

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 710 of 2004**

1. Shivbaran, S/o Ram Prasad, aged about 36 years.
2. Ram Prasad, S/o Anandi, aged about 61 years.

Both are R/o village Pandri Dholpakhna, Police Chowki Raghunath Nagar, Police Station Ramkola, District Sarguja (CG).

---- Appellants**Versus**

1. State of Chhattisgarh, through the Police Station Ramkola, District Sarguja (CG).

---- Respondent

For Appellants	Ms. Neha Verma, Advocate
For Respondent/State	Shri Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Chandra Bhushan Bajpai****Judgment On Board****21/07/2016**

1. Appellants have assailed the legality and validity of the impugned judgment of conviction dated 21-8-2004 passed by the 3rd Additional Sessions Judge (Fast Track Court), Surajpur, Sarguja, in ST No.14/2004 convicting them for offence under Section 302 read with Section 34 of the Indian

Penal Code ('the IPC' in short) and imposing sentence to undergo Rigorous Imprisonment for Life and to pay a fine of Rs.2,000/- each, in default of payment of fine to further undergo Rigorous Imprisonment for one month.

2. As per the communication sent by the Additional Sessions Judge, Fast Track Court, Pratappur, on 23-9-2009, appellant No.1 - Shivbaran, S/o Ram Prasad has died on 1-8-2009 while he was still confined in Central Jail, Ambikapur.
3. At this juncture, learned counsel appearing for the appellants would submit that the legal heirs of the appellant No.1 have not contacted her for conducting the appeal on their behalf.
4. In view of the above, the appeal in so far as it relates to the appellant No.1 - Shivbaran, S/o Ram Prasad has abated. Accordingly, the appeal in respect of the appellant No.1 is dismissed as abated. It will now be considered on merits only in respect of the appellant No.2 – Ram Prasad.
5. The First Information Report (FIR) (Ex.P/2) was lodged by Dhanpatiya (PW-1) at 22.35 hours on 5-6-2003 informing the police that at about 12.30 PM (afternoon) she along with her husband – Ramdhani (since deceased) and mother-in-law namely; Mantora Bai (PW-8) were in the house when the

appellant No.1 Shivbaran came over there and alleged that the deceased has played sorcery for which his son has fallen ill, therefore, the deceased should remove the illness. On hearing this, Dhanpatiya (PW-1), deceased Ramdhani & Mantora Bai (PW-8) came out of the house. The appellant No.1 again insisted the deceased to come to his house, on which the deceased stated that he does not practise sorcery neither he is involved in the affairs of his son, on which the appellant No.1 caused injuries over the left side neck of the deceased with the help of axe, as a result of which the deceased fell down on the ground and died instantaneously. Thereafter, the appellant No.1 escaped with axe from the place of incident. According to the complainant, she and her mother-in-law Mantora Bai (PW-8) have witnessed the incident.

6. When examined in the Court Dhanpatiya (PW-1) has improved the version and alleged that at the time of incident the appellant No.2 Ram Prasad was standing at some distance and was exhorting the appellant No.1 to assault the deceased. Similar is the statement of Mantora Bai (PW-7), who is cited as an eyewitness in the FIR. Although Phoolkunwar (PW-8) is not mentioned in the FIR as an eyewitness, she too has made statement to the similar effect

as has been made by Dhanpatiya (PW-1) & Mantora Bai (PW-7).

7. The FIR was lodged at 22.35 hours on 5-6-2003. Prior to that merg intimation (Ex.P/1) was also recorded on the same day at 22.30 hours in the same language in which the FIR is recorded. In both the documents the appellant No.2 has not been named nor any allegation is made against him that he was involved in exhorting the appellant No.1.
8. It appears, when examined in the Court Dhanpatiya (PW-1), Mantora Bai (PW-7) & Phoolkunwar (PW-8) have substantially improved their version in respect of the appellant No.2 to implicate him in the crime.
9. Even otherwise, there being no allegation that the appellant No.2 was either armed or overtly participated in commission of crime by catching hold of the deceased or even going near to him when the offence was committed, coupled with non mention of the name of the appellant No.2 in the merg intimation (Ex.P/1) and FIR (Ex.P/2), it appears the appellant No.2 has subsequently been implicated as an afterthought.
10. Evidence available in the case do not inspire confidence nor the facts of the case suggests that the prosecution has been

able to prove its case against the appellant No.2 beyond reasonable doubt.

11. For the foregoing, the appeal preferred by the appellant No.2 Ram Prasad is allowed. Conviction and sentence imposed on the appellant No.2 under Section 302 read with Section 34 of the IPC are hereby set aside and he is acquitted of the said charge. The appellant No.2 is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant No.2 – Ram Prasad shall appear before the higher Court as and when directed.

Sd/-

Judge

Prashant Kumar Mishra

Sd/-

Judge

Chandra Bhushan Bajpai

Gowri