

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.71 of 2001

Judgment Reserved on : 12.2.2021

Judgment Delivered on : 15.6.2021

1. Brijlal Gond, S/o Jivrakhan Gond, aged about 24 years,
 2. Jivrakhan Gond, S/o Anandi Gond, aged about 45 years,
- Both R/o Village Limo, P.S. Gandai, District Rajnandgaon,
Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through Police Station Gandai, District
Rajnandgaon, Chhattisgarh

--- Respondent

For Appellants	:	Shri Pragalbha Sharma, Advocate
For Respondent/State	:	Smt. Dipti Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against judgment dated 22.12.2000 passed by the Additional Sessions Judge, Khairagarh, District Rajnandgaon in Sessions Trial No.143 of 2000, whereby each of the Appellants has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304 Part II of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.500 with default stipulation

2. Prosecution case, in short, is that Appellant No.1 is son of

Appellant No.2. Vinod Kumar (PW1) and Rajesh (PW2) are sons of deceased Girwar. The Appellants and the deceased were neighbour and their houses were situated adjacent to each other. On 31.12.1999 at about 5 p.m., the deceased was making a staircase of wood. Since a wood fixed in the roof of the house of the Appellants was obstructing the work of the deceased, he cut the said wood. On this, the Appellants entered the house of the deceased and threatened him of life. After this incident, the deceased went to deposit money in a bank at Gandai. In the evening at about 7:30 p.m., he was returning his village. Allegedly, the Appellants, armed with lathi and irta (a tool in one side of which an iron nail is fixed and during cultivation this tool is used for removing the mud collected over the surface of the plough), were hidden in the way and waiting for the deceased. They assaulted the deceased with the lathi and irta and as a result of which the deceased succumbed. Dehati morgue intimation (Ex.P1) and Dehati First Information Report (Ex.P2) were lodged by Vinod Kumar (PW1). Later on, First Information Report (Ex.P19) was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed. The Trial Court framed charge under Section 302 of the Indian Penal Code.

3. To rope in the Appellants, the prosecution examined as many as 8 witnesses. Statements of the Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt, pleaded innocence and false implication. 1

witness was examined in defence.

4. On completion of the trial, the Trial Court acquitted the Appellants of the charge framed under Section 302 of the Indian Penal Code, but convicted and sentenced them as mentioned in 1st paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants submitted that the Appellants are convicted without there being clinching and sufficient evidence on record. Their conviction is mainly based on the statement of Rajesh (PW2), younger son of the deceased, who claimed himself to be the sole eyewitness of the case. It was further argued that the statement of Rajesh (PW2) is not reliable. Immediately after the incident, as stated by witnesses Vinod Kumar (PW1) and Rajesh (PW2), they and other villagers reached at the spot and Rajesh (PW2) told there that the incident was witnessed by him. But, Dehati morgue intimation (Ex.P1) and Dehati FIR (Ex.P2) do not contain the fact that Rajesh (PW2) had witnessed the incident. Instead, it is reported in Ex.P1 and P2 that the Appellants would have caused the murder. Thus, it is clear that Rajesh (PW2) did not witness the incident. He, as an after thought, claimed himself to be the eyewitness of the incident. Therefore, his statement is not reliable. It was further argued that there is no other circumstantial evidence on record on the basis of which the Appellants could be held guilty. With regard to seizure of the weapons of offence, it was argued that though the seized weapons contained blood stains, there is no serological report on record to

establish that the blood stains found over the seized weapons were of human blood. Therefore, from the seizure of the weapons also, the prosecution does not get support. Looking to the entire evidence adduced by the prosecution, the Appellants are entitled to get benefit of doubt.

6. On the contrary, Learned Counsel appearing for the State, opposing the above arguments, supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the entire record of the Trial Court including the statements of the witnesses with utmost circumspection.
8. It is not in dispute that the houses of the Appellants and the deceased were situated adjacent to each other. Vinod Kumar (PW1), who is elder son of the deceased, deposed that on the date of incident, at about 4 p.m., the Appellants, their wives and mother came to their house and quarreled on the issue of cutting of their wood. At that time, the Appellants threatened the deceased that on that day itself they will kill him. On this point, the prosecution also examined Gautar (PW3), who, at the relevant time, was working in the house of the deceased as a repairman (*mistry*). According to the Court statement of Gautar (PW3), a dispute had taken place between the lady members of the two families at about 4–5 p.m. At that time, the Appellants had come to the spot and threatened the deceased of his life, nothing so has been stated by Gautar (PW3). In his cross-examination, he categorically stated that the dispute

had taken place only between the lady members of the two families.

9. Vinod Kumar (PW1) stated that on 31.12.1999 at about 7 p.m., Horilal (not examined) came to their house and informed that the deceased was lying down smeared with blood in the lane situated near the house of Jagesar (DW1). This witness and his mother went to the spot. There they found the deceased in injured condition. On raising a voice, 5-6 persons reached there. Thereafter, Rajesh (PW2) also reached there. He told that the Appellants assaulted the deceased and ran away. According to Vinod Kumar (PW1), they were taking the deceased on a bullock cart and during that time Bashir Khan (PW4) met them on the way. They also told Bashir Khan (PW4) about the incident on which he also accompanied them to the police station. In the fateful night itself, at about 10 p.m., Dehati morgue intimation (Ex.P1) and Dehati FIR (Ex.P2) were lodged by Vinod Kumar (PW1). Next day, i.e., on 1.1.2000, inquest proceeding (Ex.P4) was conducted. During cross-examination, in paragraph 10, Vinod Kumar (PW1) stated that in his report (Ex.P2), he had got written that the incident was witnessed by Rajesh (PW2), but, why this fact is not mentioned in Ex.P2 was not known to him. In paragraph 13, this witness further admitted that when he and Horilal reached at the spot, nobody was present there.
10. Rajesh (PW2) stated that at about 7 p.m., when he met with the deceased on the way, at that time, he sat on the bicycle of the

