

(2017) 03 CHH CK 0030
In the Chhattisgarh High Court
Case No : 431 of 2004

Prem Lal and Anr.

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 313](#), [Section 374\(2\)](#) - Examination of witnesses by police - Power to examine the accused - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 302](#), [Section 34](#) - Punishment for murder - Acts done by several persons in furtherance of common intention
[Evidence Act, 1872](#), [Section 8](#) - Motive, preparation and previous or subsequent conducts

Citation : (2017) 03 CHH CK 0030

Hon'ble Judges : Prashant Kumar Mishra, Anil Kumar Shukla

Bench : Division Bench

Advocate : Y.C. Sharma, Govind Dewangan, Ajay Chandra, Arvind Dubey

Judgement

1. This appeal has been preferred under Section 374(2) of the Code of Criminal Procedure against the judgment dated 15.3.2004 delivered in Sessions Trial No.307 of 2003 by the 1st Additional Sessions Judge, Baloda Bazar, whereby the learned Additional Sessions Judge has convicted the Appellants under Section 302 of the Indian Penal Code and sentenced them to undergo imprisonment for life and to pay fine of Rs.1,000/-, in default of payment of fine, to further undergo rigorous imprisonment for 1 year.

2. Case of the prosecution before the Trial Court was that on 29.6.2003 deceased Sevakdas, his brother and other family members had gone to work in their agricultural field. The agricultural fields of the deceased and the Appellants were situated adjacent to each other. Sevakdas, his brother and other family members were raising soil over the medh (boundary) of their agricultural field and the Appellants were also working in their agricultural field. At about 2:00 p.m., the

family members of Sevakdas went back to home for taking lunch, but Sevakdas stayed at the agricultural field and continued to work there. Thereafter, the Appellants, on account of an old enmity and raising of soil over the medh, made Sevakdas run and assaulted him with lathi and tangiya. Sevakdas fell into the agricultural field of Laindas and succumbed to the injuries sustained in the assault. Thereafter, the Appellants themselves went to Police Station Palari and informed the police about the incident. Constable Ashok Tiwari (PW-9) went to the house of deceased Sevakdas and informed his family members about the incident. Younger brother of the deceased Manoj Kumar Yadav (PW-4), who was taking rest at home after having lunch, went to the police station and asked the Appellants about the incident. The Appellants accepted that due to raising of soil over the medh a dispute arose and, therefore, they killed Sevakdas with lathi and tangiya. Having heard this from the Appellants, Manoj Kumar Yadav (PW-4) along with police officials went to the place of occurrence and saw the dead body of Sevakdas. He, thereafter, lodged First Information Report (Ex.P-7) in Police Station Palari.

3. During investigation of the offence, police prepared a panchnama (Ex.P-10) of the dead body of Sevakdas before witnesses and sent the dead body for post mortem. Plain and blood stained soil, a blood stained danda, a necklace of rudraksh, a tabiz and a blood stained small piece of white vest (baniyan) were seized before witnesses vide Ex.P-13. In his memorandum statement (Ex.P-11), Appellant Prem Lal stated that he had thrown the tangiya in a well. At his instance, the tangiya was seized vide Ex.P-12. A blood stained bamboo was seized from Appellant Lakhan Lal vide Ex.P- 14. Blood stained clothes of the Appellants and a torn white vest (baniyan) were seized vide Ex.P-15. Clothes of the deceased were also seized. In further investigation, statements of witnesses were recorded. Spot-map (Ex.P-4) was got prepared by the Patwari. Appellants Prem Lal and Lakhan Lal were arrested vide Exts.P-17 and P-18, respectively. Seized articles were sent to Forensic Science Laboratory, Raipur for chemical examination vide Ex.P-21. FSL Report is Ex.P-23.

4. On completion of the investigation, a charge-sheet was filed against the Appellants for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code in the Court of Judicial Magistrate First Class, Baloda Bazar. The Judicial Magistrate First Class committed the case to the Court of Session at Raipur from where the 1st Additional Sessions Judge, Baloda Bazar received the case on transfer.

5. The Additional Sessions Judge framed charge under Section 302 of the Indian Penal Code against the Appellants. The Appellants denied the guilt and claimed trial. To bring home the offence, the prosecution examined Dr. F.R. Nirala (PW-1), Patwari Rikhiram (PW-2), Kotwar Manikdas (PW-3), Manoj Kumar Yadav (PW-4), Patiram (PW-5), Ghanaram (PW-6), Daulal (PW-7), Constable Prakash Sinha (PW-8), Constable Ashok Tiwari (PW-9) and Investigating Officer Sub-Inspector C.D. Lahare (PW-10). The Appellants did not examine any witness in their

defence. In their statements under Section 313 of the Code of Criminal Procedure, both of them stated that having seen the dead body of Sevakdas in the agricultural field, they went to Police Station Palari to inform the same. But, the police, to falsely implicate them, committed marpeet with them and made them bleed and, therefore, the villagers felt that they (the Appellants) committed marpeet with the deceased and hence the villagers made false statements. The Additional Sessions Judge, after appreciation of the evidence available on record, convicted and sentenced the Appellants as aforementioned in the first paragraph. Hence, this appeal.

6. Learned Counsel appearing for the Appellants argued that the conviction imposed upon the Appellants is contrary to the evidence available on record. The prosecution has failed to lead any substantial evidence against the Appellants. There is no eyewitness to the incident. The conviction based on circumstantial evidence is erroneous. The Trial Court has wrongly considered the statement made by the Appellants before the police. Manoj Kumar Yadav (PW-4) and Ghanaram (PW-6), who are younger brothers of deceased Sevakdas, have not supported the case of the prosecution. The theory of last seen does not apply to this case because at the place of occurrence, Rajkumar and Khodar were also present. Learned Counsel appearing for the Appellants, thus, claimed for setting aside the impugned judgment of conviction and sentence and for acquitting the Appellants of the charge framed against them.

7. Learned Counsel appearing for the State/Respondent, opposing the arguments advanced by Learned Counsel for the Appellants, submitted that the Trial Court has rightly convicted the Appellants under Section 302 of the Indian Penal Code and, therefore, the impugned judgment is impeccable and does not warrant any interference by this Court.

8. We have heard Learned Counsel appearing for the parties and have perused the evidence available on record with utmost circumspection.

9. For adjudication of this appeal, following questions arise for consideration: (i) Whether the death of Sevakdas was culpable homicide amounting to murder ?

(ii) Whether the Appellants committed marpeet with the deceased and committed his murder with a common intention ?

(iii) Whether the judgment of the Trial Court deserves to be set aside ?

10. Daulal (PW-7) and Investigating Officer C.D. Lahare (PW-10) have deposed that on 29.6.2003, for preparation of a panchnama of the dead body of Sevakdas, notice (Ex.P-9) was issued to panchas. Thereafter, panchnama (Ex.P-10) of the dead body was prepared in which there is a mention of injuries over the head, abdomen, chest, back, face and private part of the deceased, opinion of death as a result of the injuries and advice of post mortem of the dead body.

11. Dr. F.R. Nirala (PW-1) deposed that he conducted post mortem on the dead

body of deceased Sevakdas on 30.6.2003 and gave his report (Ex.P-1) in which he found the following injuries : (i) Lacerated wound with bleeding 3"x1" x ½cm over skull post auricular region, right side

(ii) Lacerated wound with bleeding 3"x1"x ½cm over skull temporal, right side

(iii) Teary of right ear

(iv) Lacerated wound with bleeding 3"x1"x ½cm over scalp, right side

(v) Lacerated wound with bleeding 1½"x ½"x½cm over skull at vertex

(vi) Lacerated wound with bleeding 5"x ½"x ½cm over scalp, left side

(vii) Lacerated wound with bleeding 2"x ½"x ½cm over occipital region, right side

(viii) Lacerated wound with bleeding 3"x ½"x ½cm over vertex on skull, left side

(ix) Lacerated wound with bleeding 2½"x1"x ½cm over vertex, right side

(x) Lacerated wound with bleeding 2½"x ½"x ½cm over chin, left side

(xi) Lacerated wound with bleeding 2½"x1"x1cm over left angle of mouth, frontal teeth broken at both jaws

(xii) Contusion, vertical 4"x1" over cheek, right side

(xiii) Contusion, vertical 3"x1" over cheek, right side, parallel to jaw

(xiv) Contusion, vertical 1½"x1" over cheek near mastoid region, right side

(xv) Contusion, vertical 1½"x1" over neck region at front

(xvi) Contusion, oblique 4"x1", 3"x1" over chest, right side

(xvii) Contusion, oblique 3"x1", 2½"x1" over suprarenal, right side

(xviii) Contusion with vertical 4"x1", 3"x1" over lower abdomen

(xix) Contusion with vertical 4"x1" over left hypochondrium below neck, left side

(xx) Contusion, oblique 4"x1" over right arm, laterally

(xxi) Contusion, oblique 3"x1" over right upper jaw upper ? laterally

(xxii) Contusion, oblique 2"x1" over elbow region, right side

(xxiii) Lacerated would with bleeding 1"x ½cm x ½cm over right fossimid ? laterally

(xxiv) Contusion, vertical 5"x1", 4"x1", 4"x1", 3"x1", over scapula, right side, below scapula

(xxv) Contusion, oblique 6"x1", 5"x1", 4"x1" over scapula

(xxvi) Contusion, vertical 3"x1", 2"x1" over left scapula region, right side

- (xxvii) Contusion, tra. 3"x1" over left scapula
- (xxviii) Contusion, tra. 2"x1" over left scapula region
- (xxix) Contusion, oblique 4"x1" over thigh upper ? laterally
- (xxx) Contusion, oblique 4"x1" over thigh upper ? laterally
- (xxxi) Contusion, oblique 5"x1", 5"x1" over thigh lower ? post parallel to each other
- (xxxii) Contusion 4"x1" over right thigh lower ? ant.
- (xxxiii) Contusion, vertical 1"x ½cm, ½cm x ½cm over penis
- (xxxiv) Contusion 2½"x1" over left upper arm laterally
- (xxxv) Contusion, tra. 2"x1", 2½"x1" over left upper arm lower ? ant.
- (xxxvi) Contusion, vertical 2"x1cm, 2"x1cm over left forearm lower ? ant.
- (xxxvii) Lacerated wound with bleeding 1"x ½cm x ½cm over left forearm mid ? ant.
- (xxxviii) Contusion, tra. 3"x1½" over neck region.

The doctor opined that cause of the death was shock due to head injuries, the death was homicidal in nature and the death had occurred 18-20 hours prior to the post mortem. The post mortem report is Ex.P-1 on which the doctor has admitted his signatures.

12. According to the prosecution, the Appellants, after killing Sevakdas, went to Police Station Palari and informed about the incident and on the information, Constable Ashok Tiwari (PW-9) went to the brother of Sevakdas and informed him about the occurrence. On being informed, Manoj Kumar Yadav (PW-4) went to Police Station Palari and knew about the occurrence from them. Thereafter, he went to the agricultural field to see his brother Sevakdas. He saw that dead body of his brother Sevakdas was lying in the agricultural field of Kotwar Laldas, which was being cultivated by Rajkumar. Thereafter, Manoj Kumar Yadav (PW-4) came back to Police Station Palari and lodged the FIR (Ex.P-7). He has admitted his signatures on the FIR.

13. Manoj Kumar Yadav (PW-4) and Ghanaram (PW-6) have deposed in their Court statements that on the date of incident, they along with their brother Sevakdas and other family members had gone to work in their agricultural field. Rajkumar was working in the nearby agricultural field. The Appellants were also working in their agricultural field. At about 1:30 p.m., except Sevakdas, all other family members went home to have lunch. Sevakdas, saying that some work is left to be finished, stayed in the agricultural field. In the nearby agricultural field, Khodar was working, but at about 11:00 a.m., he had stopped working and returned from the field. Station House Officer C.D. Lahare (PW-10) has deposed

in paragraph 14 of his statement that Rajkumar was working in the agricultural field of Laidas, but at the time of occurrence, Rajkumar and his family members had returned from the field. This fact was stated by Rajkumar which was mentioned in the case diary.

14. Thus, from the above evidence of the prosecution, it is evident that at the time of occurrence, no person was present at the agricultural fields other than the Appellants and Sevakdas. In this circumstance, who killed Sevakdas has not been disclosed by the Appellants nor have they offered any reliable explanation. Therefore, there appears strong possibility of committing murder with Sevakdas by the Appellants themselves.

15. According to the prosecution, the Appellants themselves went to the police station and informed about the incident, but this admission of the Appellants is not admissible in evidence and the Trial Court has also mentioned this fact in its judgment. Learned Counsel appearing for the Appellants placed reliance on paragraph 17 of the judgment in *Bheru Singh S/o Kalyan Singh v. State of Rajasthan*, (1994) 2 SCC 467, which states as under: "17. Where the first information report is given by an accused himself to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25 of the Evidence Act. No part of the confessional statement can be proved or received in evidence, except to the extent it is permitted by Section 27 of the Evidence Act. The first information report recorded under Section 154 CrPC is not a substantive piece of evidence. It may be used to corroborate the informant under Section 157 of the Evidence Act or to contradict him under Section 145 of the Evidence Act in case the informant appears as a witness at the trial. Where the accused himself lodges the first information report, the fact of his giving the information to the police is admissible against him as evidence of his conduct under Section 8 of the Evidence Act and to the extent it is non-confessional in nature, it would also be relevant under Section 21 of the Evidence Act but the confessional part of the first information report by the accused to the police officer cannot be used at all against him in view of the ban of Section 25 of the Evidence Act."

16. In view of the observation of the Supreme Court in *Bheru Singh* case (supra), an accused cannot be convicted on the basis of his confession, but the conduct of the accused after the occurrence can be used against him under Section 8 of the Evidence Act. Learned Counsel for the Appellants, relating to confession of the Appellants before the police, placed reliance on *Nareish v. State of Madhya Pradesh*, 2002 (4) MPHT 553 (DB) and *Aghnoo Nagesia v. State of Bihar*, AIR 1966 SC 119 .

17. Although the confession made by the Appellants before the police cannot be based for their conviction, the conduct of the Appellants after the occurrence can be used against them under Section 8 of the Evidence Act. Constable Ashok Tiwari (PW-9) has stated in his deposition that the Appellants had come to the police station and at that time, Appellant Lakhan Lal had a lathi in his hand and

his clothes were blood stained to which Appellant Lakhan Lal has not offered any explanation in his statement under Section 313 Cr.P.C. Similarly, presence of the Appellants and the deceased alone at the place of occurrence and after the occurrence going of the Appellants to the police station along with the weapons of assault and blood stained clothes are the conduct and circumstances which reveal that the Appellants themselves committed murder with the deceased and killed him.

18. Manoj Kumar Yadav (PW-4) has deposed that when he reached the place of occurrence, he saw a lathi, a tabiz, a piece of vest and a piece of wood lying near the dead body of deceased. Daulal (PW-7) has deposed that he had always seen that Appellant Prem Lal used to wear a tabiz (Article B) in his arm. Appellant Prem Lal sometimes called him to work. Although this witness himself has also admitted that all the members of Yadav Society wear a tabiz. Investigating Officer C.D. Lahare (PW-10) has deposed that plain and blood stained soil, a blood stained danda, a necklace of rudraksh, a tabiz with red thread and a blood stained piece of vest were seized from near the dead body vide Ex.P-13.

19. The piece of vest seized from the place of occurrence and the torn vest seized from Appellant Prem Lal about which Daulal (PW-7) has deposed were sent to the Forensic Science Laboratory, Raipur vide Ex.P-21. The report received from the FSL is Ex.P-23. The FSL Report says that the piece of vest seized from the place of occurrence is a piece of vest of Appellant Prem Lal. The FSL Report corroborates the involvement of Appellant Prem Lal in the commission of murder of Sevakdas.

20. Patiram (PW-5) has deposed that on the fateful day at about 1:30 p.m., he was working in his field situated near the pond. At that time, he heard the voice of Appellant Prem Lal from towards the Ugdakhar agricultural field that "VERNACULAR MATTER OMITTED". He heard this voice 2-4 times. Thereafter, he did not hear this voice. In the evening, when he returned to the village, he came to know that Appellants Prem Lal and Lakhan Lal had killed Sevakdas. According to this witness, he himself did not witness anything and he had heard the voice only.

21. Patiram (PW-5) has no inimical terms with the Appellants nor is he a member of the family of the deceased. He is a resident of the village and he heard the voice of Appellant Prem Lal. He was acquainted with the voice of Appellant Prem Lal. In these circumstances, it is possible that he could identify Appellant Prem Lal on the basis of his voice. Although this witness has stated that distance of his presence was about 1 Km. away from the place of occurrence yet there can be possibility of hearing of voice at such a distance when there is no noise.

22. According to the memorandum statement (Ex.P-11) of Appellant Prem Lal, he had thrown the weapon of assault tangiya into a well situated near the place of occurrence and this tangiya was seized vide Ex.P-12 at the instance of Appellant Prem Lal. This tangiya, according to the FSL Report (Ex.P-23), was

stained with blood. According to the FSL Report (Ex.P-23), the danda seized from Appellant Lakhan Lal vide Ex.P-14 and his shirt and lungi seized from him vide Ex.P-16 were also stained with blood. These evidence strongly support the case of the prosecution against the Appellants.

23. According to Ghanaram (PW-6), the deceased and the Appellants had a dispute regarding irrigation of their agricultural fields. There was another dispute between them regarding selling of a land of Bisahinbai by Appellant Prem Lal. Thus, it appears that there was an old enmity between the Appellants and the deceased.

24. Learned Counsel appearing for the Appellants has argued that there is a contradiction in the police and Court statements of Patiram (PW-5). In his statement under Section 161 Cr.P.C. (Ex.D- 2), Patiram (PW-5) has stated about hearing of voice of a person named Ramlal, but in his Court statement he has stated about hearing of voice of Appellant Prem Lal. Investigating Officer C.D. Lahare (PW-10), who recorded statements of witnesses under Section 161 Cr.P.C., in cross-examination, has stated about recording of the police statement (Ex.D-2) of Patiram (PW-5) that name of Ramlal was recorded by him by mistake. Learned Counsel for the Appellants has argued that in support of the fact that name of Ramlal has wrongly been recorded in the police statement of Patiram (PW-5), no supplementary statement has been recorded by the Investigating Officer. In the circumstance, case of the prosecution against Appellant Prem Lal on the basis of police statement becomes doubtful, but going through the entire evidence of the prosecution including the FIR (Ex.P-7) and the depositions of prosecution witnesses reveals involvement of the Appellants in the offence. There is no suggestion in cross-examination of any of the prosecution witnesses regarding involvement of a person named Ramlal in the offence and Patiram (PW-5), in examination-in-chief itself, has stated about hearing of voice of Appellant Prem Lal, not the voice of any person named Ramlal. Therefore, mention of name of a person Ramlal in the police statement by the Investigating Officer is his an error only and on the basis of this error the entire case of the prosecution cannot be disbelieved.

25. Therefore, from the above discussion, the following findings emerge: (i) The death of Sevakdas was a culpable homicide amounting to murder.

(ii) There was old enmity between the Appellants and the deceased regarding irrigation of their agricultural fields and other family dispute.

(iii) At the place and time of occurrence, no person other than the Appellants and the deceased was present.

(iv) After the occurrence, the Appellants themselves had gone to the police station with the weapons of assault and the blood stained clothes.

(v) A tabiz and a piece of vest of Appellant Prem Lal were seized from near the dead body of Sevakdas.

(vi) Patiram (PW-5), at some distance from the place of occurrence, had heard the voice of Appellant Prem Lal that "VERNACULAR MATTER OMITTED".

(vii) The danda, shirt and lungi seized from Appellant Lakhan Lal were found stained with blood.

(viii) There is no evidence on behalf of the prosecution nor any defence by the Appellants that the deceased was at inimical terms with any person other than the Appellants.

(ix) The doctor, who performed post mortem examination on the dead body and also examined the weapons of assault, has deposed that the injuries sustained by the deceased could be caused by the said weapons.

26. The above findings clearly disclose that it was the Appellants only who killed Sevakdas. Therefore, the impugned judgment of conviction and sentence, being unexceptionable, is affirmed and the criminal appeal is dismissed. The Appellants are on bail, their bail bonds are cancelled. They be arrested forthwith and sent to jail for serving the sentence. Appeal is dismissed.