

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on 24-01-2020Judgment delivered on 03-03-2020CRA No. 869 of 2012

[Arising out of judgment of conviction and order of sentence dated 8-8-2006 passed by the 2nd Additional Sessions Judge, Mahasamund, in ST No.397 of 2005]

1. Devnath Netam, S/o Jagdish Netam Aged About 30 Years R/o Village Kokobhatha, Thana - Pithoura, Distt. - Mahasamund, CG.

---- Appellant

Versus

1. State Of Chhattisgarh Through the Station House Officer, PS Pithoura, Distt. - Mahasamund C.G.

---- Respondent

For Appellant

Ms Usha Chandrakar, Advocate

For Respondent/State

Shri Chitendra Singh, Panel Lawyer

Hon'ble Shri Prashant Kumar Mishra, J.Hon'ble Shri Gautam Chourdiya, J.CAV Judgment

The following judgment of the Court was delivered by

Prashant Kumar Mishra, J.

1. By the instant appeal, the appellant has assailed the impugned judgment of conviction and order of sentence rendered by the Second Additional Sessions Judge, Mahasamund, in ST No.397/2005 for committing offence under Section 302 of the Indian Penal Code (for short 'the IPC') for committing murder of Narhar Netam (since deceased) and under Section

302 read with Section 34 of the IPC for committing murder of Jageshwar (father of deceased Narhar Netam) (since deceased) and, thus, the appellant has been convicted for committing two murders and has been sentenced to undergo imprisonment for life (twice) and to pay a fine of pay of Rs.2,000/- for each of the offence, in default of payment to fine to further undergo additional RI for two months (twice). The substantive jail sentences have been directed to run concurrently.

2. The prosecution case, in brief, is that PW-1 Fagani Bai, wife of deceased Narhar Netam and daughter-in-law of deceased Jageshwar, lodged merg intimation (Ex.P/1) on 11.05 am on 9-8-2005 informing the police that at about 10.00 am she had gone to the agricultural fields along with her husband and father-in-law for sowing of crop. Accused Jagdish (father of the appellant herein) (since deceased) and deceased have adjoining agricultural field. The complainant party had removed the weeds for sowing the crop and the weeds have been placed over the common embankment separating both the agricultural fields. Appellant asked them not to place the weeds over the embankment on which the deceased Narhar stated that let the lands be measured by Patwari on which the appellant assaulted Narhar over his head by means of spade

causing his spontaneous death on the spot. Thereafter, appellant Devnath and his father Jagdish assaulted the deceased Jageshwar by club & spade causing serious injuries over his head.

3. On similar allegation, Dehati First Information Letter was lodged vide Ex.P/2 whereas numbered First Information Report (FIR) was registered vide Ex.P/26. Deceased Jageshwar was taken to hospital, however, he succumbed to injuries. Spot panchnama was prepared vide Ex.P/5 and the naksha panchanama was prepared vide Ex.P/6 & Ex.P/8. From accused Devnath his blue coloured T-Shirt & Lungi were recovered vide seizure memo Ex.P/9 whereas from accused Jagdish his white vest and lungi were recovered vide seizure memo Ex.P/10. Iron Spade, tendu wood stick, plain soil & bloodstained soil were recovered from the place of occurrence vide seizure memo Ex.P/11.
4. Postmortem report in respect of deceased Narhar was submitted by PW-8 Dr. (Smt.) Tara Agrawal vide Ex.P/20 whereas postmortem report in respect of deceased Jageshwar was submitted by PW-12 Dr. Vikash Kumar Dhurv vide Ex.P/25. Deceased Narhar was found to have died on account of syncope due to excessive haemorrhage as a result of head

injury with cerebral laceration and injury to dangerous area of neck. Nature of death is homicidal; and time since death more than 6 hours and within 24 hours whereas deceased Jageshwar was found to have died on account of shock and haemorrhage as a result of multiple injuries to the body; nature is death is homicidal; and duration of death was within 24 hours since portmortem.

5. In the FSL Report available at page 49 of the paperbook, the T-Shirt & Lungi recovered from the appellant Devnath marked as 'G1' & 'G2' were found positive for presence of blood.
6. After recording the case diary statement of the witnesses, charge sheet was filed against the appellant and his father Jagdish. However, due to death of Jagdish the trial proceeded only against the present appellant Devnath.
7. In course of trial the prosecution examined as many as 13 witnesses to bring home the charges. The accused abjured the guilt; pleaded innocence and false implication. However, he has not examined any defence witness.
8. On the basis of evidence on record, the trial Judge has convicted the accused/appellant as stated *supra*.

9. Ms Usha Chandrakar, learned counsel appearing for the appellant, would submit that the appellant reached the place of occurrence subsequently and as soon as he reached the field he was assaulted, therefore, he snatched the spade belonging to the deceased and exercised his right of self defence. Learned counsel would further submit that the dead body of the deceased was found over the agricultural field belonging to the appellant, which supports the appellant's case that the deceased trespassed and encroached his agricultural land, therefore, the dispute began. Learned counsel would also submit that the time of incident is mentioned differently in merg & Dehati FIR, therefore, the entire prosecution case is doubtful.
10. Shri Chitendra Singh, learned Panel Lawyer appearing for the State, *per contra*, would support the impugned conviction on submission that the deceased party were already present at the place of occurrence and the appellant reached there and started quarreling and first committed murder of Narhar and thereafter, of Jageshwar. Learned counsel would further submit that the eyewitness has rendered full account with vivid description of the incident, which is fully natural and believable, therefore, there is no scope of interference with the impugned conviction.

11. PW-1 Fagani Bai, who is the wife of the deceased Narhar & daughter-in-law of the deceased Jageshwar, has stated that when they were sowing crops after removing weeds at about 9-10 am on the date of incident the appellant Devnath was standing near the embankment and as soon as her husband stood up after sowing crop he was assaulted by appellant Devnath by means of spade seeing which she and her father-in-law i.e. deceased Jageshwar ran towards the deceased Narhar whereupon appellant Devnath and his father Jagdish assaulted her father-in-law Jageshwar. Both the accused persons thereafter again attacked her husband Narhar. The accused persons also threatened to kill her on which she pleaded for her life and ran away. The incident was informed to Ujal to whom she met on the way and thereafter, informed to PW-3 Khorbahrin and her elder father-in-law PW-5 Gangaram. She became unconscious soon after reaching home. This witness was extensively cross-examined, but nothing material could be extracted from this witness causing dent to her statement in the examination-in-chief.
12. PW-2 Khemraj reached the spot later on and is not a material witness. PW-3 Khorbahrin & PW-5 Gangaram are the persons to whom the eyewitness PW-1 Fagani Bai informed about the incident immediately after reaching her home. These

witnesses support the statement of PW-1 Fagani Bai by saying that she informed that the appellant and his father Jagdish caused murders. PW-4 Roman is owner of nearby agricultural field and was present in his agricultural field at the time of incident. He supports the prosecution by stating that Devnath attacked the deceased Narhar where after his father Jagdish also reached there and both of the them assaulted the deceased Jageshwar.

13. PW-6 Rameshwar Singh Thakur is the Sarpanch of village. He was informed about the incident whereafter he was going to the police station, but before he could reach to the police station the matter was already known to the police and they had started for visiting the place of occurrence. PW-7 Leeladhar Patel is a villager to whom PW-1 Fagani Bai informed about the incident naming the appellant and his father as the assailants.
14. PW-8 Dr. (Smt.) Tara Agrawal has conducted postmortem on the body of the deceased Narhar whereas PW-12 Dr. Vikash Kumar Dhruv has performed postmortem on the body of the deceased Jageshwar. Both these witnesses have proved the respective postmortem reports.
15. PW-9 Peela Singh Yadav is the witness to seizure memo

(Ex.P/21) and PW-10 Hem Lal is the witness to naksha panchnama (Ex.P/8). PW-11 Abhimanyu Singh is the Patwari who has prepared the map and PW-13 A.S. Khan is the Investigating Officer.

16. There may be some minor contradictions & omissions in the statement of eyewitness, but there is no exaggeration which would negate their entire evidence so as to brand them as untrustworthy witness.
17. In *Thoti Manohar v State of Andhra Pradesh*¹, the Supreme Court has held that minor discrepancies on trivial matters not touching the core of the matter cannot bring discredit to the story of the prosecution. Giving undue importance to them would amount to adopting a hyper-technical approach. The Court, while appreciating the evidence, should not attach much significance to minor discrepancies, for the discrepancies which do not shake the basic version of the prosecution case are to be ignored.
18. On appreciation of evidence, as discussed above, it clearly appears that when the deceased persons including the eyewitness PW-1 Fagani Bai were sowing crop, the appellant Devnath and his father Jagdish reached the place of

¹ (2012) 7 SCC 723

occurrence and appellant Devnath first assaulted deceased Narhar and thereafter, appellant and his father Jagdish assaulted deceased Jageshwar. Both the deceased persons sustained grievous injuries over vital part of the body. While Narhar died on the spot, Jageshwar died later, on the same day. Statement of eyewitness PW-1 Fagani Bai does not suffer from any such contradiction, omission or embellishment which would discredit its evidentiary value. She immediately disclosed about the incident to PW-3 Khorbahrin & PW-5 Gangaram, who would also fully support the prosecution. Thus, the prosecution has proved its case beyond all reasonable doubt and the trial Court has rightly convicted the appellant Devnath Netam for committing murder of deceased persons namely; Narhar & Jageshwar. The impugned judgment of conviction and order of sentence is just and proper warranting no interference of this Court.

19. In the result, the instant criminal appeal, *sans substratum*, is liable to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Gowri