deceased and was returning home with him. On the way, due to call of the nature, he got down from the bicycle and went towards the river and at that time itself his father (the deceased), taking name of this witness, shouted '*bachao bachao*'. Running, this witness went to the spot and saw that Appellant Brijlal with a lathi and Appellant Jivrakhan with a tangiya like weapon were assaulting the deceased. Running, he reached to the deceased. At that time, taking names of the Appellants, the deceased got unconscious. Rajesh (PW2) further deposed that at that time, he went towards the village for calling a doctor. On not getting a doctor, he went home. At home also, he did not find anybody present. Then he again went to the spot with a torch. Vinod Kumar (PW1) and other villagers were present there. There, he told them about the incident. But, in his case diary statement (Ex.D1), this witness stated that from the spot, running, he went home and there he told about the incident to his brother Vinod Kumar (PW1) and mother. Thereafter, he went out for calling a doctor and Vinod Kumar (PW1) and Horilal went to the spot. In paragraph 5 of his cross-examination, Rajesh (PW2) admitted the fact that first of all Horilal witnessed the incident and came to their house and informed about the incident and thereafter this witness went out for calling a doctor and Vinod Kumar (PW1) and Horilal went to the spot. Since that was a dark night, when he again went to the spot, at that time, he had kept a torch with him.

11. Bashir Khan (PW4) is the witness before whom disclosure statements (Ex.P6 and P7) in respect of Appellants Jivrakhan and

Brijlal, respectively were recorded and one lathi was seized from Appellant Brijlal vide seizure memo (Ex.P8) and one iron irta was seized from Appellant Jivrakhan vide seizure memo (Ex.P9). Blood stained clothes of Appellants Jivrakhan and Brijlal were also seized vide seizure memo (Ex.P10 and P11), respectively. Bashir Khan (PW4) admitted the fact that the villagers usually keep lathi and irta at their houses for agricultural purposes. He further admitted that while commanding bullocks danda and irta get stained with blood of bullocks.

12. Dr. M.P. Tiwari (PW5) is the witness who conducted post mortem examination over the dead body of the deceased and gave his report (Ex.P12). This witness also examined the seized articles and opined in his report that the seized articles examined by him were stained with blood. This witness also suggested for chemical examination to find out whether the blood stains found over the seized articles were of human or not. However, no serological report in this regard is produced by the prosecution.
13. R.C. Lahri (PW8) Assistant Sub-Inspector is the witness who recorded the First Information Report (Ex.P19) on the basis of Dehati FIR (Ex.P2). K.P. Banjare (PW7), Sub-Inspector is the witness who investigated the offence in question.
14. On a minute examination of the evidence adduced by the prosecution, it is clear that the statement of Rajesh (PW2) is doubtful. He really witnessed the incident is doubtful because immediately after the incident, at 9:40 p.m., Dehati morgue

intimation (Ex.P1) and at 10 p.m. Dehati FIR (Ex.P2) were lodged by Vinod Kumar (PW1). According to the Court statement of Vinod Kumar (PW1), when he along with Horilal reached at the spot, at that time, Rajesh (PW2) told them that he had witnessed the incident. Had it been so, Vinod Kumar (PW1) would have got this fact mentioned in Dehati morgue intimation (Ex.P1) and Dehati FIR (Ex.P2). Instead, he expressed his doubt and in Dehati FIR (Ex.P2) he got mentioned that the deceased would have been killed by the Appellants. Furthermore, inquest proceeding (Ex.P4) was conducted next day, i.e., on 1.1.2000 in which Vinod Kumar (PW1) is a witness. Ex.P4 also does not contain the fact that the assailants of the deceased were the Appellants. In his Court statement, in paragraph 5, Rajesh (PW2) categorically admitted the fact that first of all the incident was witnessed by Horilal and he came to their house and informed about the incident and thereafter this witness went out for calling a doctor and Vinod Kumar (PW1) and Horilal went to the spot. Thereafter, this witness went to the spot with a torch. From the above admission made by Rajesh (PW2), it is also clear that he himself did not first witness the incident and he reached at the spot later on with a torch after giving intimation of the incident by Horilal. Horilal has not been examined by the prosecution for the reasons best known to it. Looking to the above contradictions and omissions in the statements of Vinod Kumar (PW1) and Rajesh (PW2), it appears that the incident was not witnessed by Rajesh (PW2) and his statement appears to be an after thought.

15. The material witness Horilal has not been examined by the prosecution. No other eyewitness is available on record. There is also no evidence on record to show that the Appellants were seen near the spot at the time of incident or immediately prior to the incident or immediately after the incident. With regard to the motive also, independent witness Gautar (PW3) categorically stated that on the fateful day at about 4 p.m., the dispute had taken place between the lady members of the two families. Therefore, the Appellants would have threatened the deceased of his life is also suspicious. Since there is no serological report on record to show that the blood stains found over the seized articles were of human blood, the prosecution does not get support from the seizure of those articles also. Looking to the entire evidence of the prosecution, in my considered view, the offence alleged against the Appellants is not proved beyond reasonable doubt. The finding of the Trial Court is not in accordance with the evidence available on record as also not in accordance with law. Therefore, the conviction of the Appellants is not sustainable. They are entitled to get benefit of doubt.
16. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charge framed against them.

Sd/-
(Arvind Singh Chandel)
JUDGE