

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 600 of 2012**

1. Lalman Rajwade S/o Late Harinath, aged about 35 years, resident of Sarbhoka, Junapara, PS Patna, District Korla, CG
2. Mangalsai S/o Prabhu Panika, aged 45 years, resident of Dudhaniya, PS Patna, District Korla, CG
3. Komal Prasad @ Charka S/o Hariprasad Panika, aged 30 years, R/o Nurumduga, PS Patna, District Korla, CG
4. Vinod Kumar Agariya s/o Jainath Agariya, aged 20 years, r/o Manjira, PS Gandhinagar, District Sarguja, CG
5. Ramprasad Rajwade S/o Alamsai Rajwade, aged 60 years, R/o Dudhaniya, PS Patna, District Korla, CG
6. Shankar Panika S/o Samrat Ram Panika, aged 40 years, R/o Maheshpur, PS Jainagar.

---- Appellants**Versus**

1. State of Chhattisgarh through Station House Officer, PS Patna, District Korla, CG

---- Respondent

For Appellants	:	Shri A.K. Prasad, Advocate
For Respondent/State:		Shri Anil Pillay, Dy. AG

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Sanjay Agrawal****Judgment On Board by Pritinker Diwaker, J****23/04/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 23.05.2012 passed by Sessions Judge Korla (Baikunthpur) in Sessions Trial No. 75/2008 convicting and sentencing the accused/appellants as hereunder:

Accused/appellant	Conviction (U/s)	Sentence
Lalman Rajwade & Ramprasad Rajwade	302 in alternative 302/34 IPC	Imprisonment for life with fine of Rs. 1000/- to each of them plus default stipulations.
	302 / 120-B IPC	Imprisonment for life with fine of Rs. 1000/- to each of them plus default stipulations.
Mangalsai, Komal Prasad @ Charka, Vinod Kumar and Shankar Panika	302 in alternative 302/34 IPC	Imprisonment for life with fine of Rs. 1000/- to each of them plus default stipulations.
	450 IPC	RI for 10 years with fine of Rs. 1000/- to each of them plus default stipulations.
	302 / 120-B IPC	Imprisonment for life with fine of Rs. 1000/- to each of them plus default stipulations.
	323/34 IPC	RI for 06 months with fine of Rs. 200/- to each of them plus default stipulations.
All sentences made to run concurrently.		

2. Name of the deceased in the present case is Rangamsai – husband of informant namely Urmila Bai (PW-3). As per the case of prosecution, there was an old land dispute between accused Lalman Rajwade and the deceased and that the Civil Court had also passed an order in favour of accused Lalman Rajwade and his brother Baijnath. Aggrieved with the said order, deceased had preferred an appeal before the High Court which was pending at the relevant time and there was

an interim order in favour of the deceased. It is said that on 3.4.2008 at about 10 PM someone from outside had flashed torch light inside her house and on noticing this, Urmila Bai (PW-3) lit the earthen lamp, went to the courtyard but could not come to know as to who was doing all that. Thereafter, at about 1 AM when one unknown person barged into to her veranda breaking through the wall and flashed the torch light, deceased woke up, came to the veranda and asked as to who had entered his house. Four persons, according to the case of prosecution, were standing outside the house and one was holding torch. Four persons are said to have caught hold of the deceased, thrown him on the ground and held his hands and legs. Prosecution case further says that when wife of the deceased (PW-3) raised her cries, they threw her down also and pressed her head and neck threatening of being done away with. It is alleged that the accused persons inflicted injury on the chest of the deceased with the help of pointed iron rod which ultimately resulted in his death. Suspicion has been expressed by PW-3 that the accused persons have killed her husband on account of the old land dispute. On the basis of telephonic information received from one Falendra (PW-22) entry was made in the *Rojnamcha* Ex. P-39-C at 8.30 AM. At 10.45 AM *Dehati merg* Ex. P-47 was recorded. Thereafter, inquest Ex. P-2 was drawn and spot *panchnama* Ex. P-5 was prepared. Dead-body was sent for postmortem examination which was conducted by Dr. S.S. Gupta (PW-14) who gave his report Ex. P-31. Based on *Dehati merg*, FIR Ex. P-

51 was registered against unknown persons for the offences under sections 450, 302, 34 IPC. On the memorandum of accused/appellant Lalman Rajwade (Ex.P-20), one diary mentioning the name of accused persons and date as 2.4.2008 was seized under Ex. P-21, one diary mentioning the fact that on 2.4.2008 accused Mangalsai, Komal Prasad alias Charka, Vinod Kumar, Moula Ram and Shankar was seized under Ex. P-22, one crowbar (*Tabbal*) was seized from the house of accused Mangal Sai at the instance of accused Lalman under Ex. P-24. On the memorandum of accused Mangalsai (Ex. P-13), one blood stained full shirt and cash of Rs. 200/- was seized under Ex. P-14. On the memorandum of accused Komal Prasad alias Charka (Ex.P-15), seizure of blood stained half shirt and cash of Rs. 500/- was made under Ex. P-16 and that of iron rod and torch under Ex. P-25. On the memorandum of accused Vinod (Ex.P-18-A), seizure of full pant and cash of Rs. 1100/- was made under Ex. P-18. On the memorandum of accused Ram Prasad (Ex.P-11), seizure of cash of Rs. 600/- was made under Ex. P-12. On the memorandum of accused Shankar (Ex.P-17) seizure of cash of Rs. 500/-, one blood stained full shirt and full pant was made under Ex. P-19. As per FSL report Ex. P-70 blood was found on the soil, vest (baniyan) of the deceased, shirt of accused Mangalsai, torch and iron rod seized from accused Komal Prasad alias Charka. FSL report Ex. P-74 discloses that the earth kept in a sealed packet marked as "H" and the one coated on the iron rod was the same. However, there is no

serological report on record. Further case of the prosecution is that on 1.7.2008 Test Identification Parade was conducted by Nayab Tehsildar (PW-20) vide Ex. P-26 in which Urmila Bai (PW-3) is said to have identified accused/appellant Mangalsai, Shankar Panika and Komal Prasad alias Charka but she has failed to identify accused/appellant Vinod Kumar who was also put to Test Identification Parade. No Test Identification Parade was conducted in respect of accused Lalman and Ram Prasad as according to the case of prosecution they were known to Urmila Bai (PW-3) previously. After all this, the Court below framed the charge u/s 302 in the alternative 302/34 and 302/120-B IPC against accused/appellants Lalman Rajwade and Ram Prasad and under Sections 302 in the alternative 302/34, 450, 302/120-B and 323/34 IPC against accused/appellants Mangalsai, Komal Prasad alias Charka, Vinod Kumar and Shankar Panika. However, the other accused Moula alias Garra has been shown absconding while framing charge.

3. In order to prove the complicity of the accused/appellants in the crime in question, the prosecution has examined 24 witnesses. Statements of the accused/appellants under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellants herein as mentioned

above.

5. Counsel for the accused/appellants submits as under:

(i) That in the prompt *Dehati merg* lodged by PW-3 there is no mention of any of the accused/appellants but as per her Court statement accused Lalman and Ram Prasad were previously known to her and there was some land dispute between accused Lalman and her husband (the deceased).

(ii) That accused Lalman was residing near the house of PW-3 and if he was known to her previously, his name should have been mentioned by her in the *Dehati merg*.

(iii) That while deposing in the Court PW-3 has improved a lot and stated even those facts which are not part of the *Dehati merg* or her case diary statement recorded on 3.4.2008 i.e. the date of incident itself.

(iv) That the investigating officer investigated the matter presuming that accused/appellant Lalman and Ram Prasad were known to PW-3 and that is why they were not put to test identification parade whereas in the *Dehati merg* and her diary statement she has not stated the name of these two accused persons.

(v) That Test Identification Parade was conducted on 1.7.2008 i.e. three months after the incident, accused persons were already arrested immediately after the incident i.e. on 8.4.2008 and therefore the delay in conducting test identification parade creates a serious doubt in the same.

(vi) That after recording the memorandum the accused persons were taken to the village area for making recovery of articles and therefore the possibility of their being seen by PW-4 in between could not be ruled out.

(vii) That merely on the suspicion of PW-3, the accused persons have been implicated in the present case.

(viii) Reliance is placed on the decisions of the Apex court in the matter of **Chetram v. State of Uttarakhand** reported in **(2014) 13 SCC 105**, in the matter of **Prabhat alias Bhai Narayan Wagh and others v. State of Maharashtra** reported in **(2013) 10 SCC 391** and in the matter of **Satrughana alias Satrughana Parida and others v. State of Orissa** reported in **1995 supp (4) SCC 448**.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellants as described above are based on due appreciation of the evidence on record and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Urmila Bai (PW-3) has stated that she knew the accused/appellants and that the deceased was her husband. She has stated that some old land dispute was existing between accused Lalman, his brother Baijnath and her husband, and for that her husband has been killed. According to this witness, on 2.4.2008 at about 10 PM when she was

sleeping with her family members, someone flashed torch light in her courtyard and after she went out by lighting the earthen lamp, nothing could be seen by her. However, some conversation was heard by this witness in the house of accused Lalman. This witness has further stated that at about 1 AM when some persons entered her house breaking through the wall and flashed the torch light again, she lit the earthen lamp and as soon as her husband woke up, they caught hold of him. She has stated that when her husband tried to wriggle out of their clutches, the accused persons, seven in number, again held him and when she raised an alarm, one of them namely Vinod threatened her also of being killed. This witness has stated that her husband was held by all the accused persons. She has specifically stated that accused Lalman held him by neck, two by legs, two by hands and one inflicted a pointed iron-rod blow on his chest saying that as he (deceased) was grabbing their land, his life would not be spared. Her husband is said to have been held by the accused persons until he died and was left only after he breathed his last. On hearing the cries of this witness, number of villagers had rushed to the spot whom she narrated the entire incident. This witness has further stated that in the light of earthen lamp carried by her and that of the torch carried by the accused persons, she had identified them. Thereafter, her father-in-law, watchman and one of her family members went to the police station, informed about the incident and after the police came to the village, she lodged the report. By putting

hand on the head of accused Charka and Vinod she claims to have identified them in the test identification parade conducted in jail. Likewise, she also claims to have identified two other accused persons namely Mangalsai and Shankar in the same manner. As is clear from her cross-examination, there are material contradictions in her statement made in the Court and also in her case diary statement. Most important aspect of the case is that according to this witness accused Lalman and Ram Prasad were already known to her but yet she has not named them either in the promptly lodged *Dehati merg* or in the diary statement. It is further relevant to note here that in the *Dehati merg* as also in the diary statement she has admitted that merely on suspicion she had named accused Lalman and Ram Prasad.

Raghuvar Prasad (PW-1) and Hullas Kumar (PW-2) have not supported the case of the prosecution and have been declared hostile. Kripal Rajwade (PW-4) is a hearsay witness who was informed about the incident by one Sukhdev Prasad, and that after he went to the spot, body of the deceased was lying there. He is also the witness to seizure of articles made under Ex. P-7 and P-8 which bear his signature. S.K. Singh (PW-5) is the witness who collected plain and blood stained earth from the spot. Amar Sai (PW-6) is said to have been informed by his son (PW-1) about Rangamsai being killed and after he went to his house, dead-body was lying in the veranda. Amar Sai (PW-7) - the witness to memorandum, seizure and test identification parade has partially supported

the case of the prosecution. Bhaiyalal (PW-8) - the father of the deceased has stated that on being informed by two persons namely Kamalbhan and Ramsai about the death of Rangamsai he accompanied them to the spot and found the dead-body lying there. Certain seizure is also stated to be made in the presence of this witness. Amar Das (PW-9) - the village *Kotwar* has stated that some land dispute between accused Lalman and the deceased was going on and that on the date of incident in the night hours, after hearing noise he came out of the house and accompanied Hoshram, Dhansai and Karan to the house of the deceased and found his dead-body lying on the ground with injury on his chest. Dr. S.S. Gupta (PW-14) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-31 stating that he noticed abrasions on left knee, right knee and stab (penetrating) wound on chest. Cause of death has been opined to be shock due to stoppage of heart action, and the death was homicidal in nature. Kamleshwar Prasad Painkra (PW-15) is the Patwari who prepared spot map Ex. P-34. Umashankar Tripathi (PW-19) and Linus Kespotta (PW-23) are the police officials who assisted in the investigation. Amit Gupta (PW-20) is the Nayab Tehsildar (PW-20) who conducted test identification parade vide Ex. P-26 has supported the case of the prosecution. He however has admitted the fact that PW-3 could not identify accused Vinod. Falendra Kumar (PW-21) is the witness at whose instance entry was made in the Rojnamcha Ex. P-29-C. Chhatrapal (PW-22) is the witness to

seizure and memorandum who has supported the case of the prosecution. Tejnath Singh (PW-24) is the investigating officer who has supported the case of the prosecution. He has further stated that whatever was disclosed by PW-3 was recorded by him.

