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Presented by Shri. *Punit Kumar*  
Dated. 03/11/08

(4)

(1)

**IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR**

Criminal Appeal No. 944 /2008

Appellants:

(In Jail)

1. Santram aged about 22 years, ~~22~~ years,  
S/o Gandaram, By Occupation  
Agriculture, R/o Village Karramad  
Patelpara, Thana Durgukondal, Distt.  
Kanker
2. Dyaluram aged about 23 years, S/o  
Dukaruram by Occupation Agriculture,  
R/o Village Karramad Patelpara, Thana  
Durgukondal, Distt. Kanker

Verses

Respondent:

The State of Chhattisgarh through  
Police Station, Durgukondal, Distt.  
Kanker

**CRIMINAL APPEAL UNDER SECTION 374 OF CODE OF  
CRIMINAL PROCEDURE 1973.**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Criminal Appeal No. 944 of 2008**

**Coram : HON'BLE MR.T.P.SHARMA &  
HON'BLE MR. I. S. UBOWEJA, JJ.**

**APPELLANTS**  
(In Jail)

1 Santram  
2 Dyaluram

**Versus**

**RESPONDENT**

: The State of Chhattisgarh

[Criminal Appeal under Section 374 of the Code of Criminal Procedure, 1973]

**Present:-**

Mr. Parag Kotecha, counsel for the appellants.  
Ms. Pushpa Dwivedi, Panel Lawyer for the State.

**JUDGMENT**

(Passed on 25<sup>th</sup> February, 2015)

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

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 06.09.2008 passed by the Sessions Judge, Kanker in Sessions Trial No.118/2008, whereby & whereunder, after holding the appellants guilty for causing homicidal death amounting to murder of Romdhar Poya in sharing common intention, convicted them under Sections 341/34 and 302/34 of the Indian Penal Code and sentenced them to undergo S.I. for one month and imprisonment for life and fine of Rs.500/-, in default of payment of fine, additional R.I. for two months.
2. Conviction is impugned on the ground that without there being any iota of evidence the trial Court has convicted and sentenced the appellants as aforementioned and thereby committed an illegality.
3. As per case of the prosecution, fateful night of 01.06.2007 at about 9.00 p.m. appellants were present in the meeting along with deceased – Romdhar Poya. A boy, Ghunsuram, didn't come to attend the meeting, therefore,

appellants quarreled with the deceased. After the meeting, while deceased was going to his house, appellants restrained him. Appellant – Santram assaulted him by knife over his left side of the chest and shoulder. Appellant – Dyaluram assaulted him by hand and fists. When they saw the active bleeding from the injury of the deceased, then they fled from the spot. The deceased came to his house. He went to Police Station Durgukondal on 02.06.2007 and lodged FIR vide Ex.P-7. He was sent for treatment to Community Health Centre, Durgukondal, where he was examined by Dr. Preeti Singh (PW-12) vide Ex.P-19, who found following injuries and symptoms :-

- (i) He was in unconscious condition. Pulse 70% per minute. Blood Pressure was 100/60 m.m.h.g.
- (ii) Incised wound of 6 x 1 cm over left shoulder.
- (iii) Incised wound of 3 x 5 cm x bone deep over left side of the chest between 3rd and 4th inter-coastal region .

He was referred for better treatment. During the course of treatment he died on 02.06.2007. Merg was recorded vide Ex.P-10. After summoning the witnesses vide Ex.P-5, inquest over the dead body of the deceased was prepared vide Ex.P-6. Spot map was prepared vide Ex. P/8. Dead body of the deceased was sent for autopsy to the K.D. Hospital, Kanker, where Dr. Vijay Shukla (PW-11) conducted autopsy vide Ex.P/18 and found following injuries and symptoms :-

- (i) Stitched wound over left shoulder.
- (ii) Penetrated wound over left chest.
- (iii) Puncture of left plural cavity with stab wound on left lungs.
- (iv) Left lung collapsed.
- (v) Fracture of secondary ribs.

Mode of death was shock and death was homicidal in nature.

4. Bloodstained clothes of the deceased were sealed & seized vide Ex.P-16. Appellant - Santram was taken into custody, he made disclosure statement of knife vide Ex.P-13 and the same was recovered at his instance vide Ex.P-15. Bloodstained clothes of appellant - Santram were seized vide Ex.P/17. Patwari prepared spot map vide Ex.P-19 (Second Ex.P-19).
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, Bhanupratappur, who in turn, committed the case to the Court of learned Additional Sessions Judge, Bhanupratappur.
6. In order to prove the guilt of the accused/appellants, the prosecution has examined as many as thirteen witnesses. Accused were examined under Section 313 of the Code, in which they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question is claimed.
7. After providing opportunity of hearing to the parties, learned Sessions Judge convicted and sentenced the appellants as aforementioned.
8. We have heard learned counsel for both the parties and perused the judgment impugned and record of trial Court.
9. Learned counsel for the appellants vehemently argued that this is a case of sudden provocation in which when a boy didn't attend the panchayat meeting, then they provoked and caused injuries to the deceased. Appellant - Dyaluram has caused injury by hand and fists. He was not holding any weapon. Even he was not having knowledge of the fact that co-appellant Santram was having knife. Appellant - Santram has caused injury by knife, depth of injury was bone deep. When they saw the active bleeding from the

injury of the deceased then they fled from the spot which shows that they have not caused injury to the deceased with intention to cause his death. Present appellant – Santram is in custody since 05.06.2007.

10. On the other hand, learned State counsel opposed the appeal and submits that evidence of the prosecution witnesses are sufficient to prove the guilt of the appellants. Deceased himself has lodged FIR which became dying declaration after the death of the deceased. FIR (Ex.P-7) in the form of dying declaration by itself is sufficient to prove the guilt of the appellants.
11. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the parties.
12. In the present case, homicidal death as a result of fatal injuries found over the body of deceased - Romdhar Poya has not been substantially disputed on behalf of the appellants. On the other hand, it is also established by the evidence of Akal Singh (PW-1), Smt. Mehri Bai (PW-2), Ghanshyam (PW-3), Sarita (PW-4), Lakshman (PW-5), Rohit Kumar (PW-8), Sunder (PW-9), Chammulal (PW-10), FIR (Ex.P-7), Dr. Preeti Singh (PW-12), Injury Report (Ex.P-19), Dr. Vijay Shukla (PW-11) and Autopsy Report (Ex.P-18) that the death of deceased – Romdhar Poya was homicidal in nature.
13. As regards complicity of the appellants in crime in question is concerned, conviction is substantially based on the evidence of Lakshman (PW-5), Rohit Kumar (PW-8), Sunder (PW-9), Chammulal (PW-10) and FIR (Ex.P-7) lodged by the deceased himself. As per FIR (Ex.P-7), lodged by the deceased himself, which became dying declaration and evidence of Lakshman (PW-5), Rohit Kumar (PW-8), Sunder (PW-9) and Chammulal (PW-10), before whom deceased has made oral dying declaration, Ghanshyam didn't attend the Panchayat meeting which was objected by the present appellants, then quarrel took place between them and the deceased, thereafter, deceased

was going to his house which was restrained by the appellants. Appellant – Santram caused injury by knife to him and appellant – Dyaluram has caused injury by hand and fists. When they saw the active bleeding, then they fled from the spot. This evidence is virtually unchallenged. Aforesaid evidence is sufficient for drawing an inference that the appellant – Santram has caused fatal injury to the deceased, but even after having sufficient opportunity to kill him, he has not caused further injury. Appellant – Dyaluram has caused injury by hand and fists. Prosecution has failed to prove the fact that appellant – Dyaluram was having knowledge of the fact that appellant – Santram was having knife. Deceased received injury on 01.06.2007 at 9.00 p.m. He was treated first time by Dr. Preeti Singh (PW-12) vide Ex.P-19 on 02.06.2007. He was left unattended for long time. He died on 02.06.2007 at 6.00 p.m. These circumstances shows that appellant – Santram has not caused injury to the deceased with intent to cause his death, but at least, at the time of causing injury he was having knowledge that by his act deceased may die. Prosecution has failed to prove the fact that appellant – Dyaluram was having knowledge of the fact that co-appellant Santram was keeping knife and will cause injury by knife, therefore, it will be difficult to hold that appellant – Dyaluram has shared common intention in causing homicidal death of the deceased, but, certainly he has caused simple injury after restraining him. The act attributed to appellant – Santram squarely falls within the ambit of Section 304 Part-II of the IPC.

14. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant as aforementioned. But, while convicting and sentencing the appellants trial Court has not considered the aforesaid facts and thereby committed an illegality.



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15. Consequently, the appeal is partly allowed. Conviction and sentence of the appellants under Section 341/34 of the IPC is hereby affirmed. Conviction of the appellant – Dyaluram under Section 302/34 of the IPC is altered into Section 323 of the IPC and sentenced to undergo R.I. for one year. Conviction and sentence of appellant – Santam under Section 302/34 of the IPC is altered into Section 304 Part-II of the IPC and sentenced imprisonment for the period already undergone. Appellant – Santram is in custody since 05.06.2007, he be released forthwith if not required in any other case. Appellant – Dyaluram has already served the sentence imposed upon him.

Sd/-  
T.P. SHARMA  
Judge

Sd/-  
I.S. Uboweja  
Judge

chandra