

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1299 of 2000**

1. Rajkumar, aged about 18 years, S/o Budhu Kumar Yadav, R/o Talabpara, Shankernagar, Durg (M.P.)
2. Shatrughan @ Munna, aged about 18 years, S/o Ramadhin Satnami, R/o Shikola-Bhata, Durg, (M.P.)
3. Bitesh @ Bittu, aged about 18 years, S/o Raghunath Maharana, R/o Sikola-Bhata, Durg, (M.P.)
4. Abbu Khan @ Appu, aged about 18 years, S/o Akram Khan, Musalman, R/o Titur-Dih, Durg, (M.P.)
5. Vijay @ Chhotu Sawant, aged about 18 years, S/o T.G.Sawant Marathi R/o Sikola-Bhata, Durg, (M.P.)
6. Rajun, aged about 18 years, S/o Deocharan Yadav, R/o Sikola Basti, Mohan Nagar, Durg, (M.P.)
7. Rinku @ Kashmira Singh, aged about 18 years, S/o Succha Singh Sikha, R/o Salim-Bada, Titur-Dih, Durg (M.P.)
8. Vijaysagar @ Ajay, aged about 18 years, S/o Ishrat Sagar, Isai, R/o Titur-Dih, P.S. Mohan Nagar, Durg (M.P.)

All Appellants are residents of PS Mohan Nagar, District Durg, (M.P.) (Now Chhattisgarh).

---- Appellants

Versus

State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellants : Smt. Fouzia Mirza, and Shri H.S.Ahluwalia, Advocates.
 For Respondent/State : Shri Arun Sao, Deputy Advocate General.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board**Per Deepak Gupta, Chief Justice****08/11/2016**

1. This appeal by the convicted Accused/Appellants is directed against the judgment dated 25.04.2000 delivered by the learned Second Additional Sessions Judge, Durg, in Sessions Trial No. 22 of 1998 whereby he convicted the Accused/Appellants for having committed an offence punishable under Section

302 read with Section 149 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life and to pay fine of Rs. 100/- each. In default of payment of fine, the Appellants were required to undergo further rigorous imprisonment for one year.

2. The prosecution story, briefly stated is that on 11.11.1997, Mahesh Kumar Meshram (PW-4) alongwith Rudra Mahanand (the deceased) had gone to attend the wedding of his cousin at Baikunth from Bhilai Power House area. After attending the wedding, they caught a train at about 09:00 pm from Baikunth Railway Station to go to Bhilai Power House Station. On the way, they fell asleep and the train crossed Bhilai Power House Station. Immediately after the train crossed Bhilai Power House Station, Mahesh Kumar Meshram (PW-4) woke up and asked some other occupants sitting in the train as to whether Bhilai Power House Station has been crossed or not. As soon as he asked this question, the Accused persons used abusive language against him and started beating him up. He has named some of the Accused persons who were beating him up. He then says that one of the Accused namely Vijay @ Chhotu Sawant broke a glass of the window of the toilet of the Railway compartment and he wanted to cause injuries to this witness but in the meantime, other co-accused Rinku @ Kashmira Singh and two other boys snatched the glass from Vijay @ Chhotu Sawant and threw it away. Thereafter, Rudra Mahanand (the deceased) who was sleeping got up and he was also beaten up by the Accused-Vijay @ Chhotu Sawant and was given fist blows. While being beaten up, the deceased ran away from the Accused and then the Accused threw the deceased from the running train. Thereafter, one of the Accused pulled the chain of the train and they ran away from the spot. Thereafter, the witness (PW-4) also got down from the train and near the Railway crossing, he found that Rudra Mahanand was dead. Immediately thereafter, the police was called and FIR (Exhibit P/3) was lodged.

3. The matter was investigated and the Accused-Appellants were charged for having committed murder of Rudra Mahanand. They pleaded not guilty to the charge. After evidence was recorded, the learned trial Court found the Accused-Appellants guilty of having committed an offence of murder and sentenced them as aforesaid. Hence, this appeal.

4. We have heard learned counsel for the Accused-Appellants, learned counsel for the State and have also carefully gone through the records.

5. Before dealing with the merits of the appeal, it would be pertinent to mention that during pendency of the appeal, three of the Accused-Appellants namely Appellant No. 2, Appellant No. 4 and Appellant No. 8 filed an application before this Court that they were in fact juveniles at the time when they are alleged to have committed the offence. The Court ordered an enquiry into the matter and thereafter on 19.09.2016, this Court had allowed their appeal on the ground of mis-trial. However, it was further ordered that since the alleged occurrence had taken place in the year 1997 and more than 19 years had elapsed and they were juveniles at that time, no re-trial could be ordered.

6. On merits, it has been urged before us that even assuming for the sake of argument that the identification of the Accused-Appellants is proper, Mahesh Kumar Mehsram (PW-4) in his statement has not stated as to which of the Accused persons threw the deceased out of the running train. It is urged that the learned Trial Court gravely erred in invoking the provisions of Section 149 IPC. It is submitted that there was no unlawful assembly and what to talk of Section 149 IPC, even there was no meeting of mind in terms of Section 34 IPC.

7. At the outset, we may notice that even as per the case of the prosecution, the trouble started after Bhilai Power House Station when Mahesh Kumar Meshram (PW-4) woke up and asked the Accused persons whether they have

crossed Bhilai Power House Station. The parties were not known to each other prior to the date of occurrence. Therefore, it is not a case where the Accused had planned to kill the deceased. It is more than apparent that whatever happened, happened at the spur of moment in the heat of some arguments which took place.

8. Even if we accept the statement of Mahesh Kumar Meshram (PW-4) to be absolutely correct, what emerges from his statement is that first the Accused started beating him up. It has further come in his statement that Appellant No. 5-Vijay @ Chhotu Sawant broke a glass of the window of the toilet of the Railway compartment to cause him injuries but another Accused-Appellant No. 7-Rinku @ Kashmira Singh and two other boys snatched the glass and threw it away. This by itself clearly shows that there was no common intention to cause serious injuries to the person much less cause death of any person. No doubt, the deceased was thrown out of the train. However, there is not an iota of evidence before us to ascertain as to which one of the Accused threw the deceased out of the train. It is also not the case of Mahesh Kumar Meshram (PW-4) that all the eight Accused-Appellants grabbed hold of the deceased and together threw him out of the train. May be one or two of the Accused pushed the deceased out of the train. However, when there was an eyewitness, those persons should have been identified. When Mahesh Kumar Meshram (PW-4) has been able to identify the Accused with regard to the blows given to him, he should have been able to identify which of the Accused threw the deceased out of the train. This having not been done, we cannot hold all or any of the Accused guilty of the offence of murder.

9. We therefore set aside the judgment dated 25.04.2000 of the learned 2nd Additional Sessions Judge, Durg in Sessions Trial No. 22 of 1998 convicting the Appellants under Section 302 read with Section 149 IPC and the Accused-Appellants are acquitted of the charges.

10. The Accused/Appellants are on bail. The bail bonds shall remain effective for a period of six months in view of the provisions of Section 437-A CrPC.

11. The appeal is allowed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE