

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 304 of 2007

- Devchand Patel, aged about 42 years, son of Munshi Lal Patel, resident of Village Saraipali, Police Station Dabhra, Distt. Janjgir-Champa (CG)

---- Appellant

Versus

- State Of Chhattisgarh through Station House Officer, Police Station Dabhra, Janjgir-Champa (CG)

---- Respondent

And

CRA No. 296 Of 2007

- Kanhaiya Lal S/o Aatma Ram Patel, aged about 36 years, R/o Village Saraipali, Thana - Dabhra, Distt. Janjgir-Champa (CG)

---- Appellant

Vs

- State Of Chhattisgarh through P.S. Dabhra, Distt. Janjgir-Champa (CG)

---- Respondent

And

CRA No. 323 Of 2007

- Hari Shankar Patel Son of Chhabilal Patel, aged about 51 years, R/o Village Saraipali, Thana - Dabhra, Distt. Janjgir-Champa (CG)

---- Appellant

Vs

- State Of Chhattisgarh through the Police Station Dabhra, District Janjgir-Champa (CG)

---- Respondent

And

CRA No. 460 Of 2007

1. Murlidhar @ Pardeshi Patel, S/o Jagbandhu, aged about 19 years,
2. Hulasram S/o Shashibhushan Patel, aged about 28 years,

Both resident are Village Saraipali, Thana - Dabhara, District Janjgir-Champa (CG)

---- Appellant

Vs

- State Of Chhattisgarh Through P.S. Dabhara, Distt. Janjgir-Champa (CG)

---- Respondent

And

CRA No. 387 Of 2007

- Ramesh Kumar Chauhan S/o Dilchand, aged 40 years, Cultivator and resident of Village Saraipali (Dhurkot) in the Police Station Dabhara, Distt. Janjgir-Champa (CG)

---- Appellant

Vs

- State Of C.G. through the Police Station Dabhara, Distt. Janjgir-Champa, Collector, Janjgir-Champa.

---- Respondent

For Appellants	:	Shri Varun Sharma, Shri Sanjay Agrawal, Shri Bhaskar Pyasi, Shri Arun Kochar and Shri Janak Ram Verma, counsel for the respective appellants.
For Respondent/State	:	Shri Rahul Tamaskar, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice R.C.S. Samant

Judgment On Board By Justice Pritinker Diwaker

14/12/2016

As all these appeals arise out of a common judgment of conviction and

order of sentence dated 30.3.2007 passed by Sessions Judge, Janjgir-Champa in ST No.42/2006, they are being disposed of by this common judgment.

02. Brief facts of the case are that on 24.11.2005 at 10.10 am deceased Navin Chouhan entered the house of Bhojkumari, sister of accused/appellant Murlidhar, and made an attempt to outrage her modesty. Bhojkumari informed about this incident to her brother Murlidhar, who in turn informed the other villagers and a decision was taken to call a village meeting. It is said that village panchayat was also attended by Navin Chouhan and during meeting he abused the villagers and then he was beaten by the persons present in the village panchayat and thereafter he was dropped at his house. Further case of the prosecution is that the deceased was provided home treatment and in the next morning i.e. 25.11.2005 he was taken to hospital where he was declared brought dead. Merg intimation Ex.P/2 was recorded on 25.11.2005 at 11.30 am at the instance of PW-1 Meera Bai, mother of the deceased. FIR (Ex.P/1) was registered immediately thereafter at 11.45 am under Sections 147, 149, 302 of IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "the Act, 1989") against five accused persons namely accused No.1 Kanhaiyalal, No.4 Hulasram, No.5 Devchand Patel, No.6 Ramesh Chouhan and No.7 Harishankar Patel. However, accused No.3 Murlidhar was not named in the FIR. Inquest over the dead body was performed vide Ex.P/10 on 25.11.2005. Thereafter, the dead body was sent for postmortem, which was conducted on 25.11.2005 by PW-5 Dr. G.L. Miri vide Ex.P/8 wherein he noticed as many as 37 injuries

on the body of the deceased, including 34 abrasions and bruises. In his opinion, the cause of death was excessive internal and external haemorrhage of blood from injury and the mode of death was shock and that the death was homicidal in nature. After filing of charge sheet, the trial Court framed charges against all the 10 accused persons under Sections 147, 302, 302/149 of IPC and Section 3(2)(v) of the Act, 1989.

03. So as to hold the accused persons guilty, the prosecution examined 26 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, they examined one Mohanlal Patel as DW-1.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting other accused persons, convicted all the appellants under Sections 147, 302 of IPC and sentenced to undergo RI for one year and imprisonment for life plus fine of Rs.5000/- with default stipulation respectively. Except appellant Ramesh Chouhan, all the appellants have also been convicted under Section 3(2)(v) of the Act, 1989 and sentenced to undergo imprisonment for life and fine of Rs.5000/- with default stipulation.

05. Counsel for the appellants submit as under:

(i) that PW-13 Ghasiya, PW-16 Hemchand, PW-17 Dorilal, PW-18 Chaitram, PW-19 Bodhan Prasad and PW-20 Kuleshwar have been

examined by the prosecution as eyewitnesses to the incident and but for PW-16 all of them have not supported the prosecution case and have been declared hostile. This apart, PW-16 has categorically stated that he had not seen as to who caused injuries to the deceased, the accused persons were present at the spot and they were asking the assailants not to beat the deceased.

(ii) that the alleged oral dying declaration of the deceased before PW-1 Meera Bai, PW-2 Santoshi Chouhan and PW-3 Kavita Chouhan is not reliable as these witnesses are shaky and most importantly, as per evidence of PW-12 the deceased was not in a position to make any oral declaration. Even otherwise, in the facts and circumstances of the case, it would not be safe for this Court to hold the appellants guilty on the basis of such oral dying declaration.

(iii) that conduct of the deceased is also required to be seen where he not only made an attempt to outrage the modesty of Bhojkumari (PW-15) but in the village meeting also it is he who instigated the villagers and if in these circumstances some beating has been given by the villagers to the deceased, the appellants cannot be roped in the crime in question especially in absence of any legally admissible and cogent evidence.

(iv) that even as per medical report out of total 37 injuries suffered by the deceased, 34 are abrasions and bruises and none of the injuries is on the vital part of the body.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in

accordance with law and there is no scope for any interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Meerabai Chouhan, mother of the deceased, has stated that accused Kanhaiya came near the house of one Baba and enquired about her son. Thereafter Bhupat (PW-12) and accused Kanhaiya came to her house and enquired about the deceased from her daughter-in-law Santoshi. Accused Kanhaiya asked her daughter-in-law not to let the deceased come out from his house or else his hands and legs would be broken. She states that village meeting was convened in which all the villagers, including her son deceased Navin, were called and at about 10 in the night her son was brought back to her house by Ramesh Chouhan, Chaitram Chouhan, Hemchand Chouhan and Santosh Chouhan; at that time her son was unconscious; he was taken inside the house and was given home treatment and after gaining consciousness on being asked her son informed that he was beaten by Kanhaiya Patel, Devchand, Harishankar, Ramesh and Santosh. She states that her son also informed that other persons too beat him by club and slippers, however, he did not disclose the name of those persons and then again fell unconscious. In cross-examination she admits that throughout the night her son was unconscious and was not in proper senses. She further admits that whenever panchayat meeting is called, all the villagers attend the same and population of her village is 500-600. She states that in the night her son was murmuring and when her

son was taken to police station he was not conscious.

09. PW-2 Santoshi Chouhan, wife of the deceased, has stated that on 24.11.2005 at 12 in the afternoon her husband came to his house and in between 2-4 pm Sarpanch Kanhaiya came there and asked for her husband and when she replied that he was sleeping, Kanhaiya asked her not to let him come out of his house otherwise his hands and legs would be broken. After some time, Kotwar Santosh came to call her husband and took him for village meeting. At around 10 in the night, her husband was dropped in the house; he was taken inside the house and provided home treatment. After gaining consciousness at about 12 in the night on being asked her husband informed that he was beaten by all the villagers and specifically named Devchand Patel, Kanhaiyalal Patel, Harishankar Patel, Ramesh Chouhan and Hulas as assailants. She further states that her husband was initially taken to police station from where he was taken to hospital and there he was declared dead. She states that subsequently she came to know that on account of teasing a girl her husband was beaten.

10. PW-3 Kavita Chouhan, sister of the deceased, has made almost similar statement as has been made by PW-1 & PW-2. However, there are material contradictions in the Court statement of this witness from her diary statement. She also states that subsequently she learnt that on account of teasing a girl her brother/deceased was beaten by the villagers. She admits that name of accused Santosh was not disclosed by the deceased.

11. PW-4 Ramdhan Patel, Patwari, prepared the spot map Ex.P/6.

PW-5 Dr. G.L. Miri conducted postmortem on the body of the deceased vide Ex.P/8 on 25.11.2005 and noticed as many as 37 injuries including 34 abrasions and bruises on his person. He found bruises on left side of chest, abdomen, posterior aspect of left and right forearm, on left hand, right thigh, lateral portion of right leg, above ankle joint of right leg, left side buttock, left thigh and knee of left leg. There were abrasions on right wrist, posterior aspect of right palm, back of thumb of both right and left hand, on back of wrist of left hand, on middle, little and index fingers of left hand, on right ankle joint, right leg, back of left thigh, middle of left leg and left ankle joint. This apart, he also found punctured wound on back of left palm and lacerated wound in front portion of middle of left leg and lower portion of left leg. In his opinion, the cause of death was excessive internal and external haemorrhage of blood from injury and the mode of death was shock and that the death was homicidal in nature.

12. PW-6 Ashish Kumar Saxena, Naib Tehsildar, issued caste certificates to Meerabai and Santosh, certifying that they are the members of "Ganda" community which comes under scheduled caste. PW-13 Ghasiya, PW-17 Dorilal, PW-18 Chaitram, PW-19 Bodhan Prasad and PW-20 Kuleshwar have been examined by the prosecution as eyewitnesses to the incident, however, none of them have supported the prosecution case and have been declared hostile. PW-16 Hemchand, another eyewitness to the incident, who has not been declared hostile, has stated that in the village meeting the deceased was questioned as to why he entered the house of Murlidhar, whereupon he admitted his entry in the house and when he was asked

to disclose the correct facts, he abused Devchand Patel and therefore, the villagers present in the meeting started beating him. He has categorically stated that he does not know the name of those persons who beat the deceased and further stated that the accused persons present there were asking the assailants not to beat the deceased. He states that the injured was dropped by some of the villagers to his house.

13. PW-22 Mansai Paikdra recorded the FIR (Ex.P/1) and merged intimation Ex.P/2. PW-25 Ramesh Pandey, investigating officer, has supported the prosecution case. PW-26 Karmatsai Rathiya recorded Dehati Nalishi.

14. DW-1 Mohanlal Patel who took the deceased in his jeep to hospital has stated that on the way the deceased expired and mother of the deceased started weeping and that after deliberation they had decided to implicate Sarpanch and other persons of the village as accused.

15. From the facts it emerges that on 24.11.2005 at about 10 am deceased Navin Chouhan entered the house of PW-15 Bhojkumari, sister of accused/appellant Murlidhar, and made an attempt to outrage her modesty. Thereafter, a village meeting was convened in this regard, which was attended by number of villagers including the accused persons and the deceased, where the deceased abused the villagers and was therefore beaten, as a result of which he suffered as many as 37 injuries out of which 34 were abrasions and bruises and ultimately succumbed to the same. PW-13 Ghasiya, PW-17 Dorilal, PW-18 Chaitram, PW-19 Bodhan Prasad and PW-20 Kuleshwar who

have been examined by the prosecution as eyewitnesses to the incident, have not supported the prosecution case and have been declared hostile. This apart, PW-16 Hemchand, another eyewitness to the incident who has not been declared hostile, has categorically stated that he had not seen as to who caused injuries to the deceased and rather stated that the accused persons were asking the assailants not to beat the deceased. Thus, it is evident that there is no eyewitness account of the incident.

16. The other piece of evidence strongly relied upon by the trial Court is the alleged oral dying declaration of the deceased made before PW-1 Meera Bai, PW-2 Santoshi Chouhan and PW-3 Kavita Chouhan. PW-1 Meera Bai in his cross-examination has admitted that her son/deceased was unconscious throughout the night, was not in his proper senses, he was writhing in pain in the night and was murmuring something, which she could not understand. Likewise, according to the statements of PW-2 Santoshi Chouhan and PW-3 Kavita Chouhan also the deceased was either unconscious or semi-conscious after the incident throughout the night.

17. It is settled principle of law that the Courts have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for cross-examination which poses a great difficulty to the accused persons. A mechanical approach in relying upon a dying declaration just because it is there, is extremely dangerous. The Court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the

relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration. The Court has to weigh all the attendant circumstances and come to the independent finding whether the dying declaration was voluntary and truthful.

18. In the present case, from the overall evidence of the witnesses before whom oral dying declaration is alleged to have been made by the deceased, it cannot be said with a degree of certainty that the said oral dying declaration was made by the deceased in a conscious state of mind, rather it appears that while making such statement the deceased was suffering from acute pain, was murmuring something and was either semi-conscious or unconscious, meaning thereby he was not in a fit state of mind to disclose the name of the assailants. According to the statements of PW-2 & PW-3 they subsequently came to know that on account of teasing a girl the deceased was beaten. It has also come on record that the accused party too had lodged a report against the deceased for outraging the modesty of PW-15 Bhojkumari and for this reason, the possibility of false implication of the accused/appellants cannot be ruled out. This being the position, keeping in view the law regarding dying declaration, this Court is of the considered opinion that it would not be safe for this Court to rely upon such oral dying declaration, especially when there is no other corroborative piece of evidence.

19. In view of the above discussions, it is apparent that there is no legally admissible evidence against the appellants connecting them with the crime in question. Further, considering the nature of injuries

sustained by the deceased, it appears that he was beaten in the village panchayat by some of the villagers, but for want of sufficient and cogent legally admissible evidence against the appellants, it cannot be said that it is they who caused injuries to the deceased. In these circumstances, the appellants are entitled to be acquitted of the charges under Sections 147 and 302 of IPC by giving them benefit of doubt.

20. So far as conviction under Section 3(2)(v) of the Act, 1989 is concerned, since it has already been held that the appellants have not committed any offence as against the deceased, the question of their conviction under this section does not arise. Even otherwise, this is not a case of the prosecution that as the deceased belonged to a particular caste, he was subjected to beating, rather it has been established from the evidence that it was the deceased who being at fault was beaten by the villagers, which unfortunately resulted in his death. Therefore, the accused/appellants are acquitted of this charge also.

21. In the result, the appeals are allowed. Conviction of the appellants under Section 147, 302 of IPC and Section 3(2)(v) of the Act, 1989 and the sentence imposed thereunder are hereby set aside and they are acquitted of these charges by extending them benefit of doubt. They are already on bail, therefore, their bail bonds stand discharged and they need not surrender.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(R.C.S. Samant)
Judge