

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 505 of 2005****Order Reserved on 23.03.2017****Order Delivered on 06.04.2017**

1. Bhawar Singh S/o Mahadeo Gond aged about 35 years,
 2. Ramesh Singh, S/o Mahadeo Gond aged about 25 years,
- Both R/o Sadak Dafai Haldivadi, Chirmiri, Tahsil Manendragarh,
District Koriya, Chhattisgarh.

---- Appellants (in jail)**Versus**

State of Chhattisgarh through P.S. Chirmiri, Tahsil Manendragarh,
District Koriya, Chhattisgarh.

---- Respondent

For the Appellant	:	Shri R.K. Jain, Advocate.
For the Respondent/ State	:	Shri Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Rajendra Chandra Singh Samant****CAV JUDGMENT****Per R.C.S. Samant, J.**

1. This appeal has been preferred against the judgment dated 23.02.2005 passed by the Additional Sessions Judge, Manendragarh, District Koriya, Chhattisgarh in Sessions Trial No. 98 of 2004 whereby and whereunder the learned Additional Sessions Judge has convicted the appellants under Section 302 of the Indian Penal Code (for short 'the IPC') and sentenced them to undergo rigorous imprisonment for life and to pay fine of Rs.500/- each, in default of payment of fine, to further undergo additional RI for five months.

2. The case of the prosecution, in brief, is that the appellants and the deceased were residents of Sadak Dafai Haldiwadi. On 23.9.2003 i.e. one day prior to the date of incident, deceased Ramnarayan had assaulted appellant No.1 - Bhawar Singh. Because of this enmity the appellants went to the residence of the deceased on 24.9.2003 at about 11:30 am, assaulted him with battle axe and club causing grievous injuries. Shivnarayan (PW-1), brother of the deceased, lodged the First Information Report Ex. P/1 in Police Station, Chirmiri on which offence under Section 307/34 was registered against the appellants. Ramnarayan was admitted for treatment in regional hospital in Chirmiri and he succumbed to the injuries on the same day at about 3:00 pm. As per information received from the hospital at Chirmiri, merg intimation Ex. P/10 was recorded in P.S. Chirmiri. Inquest of the dead-body was conducted vide Ex. P/11. Dr. Vinay Jaiswal (PW-11) conducted the postmortem vide Ex. P/13, in which he opined that the death was homicidal in nature. During investigation, spot map (Ex. P/14) was prepared. At the instance of appellant – Bhawar Singh vide memorandum Ex. P/3A a battle axe was seized from his possession vide seizure memo Ex. P/4 and the club was seized from the possession of appellant - Ramesh Singh vide Ex. P/3. Blood-stained soil, plain soil and the blood-stained bed clothes were seized from the spot Ex. P/5. Blood-stained clothes of the appellants were also seized from the spot vide Ex. P/7. The seized battle axe was examined by Dr. Vinay Jaiswal (PW-11). The seized articles were sent for FSL examination. Statements of the witnesses were recorded and on completion of the investigation, the appellants were charge-sheeted.

3. The appellants were charged for the offence punishable under Section 302 of the IPC. The appellants pleaded innocence and denied the charges.

On their denial of charges, the trial was conducted. The prosecution examined as many as 11 witnesses. On being examined under Section 313 of the Cr.P.C., denying all the incriminating evidence against them, the appellants pleaded innocence and false implication. It was also stated that the deceased had assaulted appellant No.1 - Bhawar Singh one day prior to the date of the incident which was reported in the police station and for this reason the accused have been falsely implicated. After giving opportunity of hearing and leading evidence to the prosecution and defence, the impugned judgment has been passed by which the appellants have been convicted and sentenced as mentioned above.

4. The grounds taken in this appeal are that the trial court has passed the judgment of conviction without any basis of legally admissible evidence of the prosecution. There had been no eyewitness to this incident. The contradictions and omissions in the statements of the witnesses have been ignored by the trial court. The statements of the witnesses about dying declaration made by the deceased are also discrepant and suffer from serious infirmity. The deceased was alive and he was examined by Dr. Varun Bhagat (PW-10) but the deceased did not make any statement as to who were the assailants. The trial court has totally ignored this fact that there had been previous enmity between the appellants and the deceased and due to this reason, the appellants have been falsely implicated in this case.

5. Learned counsel for the appellants submits that the prosecution case is solely based on the evidence of oral dying declaration. The statements,

with regard to dying declaration, made by Shivnarayan (PW-1), Pushpawati (PW-2) and Durgawati (PW-3) are different and they are unbelievable. The statement of Pushpawati (PW-2) that the appellants/ accused persons were making statement that they had killed Ramnarayan, is totally improbable and unnatural statement. In the circumstances of the case, the prosecution has totally failed to prove the motive of the appellants in this case. It is also submitted that both the appellants were charged under Section 302 of the IPC whereas only one accused was armed with battle axe thus, the assailant causing incised wound could have been only one of the accused persons. This also makes the prosecution case doubtful. Hence, the appellants are entitled for benefit of doubt.

6. Learned State counsel has opposed the arguments submitted on behalf of the appellants. He also stated that even if there are some improvements, contradictions and omissions in the statements of witnesses of the prosecution, the same are insignificant and do not affect credibility of the prosecution witnesses. The evidence on the point of oral dying declaration and extra-judicial confession, as led by the prosecution, has been proved beyond reasonable doubt. Hence, there is no scope for interference in the impugned judgment.

7. Considering the material on record and the arguments advanced on behalf of both the sides, the question which arises for decision in this appeal is, whether the conviction against the appellant is supported by the evidence of the prosecution beyond all reasonable doubt?

