

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1765 of 2000

1. Ramchandro, Aged about 27 years, S/o Gudnidhi Devta, R/o Vill: Panking,
2. Balwinder, Aged about 30 years, S/o Nikkasingh,
3. Ananto, Aged about 25 years, S/o Gudnidhi Devta, Occu: Agrirculturist, All R/o Village- Panking, P.S. Saraipali, The. Saraipali, District Ma-hasamund, MP (Now Chhattisgarh)

---- Appellants

Versus

The State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellants	:	Shri Sushobhit Singh along with Shri Basant Kaiwartya, Advocates.
For Respondent	:	Shri Vinod Deshmukh, Deputy Government Advocate.

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C A V Order

Per Navin Sinha, Acting Chief Justice:

25/02/2015

1. Appellants No.1 & 3 have been convicted under Section 302/34 IPC to life imprisonment with fine of Rs.3,000, in the event of failure to pay which, they would have to undergo ten months further rigorous imprisonment. Appellant No.1 has further been convicted under Section 323 IPC to three months rigorous imprisonment. Appellant No.2 has been convicted under Section 302 IPC to life imprisonment along with fine of Rs.3,000, in the event of failure to

pay which, he would have to undergo ten months further rigorous imprisonment. He has been further convicted under Section 323/34 IPC to three months rigorous imprisonment as ordered by the 1st Additional Sessions Judge, Mahasamund in Sessions Trial No.434/96.

2. With regard to an occurrence on 18.8.1995 at 8:30 pm inside the house of the deceased Shivshankar, Merg, Exhibit P-1 was lodged by his brother Harishankar, PW-1, alleging that the Appellants came armed to their house. Appellant No.2 assaulted the deceased with "gupti" and the other two with "lathis". The deceased succumbed to his injuries. First Information Report, Exhibit P-2, was lodged by PW-1 the same day. Postmortem of the deceased Shivshankar was conducted on 19.8.1995 by Dr. SB. Mangulrkar, PW-13, and by his report Exhibit P-11, it was opined that cause of death was due to excessive bleeding, occasioned by piercing injury on the left chest by a sharp cutting weapon. Scratches were also found near the left ear. The MLC of PW-1, Exhibit P-9, was conducted by Dr. Srikant Shukla, PW-9, on 19.8.1995 who found swelling over the occipital region opining it to be simple in nature caused by hard blunt object.

3. The memorandum of the Appellants No.1 and 2 were marked Exhibits P-3 and P-5 respectively. Consequent seizure of lathi was marked Exhibit P-4 and "gupti" from the latter Exhibit P-6. The memorandum and seizure witnesses PW-2, Maniram and PW-3, Surendra Kumar Panda, attempted to turn hostile but have not denied their signatures on the exhibits and have offered no explanation for the same. On the contrary, PW-2 stated that he normally does not sign any papers without knowing and understanding but signed the present blindly. PW-3 stated that the whole process took about two hours. Blood stained

soil was seized from the place of occurrence by PW-14, B L Sahu, marked Exhibit P-7, in presence of PW-2 and 3. The FSL report, Exhibit P-14, confirmed presence of blood on the soil, lathi and gupti.

4. Learned Counsel for the Appellants submitted that there was no motive or intention for them to kill the deceased. Their only intention was to teach a lesson to PW-1, Harishankar, brother of the deceased. Had it been otherwise, the Appellants, having accosted PW-1 earlier on the road and forced him to accompany them for some distance would not have allowed him to go away after merely assaulting him with lathis. PW-1 has deposed that the police had obtained his signature on certain papers. Fabrication and false implication cannot be ruled out. The witness denied that Merg was written in accordance with his statements but confirmed the correctness of the F.I.R. when both had identical contents lodged by witness himself. PW-1 therefore could not be relied upon as a witness stating the truth. The witness himself was prosecuted under Section 307 I.P.C for having assaulted Appellant No. 3 the same day. PW-1 had criminal antecedents, was ostracized by the villagers and proposed to be externed also. The possibility that the deceased, being the brother of PW-1, may have been the victim of the ire of another against PW-1 cannot be ruled out. PW-1 was not an eye witness as claimed, but came later, evident from the deposition of PW-7, Jaikrishna, father of the deceased. Similarly PW-8, Salobai, mother of the deceased deposed that PW-1 had gone to Odisha for bringing her son-in-law. PW-7, stated of assault by Appellant No. 2 with a sword and not a "gupti". PW-1 in his deposition stated of assault with a knife and not "gupti" contrary to that mentioned by him in the Merg. PW-8 also stated of assault by knife and not "gupti". PW-11, Punni Bai, wife of the deceased also stated of assault by knife and not "gupti". She acknowledged ostracisation of the family

by villagers and that stones would be thrown on their house in the night. She further acknowledges that PW-1 had gone to jail more than once. PW-14, B.L. Sahu, the police officer who recorded the Merg and F.I.R., acknowledged serious injuries on Appellant No. 3 by PW 1 while the deceased held him. PW 15, Investigating Officer, in his cross examination acknowledged recording of Crime No. 140/95 and 141/95 for the altercation between the parties on 20.08.1995 by PW-14. The investigation stated the place of occurrence to be near the village well and not the house of the deceased. The former was registered with regard to the assault by PW-1 on Appellant No.3. If at all the Appellants are stated to have been involved in the assault it was a case of free fight between the parties at the village well evident from the two separate crime cases registered by the police. The Appellants in their statements under 313 Cr.P.C. denied the allegations contending that they had acted in self defence when PW-1 had assaulted Appellant No.3. The Appellants, in their police report had not made PW-1 or the deceased an accused with regard to the theft of TV Sets and other items from their grocery store. The memorandum and consequent seizure cannot be believed in view of the independent witnesses PW-2 and PW-3 having turned hostile. The prosecution witnesses being all related to each other and the complete absence of any independent witness makes it unreliable to base conviction of the same only.

5. Learned Counsel for the State opposing the Appeal submitted that motive existed for the Appellants as they suspected PW-1 of having committed theft of the TV Sets and grocery items. Their intention is apparent from the conduct in having come to the house of the deceased armed. Merely because the victim was the deceased and not PW-1 does not whittle down their intention to cause death. The Trial Court has rightly rejected the theory of having acted in

self defence or of a free fight or that the occurrence took place near the village well and not at the residence of the deceased. It has rightly been held that the Appellants had come to the house of the deceased armed and were therefore the aggressors. Even if PW-1 had criminal antecedents, there is no evidence whatsoever to even remotely suggest the possibility of the assault having been committed by any others and that the Appellants had never come to the house of the deceased. Death according to postmortem report has been caused by a sharp cutting weapon leading to an incised wound on the left chest, a sensitive part of human body. The nature of injury on the deceased could be caused by a sharp cutting weapon only. Whether it was a “gupti”, sword or a knife are not material contradictions to completely disbelieve the case of the prosecution. The witnesses to the memorandum and seizure have not denied their signatures on the same. Blood has been found in the FSL report on the earth sample seized from the place of occurrence, the lathi and “gupti”.

6. We have considered the submissions on behalf of the parties and also perused the evidence on record.

7. PW-1 deposed that the Appellants suspected him with regard to theft of TV and other items from their store. Appellant No.3 denied having named anybody in the police report with regard to the theft. The Appellants had earlier in the evening accosted PW-1 on the road and accused him of the theft, assaulted him with lathi and forced him to accompany them for some distance before releasing him at the instance of one Girdhari Tiwari. The Appellants then again came together in the evening armed, to the house of PW-1 when the assault on the deceased took place. If the Appellants assaulted the deceased and PW-1 in the latter's house itself, and PW-1 may have retaliated assaulting and injuring Appellant No.3 also, it cannot be called a free fight or an act in self

defence. The Trial Court rightly opined in the facts of the case that the Appellants were the aggressors. Merely because two crime cases were registered one after other for the same occurrence is not sufficient to give it colour of a free fight. Likewise the Trial Court has rightly concluded that the place of occurrence was not at the village well and neither had any blood stained earth been seized from that place. On the contrary the blood stained earth was seized from the house of the deceased which was the place of occurrence. The fact that the deceased may have been killed accidentally and that the Appellants had intended to assault PW-1 is an irrelevant consideration in view of their evident intention. The defence by Appellant No.2 under Section 313 Cr.P.C. that the deceased may have been killed by some unknown person is too vague, evasive and unsupported by any evidence to be accepted. The contradiction suggested from the evidence of PW-1 with regard to the Merg and F.I.R is trivial to merit consideration. No question in this regard has been asked in cross-examination to doubt the entire genesis of the occurrence or any contradictions pointed out from the statement under Section 161 Cr.P.C by the witness. PW-1 may have stated that the Merg was not recorded correctly as he deposed of assault by knife and not "gupti".

8. PW-5, Kapoora Bai, wife of PW-1 and sister-in-law of the deceased, in her deposition stated that the Appellants came to their house and shouted abuses asking PW-1 to come out. The deceased stepped out asking why they were shouting, when Appellant No. 2 assaulted him with a sharp cutting weapon while the other two Appellants held the deceased. All of them ran away thereafter. During the occurrence the inmates of the adjoining houses had closed their doors. We find nothing unusual in the absence of any independent witnesses as explained by the witness. It is not unusual that in an occurrence of

the present nature persons not connected with the immediate family prefer to stay away and are reluctant to be witnesses both for reasons of the agony of a criminal trial and more importantly afraid of retaliation by the accused not wishing to endanger their own safety and that of their family members. It is a common phenomenon that in such occurrences especially when it takes place inside the house that the witnesses shall only be the inmates related to each other. The witness deposed that Appellant No. 2 took out a knife about 6 to 7 inches long from his turban and assaulted the deceased. She supported PW-1 as his having been present in the house at the time of the assault. Even if PW-1 had criminal antecedents that ipso facto cannot lead us to any conclusion for false implication of the Appellants on the assumption of the possibility with regard to an assault made by other unknown persons.

