



HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1179 of 2015

{Arising out of judgment dated 8-9-2015 in Sessions Trial No.83/2015 of the Additional Sessions Judge, Fast Track Court, Janjgir, District Janjgir-Champa}

1. Rajendra Prasad, S/o Moharsai Lahare, aged about 45 years,
2. Komal Prasad, S/o Rajendra Lahare, aged about 25 years,
3. Kaliram Lahare, S/o Rajendra Prasad Lahare, aged about 19 years,

All are resident of Village Baloda, District Janjgir-Champa (C.G.)

(In Jail)

---- Appellants

Versus

State of Chhattisgarh, Through Station House Officer, Police Station
Baloda, District Janjgir-Champa (C.G.)

---- Respondent

For Appellants: Mr. Rishi Rahul Soni, Advocate.
For Respondent/State: Mr. Afroz Khan, Panel Lawyer.

**Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Sanjay Agrawal, JJ.**

Judgment On Board
(01/07/2024)

Sanjay K. Agrawal, J.

1. Invoking the criminal appellate jurisdiction of this Court under Section 374(2) of the CrPC at the instance of the appellants who are three in number, this appeal has been preferred calling in question legality, validity and correctness of the impugned judgment of conviction and order of sentence dated 8-9-2015 passed by the Additional Sessions Judge, Fast Track Court, Janjgir, District Janjgir-Champa, in Sessions Trial No.83/2015, by which the three appellants herein have been

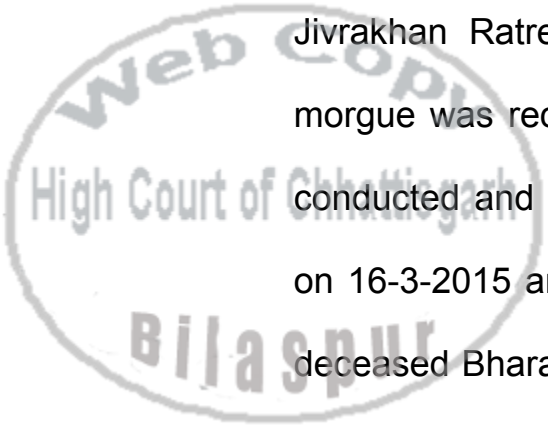


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convicted for offence under Section 302 read with Section 34 of the IPC and sentenced to undergo imprisonment for life & pay fine of ₹ 1,000/- each, in default of payment of fine to further undergo additional rigorous imprisonment for one month.

2. Case of the prosecution, in a nutshell, is that on 24-5-2014 in between 09:00 a.m. and 04:00 p.m., at the forest of Village Khisora, under the jurisdiction of Police Station Baloda, District Janjgir-Champa, the three appellants herein in furtherance of their common intention, strangled Bharat @ Bhupendra manually with the help of a *gamcha* by which he suffered grievous injuries and died and thereby committed the offence.

Jivrakhan Ratre (PW-1) reported the matter to the police by which morgue was recorded vide Ex.P-1 and thereafter, morgue enquiry was conducted and after morgue enquiry, FIR was registered vide Ex.P-20 on 16-3-2015 and inquest was conducted vide Ex.P-16. Dead body of deceased Bharat @ Bhupendra was sent for postmortem to Community Health Centre, Baloda vide Ex.P-17. Postmortem was conducted by Dr. Sadanand Jangde (PW-10) vide Ex.P-14 and no definite opinion as to cause of death and nature of death was given by him, however, in the query report Ex.P-15, mode of death was stated to be asphyxia due to suffocation. Devnath Jangde (PW-4) was cited as eyewitness and his statement under Section 161 of the CrPC was recorded on 16-3-2015, whereas his statement under Section 164 of the CrPC was recorded on 23-3-2015. Memorandum statements of accused / appellants Rajendra Prasad (A-1), Komal Prasad (A-2) & Kaliram Lahare (A-3) were recorded vide Exs.P-3, P-4 & P-5, respectively, pursuant to which a towel (*gamcha*) was seized from Komal Prasad (A-2) vide Ex.P-6.





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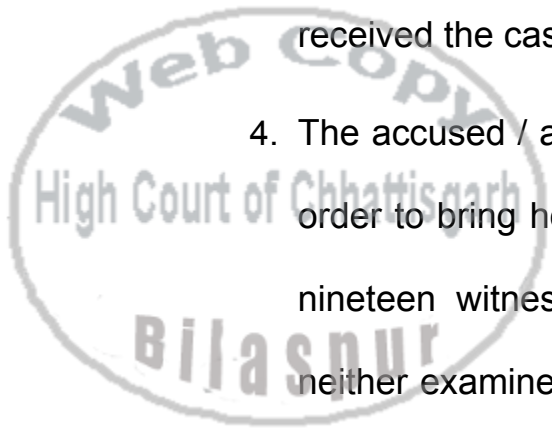
Viscera was preserved in order to find out cause of death and nature of death and the same was sent to the FSL, Raipur, from where report Ex.P-19 was received, but nothing was found on the said viscera.

3. Statements of the witnesses were recorded under Section 161 of the CrPC. After due investigation, the accused / appellants were charge-sheeted for offence under Section 302 read with Section 34 of the IPC and charge-sheet was filed before the jurisdictional criminal court i.e. Chief Judicial Magistrate, Janjgir, and the case was committed to the Court of Sessions, Janjgir-Champa from where the learned Additional Sessions Judge, Fast Track Court, Janjgir, District Janjgir-Champa received the case on transfer for trial.

4. The accused / appellants abjured the guilt and entered into defence. In order to bring home the offence, the prosecution examined as many as nineteen witnesses and exhibited 24 documents. The defence has neither examined any witness nor exhibited any document in support of its case. The accused / appellants were examined under Section 313 of the CrPC in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question.

5. The trial Court after appreciating oral and documentary evidence available on record, convicted and sentenced the appellants under Section 302 read with Section 34 of the IPC in the manner mentioned in the opening paragraph of this judgment against which the instant appeal under Section 374(2) of the CrPC has been preferred.

6. Mr. Rishi Rahul Soni, learned counsel appearing for the appellants, would submit that Devnath Jangde (PW-4) has been cited as eyewitness





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by the prosecution and accepted by the trial Court, but he is a chance witness and he has a questionable conduct and character, as though he has witnessed the incident said to have taken place on 24-5-2015, but he did not report the matter to the police or to any other person and even did not try to protect the deceased from further assault and save his life and further, he did not inform to the wife of the deceased to whom he has visited the house of the deceased on the date of offence and only he gave statement under Section 161 of the CrPC on 16-3-2015 after a period of more than nine months and thereafter gave statement under Section 164 of the CrPC on 23-3-2015. As such, Devnath Jangde (PW-4) being a chance witness, his testimony has to be accepted with great care and caution and after close scrutiny, particularly, when it was recorded after a delay of more than nine months in view of the decision of the Supreme Court in the matter of **Ravi Mandal v. State of Uttarakhand**¹. Furthermore, conduct of Devnath Jangde (PW-4) is unnatural and could not have been relied upon in light of the decision of the Supreme Court in the matter of **Surjit Singh and another v. State of Punjab**². Therefore, the three appellants herein are entitled for acquittal on the ground of benefit of doubt.

7. Mr. Afroz Khan, learned Panel Lawyer appearing for the State / respondent, would support the impugned judgment and oppose the appeal as also the submission made on behalf of the appellants and would submit that the prosecution has been able to bring home the offence against the appellants beyond reasonable doubt. He would

1 2023 LiveLaw (SC) 470

2 1993 Cri. L.J. 3901



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further submit that Devnath Jangde (PW-4) has clearly witnessed the incident, merely on the ground of delay in recording his statement under Section 161 of the CrPC, his testimony cannot be discarded only on the basis of delay and as such, the appeal deserves to be dismissed.

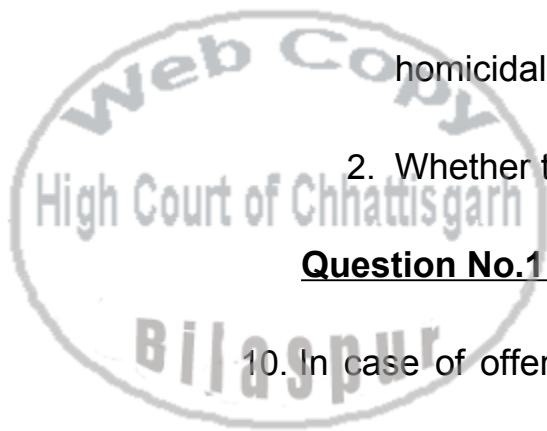
8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record carefully and thoroughly as well.
9. After hearing learned counsel for the parties and on going through the record, following two questions would arise for consideration: -

1. Whether the death of deceased Bharat @ Bhupendra was homicidal in nature?

2. Whether the appellants herein are the authors of the crime?

Question No.1: -

10. In case of offence under Section 302 of the IPC, the prosecution was obliged to prove that death of deceased Bharat @ Bhupendra was homicidal in nature. However, Dr. Sadanand Jangde (PW-10), who has conducted autopsy over the dead body of the deceased, has clearly stated in his evidence that no injury was found over the head of the deceased and according to him, liver and kidney were pale, however, he has opined that he could not give any definite opinion except saying that at the time of death, froth was coming out from mouth and in that view of the matter, he advised for preservation of viscera for chemical examination by the FSL and accordingly, viscera was preserved and sent to the FSL, but in the FSL examination vide Ex.P-19, no chemical poison was found on the Articles A, B, C & D. Dr. Sadanand Jangde





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(PW-10) has also further opined in his statement that he did not find any symptom over the body of the deceased to opine that the deceased was strangled, and trachea and hyoid cartilage were not found broken. As such, from the statement of Dr. Sadanand Jangde (PW-10), who conducted postmortem on the body of the deceased, it could not be established that the death was homicidal in nature except froth was coming from mouth and in the FSL examination Ex.P-19, no chemical substance of poison was found over the viscera preserved from the dead body of the deceased.

11. However, since the appellants could not establish the death of the deceased to be suicidal in nature, the trial Court proceeded to hold the death to be homicidal in nature which is not only totally erroneous in our considered opinion, but also perverse to the record, as the doctor who conducted postmortem did not opine the death to be homicidal in nature and the prosecution has miserably failed to establish the death of the deceased to be homicidal in nature. Thus, the question as to whether the death of the deceased was homicidal in nature is answered in favour of the appellants and against the prosecution.

Question No.2: -

12. Now, the next question is, whether the appellants herein are the authors of the crime. In this regard, the prosecution has placed implicit and great reliance on the statement of Devnath Jangde (PW-4), who was a chance witness. On the date of offence, as per the prosecution, on 24-5-2014, Devnath Jangde (PW-4) visited the house of the deceased and enquired from the wife of the deceased as to where the deceased was, then she informed that the deceased has gone to forest to collect



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firewood whereupon Devnath Jangde (PW-4) also went towards the forest and he heard the cry of the deceased, then he saw the three accused / appellants herein, accused Rajendra (A-1) was sitting on the chest of the deceased, accused Komal (A-2) was strangulating the neck of the deceased with the help of a towel (*gamcha*) and accused Kaliram (A-3) was assaulting the deceased by fists, on which he came back and gone to the village to attend a marriage ceremony and thereafter, only on morgue enquiry, FIR was lodged with a delay of more than eight months and his statement under Section 161 of the CrPC implicating the accused / appellants was recorded on 16-3-2015 and thereafter, his statement under Section 164 of the CrPC was recorded on 23-3-2015. Thus, Devnath Jangde (PW-4) is also a chance witness.

13. The Supreme Court in **Ravi Mandal** (supra) has clearly held that the evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence and further held that deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded. It has been observed in paragraphs 25 & 26 as under: -

“25. Assuming that we accept the explanation for the delay in making the disclosure, considering the place and time of occurrence, the presence of PW-2 at the spot does not appear natural, particularly, at that odd hour of the night. To explain his presence at the scene of crime, PW-2 stated that his parents stay at another place in Mohalla Khatta and, therefore, to meet them he visited them that fateful night and on way return he could witness the incident. During cross examination, PW-2 stated that he usually takes dinner at 2100 Hours with his family; and that he used to visit his parents at least once a week. According to PW-2, that fateful night he left his house to visit his parents after having dinner in his own house and on way return, at 0030 Hours



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he witnessed the incident. This explanation is not confidence inspiring, particularly, because his parents have not been interrogated or examined to corroborate PW-2's visit to their house at that odd hour of the night. In our view, PW-2 is a mere chance witness, whose presence at the spot, at that hour, is not satisfactorily explained therefore, bearing in mind that he kept silent for unusually long i.e. for more than three and a half months, his testimony is not worthy of any credit. In our view, the courts below erred by placing reliance on his testimony.

26. As regards the testimony of PW-5 (Mahender Khurana) he too, is a chance witness. As to when testimony of a chance witness could be relied, the law is settled, which is, that the evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (**See: Rajesh Yadav & Another v. State of Uttar Pradesh³; and, Jarnail Singh & Others v. State of Punjab⁴.**)

14. Reverting to the facts of the case, it is quite vivid that Devnath Jangde (PW-4), who is a chance witness, had gone to meet deceased Bharat @ Bhupendra, but even after witnessing that the three accused/appellants herein were sitting on the chest of Bharat and assaulting him by fist and strangulating his neck with the help of a towel (*gamcha*), Devnath Jangde (PW-4) did not make any attempt to save his life or to inform the police immediately in order to rescue him and even thereafter, he left the place in question and remained busy in perform his daily pursuits and also did not inform to his wife (wife of the deceased) from whom he enquired about the deceased making his conduct highly unnatural and a person of questionable character. More particularly, Devnath Jangde (PW-4) has not reported the matter to the police or to any authority or to any person and he only informed the police after recording the FIR with

3 (2022) 12 SCC 200

4 (2009) 9 SCC 719



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a delay of more than eight months which makes his statement unworthy of acceptance. As per the statement of Devnath Jangde (PW-4), he has informed about the incident to Yogesh – brother of deceased Bharat, but Yogesh Kumar Ratre – brother of deceased Bharat, has been examined as PW-2, but he did not say that he was informed by Devnath Jangde (PW-4), however, Yogesh (PW-2) also did not inform to the police or to his another brother Jivrakhan Ratre (PW-1) and somehow, Jivrakhan Ratre (PW-1) informed the matter to the police. As such, it is quite established that the prosecution has failed to establish the death of deceased Bharat @ Bhupendra to be homicidal in nature and further failed to establish that the three appellants herein were the authors of the crime. Merely on the basis of the statement of Devnath Jangde (PW-4), who is a chance witness and whose conduct is questionable and highly unnatural he being a person of questionable character and who had given statement only after eight months of the date of incident, it would be highly unsafe to accept his evidence and to maintain conviction of the three appellants herein that too for an offence of murder. Furthermore, the trial Court has recorded that the motive of the offence is also established beyond reasonable doubt, as there is no proximate enmity between the appellants herein and the deceased. As such, we are of the opinion that the appellants are entitled for acquittal on the basis of benefit of doubt.

15. In that view of the matter, conviction of the appellants under Section 302 read with Section 34 of the IPC as well as the sentence of life imprisonment and fine awarded to them by the learned trial Court are hereby set aside and they are acquitted of the said charge. They be



released forthwith, if not required in any other case.

16. The criminal appeal is allowed.

17. Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned and to the Superintendent of Jail where they are lodged and suffering jail sentence, forthwith for necessary information and action, if any.

18. While parting with the record, this Court appreciates the assistance rendered by Mr. Rishi Rahul Soni, Advocate, who in a very short notice, appeared on behalf of the accused/appellants and argued the matter with excellence.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay Agrawal)
Judge

