

**(2018) 08 CHH CK 0259**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal (CRA) No. 1105 Of 2013

Ganesh Kumar Bhaskar

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Aug. 24, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 302, 307
- Code Of Criminal Procedure, 1973 - Section 313

**Hon'ble Judges:** Pritinker Diwaker, J; Rajani Dubey, J

**Bench:** Division Bench

**Advocate:** H.S. Patel, N.K. Mehta

**Final Decision:** Dismissed

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**Judgement**

Pritinker Diwaker, J

01. This appeal arises out of the judgment of conviction and order of sentence dated 31.08.2013 passed by Additional Sessions Judge, Bemetara

(C.G.), in S.T. No.54/2010 convicting the accused/appellant under Sections 302 (on two counts) and 307 IPC & sentencing him to undergo

imprisonment for life with fine of Rs.500/- (on two counts) and R.I. for seven years with fine of Rs.500/- plus default stipulation respectively.

02. In the present case, there are two decease namely Pusau Ram Bhaskar and Anjor Das Bhaskar, who were grand father and father of the

appellant respectively. Pusaiya Bai, aunt of the accused/appellant was also beaten by him.

03. As per the prosecution case, in the night intervening 1-2/06/2010 the accused/appellant caused number of injuries to Pusau Ram and Anjor Das by

axe. The accused/appellant also amputated hand of his father Anjor Das. Deceased Pusau Ram succumbed to his injuries at the place of occurrence

itself, whereas deceased Anjor Das died in the hospital. Anjor Das was medically examined by Dr. P.C. Thakur (PW/6) vide Ex.P/7 noticing (i)

segmentation of left forearm and (ii) intestine came out from abdomen. Injured Pusaiya Bai was also medically examined by the same Doctor vide

Ex.P/8 noticing (i) incised wound of 7"" x 2"" on left arm and (ii) lacerated wound of 8"" x 2"" x 2"" on chest just below left breast. Further case of the

prosecution is that the incident has been witnessed by Arjun Kumar Bhaskar (PW/7), Jitendra Kumar Bhaskar (PW/8) and Pannalal Koushal

(PW/10) before whom the deceased Anjor Das has also made oral dying declaration. On 02.06.2010 at 6.05 AM, FIR (Ex.P/10) was lodged by Arjun

Kumar Bhaskar (PW/7), uncle of the accused/appellant, against the accused/appellant under Sections 302 (on two counts) and 307 IPC. After

recording mere intimations (Ex.P/21 and P/22), inquest on the bodies of deceased Pusau Ram and Anjor Das was conducted vide Ex.P/2 and P/14

respectively and the body of deceased Pusau Ram was sent for postmortem examination to Community Health Center, Nawagarh, whereas

postmortem on the body of deceased Anjor Das was conducted in CIMS, Bilaspur. Postmortem examination on the body of deceased Pusau Ram

was conducted by Dr. T.N. Mahingleshwar (PW4) who gave his report (Ex.P/5) noticing following injuries:-

(i) Incised wound of 1.5 cm x 0.5 cm on inner aspect of left middle finger.

(ii) Incised wound of 1 cm x 0.5 cm on inner aspect of left ring finger.

(iii) Stab wound of 9 cm x 2 cm x deep on middle of sternum.

(iv) Stab wound of 9 cm x 1.5 cm x deep to ribs and middle of left side.

The autopsy surgeon opined the cause of death of deceased to be shock due to excessive hemorrhage from vital organ and the death was homicidal in nature.

Postmortem examination on the body of deceased Anjor Das was conducted by Dr. Jawaharlal Shrivastava (PW/5) who gave his report (Ex.P/23)

noticing following injuries:-

(i) Blood stains were present over chest, abdomen, back and buttock region.

(ii) Incised wound of 8 cm x 7 cm x abdominal cavity.

Half portion of the stomach came out through the wound.

(iii) Incised wound of 8 cm x 4 cm x 5 cm on left side of back, 9 cm below to left scapular angle.

(iv) Incised wound of 8 cm x 2 cm x 1.5 cm on mid scapular region.

(v) Deep incised wound of 5 1/2 cm x 4 cm x 6 cm on left forearm, 8 1/2 cm from wrist and 17 cm from the elbow. (muscle, vessel and bone were cut). Cut parts were partially attached with skin.

Autopsy surgeon opined the cause of death of deceased to be cardio vascular failure and excessive hemorrhage due to multiple injuries and the death was homicidal in nature.

03. After filing of the charge sheet, the trial Judge has framed the charge against the accused/appellant under Sections 302 (on two counts) and 307 IPC.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 20 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned above. Hence, this appeal.

06. Learned counsel for the appellant submits :

(i) That none of the witness had infact seen the actual occurrence and when they reached the place of occurrence, saw the accused/appellant fleeing from the spot.

(ii) That the accused/appellant has been falsely implicated by these witnesses as he used to demand his share in property.

(iii) That the evidence of oral dying declaration before Arjun Kumar Bhaskar (PW/7), Jitendra Kumar Bhaskar (PW/8) and Pannalal Koushal (PW/10) is not conclusive in nature.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that there is no reason for this Court to disbelieve the statements of eye witnesses Arjun Kumar Bhaskar (PW/7), Jitendra Kumar Bhaskar (PW/8) and Pannalal Koushal (PW/10), and likewise, the evidence of oral dying declaration made by deceased Anjor Das before these witnesses is also conclusive in nature.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Arjun Kumar Bhaskar (PW/7) is uncle of the accused/appellant. He has stated that on the fateful night he was sleeping in his house and at about 3-4.00 AM he heard the cries of deceased Anjor Das and injured Pusaiya Bai. After hearing the cries when he reached the place of occurrence, he saw the accused/appellant causing injuries to deceased Anjor Das and after seeing him (this witness), the accused/appellant fled away from the spot leaving axe. He has further stated that thereafter he noticed body of Pusau Ram, whereas Anjor Das and Pusaiya Bai were in the injured condition.

He has also stated that deceased Anjor Das informed him that he, Pusaiya and Pusau have been assaulted by the accused/appellant. In cross-examination, this witness remained firm and nothing could be elicited by the defence to discredit his testimony.

10. Jitendra Kumar Bhaskar (PW/8) is also uncle of the accused/appellant. This witness has also supported the prosecution case and his statement is almost identical to that of PW/7.

11. Pannalal Koushal (PW/10) is neighbour of the accused/appellant and the deceased. He has stated that after hearing the cries of deceased Anjor Das when he came out of his house, he saw the accused/appellant fleeing from the spot leaving axe. He is also witness to seizure (Ex.P/16).

12. Keju Ram (PW/1) is the witness to inquest made under Ex.P/2. D.K. Kurre (PW/2) is the Patwari who prepared spot map vide Ex.P/3. Koushal Ram (PW/3) - Constable, assisted in the investigation. Dr. T.N. Mahingleshwar (PW/4) conducted postmortem examination on the body of deceased Pusau Ram and gave his report Ex.P/5 opining the cause of death to be shock due to excessive hemorrhage from vital organ. Dr. Jawaharlal

Shrivastava (PW/5) examined injured Pusaiya Bai in CIMS, Bilaspur. This witness had advised for x-ray of Pusaiya Bai and gave his report

(Ex.P/6) for surgery. Dr. P.C. Thakur (PW/6) has medically examined injured Anjor Das and Pusaiya Bai & gave his reports (Ex.P/7 and P/8)

noticing incised wounds on their body. This witness, looking to their serious condition, referred them to CIMS, Bilaspur for further treatment. Fulbai

(PW/9) has been declared hostile. Gajendra Kumar (PW/11) is the Sarpanch of the village. He is witness to inquest made under Ex.P/2. He is also

the witness to seizure made under Ex.P/17 and P/18. Chandra Vilas (PW/12) is the witness to seizure of axe made under Ex.P/17. Vikash Tiwari

(PW/13) - Constable, Santram Mandavi (PW/14) - Head Constable, J.K. Rathore (PW/15) - Assistant Sub Inspector and Pradeep Pandey (PW/16) -

Constable, assisted in the investigation. Dr. Sanjay Kumar (PW/17) medically examined the accused/appellant and gave his report (Ex.P/26) noticing

the accused/appellant to be completely fit. Anup Bajpayee (PW/18) is the Investigating Officer who has duly supported the prosecution case. Dr.

Archana Singh (PW/19) did x-ray of injured Pusaiya Bai vide Ex.P/36 and no fracture was found on her body. Dr. Anil Haripriya (PW/20) treated

injured Pusaiya Bai and gave her report Ex.P/38.

13. Close scrutiny of the evidence available on record, makes it clear that in the night intervening 1-2/06/2010 the accused/appellant caused injuries to

Pusau Ram, Anjor Das and Pusaiya Bai by axe, resulting instantaneous death of Pusau Ram, whereas deceased Anjor Das died in the hospital. In the

incident, Pusaiya Bai was critically injured. The entire incident was witnessed by Arjun Kumar Bhaskar (PW/7), Jitendra Kumar Bhaskar (PW/8) and

Pannalal Koushal (PW/10) before whom deceased Anjor Das has also made oral dying declaration. PW/7, PW/8 and PW/10 have categorically

stated as to the manner in which deceased Pusau and Anjor Das were done to death and caused injuries to Pusaiya Bai. The defence has cross-

examined these witnesses at length but has not been able to elicit anything in their cross-examination to discredit their testimonies especially to the fact

that the accused/appellant has not committed murder of two deceased and caused injuries to Pusaiya Bai. Evidence of these witnesses gets

corroboration from medical evidence according to which left forearm of deceased Anjor Das was amputated and his intestine also came out from the abdomen. Two incised wounds on inner aspect of left middle, right ring fingers and two stab wounds on middle of sternum and left ribs of Pusau Ram were noticed. Two incised wounds on left arm and chest just below left breast of Pusaiya Bai were also noticed. Cause of death of deceased Pusau Ram was shock due to excessive hemorrhage and deceased Anjor Das due to cardio respiratory arrest and excessive hemorrhage due to multiple injuries. Considering the statements of the eye-witnesses PW/7, PW/8 and PW/10 coupled with the medical evidence, the complicity of accused/appellant in the crime in question stands proved beyond reasonable doubt and we have no reason to disbelieve the statements of these witnesses.

14. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.
15. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Being already inside, no further order regarding his arrest etc. is required.