

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1095 of 2008

1. Santosh Yadav, S/o Adali Yadav, Aged about 33 years, R/o Gayanagar in front of Dwangan Dharamshala, Durg, Police Station : Durg, District Durg (CG)
2. Keshav Ram Gond, S/o Sevakram Gond, Aged about 22 years, R/o Rajiv Nagar, Durg, District Durg (CG)

---- Appellants

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Durg, District Durg (CG)

---- Respondent

For Appellants	:	Dr. Kumaresh Tiwari, Advocate.
For Respondent/State	:	Mr. Raghvendra Verma, Govt. Adv.

CRA No. 88 of 2009

1. Pintu Banchore, S/o Khilawan Banchore, aged about 22 years, R/o Gayanagar, Infront of Dewangan Dharamshala, Durg, District Durg.
2. Govind Netam, S/o Kishan Netam, aged about 16 years (now 18 years) R/o Rajeev Nagar, Distt. Durg (CG).

---- Appellants

Versus

- State Of Chhattisgarh Through Police Station Durg, District Durg.

---- Respondent

For Appellants	:	Dr. Kumaresh Tiwari, Advocate on behalf of Ms. Shipra Viswas, Advocate.
For Respondent/State	:	Mr. Raghvendra Verma, Govt. Adv.

Judgment On Board By Justice Gautam Chourdiya

11/06/2020

Cr.A.No.88/2009 has already been admitted for hearing, however, Cr.A.No.1095/2008 is not yet admitted and has been directed to be listed for final hearing. Hence, considering the facts and circumstances of the case, the long pendency of the appeal, Cr.A.No.1095/2008 is admitted and is being decided finally with the consent of the parties.

02. Since both these appeals arise out of the common judgment of conviction and order of sentence dated 28.11.2008 passed by 9th Additional Sessions Judge (FTC), Durg (CG) in ST No.152/2007, they are being disposed of by this common judgment. By the impugned judgment, the accused/appellants stand convicted and sentenced as under:

Accused	Conviction	Sentence	Default sentence
<u>Santosh Yadav</u>	294 of IPC	1 month's RI, fine of Rs.200/-	10 days' additional RI.
	506-B/34 of IPC	1 year RI, fine of Rs.500/-	1 month's additional RI.
	323 of IPC	3 months' RI, fine of Rs.300/-	1 month's additional RI.
	323/34 of IPC	3 months' RI, fine of Rs.300/-	1 month's additional RI.
	323/34 of IPC	3 months' RI, fine of Rs.300/-	1 month's additional RI.
	304 Part-I/34 of IPC	10 years' RI, fine of Rs.1000/-	6 months' additional RI.

<u>Pintu Banchore</u>	294 of IPC	1 month's RI, fine of Rs.200/-	10 days' additional RI
	506-B of IPC	1 year's RI, fine of Rs.500/-	1 month's additional RI.
	323/34 of IPC	3 months' RI, fine of Rs.300/-	1 month's additional RI.
	323/34 of IPC	3 months' RI, fine of Rs.300/-	1 month's additional RI.
	323/34 of IPC	3 months' RI, fine of Rs.300/-	1 month's additional RI.
	304 Part-I/34 of IPC	10 years' RI, fine of Rs.1000/-	6 months' additional RI.
<u>Keshavram Gond</u>	294 of IPC	1 month's RI, fine of Rs.200/-	10 days' additional RI.
	506B of IPC	1 year's RI, fine of Rs.500/-	1 month's additional RI.
	323/34 of IPC	3 months' RI, fine of Rs.300/-	1 month's additional RI.
	323/34 of IPC	3 months' RI, fine of Rs.300/-	1 month's additional RI.
	323/34 of IPC	3 months' RI, fine of Rs.300/-	1 month's additional RI.
	304 Part-I/34 of IPC	10 years' RI, fine of Rs.1000/-	6 months' additional RI.
<u>Govind Netam</u>	294 of IPC	1 month's RI, fine of Rs.200/-	10 days' additional RI.
	506B of IPC	1 year's RI, fine of Rs.500/-	1 month's additional RI.
	323/34 of IPC	3 months' RI, fine of Rs.300/-	1 month's additional RI.
	323/34 of IPC	3 months' RI, fine of Rs.300/-	1 month's additional RI.

	323/34 of IPC	3 months' RI, fine of Rs.300/-	1 month's additional RI.
	304 Part-I/34 of IPC	10 years' RI, fine of Rs.1000/-	6 months' additional RI.