8. Shivnarayan (PW-1), brother of deceased Ramnarayan, stated that when he was taking rest in his residence between 11:00-12:00 am, his wife, Durgawati (PW-3) and his daughter - Pushpawati (PW-2) came and told him that the appellants have assaulted Ramnarayan by using battle axe and club. After hearing this, he ran towards the spot of incident and saw Ramnarayan in an injured condition. He was alive and asking for water. He asked as to who assaulted him, then the deceased told him that the appellants were the assailants. He left to arrange for a vehicle. In cross-examination, he admitted about the criminal history of the deceased. He was confronted to his previous statement Ex. D/1 and compared to his previous statement, his statement before the court that the deceased told him about the assailants, seems to be an improved statement.

9. Pushpawati (PW-2) has stated, that on the date of incident she was studying in the house of appellant No.1 - Bhawar Singh and she saw the appellants coming with their blood-stained clothes and appellant No.2 – Ramesh Singh was saying that Ramnarayan was killed by them and if anybody wants to be witness against them, then they will kill him as well. When she came to the house of Ramnarayan she saw Ramnarayan in injured condition. Her father asked the deceased as to who assaulted him and upon which the deceased told him that the appellants were the assailants. In cross-examination, this witness was confronted with her previous statement Ex. D/2. The statement made by appellant No.2 - Ramesh Singh about assaulting the deceased is a consistent statement but the statement of oral dying declaration made by the deceased seems to be an improved statement. Hence, on the basis of the statement of this witness, the evidence in favour of the prosecution is with respect to the

extra-judicial confession made by one of the appellants in her presence.

10. Durgawati (PW-3) stated that the deceased was having grievous injuries and asking for water and when she gave some water to the deceased he told that the appellants had assaulted him. She was also confronted with her previous statement Ex. D/3. There is some change in the details compared to her statement about the statement of deceased which is insignificant. Thus, her statement before the court about the oral dying declaration of deceased is a consistent statement in accordance with her previous statement. Other statements made in her cross-examination are of no consequence.

11. Ramesh Singh (PW-8) stated that when he was going to answer the call of nature at about 11:00 am, he saw the appellants going towards the house of deceased Ramnarayan carrying a battle axe and a club which were blood-stained. Later on, he heard that Ramnarayan was murdered and this statement has remained unrebutted in his cross-examination about seeing the appellants with blood-stained weapons. It is submitted by the defence that he is a chance witness and he has stated an improbable theory about going to answer the call of nature at about 11:00 am. This argument deserves to be rejected as the requirement to answer the call of nature at about 11:00 am may arise on account of different reasons. No question has been put in his cross-examination as to why he needed to go to answer the call of nature at about 11:00 am. Hence, there is no improbability regarding the reason given by this witness about his presence on the spot where he saw the appellants armed with blood-stained battle axe and club.

12. Churawan Singh (PW-9), ASI, stated about recording of FIR Ex. P/1 and other investigative proceedings. On 24.9.2003 at 2:40 pm, Dr. Varun Bhagat (PW-10) treated Ramnarayan in the hospital when he was alive. He found injuries and fracture on his right forearm, incised wound on left elbow, various injuries on right arm, incised wound on left leg alongwith fracture, incised wound on right thigh and incised wound on his right chest vide report Ex. P/18. According to him, the deceased was brought in gasping condition who expired at 3:00 am. In cross-examination, he stated that the deceased was conscious but he did not tell the names of the assailants and he recorded the name of the deceased after asking him. The statement of the doctor is relied upon in support of the arguments that the deceased was not in a state to make any statement before he died, but as per the statement the deceased was conscious and it was on his information his name was recorded on paper. The time of admission was 2:40 pm i.e. after about more than two hours having been passed after the incident took place and in between the deceased could have talked and stated to other witness giving information about his assailants. Hence, this argument brought by the appellants has no force. Dr. Vinay Jaiswal (PW-11) has conducted the postmortem and reported vide Ex. P/13 that death of the deceased was homicidal which appears not to be disputed in this case.

13. There are some improvements and contradictions in the evidence of the prosecution witnesses. The statement of Shivnarayan (PW-1) with regard to the deceased making a statement before him has been found to be improved statement and as such this statement is not to be taken into consideration. Statement of Pushpawati (PW-2) about the deceased making statement in her presence is also an improved statement which shall not be

taken into consideration but the statement about the extra-judicial confession made by appellant No.2 – Ramesh Singh that Ramnarayan has been killed by them, has remained unrebutted and consistent with her previous statement as well. The statement of Durgawati (PW-2) has been found consistent that the deceased made this statement in oral dying declaration that the appellants were the assailants. This evidence is corroborated with the statement of Ramesh Singh (PW-8) who saw the appellants having blood-stained weapons at the time of the incident. This kind of evidence had been sufficient to hold the appellants guilty of causing death of deceased Ramnarayan. The quality of evidence on the point of oral dying declaration, extra-judicial confession and the circumstance is worth consideration for which there is no requirement of quantity.

14. Looking to the nature of evidence, it is clear that the intention of the assault made on the deceased was to cause his death. On the basis of these findings and on scrutinizing the evidence of the prosecution, we are of the opinion that this appeal has no merit, the grounds urged in this appeal are without any substance.

15. In conclusion, the appeal is dismissed. The appellants are on bail. Their bail bonds are cancelled and they are directed to surrender forthwith before the trial Court to undergo the remaining part of the sentence awarded by the trial Court.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(R.C.S. Samant)
Judge