of occurrence and rescued her son and then she returned home and narrated entire incident to her husband. Thereafter, Thukru Ram (father of Goverdhan) went to the house of appellants and enquired about the incident, as a consequence, all the accused persons assaulted Thukru Ram by means of club, hand & fist, as a result of which, he (Thukru Ram) died

on the spot on account of the injuries sustained by him in the said incident.

FIR (Ex. P/16) was lodged by Goverdhan (son of deceased) on the next day i.e. 30.10.2008 to this effect. During investigation, inquest over the dead body was prepared vide Ex. P/13; and in presence of the witnesses, spot map (Ex. P/12) was also prepared. From the place of occurrence, blood stained soil was seized vide Ex. P/11. Memorandum statement of accused- Buluram was recorded vide Ex.P-1. One wooden stick (*khutha*) was seized vide Ex. P/2. Memorandum statement of Kishun was recorded vide Ex. P/3. One knife (*Chhuri*) was also seized vide Ex. P/4. On the basis of memorandum statement of Manora Kumar, two clubs were seized vide Exs. P-5 & P-6. Clothes of the appellants were also seized vide Exs. P-7 to P-10. Dr. Purashottam Kumar Singh (PW-11) conducted postmortem of the deceased vide Ex.17, who noticed following injuries :-

- (i) Incised wound on eyebrow in the size of 2" x 1".
- (ii) Incised wound on maxilla bone in the size of 1 ½ " x 1".
- (iii) Incised wound on chin in the size of 2" x 1".
- (iv) Incised would on the neck in the size of 4" x 2". Carotid artery and air passage was cut.
- (v) Incised would on occipital bone in the size of 3" x 2".
Upward to downward.
- (vi) Both testis comes out from the serums.

In his opinion, the cause of death was cut the carotid artery, which is homicidal in nature.

05. After usual investigation, charge sheet was filed against all the accused/appellants under Sections 302,34, 342, 323 & 506-B of the IPC. Thereafter, the trial Court framed charge under Sections 323, 342,

506 (B) of IPC against the accused – Gururam whereas the trial Court framed charge under Section 302/34 of the Indian Penal Code against the remaining accused persons, which were denied by them and they prayed for trial.

06. So as to hold the accused/appellants guilty, the prosecution examined as many as 11 witnesses namely- Etwari Bai (PW-1), Suganti (PW-2), Gopalram (PW-3), Amrut Ram (PW-4), Sanjay Ram (PW-5), Birajsai Pankra (PW-6), Bhushwar Bhagat (PW-7), Goverdhan (PW-8), Govind (PW-9), Vimal Kumar Toppo (PW-10) & Dr. Purshottam Kumar Singh (PW-11). Statements of the accused/appellants 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. No defence witness has been examined on behalf of accused/appellant.

07. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment acquitted the accused – Gururam of the charges framed against him whereas convicted and sentenced the remaining accused persons as mentioned in opening paragraph of the judgment.

08. Learned counsel appearing for the accused/appellants would submit that the appellants have been falsely implicated in the crime in question as there is no eyewitness account nor any motive to commit the murder of the deceased. He submits that conviction of the accused/appellants is based on statements of two witnesses namely Etwari Bai (PW-1) & Suganti (PW-2) but no specific allegation was made against the appellants as to who caused injuries to the deceased

namely Thukru Ram. He submits that the whole case is based upon the testimony of Etwari Bai (PW-1) & Suganti (PW-2) but they are not the eyewitness to the incident and, therefore, the trial Court is absolutely unjustified in convicting and sentencing the accused/appellants as mentioned above. Thus, the appellants may be acquitted of the charges levelled against them.

09. On the other hand, learned counsel appearing for the State while supporting the judgment of the trial Court would submit that on the next date of incident, prompt FIR has been lodged by Goverdhan before the Police Station, Jashpur alleging that the appellants quarreled with and assaulted complainant Goverdhan, after hearing this, his mother rescued him and thereafter informed her husband (Thukru Ram) about the incident. When Thukru Ram went to the house of the appellants to enquire about the matter, they assaulted him too by means of club, knife, hand & fist, as a result of which, Tahkru Ram died on account of the injuries sustained by him and dead body was also found in the house of the appellants. Immediately after the incident, Etwari Bai (PW-1) & Suganti (PW-2) reached the place of occurrence and all the appellants were present there, therefore, the trial Court is absolutely justified in convicting and sentencing the accused/appellants as mentioned above, which does not call for any interference.

10. I have heard learned counsel appearing for the parties and perused the record of the trial Court including judgment impugned.

11. Etwari Bai (PW-1) – wife of the deceased & mother of the complainant- Goverdhan and Suganti (PW-2) both stated in their deposition that on the date of incident i.e. 29.10.2008 at about 7.00 O'

clock in the evening on the eve of Diwali festival, the villagers were celebrating the festival after consuming local liquor. Goverdhan, who is son of deceased Thukru Ram, was standing near Bazardand, at that time, the appellants came there and started beating him with hand & fist and after hearing his cries, mother of Goverdhan namely Etwari Bai (PW-1) reached at the place of occurrence and rescued her son and then she returned home and narrated entire incident to her husband. Thereafter, Thukru Ram (father of Goverdhan) went to the house of appellants and enquired about the incident, as a consequence, all the accused persons assaulted Thukru Ram by means of club, hand & fist, as a result of which, he (Thukru Ram) died on the spot itself on account of the injuries sustained by him in the said incident and his body was found in the courtyard of the appellants' premises.

12. From careful perusal of the evidence available on record, in particular, the evidence of Etwari Bai (PW-1) & Suganti (PW-2), it is also apparent that deceased had consumed liquor in his house and then in a drunken condition, he went to the house of the appellants. The aforesaid witnesses have also stated in their evidence that they are unable to explain the manner in which the appellants assaulted the deceased and the injuries were sustained by him in the said incident and he (Thukruram) died on the spot.

13. Thus, looking to the entire evidence of the witnesses and injuries found on the body of the deceased, it reveals that the injuries caused to the deceased may be caused by the weapons which were seized on the basis of memorandum of the appellants though the seizure witnesses have not supported the case of the prosecution and turned

hostile but the evidence of Etwari Bai (PW01) and Suganti (PW02) clearly establishes the fact that the deceased was assaulted by the appellants and his dead body was found in the house of the appellant. In the considered opinion of this Court, the trial Court is absolutely justified in convicting and sentencing the accused/appellants under Section 304 part-II of the IPC, which does not call for any interference in the instant appeal.

14. Consequently, the appeal being devoid of merit is liable to be and is hereby dismissed. It is reported that the appellants completed their sentence awarded to them, therefore, there is no need to pass any order with regard to their surrender.

Sd/-

(Gautam Chourdiya)
Judge