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HIGH COURT OF CHHATTISGARH : BILASPUR

Criminal Appeal No. 527 of 2007

Kawasi Kuma

Versus

State of Madhya Pradesh (now Chhattisgarh)

Criminal Appeal No. 528 of 2007

Bandru

Versus

State of Madhya Pradesh (now Chhattisgarh)

&

Criminal Appeal No. 529 of 2007

Kawasi Hunga

Versus

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge

29-03-2008

HON'BLE SHRI T.P. SHARMA, J

Sd/-
T. P. Sharma
Judge

29-03-2008

POST FOR JUDGMENT ON 31st MARCH, 2008

Sd/-
L.C.BHADOO
Judge



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HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench : Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri T.P. Sharma, JJ

Criminal Appeal No. 527 of 2007

Appellant :

Kawasi Kuma, S/o Boti Madia, aged
56 years, R/o Chandangiri, Police
Station Darbha, District Bastar (MP)
(now CG).

Versus

Respondent :

State of Madhya Pradesh (now
Chhattisgarh), Through Police Station
Darbha, District Bastar.

Criminal Appeal No. 528 of 2007

Appellant :

Bandru, S/o Kuma Madia, aged 26
years, R/o Chandangiri, Police Station
Darbha, District Bastar (MP) (now
CG).

Versus

Respondent :

State of Madhya Pradesh (now
Chhattisgarh), Through Police Station
Darbha, District Bastar.

&

Criminal Appeal No. 529 of 2007

Appellant :

Kawasi Hunga, S/o Kuma Madia,
aged 36 years, R/o Chandangiri,
Police Station Darbha, District Bastar
(MP) (now CG).

Versus

Respondent :

State of Madhya Pradesh (now
Chhattisgarh), Through Police Station
Darbha, District Bastar.

(Criminal Appeals under Section 374(2) of the Cr.P.C.)

Present :-

Shri Ratan Pusty, counsel for the appellant (Kawasi Kuma) in
Cr.A.No.527/2007.

Shri Shrawan Agrawal, counsel for the appellant (Bandru) in Cr.A.No.
528/2007.

Shri Pankaj Agrawal, counsel for the appellant (Kawasi Hunga) in
Cr.A.No.529/2007.

Shri Praveen Das, Dy. Govt. Advocate for the State.



JUDGMENT

(Delivered on 31st March, 2008).

The following judgment of the Court was delivered by
L.C. Bhadoo, J

Even though today these matters are fixed for admission, but as the accused persons are in detention since 1997, with the consent of learned counsel for the parties the appeals are heard for final disposal.

2) Criminal appeal Nos.527/2007, 528/2007 & 529/2007 are arising out of same judgment dated 7-11-1998 passed in sessions trial No.24/98 and relating the same incident, therefore, they are being disposed of by this common judgment.

3) By these appeals under Section 374 (2) of the Code of Criminal Procedure (*for short "the Cr.P.C."*), the accused/appellants have questioned the legality & correctness of the judgment of conviction and order of sentence dated 7-11-1998 passed by the Special Judge, Bastar (Jagdalpur), in Sessions Trial No.24/98 whereby and whereunder learned Special Judge after holding the accused/appellants namely, Kawasi Hunga & Bandru guilty for commission of offence under Section 302 of the Indian Penal Code and holding the accused/appellant namely, Kawasi Kuma guilty for commission of offence under Section 302 read with Section 34 of the Indian Penal Code (*for short "the IPC"*), sentenced each of the accused to undergo imprisonment for life.

4) Case of the prosecution, in brief, is that Lakhmi, who is the daughter of Podiyami Jagru (PW-1) and sister of Podiyami Sappe (since deceased), was kept by Dole, son of the accused namely, Kuma, as his wife at his residence. Accused Kuma did not pay the cost imposed upon him by the community, therefore, after some time Lakhmi came back to her parental house. On that account there was animosity between Kuma and his relatives namely, Hunga & Bandru on the one hand and Podiyami Jagru (PW-1) on the other hand. On 9-11-1997 at about 8.00 p.m. accused Hunga & Bandru armed with axe along with Kuma went to the house of Jagru and called him outside of his house. In response to the call Jagru (PW-1) along with his son Sappe & family members came out of the house. The accused persons asked Jagru as to why he is not sending Lakhmi to their house, on which Jagru replied that they are not paying the cost imposed upon them by the community, they can



pay the cost and take Lakhmi. Hearing this, the accused persons became angry and said that they will finish them. Accused Kuma caught hold of Sappe whereas the other accused persons namely, Hunga & Bandru attacked him with the axe. Jagru (PW-1) being frightened ran away. In the attack made by Hunga & Bandru with axe, Sappe sustained injuries on his abdomen & waist, as a result of which Sappe succumbed to the injuries sustained by him. The incident was witnessed by PW-2 Podiyami Payake, wife of Podiyami Jagru (PW-1) & PW-6 Podiyami Lakhmi, daughter of Podiyami Jagru (PW-1). Panchayat was convened in the village in which the accused persons made extra judicial confession. Matter was reported by Podiyami Jagru (PW-1) in Police Station Darbha under Ex.P/1. Merg intimation was also given by him in the Police Station under Ex.P/7.

5) After registering the case, the Investigating Officer left for the place of occurrence. He prepared the site plan (Ex.P/8). After giving notice to the Panchas, he prepared inquest (Ex.P/9) on the body of Sappe. The body of Sappe was sent for postmortem examination to Primary Health Centre, Darbha under Ex.P/10 where Dr. A.D. More (PW-4) conducted postmortem and opined that the cause of death was shock as a result of internal haemorrhage from the wound over liver and right kidney. Postmortem report is Ex.P/3. While in police custody, accused Hunga gave memorandum (Ex.P/11) regarding the place where he kept the axe i.e. weapon of offence and in pursuance of that the axe was seized under Ex.P/12. Blood stained soil and plain soil was seized from the place of occurrence under Ex.P/13. Blood stained clothes of accused Bandru were seized under Ex.P/14. Axe was seized under Ex.P/15 from the possession of accused Bandru. Clothes of accused Hunga were seized under Ex.P/16. Clothes of the deceased were seized under Ex.P/17. Seized articles were sent to Forensic Science Laboratory, Raipur, from where report (Ex.P/23) was received.

6) After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to the Court of Sessions Judge, Jagdalpur, from where learned Special Judge, Bastar (Jagdalpur), received the same on transfer for trial.—

7) In order to establish charges against the accused/appellant, the prosecution examined 10 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence. They stated that they are innocent and have been falsely implicated in the crime in question.



8) Learned Special Judge after hearing counsel for the respective parties, convicted and sentenced the accused persons as aforementioned.

9) We have heard Shri Ratan Pusty, Shri Shrawan Agrawal & Shri Pankaj Agrawal, learned counsel for the appellants and Shri Praveen Das, learned Dy. Govt. Advocate for the State.

10) Learned counsel for the appellants have not disputed the homicidal death of Sappe. Moreover, Dr. A.D. More (PW-4) has stated that on 11-11-1997 he conducted postmortem on the body of Sappe. There was a stab wound in the right side of the chest below 8th rib in the size of 6 cm. x 3 cm. & 10 cm. deep. Clotted blood was present around the wound. There was an incised wound on the left side of back & mid-scapular region near the 8th rib in the size of 6 cm. x 3 cm. x 2 cm. Clotted blood was present around the wound. On account of injury No.1 the liver was cut. Blood was present in the abdomen cavity. Injuries were ante mortem in nature. Injury No.1 was sufficient in the ordinary course of nature to cause death. Cause of death was internal haemorrhage and shock. The above medical evidence has been corroborated by the evidence of PW-6 Podiyami Lakhmi, sister of Sappe (deceased), who has categorically stated that the accused persons attacked her brother Sappe. PW-2 Podiyami Payake, mother of Sappe, has also stated that the accused persons came to their house and attacked Sappe with axe. Accused Hunga & Bandru attacked the deceased with axe whereas accused Kuma caught hold of him. They attacked her son on the back and the ribs side. Therefore, in view of the above, medical & ocular evidence, it is established that the death of Sappe was homicidal in nature.

11) As far as complicity of the accused persons in the crime in question is concerned, learned counsel for the appellants argued that there is material contradiction between the First Information Report and the evidence of witnesses namely, PW-2 Podiyami Payake, PW-6 Podiyami Lakhmi & PW-1 Podiyami Jagru, therefore, explicit reliance cannot be placed on their testimony.

12) On the other hand, learned counsel for the State supported the judgment of the trial Court.


13) Having heard learned counsel for the parties, we have scrutinized the material available on record.

14) PW-1 Podiyami Jagru, father of the deceased, has stated that Sappe was his son. In the month of Diwali the accused persons came to his house and they gave beating to him. He ran away from the place of incident. He came after some time to his house. At that time his wife told him that the accused persons have murdered Sappe. Panchayat was convened. Accused persons were also present in the Panchayat and they made extra judicial confession in the Panchayat.

15) PW-2 Podiyami Payake, mother of the deceased, has categorically stated that prior to 6-7 months they were at their residence. All the three accused persons came to their house. They called her husband, therefore, first her husband went out of the house and thereafter, she went out of the house. They enquired from the accused persons as to why they have come, on which they said that they have come to take Lakhmi, they attacked her husband and her husband ran away from the house. Thereafter, accused Hunga & Bandru attacked her son Sappe with axe whereas accused Kuma caught hold of him. They attacked on the back and rib area of her son. Even after her intervention, the accused persons continued to attack her son. She saw the accused persons attacking Sappe. Sappe died as a result of assault caused by the appellants. Panchayat was convened in the village where she disclosed that the accused persons had attacked her son. The accused persons also made extra judicial confession before the Panchayat.

16) PW-6 Podiyami Lakhmi, sister of the deceased, has also corroborated the above evidence of her mother and has stated that on the fateful day accused Hunga, Bandru & Kuma came to their house. At that time, family members were at residence. Accused Hunga asked her father to accompany them for consuming liquor. They took him to their house and gave beating to him. From there her father came to the house. When her brother Sappe went out of the house at that time accused persons were hiding themselves near the kitchen garden and as soon as her brother went out of the house accused Hunga & Bandru attacked her brother with axe and she witnessed the incident. Accused Kuma also attacked her brother and her brother died on account of injuries sustained by him.

17) Even though PW-6 Lakhmi has stated that accused Kuma also attacked, but the mother of Lakhmi i.e. PW-2 Podiyami Payake has stated that, in fact, accused Hunga & Bandru attacked the deceased with axe whereas accused Kuma caught hold of him. On this minor contradiction, the evidence of these witnesses cannot be disbelieved, particularly when the time



of incident was evening and all the persons are expected to remain at their house, therefore, their presence cannot be doubted on the scene of occurrence. Moreover, their evidence is corroborated by the medical evidence. There was a stab wound on the right side of the chest and back and on account of that liver was cut, which shows that the injury was inflicted by axe. Even, doctor has stated that the axe was brought to him and he opined that the injury found on the body of the deceased could be caused by axe. His reports are Ex.P/4 & P/5. Doctor has not been cross-examined. Moreover, in the cross-examination of PW-2 Podiyami Payake & PW-6 Podiyami Lakhmi, the defence has not been able to elicit any circumstance, which discredits their evidence or which creates doubt about their presence on the scene of occurrence. Even PW-2 Podiyami Payake has stated that the accused persons made extra judicial confession in the Panchayat. On that aspect she has not been cross-examined by the defence, therefore, to that extent her evidence cannot be disbelieved. The FIR was lodged by PW-1 Podiyami Jagru in which he has categorically mentioned that accused Kuma caught hold of Sappe whereas accused Hunga & Bandru attacked Sappe with axe and similar is the evidence of this witness. Therefore, there is no material contradiction in the FIR and in the evidence of eyewitnesses. From the evidence of these eyewitnesses and the medical evidence, complicity of the accused persons in the crime in question is established. Even though accused Kuma has not attacked, but all the three accused persons came together and in order to facilitate the crime accused Kuma caught hold of Sappe and thereafter only the other co-accused persons namely, Hunga & Bandru attacked Sappe with axe, therefore, common intention of the accused Kuma is clearly established and he has rightly been convicted with the aid of Section 34 of the IPC.

18) Learned counsel for the appellants argued that incident took place in a sudden quarrel; therefore, it cannot be held that the accused persons attacked the deceased with intention to cause his death.

19) In order to appreciate the arguments advanced by learned counsel for the appellants, we have scrutinized the evidence. As per the prosecution evidence, the son of accused Kuma kept Lakhmi, sister of the deceased, as his wife at his residence, therefore, Panchayat of the community was convened. The Panchayat imposed cost upon accused Kuma and directed him to pay the same to Jagru (PW-1), which was not paid by Kuma that is why Lakhmi returned to her parental house. On the fateful day, these three accused persons went to the house of Jagru to take Lakhmi, on which Jagru



said that they should pay the cost and thereafter they can take Lakhmi. When Jagru said so the accused persons became angry, as Jagru ran away Kuma caught hold of Sappe and other accused persons Hunga & Bandru attacked him with axe. They attacked him in front of his house. Therefore, the accused persons came armed with axe whereas the deceased and his father were armless, simply they said that unless the cost is paid they are not going to send Lakhmi to their house and on account of that only accused persons attacked deceased Sappe. Therefore, it cannot be said that anything happened on the spur of moment, without preparation & premeditation because accused persons came armed with axe, they quarreled and there was no occasion for them to get enraged. From the manner in which the accused persons attacked the deceased on the vital organ with a deadly weapon i.e. axe, the force with which the accused attacked with deadly weapon, it is established that the accused persons attacked the deceased with intention to cause his death.

20) For the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial Court and the finding of the trial Court is based on sound reasoning which does not require any interference by this Court.

21) In the result, the appeals being devoid of merit are liable to be dismissed and they are hereby dismissed.

22) Copy of this judgment be placed on records of Cr.A.Nos.527/2007, 528/2007 & 529/2007.

Sd/-
L.C.BHADOO
Judge

Sd/-
T. P. Sharma
Judge

31-03-2008

Gowri