

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.351 of 2015**

1. Bogo Dula S/o Bogo Raja Aged About 28 Years R/o Village Darbhaguda, Thana Arrabor, Tah. Bes Camp Arrabor, Distt. Sukma, C.G., Chhattisgarh
2. Soyam Nagesh S/o Mutta Aged About 25 Years R/o Village Darbhaguda, Thana Arrabor, Tah. Bes Camp Arrabor, Distt. Sukma, C.G., District : Sukuma, Chhattisgarh
3. Dare Kitta S/o Dare Joga Aged About 28 Years R/o Village Darbhaguda, Thana Arrabor, Tah. Bes Camp Arrabor, Distt. Sukma, C.G., District : Sukuma, Chhattisgarh
4. Soyam Mutta S/o Soyam Joga Aged About 27 Years R/o Village Darbhaguda, Thana Arrabor, Tah. Bes Camp Arrabor, Distt. Sukma, C.G., District : Sukuma, Chhattisgarh
5. Soyam Rama S/o Mukka Aged About 27 Years R/o Village- Kodhgam, P.S. Arrabor, Tah Bess Camp Arrabor, Distt.- Sukma, C.G., District : Sukuma, Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh S/o Through Station House Officer, Police Station Arrabor, Distt. Sukma, C.G., Chhattisgarh

---- Respondent**Present:-**

Smt. Seema Singh, Advocate

Shri Lalit Jangde, Deputy Government Advocate for the State.

**D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Smt. Justice Vimla Singh Kapoor**

Order on Board**Per Manindra Mohan Shrivastava, J.****09/06/2021**

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 21-01-2015 passed by the learned Additional Sessions Judge(FTC), Dakshin Bastar, Dantewada, Chhattisgarh in Sessions Trial No.99/2008, whereby and whereunder, the appellants, five in number, have

been held guilty for commission of offence under Section 147, 302/149 of IPC and sentenced, as described below-

Section-147 of IPC	R.I. for one year and fine of Rs.1,000/-, in default of payment of fine, additional R.I. for six months.
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Section-302/149 of IPC	Life Imprisonment and fine of Rs.1,000/-, in default of payment of fine, additional R.I. for six months.
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Both sentences were ordered to run concurrently.

2. The prosecution story, as unfolded from the impugned judgment of conviction and order of sentence and also from the records of the case is that the appellants came to the house of the deceased in the night, when he was sleeping. It is said that the deceased was assaulted, hands were tied with the help of rope and he was taken away and then, on the next day, his dead body was found in an open field. Merg intimation was given in the police station by Karam Chinge, PW-1, wife of the deceased, at about 10.35 AM in the morning on 18-02-2008, wherein, she informed that at about 9 PM in the night on 17-02-2008, when the deceased was sleeping in the house along with the family, the appellants, five in number, arrived at the house and asked him to do some solemn prayer (*Jhadphunk*) for Darre Kitta and while the deceased was engaged in the activity of prayer, the appellants-accused started assaulting her husband and when he tried to run away, he was caught hold of and tied with the rope and then taken away. Though search was carried out, but the deceased was not found and then, on the next day morning, his dead body was found in the agriculture field of another villager. The matter was informed to the Sarpanch and other persons and intimation is being given in the police station.

On the basis of the merg intimation, the police authorities of Police Station Errobore reached the place of occurrence and after giving notice to the

witnesses, prepared inquest over the dead body vide Ex.P-15 in presence of witnesses of inquest. Dead body was sent for postmortem and postmortem was conducted at 3 PM on 18-02-2008 by Dr. Sudhanshu Shekhar Panda, PW-12. Upon examination of external and internal injuries found on the body of the deceased, Dr. Sudhanshu Shekhar Panda, PW-12 opined that death was as a result of cardio-respiratory failure caused by trauma and excessive bleeding and nature of death was homicidal. According to doctor, duration of death was 14 to 16 hours before the postmortem, meaning thereby that death had taken place between 11 PM to 1 AM of the intervening night of 17-02-2008 & 18-02-2008. As the accused persons were named right from the beginning, when the merger intimation was lodged, after the dead body was seen in the morning, they all were taken into custody and it is the case of the prosecution that the memorandum statement of appellant-accused-Bogo Dulla, had been recorded in Ex.P-3, that of Somay Nagesh vide Ex.P-4, Soyam Rama vide Ex.P-5 and Soyam mutta vide Ex.P-6. No memorandum of Darre Kitta was recorded. Further case of the prosecution is that on the basis of memorandum of co-accused, seizure of various articles including towel, Gamchha (stole), plastic rope and club were made in presence of witnesses vide Ex.P-7 to P-10. The underwear of the deceased was said to be stained with blood which was also seized as Ex.P-11. FIR in Ex.P-13 was also recorded at the instance of PW-1 Smt. Karam Chinge, wife of the deceased. Diary statement of the witnesses were recorded, seized articles were sent to the Forensic Science Laboratory for examination and charge sheet was filed against the appellants. On the basis of the material contained in the charge sheet, the learned trial Court framed charges for commission of offences under Section 147 & 302 read with Section 149 of the IPC. The appellants having abjured guilt, they were put to trial.

3. In order to prove its case, the learned trial Court examined as many 12 witnesses and also produced forensic evidence and report of blood stains found

on the towel and stole as also recovery of wooden club. The appellants were examined under Section 313 of Cr.P.C. in respect of incriminating evidence and circumstances appearing against them in the evidence led by the prosecution. The appellants-accused have stated that they have been falsely implicated. In order to make out defence and defend themselves, the appellants examined one Podium Bojji, DW-1 as sole defence witness.

4. The learned trial Court, relying upon the evidence led by the prosecution, particularly the evidence of last seen and assault given on the deceased by the accused, he being dragged away and gone missing and thereafter, dead body having been found in the agriculture field, it being a case of homicidal death as also recovery of bloodstained towel and stole from the two accused, disbelieving the defence witness, held all the appellants guilty for commission of offence and sentenced them, as described above.

5. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that the prosecution has failed to prove its case beyond reasonable doubt. It is contended that the prosecution case is not based on any eye-witness account, but only on the circumstantial evidence of last seen and the evidence of assault, tying of hands and dragging away from home, but nobody has seen the appellants giving assault, particularly of such a nature, which would result in injuries on the body of the deceased. It is submitted that there were witnesses of memorandum and seizure, but, they have not supported the case of the prosecution regarding recovery of towel, stole, rope and club. According to these witnesses, these articles were kept in the police station and upon being asked by the police, they put their signature and therefore, memorandum and recovery based on the said memorandum become doubtful and unreliable. Next submission of learned counsel for the appellants is that the evidence of prosecution witnesses i.e. Karam Chinge, PW-1, Karam Hungi, PW-2, Panda

Dulla, PW-4, Kurmi Dewe, PW-5 and Kamlesh, PW-9 on the aspect of arrival of the accused, alleged overt act and what they were holding in their hands, are contradictory. According to Karam Chinge, PW-1, wife of the deceased, Karam Hungi, PW-2, other wife of the deceased, claimed to have seen the incident. Further submission is that though, it is stated by the prosecution witnesses that the deceased was assaulted and his hands were tied, the medical report does not prove any marks of tying of hands by rope. It is also highlighted that there is contradiction in the version in the prosecution witnesses with regard to whether the accused persons were carrying gun or club. Learned counsel for the appellants also argued that later on, Karam Chinge, PW-1, wife of the deceased, who was FIR informant and had also lodged merger intimation, was recalled for further examination and what she has stated, upon her further examination, renders the complete story of the prosecution doubtful that the accused persons arrived in the house and taken the deceased to the field, after assaulting and tying his hands. Learned counsel for the appellants also argued that the prosecution witnesses, Soyam Naraiyah, PW-7 and Soyam Nagesh, PW-8 as also son of the deceased, have clearly stated that the deceased was associated with "Salwa Judum Mission" and had earned serious displeasure and wrath of the naxalites and he was threatened of dire consequences of murder by the naxalites. It is lastly argued that the evidence of defence witness, Podium Bujji, DW-1 raises plausible defence, because this witness has stated that he met with the deceased at 11 PM in the night, when the deceased disclosed that he was returning after solemn prayer (*Jhadphunk*), that means, the deceased was returning home after the incident as alleged by the prosecution witnesses, but he could not reach home and his dead body was found in the near vicinity and therefore, it cannot be said that it is the appellants and appellants alone responsible for murdering the deceased, because they had taken the deceased away at about 9 PM from the house. One more

argument has been advanced by the learned counsel for the appellants that as number of prosecution witnesses have stated that the deceased was associated with "Salwa Judum Mission" and he was in the hit list of naxalites, the deceased might have been killed by the naxalites.

6. On the other hand, learned State counsel would argue that as soon as the dead body of the deceased was found on the next day, his wife, Karam Chinge, PW-1 lodged merg intimation and at the very first occasion, she clearly disclosed the name of the appellants as the persons, who had arrived in the house of the deceased for making solemn prayer for one of the accused and thereafter, all of them assaulted the victim, when he tried to run away, he was caught hold of and his hands were tied and then, he was dragged away. According to learned State counsel, this has been stated by all the prosecution witnesses and minor contradictions as pointed out by learned counsel for the appellants are not so material as to altogether disbelieve the evidence of prosecution witnesses of as many as five witnesses regarding arrival of the accused in the house of the deceased and taking him away after assaulting and tying his hands with the help of rope. Learned State counsel would further highlight that in the present case, merg intimation and FIR was lodged promptly by the wife of the deceased, who also deposed in the Court regarding involvement of the appellants. Karam Chinge, PW-1 was recalled for further examination after about six years of her examination, which clearly shows that an attempt was made to win her over and there were other evidence on record to support her version as stated by her during trial. Learned State counsel would also argue that though, witnesses of memorandum and seizure have not supported the prosecution case, but the Investigating Officer, who is also responsible police officer, stated regarding the investigation done by him including seizure of articles and memorandum statement of four accused (Except Darre Kitta) and recovery of towel, stole, rope and club. He would

submit that the towel and stole were found stained with blood, which the accused have failed to explain. This is also additional circumstance to point towards the guilt of the accused. It is also submitted that the proximity of time of death and the incident and appellants coming to the house of the deceased, assaulting and taking him away, rules out possibility of deceased having been killed by any other person. It was within two hours from the time when the deceased was kidnapped from the house that of he died as per the postmortem report, the evidence of defence witness is wholly unreliable as this witness has admitted that he is the friend of the accused and has admitted that he claimed to be only person with whom the deceased met at about 11 PM in the night, after he was kidnapped from his house, he would have definitely disclosed it to others but he never came out until he was examined as sole defence witness. In any case, it is contended that what this witness has stated, does not demolish the statement of all other prosecution witnesses, because he was one of those persons, who was present at the time when the accused persons arrived at the house of the deceased, assaulted and kidnapped. The story stated by this defence witness, is improbable and he is only a planted witness.

7. We have heard learned counsel for the parties, perused the records of the case and the impugned judgment passed by the learned trial Court.

8. Conviction of the appellants is based only on the circumstantial evidence, because there is no eye-witness to prove that the fatal assaults were given to the deceased, resulting in death. Therefore, it has to be seen whether the prosecution has succeeded in proving its case beyond reasonable doubt on the basis of the circumstantial evidence led by it before the Court and to what extent, the evidence of defence witness is reliable and as to how it affects the case of the prosecution.

9. As far as finding of the learned trial Court that death of the deceased is proved to be homicidal in nature, is well founded on the basis of uncontroverted

testimony of the Dr. Sudhanshu Shekhar Panda, PW-12, who conducted postmortem of the dead body of the deceased. Dr. Sudhanshu Shekhar Panda, PW-12 has stated that when the dead body was brought for postmortem, he had seen bloodstains on the mouth and blood was oozing from the nose and there was swelling in the right eyelash and as many as five injuries were found by him, which included fracture of neck bone as also the head. Amongst other injuries, fracture of right shoulder was also found. Internal injury disclosed serious injuries in the lungs as also atlas bone broken. Dr. Panda, PW-12 has stated that he is a close associate of the doctor, who conducted postmortem, but he could not be examined. The opinion, as contained in the postmortem report on the basis of the injuries is that the death was due to cardio-respiratory failure caused by trauma and excessive bleeding and being homicidal in nature which has remained uncontroverted in the cross-examination and nothing could be elicited in the cross-examination to impeach the credibility, correctness and veracity of postmortem report and nature and extent of internal and external injuries, on the basis of which, the doctor formed an opinion that the death was homicidal in nature.

10. Karam Chinge, PW-1, wife of the deceased, has deposed that the appellants had arrived in her house in the night when they were sleeping in the house and woke up her husband-Karam Joga and took him away and then murdered. She has deposed that the clothes of the deceased-husband were removed and there were marks of injuries on the neck and other parts of the dead body. She has deposed that the deadbody of the deceased-husband was found at a short distance from her house. She has deposed that when the accused persons assaulted her husband, at that time, her son was present in the house. She has further deposed that she enquired from the appellants as to why her husband was kidnapped, but the appellants did not say anything. Thereafter, she informed about the incident to the Sarpanch of the Village.

According to Karam Chinge, PW-1, it is not the simple case of the prosecution that the appellants accused arrived at the house of the deceased and the deceased was kidnapped and thereafter, he was taken away. According to Karam Chinge, PW-1, her husband was beaten up in the presence of her son. In the cross-examination, she admits that she had seen the accused persons taking her husband, but she has not seen them assaulting. However, she has stated of her own that the accused persons had tied the hands of the deceased-husband with the help of rope and taken away from his house.

11. During the course of arguments, learned counsel for the appellants referred to the evidence of this witness, which was recorded by the learned trial Court after about six years. We have gone through the statement, which was recorded on 27-05-2014, in which, certain suggestions were given to the wife of the deceased, which was admitted. Suggestions were that her husband had gone for solemn prayer (*Jhadphunk*), when her husband did not return, she went to the house of the Sarpanch Soyam Mukka to inform that her husband had stated that he will come back after solemn prayer. At that moment, the accused persons were not present in the house of the Sarpanch. Lastly, she has admitted that when her husband was called for making solemn prayer, her son and other wife were making preparation for sleeping. Highlighting this part of the evidence, which was recorded by the learned trial Court after recall of the witness on 27-05-2014, it has been argued that the evidence of this witness completely renders her entire evidence unreliable that the accused persons had come to the house of the deceased, he was assaulted and then dragged away.

12. In this regard, we find that the wife of the deceased, Karam Chinge, PW-1 as well as Investigating Officer, Karam Raja, PW-3 has proved that the merg intimation, which was lodged by the wife of the deceased on 18-02-2008 at 10.35 AM, as soon as the dead body was found, clearly records the summary of the incident leading to death. In the merg intimation, Ex.P-14, lodged at the

instance of Karam Chinge, PW-1, it has been clearly stated that the accused persons had come in the night of 17-02-2008 in the house of the deceased when he was sleeping and asked him to make solemn prayer for the accused-Darre Kitta and while the deceased was engaged in the activity, the appellants started assaulting and when the deceased was trying to run away, he was caught hold of and his hands were tied with the help of rope and thereafter, he was taken away. After that, the deceased was not seen in the house and on the next day, his deadbody was found behind the field of accused house. According to the evidence of the prosecution witnesses, the dead body was found at about 10.35 AM in the morning on 18-02-2008 and soon thereafter, the merger intimation was lodged by the wife of the deceased and the incident was disclosed involving the appellants-accused in the commission of offence. The inquest report, which was prepared by the Investigating Officer, in the presence of the witnesses on 18-02-2008, there also the same story involving the appellants has been written. In the FIR also, Karam Chinge, PW-1 has clearly stated that the appellants had come to their house. The same story was stated by her in the evidence before the Court also, when she was examined by the learned trial Court on 06-10-2008.

13. We find that later on, an application under Section 311 of Cr.P.C. was filed by the accused persons seeking recall of the prosecution witness-Karam Chinge and this application was allowed by the learned trial Court on 05-12-2013. The order in order sheets and the application for recall of the prosecution witness attached with the records of the learned trial Court show that the reason for recall of the witness was that the effective cross-examination could not be done with regard to making solemn prayer for one of the accused-Darre Kitta. The manner, in which, the suggestions have been given and admitted by Karam Chinge, PW-1 leaves no manner of doubt that during the course of trial, attempt was made to tamper with the prosecution witnesses, so

much so that the wife of the deceased had to come out with a new story, of her own, that her husband had gone for some work. However, this part of evidence, which was recorded during the course of trial, which story also disclosed from the mere intimation and FIR and Inquest Report is prepared soon after the incident, lays far more credence and evidentiary value and then what was sought to be extracted from this prosecution witness, upon recall.

In any case, what happened in the house of the deceased, has not been stated by Karam Chinge, PW-1 alone, but there were many other prosecution witnesses, who had stated regarding arrival of the appellants in the house of the deceased and he was taken away after assault and tying his hands.

14. Karam Hungi, PW-2, other wife of the deceased, has stated in her evidence that she is the first wife of Karam Joga and while Karam Joga was sleeping in the house with the second wife and son and she was sleeping in the other room, the accused persons arrived in the house and after tying of hands of Karam Joga, he was taken away. She has clearly stated that the accused persons were hurriedly dragging away Karam Joga and Karam Chinge, other wife, following these persons and murmuring something, which she could not hear and on the next day, at about 9 AM, deadbody of Karam Joga was found in the agriculture field and there were injuries on the head, throat and testicles. In the cross-examination, it has come that when the accused persons arrived in the house and attempting taking away Karam Joga from the house, she woke up. She has been given suggestion that she had seen the accused persons from behind. Suggestion was given, which was admitted is that the accused persons were dragging away Karam Joga from the side of the room of Karam Chinge, other wife. Other suggestion, which has been given and admitted that though, she had seen the accused persons taking Karam Joga away, but she has not seen them assaulting. She has clearly stated regarding the accused persons coming to her house in the night taking Karam Joga away hurriedly

after tying his hands.

15. Karam Raja, PW-3, son of the deceased, has also supported the evidence of his mother and brother that he was informed regarding arrival of the accused persons in the night and later on, his father was kidnapped and killed.

16. Panda Dulla, PW-4, is an independent witness and is not related to the deceased. He is one of the neighbours and has deposed that the accused persons had come to the house of the deceased in the night at 10 PM and they tied his hands with rope and took him away. He clearly deposed that he had seen the accused persons were taking Karam Joga away and on the next day, deadbody of Karam Joga was found. In para-4 of his cross-examination, he has further stated that when the accused persons were taking Karam Joga away, after tying his hands, he cried for help, but nobody has come forward and he had come out from his house to save Karam Joga. Suggestion regarding taking away of Karam Joga not seen by Panda Dulla, PW-4 and that he was not present in the house, has been denied. It is stated that at the time, when accused persons were taking away Karam Joga, they were holding guns in the hands. However, this witness says that he had not actually seen the accused persons assaulting the deceased. The evidence of this witness is natural and there is no reason as to why this witness should be disbelieved.

17. Kurmi Dewe, PW-5 is also one of the next door-neighbour of the deceased, who has stated that in the night, the accused persons were taking away Karam Joga away, after tying his hands with rope. However, she states that the accused persons were holding club in their hands. She has further stated that son of Karam Joga-Kamlesh was also running behind Karam Joga and he was also assaulted by the accused persons. She has denied suggestion that she does not know, who has assaulted the deceased. She has stated in her evidence that when she heard cries, she woke up and had seen some of the people running away. In totality of the evidence, this witness has clearly stated

that she had seen the appellants-accused persons, who had come to the house of the deceased, hands were tied and kidnapped.

18. Pakla Raut, PW-6, has stated that in the early morning, Karam Chinge came to his house and informed that the accused persons had kidnapped her husband-Karam Joga and Karam Joga is not traceable and gone missing. In the cross-examination also, this witness re-affirms that after dragging dead body of Karam Joga, Karam Chinge informed that the accused persons had kidnapped Karam Joga in the name of *Jhadphunk*.

19. Kamlesh , PW-9, a minor, aged 7 years, son of the deceased has also been examined. He has also stated in his evidence that in the night, the accused persons had come to the house and hands of his father were tied with rope and he was taken away. To that extent, nothing could be elicited in the cross-examination to disbelieve what he has stated, as referred to hereinabove.

20. The evidence of the aforesaid witnesses remove shadow of doubt in the evidence of Karam Chinge, PW-1, on account of her further examination, after initial examination after recall and there is overwhelming evidence to prove that in the night of 17-02-2008, the appellants had come to the house of the deceased-Karam Joga and he was asked to make solemn prayer (*Jhadphunk*) for one of the accused-Darre Kitta and thereafter, the accused persons tied the hands of Karam Joga and then kidnapped from his house and on the very next day, his dead body was found in the agriculture field.

The proximity of time of death with that of time when Karam Joga was kidnapped from his house also lays credence to the prosecution story regarding involvement of the appellants in the incident. It is not the case where the deceased died long after he was taken away from his house by the accused persons. According to the evidence of the prosecution witnesses, the accused persons arrived at the house of the deceased, asking him to make solemn prayer for one of the accused-Darre Kitta and after that, the accused persons

assaulted Karam Joga, his hands were tied and taking him away around 9 to 10 PM in the night of 17-02-2008. According to the evidence of the prosecution witnesses, dead body of Karam Joga was found on the very next day morning about 10.35 AM in the agriculture field, which was nearby his house. The postmortem report, Ex.P-18 proved by Dr. Sudhanshu Shekhar Panda, PW-12, shows that the postmortem was conducted at 3 PM on 18-02-2008 and according to the opinion of Doctor, who conducted the postmortem, the death had occurred about 14-16 hours before the postmortem. That means, Karam Joga died sometimes before 11 PM to 01 AM in the intervening night of 17-02-2008. This clearly shows that immediately after the deceased was kidnapped from his house, after tying his hands with rope, he died. From the medical evidence, the death is proved to be homicidal in nature. In the present case, the prosecution has also come out with the recovery of bloodstained towel and stole as also club and rope at the instance of the appellants. Though, the witnesses of memorandum and seizure have not stated that the memorandum was recorded and seizure was made in their presence, the evidence of Investigating Officer in this regard is reliable. He has clearly stated regarding recording of memorandum, recovery of the articles and that blood was found in the towel and stole of the appellants-accused-Bogo Dula and Soyam Nagesh. Recovery of these articles were made at the instance of the accused-appellants and they all were seen together in the house of the deceased and took the deceased away and thereafter, deadbody was found on the next day. As far as medical report is concerned, this clearly shows that the deceased was beaten up and in the course of assault, his atlas bone was broken. His lungs were found completely damaged. All these shows the severity of assault and as stated in the opinion of the Dr. Panda, Ex.P-18.

21. Much insistence has been laid of the solitary defence witness. According to this witness, he met with the deceased at about 11 PM in the night. If the

evidence of this witness is to be believed, there is preponderance of probability that he was the only person, to whom, the deceased met after he was kidnapped from his house and his dead body was found. But, surprisingly, this witness has come forward only when he was examined as defence witness for the first time during trial, but he did not disclose to any body regarding he having met with the deceased in the night after the incident, when he was caught hold of and taken away by tying his hands with rope. The version of this witness is highly contradictory. He claimed to have met with the deceased at 11 PM in the night, when he came out of his house to attend the call of nature. The abundance of evidence of number of prosecution witnesses including the independent witness shows that the deceased was caught hold of, his hands were tied with rope, dragging away from the house. In the evidence, the story, as described by Podium Bojji, DW-1, regarding he having met with the deceased, appears to be concocted story and the defence witness is a planted one.

22. As far as argument of involvement of the deceased with the “Salwa Judum Mission” and he being in the hit list of naxalites is concerned, this itself demolishes the prosecution case, once we are inclined to rely upon the prosecution evidence as discussed above with regard to homicidal death of the deceased, as he was assaulted with club and finally he succumbed to death within two hours and thereafter recovery of bloodstained towel and stole at the instance of the appellants-accused.

23. We do not find any merit in this appeal, which is accordingly dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor)
Judge