

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.139 of 2012

{Arising out of judgment dated 6-1-2012 in Sessions Trial No.35/2011 of the learned Sessions Judge, Jashpur}

1. Anand Singh alias Mukesh, S/o Gulab Singh, aged 25 years, Agriculturist by profession.
2. Gulab Singh, S/o Shivraj Singh, aged 50 years, Agriculturist by profession.
3. Rupesh Singh, S/o Gulab Singh, aged 20 years

All are R/o Village Gowaru, Police Station Asta, Tahsil Jashpur, District Jashpur (C.G.)

---- Appellants

Versus

State of Chhattisgarh, through Police Station Asta, District Jashpur (C.G.)

---- Respondent

For Appellants: Mr. R.V. Rajwade, Advocate.
For Respondent / State: Mr. Aditya Sharma, Panel Lawyer.

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Arvind Singh Chandel, JJ.

Judgment On Board
(08/11/2021)

Sanjay K. Agrawal, J.

1. This criminal appeal preferred under Section 374(2) of the CrPC is directed against the judgment of conviction recorded and sentence awarded by the learned Sessions Judge by which the appellants have been convicted for offence under Sections 302 read with Section 34 & 450 of the IPC and sentenced to undergo imprisonment for life and pay a fine of ₹ 1,000/- each, in default, to further undergo RI for three months and to undergo RI for three years and pay a fine of ₹ 1,000/-

each, in default, to further undergo RI for three months, respectively.

The sentences were directed to be run concurrently.

2. Case of the prosecution, in brief, is that on 30-12-2010 at about 4.30 p.m., the three appellants herein entered into the house of deceased Bahadur Singh forcefully and started abusing him and threatened to kill him and at that time, Anand Singh (A-1) assaulted Bahadur Singh by hands and fists on his face and neck, and the other accused / appellants were present there and were standing on the spot. On account of injuries so caused, Bahadur Singh became unconscious and started bleeding from nose and immediately, he was admitted to Holy Cross Hospital, Kunkuri, but he was referred to higher medical centre whereby he was escorted to hospital at Ranchi, but on the way to hospital at Ranchi, he succumbed to the injuries sustained by him and died. On 1-1-2011, Vivekanand Singh (PW-4) informed the police and morgue intimation vide Ex.P-6 was recorded and thereafter, FIR Ex.P-5 was registered and copy of the FIR was sent to the jurisdictional Magistrate vide Ex.P-3. The investigating officer reached to the spot and prepared inquest Ex.P-8. On being produced by Vivekanand Singh (PW-4), shawl and baniyan with bloodstains were recovered from the spot vide Ex.P-9 and spot map Ex.P-10 was prepared. Dead body of the deceased was sent for postmortem vide Ex.P-12A which was conducted by Dr. Purushottam Singh (PW-9) and cause of death was reported to be subarachnoid haemorrhage due to trauma of nose.
3. After completion of investigation, the appellants were charge-sheeted by the respondent herein and on the case being committed, charges were framed against the appellants herein for offence under Sections

302 read with Section 34 & 450 of the IPC. The appellants abjured the guilt and entered into witness / defence.

4. In order to prove the case, nine witnesses were examined by the prosecution and they have proved documents Exs.P-1 to P-13 to bring home the offence. No witness was examined on behalf of the defence and they have not brought any document on record.
5. The trial Court after appreciating oral and documentary evidence on record, held that death of Bahadur Singh was homicidal in nature and it has been caused by the appellants herein after making house-trespass and proceeded to convict them for the offence under Sections 302 read with Section 34 & 450 of the IPC and sentenced for punishment as mentioned in the opening paragraph of this judgment against which this appeal has been preferred and conviction has been sought to be questioned by the appellants herein.
6. Mr. R.V. Rajwade, learned counsel appearing for the appellants, would submit that conviction recorded by the learned Sessions Judge is based solely on the testimony of Vivekanand Singh (PW-4) – brother of the deceased, Prabhavati (PW-5) – wife of Vivekanand Singh (PW-4) and Vipti Bai (PW-6) – wife of the deceased, but they have not supported the case of the prosecution and they have turned hostile and declared hostile by the prosecution. The entire conviction is based on surmises and conjectures as the learned Sessions Judge has drawn inference which is based on no evidence. As such, there is no legal evidence on record to convict the appellants for offence under Sections 302 read with Section 34 & 450 of the IPC and therefore the judgment of conviction so recorded and sentences so awarded are liable to be set aside and the appellants deserve to be acquitted from

the aforesaid charges.

7. Mr. Aditya Sharma, learned State counsel, would submit that death of Bahadur Singh is duly established to be homicidal in nature and conviction is based on the testimony of eye-witnesses Vivekanand Singh (PW-4), Prabhavati (PW-5) and Vipti Bai (PW-6) as such, the appeal deserves to be dismissed, as the prosecution has proved the offence against the appellants herein beyond reasonable doubt.
8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record of the trial Court with utmost circumspection.
9. The first question for consideration would be, whether the death of Bahadur Singh was homicidal in nature which the trial Court has held that death was homicidal in nature.
10. Postmortem of the dead body was conducted by Dr. Purushottam Singh (PW-9). In his report Ex.P-12A, he has categorically stated that cause of death is subarachnoid haemorrhage due to trauma of nose and accordingly the death was held to be homicidal in nature. He has been examined as PW-9 in which also he has stated that cause of death of the deceased was subarachnoid haemorrhage due to trauma (nose) and thereby he has maintained his version. Even otherwise, the fact of homicidal death of the deceased has not been seriously disputed by learned counsel for the appellants, therefore, the finding of the learned Sessions Judge that death of deceased Bahadur Singh was homicidal in nature, is hereby affirmed.
11. Now, the next question would be, whether the death of Bahadur Singh was caused by the present appellants herein as it has been held so by

- the Sessions Judge resting the conviction on the basis of testimonies of Vivekanand Singh (PW-4), Prabhavati (PW-5) and Vipti Bai (PW-6).
12. It is the case of the prosecution that on 30-12-2010 at around 4.30 p.m., Bahadur Singh was sitting in his house with his cousin Baldev Singh and he was talking with his cousin Baldev Singh & sister-in-law Vipti Bai (PW-6), then, at that time, the appellants herein forcefully entered into the house and abused Vivekanand Singh (PW-4), Prabhavati (PW-5) & Vipti Bai (PW-6) and threatened to kill them. Anand Singh (A-1) caused hand and fist blow to Bahadur Singh on his face & neck and the other accused remained silent standing there. Bahadur Singh became unconscious and fell down on the ground and while taking to higher medical centre, he succumbed to the injuries and died on the way.
13. Vivekanand Singh is brother of deceased Bahadur Singh. He has been examined as PW-4 before the trial Court. In his examination-in-chief, he omitted to support the prosecution case and therefore he was declared hostile by the prosecution and permission was sought by the prosecution to put leading questions and cross-examine him which was allowed by the trial Court and thereafter also he has stated that he has informed about the names of the appellants herein to the police and admitted his signature in Ex.P-10 and has still not supported the case of the prosecution. In paragraph 12, he has stated that his brother Bahadur Singh was having weak eyesight and unable to watch the things at night and refuted the entire prosecution case.
14. Prabhavati (PW-5) is wife of Vivekanand Singh (PW-4), meaning thereby, she is deceased Bahadur Singh's brother's wife. She is also

an eye-witness to the incident according to the prosecution and the prosecution has cited her as eye-witness, but she has not supported the case of the prosecution and accordingly, she was also declared hostile and the prosecution was permitted to ask leading questions. She has only admitted the fact that all the three named appellants herein entered their house and also admitted the fact that the deceased, her husband Vivekanand Singh (PW-4), she herself and Vipti Bai (PW-6) – wife of the deceased, were present in the house at that time, but further omitted to state that any injury was caused by Anand Singh (A-1) to deceased Bahadur Singh. She has further stated that Bahadur Singh fell down on the ground and she has also stated in paragraph 5 that Bahadur Singh was having weak eyesight.

15. Similarly, Vipti Bai (PW-6) – wife of the deceased, was said to be present on the spot according to the prosecution and accordingly, she was cited as prosecution eye-witness, but she has partly supported the case of the prosecution and while replying to the leading question put to her in paragraph 5 of her evidence that Anand Singh (A-1) had assaulted her husband Bahadur Singh by which he became unconscious and fell into the ground, she has categorically stated in paragraph 6 that she did not see the causing of assault to her husband by any of the accused / appellants. As such, she has refuted her statement made in paragraph 3 while replying to the leading question in paragraph 6 by stating that she has not seen causing assault by any one of the accused to her husband Bahadur Singh. In paragraph 5, she has also admitted that Bahadur Singh had fell into the courtyard.

16. As such, a careful perusal of the evidence of the aforesaid three

witnesses namely Vivekanand Singh (PW-4), Prabhavati (PW-5) & Vipti Bai (PW-6), who are near relatives of the deceased being brother, brother's wife and wife of the deceased, respectively, would show that they have not supported the case of the prosecution, rather they have stated that the deceased fell into the courtyard of his house and suffered injuries. Vipti Bai (PW-6), though initially in paragraph 3 of her evidence has supported the case of the prosecution, but on being declared hostile, in cross-examination, she has refuted that she has not seen causing injury to her husband Bahadur Singh by Anand Singh (A-1) or by any of the accused / appellants. As such, it cannot be held that the appellants had caused injury to the deceased on neck & face by which he sustained injuries and became unconscious and subsequently died. Apart from this, Prabhavati (PW-5) & Vipti Bai (PW-6) have also stated that while coming out from house to the courtyard, Bahadur Singh fell on the ground and suffered injuries. Dr. Purushottam Singh (PW-9), in his cross-examination, paragraph 8 has also said that the injuries suffered by the deceased may occur on account of falling on ground. As such, the prosecution has failed to establish that the appellants have assaulted the deceased by which he suffered injuries and thereafter succumbed to death.

17. Prabhavati (PW-5) has also stated in her cross-examination that the appellants and Bahadur Singh had previous acquaintance with each other and the accused / appellants used to come to the house of the deceased. Similarly, Vipti Bai (PW-6) in paragraph 5 has also stated that the appellants used to come to the house of the deceased without any interruption. As such, the family of the deceased / deceased and the appellants herein were in good terms having close acquaintance.

18. As such, the prosecution has failed to establish that the appellants have caused house-trespass and thereafter, assaulted deceased Bahadur Singh on his neck & face by which he suffered serious injuries and succumbed to death. The learned Sessions Judge has misread the statements of the three eye-witnesses for resting the conviction which we are unable to concur with and accordingly, the judgment of conviction recorded and sentences awarded to the appellants for offences under Sections 302 read with Section 34 & 450 of the IPC are hereby set aside. The appeal is allowed and the appellants are reported to be on bail, they need not surrender. However, the bail bonds will remain in force for a period of six months in view of Section 437-A of the CrPC.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Singh Chandel)
Judge