03. Case of the prosecution, in brief, is that on the date of incident i.e. 5th March, 2007 at 22 pm at Rajiv Nagar, Durg, all the accused persons Santosh Yadav, Pintu Banchhor, Keshavram Gond and Govind Netam with common intention were filthily abusing Shriram Chandrakar, Narendra Chandrakar, Sitaram Chandrakar and Bharat Chandrakar in a public place and after threatening them of life, assaulted upon them with clubs, bamboo sticks and bricks as a result of which they sustained grievous injuries. On report being made by Shriram Chandrakar to police on the same day, it was recorded in Rojnamchasanha No.351 and thereafter FIR was registered under Crime No.156/07. Injured persons were sent for medical examination who were examined by PW-1 Dr. VS Baghel. The injuries sustained by the injured persons are as under:

MLC (Ex.P/1) of Shriram Chandrakar

1. one lacerated wound, 2 x 1 x ½ cm over left hand little finger
2. one lacerated wound, 2 x 1 x 1 cm over left hand
3. one bruise, 3 x 2 cm over left side frontal area
4. abrasion 2 x 2 cm over occipital area
5. bruise 6 x 2 cm on right elbow

6. bruise 4 x 2 cm on right shoulder

Colour of injury was reddish, duration within 12 hours, caused by hard and blunt object. Nature of injury was simple.

MLC (Ex.P/2) of Narendra Chandrakar

1. lacerated wound 3 x 1 x ½ cm over mid frontal area
2. lacerated wound 4 x 1 x 1 cm on left side of frontal area
3. bruise 4 x 2 cm over right knee in upper part
4. abrasion 3 x 2 cm on lateral aspect of left leg

Colour of injury was reddish, duration within 12 hours, caused by hard and blunt object. Nature of injury as per opinion of radiologist and treating doctor of ward.

MLC (Ex.P/3) of Sitaram Chandrakar

1. bruise 4 x 3 cm on both side of face
2. complaining of pain in back of chest, right thigh.

Colour of injury was reddish, duration within 12 hours, caused by hard and blunt object. Nature of injury was simple.

MLC (Ex.P/4) of Bharat Chandrakar

1. lacerated wound 1 x ¼ x ¼ cm on right eyebrow,
2. bruise 4 x 2 cm on right side of frontal area
3. lacerated wound 2 cm linear partially deep on left side of chin

Colour of injury was reddish, duration within 12 hours, caused by hard and blunt object, advised for x-ray of skull. Nature of injury as per opinion of radiologist and treating doctor of ward.

04. During treatment injured Bharat Chandrakar died and information was sent to concerned police station regarding death of Bharat Chandrakar. Merg intimation Ex.P/32 was lodged at concerned police station. Inquest Ex.P/16 regarding deceased Bharat Chandrakar was prepared in presence of panch witnesses. Postmortem on the body of deceased was conducted by PW-7 Dr. AK Mishra vide Ex.P/13 who noticed stitched wounds (16 inch) over left tempo-frontal region, old healed injury over right lateral eyebrow 1 x 1 cm, blood clot was there in left temporal parietal, occipital region; stitch mark was there on left side forehead, and there was fracture of left temporal bone. All the injuries were antemortem in nature. In his opinion, the cause of death was shock and hemorrhage as a result of antemortem head injury.

05. During investigation, as per Ex.P/17 one club was seized from Pintu Banchhor, one club from Keshavram vide Ex.P/18 and one club from Santosh Yadav vide Ex.P/19. Spot map was prepared as per Ex.P/20. The seized clubs and clothes seized from Dukhiyabai were sent for chemical examination to FSL as per Ex.P/26. Bedhead ticket of deceased Bharat Chandrakar were seized by the police vide Ex.P/29. After recording statements of the witnesses, charge sheet was filed against the accused persons under Sections 294, 506B, 323, 324, 307, 302, 34 of IPC.

06. The trial Court framed charges under Sections 294, 506B, 323, 324, 307, 302/34 of IPC against the accused persons which were

denied by them and they prayed for trial. The prosecution examined 17 witnesses in support of its case. Statements of the accused persons were recorded under Section 313 of CrPC in which they denied the incriminating circumstances appearing against them in the prosecution case, pleaded innocence and false implication. Accused Govind Charakar examined Smt. Kumari Bai as DW-1.

07. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellants as mentioned above.

08. Learned counsel for the appellants in both the appeals submits that in this case the appellants are falsely implicated as they were not present at the time of occurrence. Looking to the contradictory statements of eyewitnesses, the prosecution has failed to prove its case beyond all reasonable doubt. He submits that the incident took place in dark night and therefore, identification of the accused persons was not possible. No test identification parade was conducted by the police during investigation. All the eyewitnesses are interested witness. No independent witness has supported the prosecution case. The trial Court only on the basis of conjectures and surmises has held the appellants guilty and therefore, the impugned judgment is liable to be set aside and the appellants be acquitted of all the charges.

09. On the other hand, learned State counsel submits that in this case, three injured witnesses were examined by the prosecution who have fully supported the prosecution case. Death of Bharat Chandrakar was also due to injuries sustained by him in the said incident. The evidence of the injured eyewitnesses is supported by medical evidence

and prompt report. No any reason has been assigned by the appellants as to why they were falsely implicated in this case. No such evidence was adduced by the defence. Therefore, there is no need to interfere with the impugned judgment.

10. Heard learned counsel for the parties and perused the material available on record.

11. So far as homicidal death of Bharat Chandrakar is concerned, the same is not in dispute. Even otherwise, looking to the inquest report (Ex.P/16), MLC of deceased Ex.P/4, his bedhead ticket (Ex.P/29) and the postmortem report Ex.P/13, it is clear that death of Bharat Chandrakar was homicidal in nature.

12. PW-1 Dr. VS Baghel medically examined the injured persons namely Shriram Chandrakar, Narendra Chandrakar, Sitaram Chandrakar and Bharat Chandrakar vide Ex.P/1, P/2, P/3 & P/4 and noticed certain injuries as mentioned in the preceding paragraph. He has duly proved the said injury reports. He also examined the clubs seized from the accused persons and opined that the injuries suffered by the victims could be caused by these clubs.

13. PW-5 Shriram Chandrakar, PW-6 Narendra Chandrakar, PW-8 Prakash Thakur, PW-10 Malikram Chandrakar, PW-11 Sitaram and PW-12 Lalita have categorically stated in their deposition that all the four accused persons assaulted upon Bharat Chandrakar, Shriram Chandrakar, Narendra Chandrakar and Sitaram Chandrakar. There is no reason to disbelieve the evidence of injured witnesses. They have specifically stated that the accused persons were filthily abusing them

and after threatening them of life, assaulted upon them and as a result of injuries sustained by Bharat Chandrakar in the said incident, he died during treatment. The evidence of eyewitness is fully supported by the medical evidence in the form of MLCs of injured persons, the postmortem report of the deceased and the evidence of PW-1 Dr.VS Baghel & PW-7 Dr. AK Mishra.

14. There is no major contradiction or omission shown in the deposition of PW-5 Shriram Chandrakar, PW-6 Narendra Chandrakar, PW-8 Prakash Thakur, PW-10 Malikram Chandrakar, PW-11 Sitaram, PW-12 Smt. Lalitabai and PW-13 Dukhiyabai if the same is compared to their diary statements Ex.D/1 to D/7 which were recorded promptly on 6th March, 2007. Though there is some minor contradiction or omission in the statements of the prosecution witnesses but that does not affect the credibility of the prosecution case. Prosecution case is based on prompt information of the incident given to police as per Ex.P/9C against all the four accused persons. As per Ex.P/11 named FIR was registered on basis of information given on 5th March, 2007.

15. DW-1 Smt. Kumaribai is mother of accused Govind and she also states that Govind is known as Vishnu as well. She also proved this fact that accused Govind is known as Vishnu in the locality. Nothing else was stated by her regarding the incident. No any evidence was adduced by the defence for false implication of the appellants. However, from the unrebutted evidence of the injured witnesses, which is fully supported by the prompt report and the medical evidence, the prosecution has successfully proved its case against the appellants beyond all reasonable doubt. Therefore, this Court finds no illegality or

infirmity in the impugned judgment of the trial Court which has discussed in detail the entire evidence and recorded finding of guilt against the accused/appellants.

16. In the result, both the appeals being devoid of any substance are liable to be dismissed and are, accordingly, dismissed. All the accused persons have completed their entire sentence and are reported to have been released from jail. Therefore, there is no need to pass any order regarding their arrest, surrender etc.

Sd/

(Gautam Chourdiya)

Judge