

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 904 of 2012**

1. Sonai Bai W/o Maya Ram Sahu Aged About 60 Years R/o Village Parra Pathara, Ps Bilaigarh, Distt. Raipur Now Distt. Baloda Bazar/bhatapara, Chhattisgarh
2. Punimati W/o Gajadhar Sahu Aged About 35 Years R/o Village Parra Pathara, Ps Bilaigarh, Distt. Raipur Now Distt. Baloda Bazar/bhatapara, Chhattisgarh
3. Puni Bai W/o Dayalu Sahu Aged About 30 Years R/o Village Parra Pathara, Ps Bilaigarh, Distt. Raipur Now Distt. Baloda Bazar/bhatapara, Chhattisgarh
4. Shyam Bai W/o Dayanidhi Sahu Aged About 33 Years R/o Village Parra Pathara, Ps Bilaigarh, Distt. Raipur Now Distt. Baloda Bazar/bhatapara, Chhattisgarh

---- Appellants**Versus**

- State Of Chhattisgarh Through The Police Station House Officer, Bilaigarh Distt. - Raipur Now Baloda Bazar/bhatapara/ Collector Baloda Bazar/bhatapara, Chhattisgarh

---- Respondent**CRA No. 931 of 2012**

1. Dayalu S/o Maya Ram Sahu Aged About 32 Years R/o Village Parra Pathara, Ps Bilaigarh, Distt. Raipur Now Distt. Baloda Bazar/bhatapara, Chhattisgarh
2. Dayanidhi S/o Maya Ram Sahu Aged About 28 Years R/o Village Parra Pathara, Ps Bilaigarh, Distt. Raipur Now Distt. Baloda Bazar/bhatapara, Chhattisgarh
3. Gajadhar S/o Maya Ram Sahu Aged About 42 Years R/o Village Parra Pathara, Ps Bilaigarh, Distt. Raipur Now Distt. Baloda Bazar/bhatapara, Chhattisgarh

---- Appellants**Versus**

- State Of C.G. Through The Police Sho Bilaigarh Distt. - Raipur Now Baloda Bazar/bhatapara Collector Baloda Bazar/bhatapara, Chhattisgarh

---- Respondent

For Appellant	:	Ms. Supriya Upasane, Advocate.
For State	:	Mr. Aman Kesharwani, Panel Lawyer.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment On Board**

Per Manindra Mohan Shrivastava, J.

17/02/2021

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 01.09.2012 passed by Second Additional Sessions Judge, Balodabazar in Sessions Trial No.14 of 2012, by which, the appellants have been held guilty of commission of offence and sentenced as described below:-

Conviction	Sentence
Under Section 302/149 of IPC	Imprisonment (R.I.) for life and fine of Rs.1,000/-, and in default of payment of fine amount, further imprisonment for 6 months.
Under Section 148 of IPC	Imprisonment (R.I.) for 2 years and fine of Rs.200/-, and in default of payment of fine amount, further imprisonment for 6 months.

2. The prosecution story, as it reveals from the impugned judgment and records of the case, is that an incident of assault happened in which victim-Gorelal was found dead near pond in a naked condition and his hands were tied. The matter was reported to the police station by lodging FIR by Paras Bai (PW-4) wherein she alleged that her son- Gorelal was assaulted by the appellants and due to such assault, her son died. After recording FIR, dead body was sent for postmortem and postmortem was done by Dr. Chain Singh (PW-7). In the postmortem report Ex.P-24, it was stated that deceased has sustained various injuries more on his face and cause of death was coma as a result of head injury and was stated to be homicidal. The appellants were taken into custody and charge sheet was filed. Charges were framed against the appellants on the allegation of having committed murder of Gorelal in furtherance of common object. The appellant were found guilty. The prosecution in order to prove its case, examined as many as 10 witnesses and also number of documents. The accused persons were thereafter examined under Section 313 Cr.P.C. to come out with their version on the incriminating circumstances and evidence appearing against them in the evidence led by the prosecution. Each of the appellants-accused denied having committed

offence.

3. Learned trial Court, however, relying mainly upon the evidence of eyewitnesses account of Paras Bai (PW-4) the FIR informant and mother of the deceased, held the appellants guilty of commission of offence and convicted them as above.
4. Assailing legality and validity of impugned judgment of conviction and order of sentence, learned counsel for the appellants would argue that the conviction of the appellants for the alleged commission of offence is founded upon the evidence of an interested and related witness i.e. the mother of the deceased, whereas no independent witness has supported the case of the prosecution. As far as independent witness Lakhanlal (PW-9) is concerned, he has not supported the prosecution case of appellants giving any assault on the deceased. It is also submitted that place where the incident happened, was a main road and the prosecution has failed to establish its case on the basis of independent witness Lakhanlal (PW-9) only and no other independent witness was examined to prove the case of the prosecution. The next contention of learned counsel for the appellants is that there are material contradictions in the evidence of Paras Bai (PW-4) and coupled with her conduct rendered the case of the prosecution highly doubtful because if at all she had seen the incident, when her son was being assaulted by so many persons, it would have only been natural conduct to cry for help and attempt to save her son but even according to evidence of this so-called eyewitness, she had come back home. The sole evidence of Paras Bai is not safe to act upon because the other independent witnesses of the prosecution case namely- Indu who had actually informed Paras Bai (PW-4) has not been examined and the prosecution has failed to examine why Indu Bai was not examined. Learned counsel for the appellants would further argue that even Paras Bai has not clearly stated regarding the manner in which incident happened and a very cryptic statement has been made without clearly stating as to which part of the body of the deceased was assaulted by which of the appellants. Therefore, in such circumstances, the accused could not be convicted in the absence of cogent evidence of furtherance of common object, with the aid of Section 149 of IPC. It is also argued that the place of incident is also not clear because at one place, it is stated that the incident happened in front of the house of Mayaram whereas evidence on record also shows that incident was near pond

and therefore, the entire case of the prosecution becomes highly doubtful and on such set of evidence, it would be highly unsafe to convict all the appellants. Next submission of learned counsel for the appellants is that the circumstances of the case show that along with male members of the family the female members are also alleged to have joined the assault and deceased was found naked with his hands tied which led to a plausible story that the deceased who is said to be habitual of teasing women in the area might have conducted in an objectionable manner and in that situation, he may have been assaulted by some people, unfortunately leading to his death. It is also submitted that the doctor in his evidence has admitted that the injury sustained by the deceased could possibly be also caused due to fall. In support of submissions, learned counsel for the appellants has placed reliance upon the decisions in the cases of **Baliraj Singh Vs. State of M.P., 2017 (5) Scale 319, Mohar Singh Verma and others Vs. State of C.G. decided on 23.11.2011 in Criminal Appeal No.485 of 2006, Rameshar Satnami Vs. State of C.G., 2013 (2) CGLJ 148 and Ramkeshra @ Rameshwar Yadav Vs. State of C.G, 2008 (3) CGLJ 86.**

5. On the other hand, learned State Counsel supporting judgment of conviction and order of sentence would submit that the incident of assault has been seen by the mother of the deceased who has categorically stated in her evidence that when she reached at the spot, she saw her son lying on the spot and accused were holding club in their hands and son was lying injured. This witness further stated that even after Gorelal fell on the ground, he was being continuously assaulted by the appellants which shows intention to cause death. Next submission is that the evidence of mother of the deceased could not be discarded only on the ground that she is related witness. It is a case of prompt FIR and as far as time, place and manner of assault as stated in the FIR, case diary statement and Court's statement are concerned, there is no material contradiction so as to altogether disbelieve testimony of witness. There is nothing on record to show as to why mother of the deceased would falsely implicate the appellants in the case, who assaulted and killed her son. The evidence of this witness is corroborated by Lakhnial (PW-9) who was present at the spot. The medical evidence also supports the ocular testimony. Learned State Counsel would argue that once the evidence of Paras Bai (PW-4) is reliable, it could not be discarded or disbelieved only on the ground of non-examination of informant Indu unless the evidence of Paras Bai (PW-4),

for some reason, found to be doubtful.

6. We have heard learned counsel for the parties and perused the impugned judgment and records of the case.
7. The First Information Report Ex.P-22 has been duly proved by the prosecution as Paras Bai (PW-4) the eyewitness and the police officer who recorded the FIR both had supported it. Paras Bai (PW-4) has stated in her evidence that she had informed the incident to Kotwar and Sarpanch and then they brought her to police station Bilaigarh and she lodged the report. When the witness had lodged the FIR (Ex.P-22) and has stated that she affixed her thumb impression. In the cross-examination also, this fact statement could not be impeached insofar as lodging of the report by Paras Bai (PW-4) in Ex.P-22 is concerned. P.S. Sen (PW-8) has also stated regarding lodging of FIR by mother of the deceased.
8. In the FIR lodged by Paras Bai (PW-4), it has been narrated that on 17.07.2010, in the morning, her son had gone towards pond to take bath and grand-daughter Indu was playing in front of the house at about 9:00 a.m., Indu came and disclosed that her father was being assaulted by "Teli" people. Thereafter, she came out of the house and found that in front of the house of Mayaram Sahu, wife of Mayaram Sahu- Sonai Bai, Punimati, Puni Bai, Shyam Bai, Gajadhar, Dayalu and Dayanidhi all were assaulting her son with the help of club and stone and his hands were tied and when she resisted, Gajadhar threatened this witness, due to which, she came back at home. After some time, again when she came out, she saw her son dead and the assailants had gone their home. Thereafter, the matter was reported to the Kotwar and Sarpanch and then report lodged in the police station. The incident is said to have happened at about 9:00 am in the morning and FIR was lodged in the police station at 12:40 pm. The FIR was lodged within 4 hours of the incident by Paras Bai (PW-4) and it gives brief details of the incident, particularly stating the name of all the appellants involved in alleged act of assault.
9. Paras Bai (PW-4) and Lakhanlal (PW-9) have claimed to be the eyewitness of the incident, though at different stages of the alleged incident of assault. Lakhanlal (PW-9) has deposed that at about 10-11 a.m. in the morning, a quarrel had taken place between appellants and Gorelal near pond

and he had seen the incident of quarrel as he was present at that time and thereafter he left. According to him, in his presence, the appellants and Gorelal had indulged in verbal altercation. This witness was declared hostile as he has not supported the remaining story of the prosecution and in his cross-examination, he has admitted that when quarrel was going on, he ran away from the spot out of fear. A suggestion has been given to him which has been admitted that at the spot, appellants and Gorelal had indulged in abusing each other and apprehending that this may lead to further aggravating of dispute, he ran away from the spot. He admits that he had not seen the appellants catching hold of the deceased and he has not stated to the police that hands of Gorelal were tied and he was being assaulted and he does not know how his statement was recorded in case diary statement. Certainly, the prosecution witness does not support the story of he having seen the appellants tying the hands of the deceased and assaulting.

10. Paras Bai (PW-4) mother of the deceased has deposed that on the date of incident, when she was cooking food at home, Gorelal had gone towards pond, Indu, daughter of Gorelal, came in and disclosed that appellants- Sonai Bai, Punimati, Puni Bai, Shyam Bai, Gajadhar, Dayalu and Dayanidhi have assaulted Gorelal. Having listened to this, she went towards the pond and there she was also assaulted by the appellants. When she reached near the pond, she saw that appellants were assaulting Gorelal and when she objected as to why Gorelal was being assaulted, she was threatened that she would also be assaulted and blow was also given on her head, but, Dayalu had stopped it and then she came to Sarpanch, Kotwar and then went to police station and report lodged. She has been subjected to detailed cross-examination and distance of about 200-300 meter between her residence and the place of incident has been elicited from her cross-examination and that in between her residence and the place of incident, there are 4 houses. An improvement in her statement after having been pointed out with case diary statement has been elicited that the statement that she ran towards the pond and also blow on her head was not stated by her in her case diary statement. Therefore, to that extent, there is an improvement in her Court statement regarding an assault being given on her head. She has admitted that the place of incident is not visible from her residence but can be seen if one reaches near the pond. A suggestion that she knows only those things which were told by Indu has been denied. A suggestion that she had only come out of the

house but did not reach the place of incident is denied. A suggestion that she had not seen the incident was also denied. She stated that her son was tied up. Further it has also come in her evidence in admission on certain suggestions that Gorelal sustained injury and she cannot say which accused assaulted with lathi and which accused assaulted with stone. She also admitted that when she reached the place of incident, the appellants were standing and Gorelal seen having sustained injury. She then states of her own that Gorelal was bleeding but denied suggestion that there were 10-5 villagers standing. She stated that no other villager was present. She has admitted suggestion that when she reached the spot, she did not see the appellants holding the stones but denied suggestion that they were not holding club. A suggestion that when she reached the spot she did not see the appellants assaulting Gorelal has been denied and has stated of her own that when she reached, at that time also, appellants were assaulting Gorelal and that assault continued even after his death. A suggestion that when she reached there, Ramgural was not present has been admitted and suggestion that villager-Lakhan was not present has been denied and she stated that Lakhan was present at the spot and he had also asked the appellants not to assault. The evidence of this witness, if seen in totality, suffers from one improvement on the aspect as far as assault is alleged to be given on her is concerned. Moreover, there is contradiction in the statement of this witness and that of Lakhanlal (PW-9) insofar as the period during which Lakhanlal remained present is concerned. According to Lakhanlal (PW-9), in his cross-examination, during quarrel, he left the spot out of fear, whereas according to Paras Bai (PW4), Lakhanlal was also present at that spot. According to Paras Bai (PW4), Gorelal was found lying on the ground and appellants were assaulting. That means this witness reached the spot at a stage later than the stage Lakhanlal was present at the spot.

11. However, the aforesaid contradiction and omission do not impeach the credibility of the eyewitness with regard to what she had seen at the spot. An argument has been raised that this witness being the mother of the deceased, the relative, should not be relied upon in the absence of any corroboration to support her evidence.

At the first place, the law does not require that the evidence of every relative should necessarily be corroborated. The rule of caution is that where

only evidence is that of the relative or interested witness, the evidence is to be scrutinized with due care and caution. If, upon examination and scrutiny of the evidence, the same is found to be reliable it cannot be discarded or disbelieved because it does not find corroboration. Whether or not the evidence required corroboration would depend upon facts and circumstances of every case. In the present case, the evidence of the witness Paras Bai (PW-4) is coherent with regard to incident and what she had seen. Moreover, a corroboration to her statement is found in the statement of independent witness Lakhanlal (PW-9) inasmuch as Lakhanlal confirms beginning of the quarrel between deceased and the appellants. He has remained firm in his evidence that quarrel had begun between the appellants and deceased. What has been seen by the Paras Bai (PW-4) is a later stage of the incident of assault. Therefore, the statement of Lakhanlal (PW-9) corroborates the evidence of Paras Bai (PW-4) that her son and the appellants were found near pond and some kind of quarrel was going on and clearly stating that the son had fallen down on the ground and there were assaults with the help of club by the appellants.

12. Learned counsel for the appellant has vehemently argued that in the present case, apart from evidence of Lakhanlal who only talks about altercation between the parties evidence of Paras Bai (PW-4) does not clearly specify as to what role was played by each of the appellant and which part of the body was assaulted by them in the assault. In the considered opinion of this Court, the evidence that all the appellants were assaulting the deceased is sufficient to show that all the appellants are equally involved in the assault. All the appellants are stated holding club. The presence of the appellants at the spot and quarrel with the deceased- Gorelal is proved from the reliable testimony of Lakhanlal (PW-9) then later on assaulted by the appellants is proved from the evidence of Paras Bai (PW-4). This proves that all the appellants had come together where the deceased was present. They all were armed with lathi and club and all assaulted the deceased. The evidence of Dr. Chain Singh Paikra (PW-7) proves multiple injuries on different parts of body including fatal injury on the head and other injuries which led to death of deceased. Thus, the nature of injuries present on the body of the deceased supports and corroborates the evidence of Paras Bai (PW-4) that accused were assaulting the deceased which resulted in several injuries.

13. The argument with regard to contradictions with regard to place of incident must fail in view of undisputed map of the spot as Ex.P-2 which shows that the place where the dead body of Gorelal was found is at the spot situated on one side of the road which leads towards pond and just opposite to it on the other side of the road the house of Mayaram Sahu is situated. Therefore, the statement that the incident happened in front of the house Mayaram and another statement that incident happened near pond, really do not amount to a contradiction insofar as place of incident is concerned. We also noticed the conduct of the eyewitnesses that soon after the incident, she informed two prosecution witnesses Kamalkant Patel (PW-2) and Narendra Kumar (PW-3) stating that her son was assaulted by these appellants. Both the witnesses have stated regarding this fact that she told to them. This also rules out possibility of any false implication because the statement is made soon after the incident.

Ramgural (PW-1) and Ramaiya (PW-6) have also stated regarding they having seen the dead body of Gorelal with his hands tied. This is what has been stated by Paras Bai (PW-4) that hands of her son were tied.

Prosecution has come out with case of the seizure from all the accused and injury reported by the doctor support the case of the prosecution that death could be caused by such weapon.

14. As an alternative submission, learned counsel for the appellants vigorously contends before this Court that this appears to be a case of sudden and grave provocation on account of deceased having committed an act of objectionable nature with the lady member of family, leading to certain assaults. We carefully went through records of the case, particularly evidence of the witness but we find it difficult to accept the submission as no such story emerges from the records of the case. The accused, in Section 313 Cr.P.C. statement, have not made any allegation nor any defence witness has been examined, that assault on the deceased was on any sudden grave provocation. It is not even a case of exceeding right of private defence. Our attention was drawn to a suggestion though denied by Paras Bai (PW-4) that Gorelal the deceased, was of unsound mind and used to behave in an unnatural manner, roaming around in the village in naked condition and also used to remove clothes in front of women which was complained to his

mother. Paras Bai (PW-4) has denied above suggestion. She has also denied that a village meeting was held and report lodged in this regard. She also denied a suggestion that on the date of incident also, the deceased had removed his cloth wandering around in the village in naked condition.

15. Similar suggestion has also been given to Ramaiya (PW-6) who is the brother of the deceased but all such suggestions have been denied. This witness has stated in the para-5 of his evidence that a village meeting was held that the deceased used to tease appellants by caste name "Teli". A suggestion has been given that for this reason they used to quarrel with the accused has been denied. A suggestion that as his brother Gorelal was roaming around in the village in the naked condition and aggrieved by this villager committed *marpit* in which his brother sustained injury and therefore the appellants have been falsely implicated is denied. Lakhanlal (PW-9) has admitted in para 6 of his evidence that Gorelal was mentally retarded and used to quarrel in the village. He has denied suggestion that Gorelal used to remove clothes in front of women but he says that he heard about it.

16. There cannot be a plausible defence merely because certain suggestions were given but denied. In order to make out a plausible case of defence, the circumstance of the case must be self speaking. One of the important fact which may be said to be possible is that deceased, at that time of sustaining assault, was naked. This has been very clearly stated by prosecution witnesses and prosecution story also, therefore, one of the possibility of deceased being mentally retarded or of unsound mind and roaming around in the village in naked condition is possible. However, that by itself, would not make out any case for the appellants to contend that assault was as a result of any grave provocation or an act of indecent nature on any of the women of appellant's family. On the other hand, the evidence has come that the appellants were angry when deceased used to tease by saying "Teli". We are unable to hold that these are so grave a provocation so as to make out case of exception. If the deceased was mentally unsound and used to roam around, he only required proper care and treatment and not an assault of the nature and gravity which have been proved from the medical evidence on the record of the case where he was found to have been given multiple assault on the face with fracture injury on the head, resulting in his death.

17. In the case of **Rameshar Satnami (supra)**, the lathi was not found blood stained. However, that was not a case where only on that ground, case of the prosecution held unreliable. The other case of **Ramkeshra @ Rameshwar Yadav (supra)** is also distinguishable because in that case, benefit of doubt was given as material witness was not examined and other not found reliable. Whether or not in a given case, reasonable doubt requires acquittal to be ordered would depend upon facts and circumstances of each case and it cannot be put in straight-jacket formula and for that reason, reliance placed on **Baliraj Singh (supra)** is misconceived in law. The judgment in the case of **Mohar Singh Verma (supra)** proceeds on the principle that in order to convict accused with the aid of Section 149 of IPC, the prosecution is required to prove that the accused persons have formed unlawful assembly and object of unlawful assembly was to commit murder and every member of the assembly must have knowledge of common object. In the present case, it is not a circumstance that the accused persons and the deceased came together at the spot all of a sudden. It is a case where prosecution witness Lakhanlal (PW-9) has stated that quarrel had already begun with the appellants and the deceased. Deceased was not holding any weapon. All the appellants had come to place away from their house and all of them were found holding club in their hands and most of the assault was selectively given on the face and head which also shows as to what the appellants intended to do with the deceased. His hands were tied so that he could not resist. There is no doubt that the common object of the unlawful assembly of the appellants was only to cause murder of the deceased. Therefore, said decision is also distinguishable.

18. In the result, we do not find any good ground to interfere with the impugned judgment of conviction and order of sentence. Appeal therefore fails and hereby dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge