

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 187 of 2002

1. Shiv Kumar, S/o Jageshwar Yadav, age 42 years, r/o Kanakpur, P.S. Ramanujganj, Distt. Surguja, CG
2. Chandradev, s/o Ramnand, age 35 years, r/o village Lurgi, P.S. Ramanujganj, Distt. Surguja, CG.
3. Teman Yadav, s/o Laxman, age 40 years, r/o village Kanakpur, P.S. Ramanujganj, Distt. Surguja, CG.
4. Chaturgan, s/o Ram Khilavan, age 50 years, r/o Kanakpur, P.S. Ramanujganj, Distt. Surguja, CG.
5. Karuchand, s/o Raghuni @ Dubi, age 55 years, r/o Kanakpur, P.S. Ramanujganj, Distt. Surguja, CG
6. Bishun Mahto, s/o Jhari, age 50 years, r/o Kanakpur, P.S. Ramanujganj, Distt. Surguja, CG.
7. Baddhu, s/o Bigan, age 45 years, r/o village Madgadhi, P.S. Bhandariya, Distt. Gadhwa, Jharkhand.

---- Appellants

Versus

- State Of C.G. through P.S. Ramanujganj, Distt. Surguja, CG

---- Respondent

For Appellant	:	Shri Rishi Mahobiya, Advocate
For Respondent	:	Shri R. Tamaskar, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgement

17/01/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 9.1.2002 passed by the 3rd Additional Sessions Judge, Ambikapur, District Surguja (CG) in S.T. No.116/94 convicting the accused/appellants under Section 147 of the Indian Penal Code (for short 'the IPC') and sentencing each of them to pay fine of Rs.1,000/-, in default to undergo

additional R.I. for 4 months.

2. The prosecution story, in brief, is that on 6.7.1987 at about 2 in the afternoon in village Kanakpur the accused/appellants have formed an unlawful assembly and in furtherance of common object of that assembly murdered Parahuram. The first information report was lodged by Dhanpat (PW-1) on 7.7.1987. After completion of investigation, charge sheet under Sections 147 & 302/149 of IPC was filed against the accused/appellants before the Court below followed by framing of charges by the Court below under the aforesaid sections.
3. The prosecution in order to bring home the charge levelled against accused/appellant examined 14 witnesses in all. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, convicted & sentenced the accused/appellants as described above.
5. Learned counsel for the accused/appellants submits that the fine amount has already been deposited by the appellants and they are not interested in prosecuting this appeal. He prays that the appeal may be dismissed as not pressed.
6. On the other hand, learned counsel for the respondent/State submits that even if the fine amount has been deposited by the appellants and they are not interested to prosecute this appeal then also the appeal is required to be decided on merits.
7. I have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court including the statements of the

prosecution witnesses.

8. Admittedly, the appellants are not interested in challenging the judgment impugned and they want to withdraw this criminal appeal. However, there is no provision in the Code of Criminal Procedure permitting withdrawal of an appeal filed against any judgment and order of the lower Court whether it has ended in acquittal or conviction of the accused. The Supreme Court in catena of its judgment has also held that the criminal appeal must be considered and disposed of on merits irrespective of the fact whether the appellant or his counsel is present or not. Even if the appeal is disposed of in their absence, the decision must be after consideration on merits. Accordingly, we propose to examine the evidence which was adduced by the prosecution on record to find out whether the trial Court was justified in holding the accused/appellants guilty under Section 147 of IPC?
9. Dhanpat Singh (PW-1) is the witness of inquest (Ex.P-2). As this witness has not supported the prosecution case, therefore, he has been declared hostile.
10. Umashankar (PW-2), son of deceased, has stated that on the date of incident all the accused persons tried to forcibly take possession of the field of his father (deceased) of which he was in possession for the last 40-50 years. He has further stated that on being objected by his father, the accused persons assaulted his father and thereafter fled from the spot.
11. Anrajiya Bai (PW-3), wife of deceased, and Bachnu (PW-4), another son of deceased, have also deposed about the occurrence more or less in almost similar terms as has been stated by Umashankar (PW-1).
12. Kasim (PW-6) is the witness of inquest (Ex.P-2) and seizure memo Ex.P-7. Jagdish (PW-7), Ramsagar Sao (PW-8) did not support the prosecution case and turned hostile. Dr. A.K. Sharma (PW-9) is the person who

conducted post-mortem examination over the body of deceased and gave his report Ex.P-11. He has opined that cause of death of the deceased was haemorrhage due to rupture of left kidney along with haematoma in left temporal area. This witness has further opined that no definite opinion regarding nature of death could be given.

13. S.R. Diwan (PW-10) is the investigating officer who has duly supported the prosecution case. Sheikh Noor Ali (PW-11) is the Patwari who prepared the spot map. Ramjash Tiwari (PW-12) is another police personnel who helped in the investigation. Ramnath (PW-13) did not support the prosecution case and turned hostile.
14. As regards the complicity of accused/appellants in crime in question, if the participation of five or more persons stands proved in an offence then rioting under Section 147 IPC will definitely apply. In the present case, according to Umashankar (PW-2), Anrajiya Bai (PW-3) & Bachnu (PW-4), all the accused/appellants came together on the spot with intent to encroach upon the agriculture land in possession of deceased Parahuram and in furtherance of said object they forcibly started ploughing his field. When the said act was objected to by said Parahuram, they had committed rioting. The defence had cross-examined these witnesses in detail but had not been able to elicit anything in their cross-examination to show that accused/appellants were not present on the spot at the relevant point of time. Thus, from the evidence of PW2, PW-3 & PW-4, the participation of five or more persons in the crime stands established beyond doubt and being so, conviction of the appellants under Section 147 of IPC is justified as Section 141 of IPC, which is definition clause for the offence 'unlawful assembly' is satisfied. Therefore, I am in agreement with the finding arrived at by the trial Court which is based on the proper appreciation of the evidence available on record.

15. Resultantly, the appeal filed on behalf of the appellants has no substance,
the same is liable to be dismissed and is hereby dismissed.

Sd/-

(P.Diwaker)
Judge

roshan/-