

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No.807 of 2011**

- 1 Sonu Ram S/o Jhuru Ram, Aged about 38 years
- 2 Mehattar Ram S/o Ghutral, Aged about 48 years
- 3 Sarad @ Sharad S/o Dhan Singh, Aged about 32 years
- 4 Manglu Ram S/o Tubel Ram, Aged about 37 years

All residents of village Furfundi, P.S. Bande, District – North Bastar, Kanker (C.G.)

- Appellants (In jail)

**Versus**

State of Chhattisgarh, Through : Station House Officer, Police Station, Bande, District – North Bastar, Kanker (C.G.)

– Respondent

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For Appellants : Mr. Mukesh Shrivastava, Advocate

For Respondent / State : Mr. Mahesh Mishra, Panel Lawyer

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**Hon'ble Shri Justice T. P. Sharma &  
Hon'ble Shri Justice Inder Singh Uboweja**

**JUDGMENT**

**31.03.2015**

**Per T.P.Sharma, J.:-**

- 1) Challenge in this appeal is to the judgment of conviction & order of sentence dated 20.09.2011 passed by the Additional Sessions Judge, North Bastar, Kanker in Sessions Trial No. 32 of 2009, whereby and whereunder after holding the appellants guilty for causing homicidal death amounting to murder of Mahesh in sharing common intention, the trial Court has convicted the appellants under Section 302/34 IPC

and sentenced them to undergo imprisonment for life and fine of Rs.500/- each, in default, additional RI for one month.

- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellants as aforementioned and thereby committed illegality.
- 3) As per case of prosecution, 19.02.2009 between 8.30 pm to 10 pm, the appellants came to the shop of Sanjay Dutta (PW-2) and Niranjan Dutta (PW-7) (son and father). Unfortunate deceased Mahesh was also present in the shop of Sanjay Dutta (PW-2). Appellants assaulted Mahesh, then he left the shop. The appellants also followed him. Thereafter, his dead body was found on the second day at about 10 am. Bishunram (PW-6) went to the Police Station Bande and lodged Morgue Intimation vide Ex.P/7. FIR was registered vide Ex.P/6 against all the appellants. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P/2, inquest over the dead body of the deceased was prepared vide Ex.P/3. Spot map was prepared vide Ex.P/8. One red color *gamcha* was seized from the spot vide Ex.P/19. Bloodstained and plain soil were recovered from the spot vide Ex.P/20. Dead body of the deceased was sent for autopsy to the Primary Health Centre, Bande and Dr.D.S.Nareti (PW-5) conducted autopsy vide Ex.P/5 and found following injuries :-

- i) Incised wound over left side of the head of 7 x 1 cm, left ear was found cut ;
- ii) Seven contusions of 4 to 5 cm having width of 3 cm found over the back;
- iii) Bleeding from nose, mouth and wounds;
- iv) Fracture of skull bone of left side.

Mode of death was Cardio respiratory failure as a result of excessive haemorrhage and death was homicidal in nature.

- 4) Clothes of the deceased were sealed and seized vide Ex.P/1.

During the course of investigation, appellants were taken into custody. Appellant- Sonu Ram was taken into custody, he made disclosure statement of axe and currency notes of Rs.200/- vide Ex.P/4, same were recovered at his instance vide Ex.P/9. Appellant- Mehattar made disclosure statement of bamboo stick vide Ex.P/10, same was recovered at his instance vide Ex.P/11 along with two currency notes of Rs.100/- denomination; appellant- Manglu Ram made disclosure statement of two currency notes and stick vide Ex.P/12, same were recovered at his instance vide Ex.P/13. Appellant- Sarad @ Sharad made disclosure statement of two currency notes of Rs.100/- denomination and stick vide Ex.P/14, same were recovered at his instance vide Ex.P/15. Clothes of appellants- Sonu Ram and Sarad were seized vide Exs.P/16 and P/17. Seized articles were sent for chemical examination to FSL vide Ex.P/36. Presence of blood upon the articles seized from the appellants has been affirmed vide Ex.P/37.

- 5) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge-sheet was filed before the Court of Judicial Magistrate First Class, Pakhanju, who in turn, committed the case to the Court of Additional Sessions Judge (FTC), Bhanupratappur, District- North Bastar, Kanker.
- 6) In order to prove the guilt of the accused/appellants, the prosecution has examined as many as 9 witnesses. Statements of the accused/appellants were recorded under Section 313 of the Code, in which they denied the circumstances appearing against them and pleaded innocence and false implication in the crime in question.
- 7) After providing opportunity of hearing to the parties, the trial Court has convicted & sentenced the appellants as aforementioned.
- 8) We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 9) Learned counsel for the appellants vehemently argued that conviction is substantially based on the evidence of Sanjay Dutta (PW-2) and Niranjana Dutta (PW-7), father of Sanjay Dutta (PW-2). Prosecution has declared both these witnesses hostile. Niranjana Dutta (PW-7) has not supported the case of the prosecution. Evidence of Sanjay Dutta (PW-2) is self contradictory. Even as per his evidence, he is shopkeeper, appellants and the deceased came to his shop, they



purchased something, thereafter, they left his shop. He has not deposed that the deceased was alive in the company of the appellants. In absence of such specific evidence, conviction and sentence of the appellants as aforementioned is not sustainable under the law. He further submits that in the present case, prosecution has tried to prove that case is based on circumstantial evidence, but has failed to prove the complete chain of circumstances, that the appellants were only the authors of crime and none-else. Even otherwise, as per evidence of Sanjay Dutta (PW-2), there was no previous dispute, the incident took place all of sudden, when appellant-Sonu Ram was beaten by the deceased, therefore, if the case of the prosecution is taken on its face value, then, the act attributed to the appellants does not travel beyond the scope of Section 304 Part-I of the IPC, in which they are in custody since 2009.

- 10) Learned counsel for the appellants placed reliance in the matter of **Manbasiya alias Barparhin Vs State of Madhya Pradesh (now State of Chhattisgarh), 2012 (2) Acquittal 471 (CG)**, in which, Division Bench of this Court has held that in case of evidence of last seen theory, if it is shown that after such last seen theory if deceased is seen alive to any of the person, then last seen theory comes to an end. He further placed reliance in the matter of **Padum Lal Vs State of CG, 2015 (1) CGLJ 387**, in which Division Bench of this Court has

held that, in case of circumstantial evidence, prosecution is required to prove complete chain of circumstances, sufficient for drawing inference that only the appellant is author of the crime and none-else. In case of any missing link, the conviction would not be legally sustainable. He also placed reliance in the matter of **Kanhaiya Lal Vs State of Rajasthan, (2014) 2 SCC (Cri) 413**, in which, the Supreme Court has held that only last seen theory by itself is not sufficient to prove the guilt of the appellant in absence of any other evidence.

- 11) On the other hand, learned Panel Lawyer for the State opposes the appeal and submits that the evidence of Sanjay Dutta (PW-2), well corroborated by the evidence of his father, Niranjana Dutta (PW-7) are sufficient for proving the guilt of the appellants. Therefore, on the basis of aforesaid evidence, the Court below has rightly convicted and sentenced the appellant as aforementioned.
- 12) In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution.
- 13) In the present case, homicidal death as a result of fatal injuries found over the body of deceased Mahesh has not been substantially disputed on behalf of the appellants. Even otherwise, it is also established from the evidence of Sanjay Dutta (PW-2), Niranjana Dutta (PW-7), FIR (Ex.P/6), Morgue

Intimation (Ex.P/7), Dr.D.S.Nareti (PW-5) and autopsy report (Ex.P/5), that death of deceased was homicidal in nature.

- 14) As regards the complicity of appellant in crime in question, conviction is substantially based on the evidence of Sanjay Dutta (PW-2). As per his evidence, deceased Mahesh came to his shop for purchasing cigarette, after purchasing the cigarette, he was consuming it, at the same time, the appellants came to his shop. Appellant- Mehatar pushed the deceased, who fell down, then he objected as to why they were assaulting the deceased, then deceased left his shop, after leaving his cycle. All the appellants also challenged him. After one hour, all the appellants came and took the cycle of the deceased. On second day he came to know that dead body of the deceased is lying in the field. Niranjn Dutta {PW-7, father of Sanjay Dutta (PW-2)} has not substantially deposed in favour of the prosecution. Prosecution has declared him hostile. But in para-2 of his evidence, he has specifically deposed that his son Sanjay Dutta (PW-2) has objected the quarrel of the appellants and deceased. This part of evidence shows that there was some quarrel between the appellants and deceased, but he is suppressing the truth. In these circumstances, only evidence of Sanjay Dutta (PW-2) is remained for consideration. Prosecution has also declared him hostile. In paras-1, 2 and 4 of his evidence, this witness has admitted the presence of deceased-Mahesh and all the

appellants. He has also admitted the quarrel between the parties. His evidence clearly reveal that after some quarrel in front of his shop, deceased- Mahesh left his shop, and left his cycle. Appellants also followed him and after one hour, they came back and took the cycle of the deceased. This shows that the deceased was with these appellants after some quarrel took place between them in front of the shop of Sanjay Dutta (PW-2). After sometime, they have also taken the cycle of the deceased, which shows that they were with the deceased for a long time and they have taken the cycle lying in front of the shop of Sanjay Dutta (PW-2). In these circumstances, all the appellants were under obligation to offer an explanation as to when they left the company of the deceased and who has caused injuries to the deceased. Dead body of the deceased was recovered on the second day.

- 15) As held in the case of **Manbasiya** (supra), in case deceased is seen by any person after last seen theory, then the last seen theory will come to an end. In the present case, prosecution has proved the case that the deceased was last seen alive in the company of the appellants, therefore, this case is distinguishable on the ground of fact. As held in case of **Kanhaiya Lal** (supra), prosecution is required to prove more than only last seen theory. In the present case, prosecution has not only proved last seen theory, but has also proved quarrel just immediate before alleged last seen theory.



Therefore, this case is also distinguishable on the ground of fact. Evidence of Sanjay Dutta (PW-2) partially corroborated by the evidence of his father, Niranjan Dutta (PW-7) is sufficient for drawing inference that the appellants have caused homicidal death, amounting to murder of the deceased.

- 16) As regards the question of motive, in case of direct evidence motive loses its importance. Even otherwise, motive is only an aid in criminality and can be inferred on the basis of nature of injury, kind of weapon used, part of the body effected and other similar circumstances. Motive is a state of mind of person at the time of commission of offence and only the person concerned would be in a position to explain that what was his intention or motive behind commission of any act.
- 17) In the present case, as per para-4 of evidence of Sanjay Dutta (PW-2), appellant- Sonu Ram was present in his shop. Other appellants also came to his shop, at that time, deceased- Mahesh was in drunken state. Mahesh slapped appellant- Sonu Ram and told that they were not working, then, some altercation took place, thereafter, they left his shop. This evidence shows that initially there was no motive for commission of homicidal death of the deceased, but when the appellants were provoked specially by causing injury to appellant- Sonu Ram, then the incident took place. Doctor has noticed eight injuries, out of these, seven were contusions and



one was incised wound, which shows that on account of provocation, on spur of moment, the appellants got annoyed in the light of activity of the deceased and they caused his homicidal death. But at the time of causing homicidal death of the deceased, they were having knowledge that by their such act, deceased will die. Consequently, the act attributed to the appellants squarely falls within the ambit of Section 304 Part-I read with Section 34 of the IPC and not under Section 302/ 34 of the IPC. While convicting and sentencing the appellants as aforementioned, the trial Court has not considered the aforesaid facts and circumstances and thereby committed illegality.

- 18) Consequently, the appeal is partly allowed. Conviction of the appellants under Section 302/34 IPC is altered to Section 304 Part I read with Section 34 of the IPC and sentenced to undergo RI for eight years and fine of Rs.500/- in default, additional RI for one month. Appellants are in custody since 22.02.2009. They are entitled to set off for the period of detention.

Sd/-  
T.P. Sharma  
Judge

Sd/-  
Inder Singh Uboweja  
Judge