9. Considering a similar plea of interested and related witnesses, for an occurrence inside the house it was observed in (2012) 7 SCC 723 (Thoti Manohar v. State of Andhra Pradesh) as follows :-

“30. The second submission of the learned counsel for the appellant is that all the witnesses, being relatives, are interested witnesses. The occurrence in part took place inside the house and the rest of it slightly outside the premises of the deceased. Under these circumstances, the family members and the close relatives are bound to be the natural witnesses. They intervened and sustained injuries. Their sustaining of injuries has got support from the ocular evidence as well as the medical evidence. The same has been dislodged and if we allow ourselves to say so, not even a fragile attempt has been made to dislodge the same. By no stretch of imagination can it be said that they are chance witnesses. In the obtaining factual matrix, they are the most natural witnesses.”

The reluctance of independent witnesses to depose was also noticed in (2013) 7 SCC 629 (Manga v. State of Uttarakhand) observing as follows:-

“34....It has also taken judicial notice of the fact that the public are reluctant to appear and depose before the

court, .especially in criminal cases because of many obvious reasons. We fully endorse the said conclusion of the High Court, while dealing with the said submission made on behalf of the appellants.”

10. There existed sufficient motive for the Appellants to go armed to the house of PW-1 as they suspected him of theft from their store. The absence of any immediate motive against the deceased who may have been accidentally killed is an irrelevant consideration. The fact that the Appellants went to the house with murderous intent is more than apparent from their conduct. In any event any absence of motive in a case like the present has not much relevance.

11. PWs-7 and 8, the father and mother of the deceased likewise attributed the assault on the deceased to Appellant No. 2. The former clearly stated of the presence of PW-1 at the time of the assault. The statement of PW-8 that PW-1 had gone to bring her son-in-law cannot lead to any conclusion that he had not returned by night. PW-1 was injured in the same occurrence and is alleged to have assaulted Appellant No.3 leading to his prosecution under Section 307 I.P.C. Punni Bai, PW-11, wife of the deceased also deposed of the assault by Appellant No.2 on the deceased in their house leading to his death and the presence of the other two Appellants abusing.

12. PWs-1, 5, 7, 8 and 11 are undoubtedly all family members. If the occurrence has taken place at night inside the house, naturally the witnesses have to be the inmates only. There are no material contradictions in their evidence to disbelieve the fact that they are not eye-witnesses even after cautious examination of their evidence as all related to each other. The Appellants have not explained the injuries on PW-1 except for a bald suggestion that it may have been caused somewhere else. If the Appellants

came to the house of the deceased at night armed obviously they shall be the aggressors. Any assault by PW-1 in self defence cannot be invoked by the Appellants to claim either private defence or a free fight. It is difficult to accept that PWs-7, 8 and 11, the parents and wife of the deceased would falsely implicate the Appellants leaving out the real assailants especially when the assault has taken place inside the house in their presence. Had the assault taken place in a public place, issues for consideration may have been different. Criminal jurisprudence does not contemplate rejection of related witnesses but only greater cautious scrutiny of the same for contradictions and embellishments which are wanting in the present case. PW-11, was the wife of the deceased. It was very natural to have been home at night when the assault took place. She is not a chance witness but a wholly reliable witness fully corroborated by the other family members who were eye witnesses.

13. The Trial Court has rightly disbelieved that the place of occurrence was the village well. No blood stained earth was recovered near the village well. On the contrary blood stained earth has been recovered from inside the house. The police report by both sides for the assault on PW-1 and the deceased along with injuries to Appellant No.2, the fertile but futile imagination of the police to shift the place of occurrence during investigation by PW-14 could rightly not be protected by PW-15. Suffice it to observe that the police did make a concerted attempt unsuccessfully to derail the investigation.

14. If the aforesaid were not sufficient, the recovery of blood stained earth from the place of occurrence, the confession of Appellants 1 and 2 leading to recovery of lathi and “gupti” with blood on it confirmed in the FSL report take it beyond shadow of doubt that the Appellants were the assailants.

15. In conclusion we find no reasons to interfere with the order of conviction of the Appellants, either under Section 302 or 302/34 as also under Section 323 or 323/34 IPC. The bail bonds of the Appellants are cancelled and they are directed to surrender forthwith and / or be taken into custody for serving out the remaining period of their sentences.

16. The Appeal is dismissed.

Sd/-
ACTING CHIEF JUSTICE

Sd-
JUDGE

HIGH COURT OF CHHATTISGARH, BILASPUR

Coram: **Hon'ble The Acting Chief Justice**
Hon'ble Shri Justice P. Sam Koshy

Criminal Appeal 1765 of 2000

Ramchandro and Others

Vs.

The State of Chhattisgarh

C A V ORDER

For consideration

Acting Chief Justice
/02/2015

Hon'ble Shri Justice P. Sam Koshy

Judge
/02 /2015

Post for C A V Order: /02/2012

Acting Chief Justice
/02/2015