9. We have thoroughly examined the entire material available on record including the evidence of the witnesses. Evidence makes it clear that though accused Lalman and Ram Prasad were known to Urmila Bai (PW-3) yet while lodging the *Dehati merg* with great promptness she has not disclosed their names in the same. Likewise, in the diary statement also she has not taken the names of these two accused persons. As per the *Dehati merg* and the diary statement of PW-3 the incident occurred at 1 AM and in the light of earthen lamp and that of torch she saw the faces of accused persons. This version put forth by PW-3 appears to be a falsity for the reason that if she really knew them and saw their faces at the time of occurrence, there was no occasion for her not to disclose their names at both the places. It further assumes importance that as per PW-3, accused Lalman was her neighbour and there was an old land dispute between them but yet she has failed to disclose his name in either of these two papers. Further, from the *Dehati merg* and the diary statement of PW-3 it is manifest that she had suspicion that on account of old land dispute, accused Lalman killed her husband with the help of other accused persons and for that only, accused Lalman and Ram Prasad were not put to the test

identification parade. It is a settled legal position that for the ultimate judicial adjudication the suspicion howsoever strong it is, cannot be allowed to take the place of legal proof – **{Jaharlal Das v. State of Orissa reported in (1991) 3 SCC 27}**. Though the record suggests that the accused/appellants Vinod Kumar, Komal Prasad alias Charka, Mangalsai and Shankar have been identified by PW-3 in the test identification parade conducted by Nayab Tehsildar (PW-20) three months after their arrest yet in the absence of any plausible explanation offered by the prosecution as to how this inordinate delay in doing so has occasioned, test identification parade becomes doubtful. Dealing with a case involving identical issue it has been held by the Apex Court in the matter of **Mullah v. State of UP** reported in **AIR 2010 SC 942** as under:

“Therefore, the following principles regarding identification parade emerge: first an identification parade ideally must be conducted as soon as possible to avoid any mistake on the part of witnesses; this condition can be revoked if proper explanation justifying the delay is provided; and, (3) the authorities must make sure that the delay does not result in exposure of the accused which may lead to mistakes on the part of the witnesses.”

In the matter of **Satrughana alias Satrughana Parida (supra)** also it has been held that unexplained delay in holding the test identification parade adversely affects the value of evidence of identification. This is what appears to be the position in the case in hand also because the test identification parade was conducted on 1.7.2008 i.e. three

months after the incident though the accused persons were arrested immediately after the incident i.e. on 8.4.2008. The prosecution has not advanced any reason for not holding the same promptly. In other words, the prosecution has not placed on record the reason why it was not possible for it to hold the identification parade with promptitude i.e. soon after arrest. Moreover, the record reveals that after recording the memorandum of accused persons they were taken to village side for effecting seizure and in these circumstances the possibility of PW-3 seeing them in the meanwhile cannot be ruled out.

10. Apart from this, though the prosecution has made certain seizure on the memorandum of the accused persons and FSL report in regard to the articles seized is also positive but in the absence of serological report confirming the fact that the blood so present was human blood and that too of the blood group of the deceased, such seizure has no decisive value in the eye of law to uphold the conviction of the accused/appellants - (***Kansa Behera Vs. State of Orissa, AIR 1987 SC 1507***). Furthermore, though in the court statement PW-3 has given the description of the accused persons involved in commission of crime in question yet she has not specifically stated as to which of the accused caused fatal injury to the deceased and how the others helped him in doing so. In addition, the court statement of Urmila Bai (PW-3) is not in consonance with the version contained in the *Dehati Merg* and the case diary statement because everywhere she

has stated differently in order to make a futile attempt of establishing the identity of the accused persons, and being so it is utterly difficult to place any reliance on her testimony as regards the involvement of the accused/appellants in the incident.

11. Factual and legal position sketched above does not persuade this Court to approve the erroneous findings recorded by the Court below convicting the accused/appellants under various sections referred to above. Appreciation of evidence while arriving at such ill-founded conclusion has not gone in the right direction and for that the accused/appellants are entitled to receive benefit of doubt and resultant acquittal of the charges levelled against them. Accordingly, the appeal is allowed, judgment impugned is set aside and the accused/appellants are acquitted of the charges levelled against them. Accused/appellants are reported to be in jail and therefore, they be set free forthwith if not required in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge