

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1098 of 2002

Judgment Reserved on : 11.5.2018

Judgment Delivered on : 10.8.2018

- 1. Sanju @ Sanjay, aged 20 years,
- 2. Ramayan, aged 26 years,
- 3. Narayan, aged 24 years,
- 4. Raju, aged 19 years,

All sons of Santram, residents of Tifra, Police Station Civil Lines, Bilaspur, District Bilaspur, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through Station House Officer, Police Station Civil Lines, Bilaspur, District Bilaspur, Chhattisgarh

--- Respondent

For Appellants : Shri R.S. Marhas, Advocate
For Respondent : Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 24.9.2002 passed by the 1st Additional Sessions Judge, Bilaspur in Sessions Trial No.227 of 2001 convicting and sentencing each of the Appellants as under:

<u>Appellants</u>	<u>Conviction</u>	<u>Sentence</u>
Each of the Appellants	Under Section 304 Part II in the alternative under Section 304 Part II	Rigorous Imprisonment for 5 years

	read with Section 34 of the Indian Penal Code	
Appellant No.1, Sanju @ Sanjay	Under Section 323 of the Indian Penal Code	Rigorous Imprisonment for 6 months
Appellants No.2 to 4, i.e., Ramayan, Narayan and Raju, respectively	Under Section 323 read with Section 34 of the Indian Penal Code	Rigorous Imprisonment for 6 months

2. Facts of the case, in brief, are that on 15.4.2001 at about 10:30 p.m., Sangita Sahu (PW1), daughter of deceased Ramesh Sahu lodged First Information Report (Ex.P1) at Police Station Civil Lines, Bilaspur to the effect that at about 10:00 O'clock of the same night, when her mother was at home and her father was taking out his scooter to go somewhere, Appellant No.1, Sanju and his 4-5 companions entered their house. All of them caused damage to the scooter and pulled her father out of home and assaulted him with lathi and knife. When Chandrika (PW4), wife of Ramesh Sahu tried to intervene, one of the assailants assaulted her on her left leg with a knife. The incident was witnessed by neighbours also. Thereafter, injured Ramesh Sahu was taken to hospital by Lokesh Sahu, cousin of Sangita Sahu and Ganesh Sahu, elder brother of Ramesh Sahu. The First Information Report was registered for offence punishable under Sections 452/323/34 of the Indian Penal Code against Appellant No.1, Sanju and his 4-5 companions. Injured Ramesh Sahu was examined at the hospital by Dr. S.S. Bhatia (PW3). Dr. Bhatia found 4 injuries on the body of Ramesh Sahu. Out of them, 3 injuries were contusions and 1 injury was incised wound. He was admitted in surgical ward of the hospital. X-ray of the abdomen and skull was advised by the doctor. His

report is Ex.P4. The doctor also informed the matter to the police vide Ex.P3. On 16.4.2001, statements of Sangita (PW1), Chandrika (PW4) and other witnesses were recorded under Section 161 of the Code of Criminal Procedure. In her statements (Ex.D1 and D2) under Section 161 of the Code of Criminal Procedure, Sangita and Chandrika mentioned the names of all the assailants. Injured Ramesh Sahu remained hospitalised for 2 days and on 17.4.2001, he died in the hospital. Morgue intimation (Ex.P27) was recorded on the basis of information received from the hospital vide Ex.P26. Inquest (Ex.P2) was recorded. Spot-map (Ex.P13) was prepared. Post mortem examination of the dead body of Ramesh Sahu was conducted by Dr. S.S. Bhatia (PW3). Post mortem examination report is Ex.P7. On examination, he found 1 additional injury (lacerated wound) on right ring finger of the deceased. He also found fracture on the base of the skull. He opined that injuries No.1, 2, 3 and 5 were caused by hard and blunt object and injury No.4 was caused by hard and sharp object. He also opined that the deceased died of shock and coma as a result of injuries No.1, 2 and 3 and the nature of death was homicidal. During investigation, the police recorded memorandum statement (Ex.P15) of Appellant Sanju and on the basis of his memorandum, seized a gupti from him vide Ex.P16. The police also recorded memorandum statement (Ex.P17) of Appellant Ramayan and on the basis of his memorandum, seized a lathi from him vide Ex.P18. Memorandum statement (Ex.P19) of Appellant Narayan was recorded and on the basis of his memorandum, 1 lathi was seized from him vide Ex.P20. Memorandum statement (Ex.P21) of Appellant Raju was also recorded and on the basis of his memorandum, 1 lathi was seized

from him vide Ex.P22. Blood stained clothes of Appellant Sanju were seized from him vide Ex.P24. Blood stained clothes of Appellant Ramayan were seized from him vide Ex.P25. All the seized articles were examined by Dr. S.S. Bhatia (PW3). All the seized articles were also sent to the Forensic Science Laboratory vide Ex.P29 for chemical examination. FSL report is Ex.P34. The articles were also sent for serological examination. Report of the Serologist is Ex.P35. Stains of "B" blood group were found on the clothes of the deceased. On completion of the investigation, a charge-sheet was filed against the Appellants for offence punishable under Sections 302, 450, 323, 324 read with Section 34 of the Indian Penal Code. Charges were framed against them under Section 302 in the alternative under Section 302 read with Section 34 of the Indian Penal Code, under Section 323 in the alternative under Section 323 read with Section 34 of the Indian Penal Code and under Section 450 of the Indian Penal Code.

3. To rope in the Appellants, the prosecution examined as many as 11 witnesses. Statements of the Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the circumstances appearing against them, pleaded innocence and false implication. 1 witness has been examined in defence of the Appellants.
4. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, the instant appeal has been preferred by the Appellants.
5. Learned Counsel appearing for the Appellants submitted that in the FIR (Ex.P1), only the name of Appellant Sanju is mentioned.

Statements (Ex.D1 and D2) of Sangita (PW1) and Chandrika (PW4) under Section 161 of the Code of Criminal Procedure were recorded on 16.4.2001, wherein they have stated the names of other assailants which too had come to their knowledge from the villagers, but none of those villagers have been examined by the prosecution nor have any of them been cited as a witness by the prosecution. He further submitted that in these circumstances, test identification parade was essential, but the same was not conducted. He further submitted that there are many contradictions and omissions in the statements of Sangita (PW1) and Chandrika (PW4). They have exaggerated their statements before the Court. For this reason also, their statements are not trustworthy. He further submitted that there was a free fight between both the parties and Appellants Narayan and Raju also received some injuries in the fight and they were also examined by Dr. S.S. Bhatia (PW3). Therefore, it is clear that there was no intention on the part of the Appellants to commit murder of Ramesh Sahu. Therefore, it can be presumed that at the most they intended to cause grievous hurt to the deceased. Reliance has been placed on **(1973) 3 SCC 466 (Ram Lal v. Delhi Administration)** and **(1991) 1 SCC 339 (Abdul Hamid v. State of Uttar Pradesh)**.

6. Per contra, Learned Counsel appearing for the State/Respondent supported the impugned judgment of conviction and sentence and submitted that there is sufficient evidence on record against all the Appellants though some omissions and contradictions have occurred in the statements of Sangita (PW1) and Chandrika (PW4), which are immaterial. Therefore, the Trial Court has rightly

convicted and sentenced the Appellants.

7. I have heard Learned Counsel appearing for the parties and perused the record with utmost care.
8. The First Information Report (Ex.P1) was lodged by Sangita (PW1), daughter of deceased Ramesh Sahu. She and her mother Chandrika (PW4) are the star witnesses of prosecution. Both of them, in their Court statements, have stated that on the date of incident at about 10:00 p.m., when they were walking along with the deceased in front of their house, at that time, Tilakram (PW6) also came there. Thereafter, both Tilakram and deceased Ramesh Sahu went out to consume *Gutkha*. 5 minutes thereafter, Ramesh returned and asked for the keys of his scooter. At that time, they saw that Ramesh was bleeding from the back part of his waist. Both these witnesses have further stated that on being asked Ramesh told them that a quarrel had taken place in the house of Bhagwat. According to Sangita (PW1), Ramesh had told her that he had been assaulted by Appellants Narayan and Sanju. According to Chandrika (PW4), Ramesh had told her that at the house of Bhagwat, Appellant Sanju had given him a knife blow and at that time Appellant Narayan was present there. Both Sangita and Chandrika have also stated in their Court statements that thereafter when the deceased was taking out his scooter, at that time, Appellant Narayan entered the house and assaulted Ramesh on the head with a lathi. The scooter left away from the hands of Ramesh and Appellant Narayan fled from there. Both the witnesses have further stated that when Ramesh chased Appellant Narayan and reached near a chowk, all the Appellants assaulted him there. According to both the witnesses, Appellant Sanju was

armed with a knife. Appellant Narayan was armed with an iron rod and the other two Appellants were armed with lathi. Both the witnesses have further stated that Chandrika (PW4) tried to intervene. On this, Appellant Sanju assaulted her also on her leg. Thereafter, all the Appellants fled from the spot. Both the witnesses have also stated that at the time of incident, people of the nearby locality were standing there and they have witnessed the incident. Thereafter, both the witnesses along with Ganesh, Lokesh and other persons took Ramesh to hospital and FIR (Ex.P1) was lodged by Sangita (PW1). In paragraph 26, 27 and 81, Sangita (PW1) has stated that she knew the Appellants from her childhood. She Also knew the names of all the Appellants much prior to the date of incident. In her case diary statement (Ex.D1) recorded under Section 161 of the Code of Criminal Procedure, it is mentioned that names of Appellants Ramayan, Narayan and Raju were not known to her. She came to know about the names of these 3 persons from the villagers. But, in her Court statement, she denied the above fact.

9. Chandrika (PW4), wife of the deceased has also stated in paragraph 16 of her statement that she was already acquainted with all the Appellants and she was in talkative terms with them. But, in her case diary statement (Ex.D2) recorded under Section 161 of the Code of Criminal Procedure, it is mentioned that she came to know about the names of Appellants Ramayan, Narayan and Raju from the villagers. But, she too denied the above fact in her Court statement. In paragraphs 44 and 45 of her cross-examination, Chandrika has stated that the police officials had inquired and recorded statement of her husband Ramesh (the

deceased). At that time, her husband had told the names of two assailants. But, no dying declaration or statement of Ramesh recorded under Section 161 of the Code of Criminal Procedure is available on record.

10. Tilakram (PW6), another eyewitness of the prosecution has not supported the case of the prosecution and has been declared hostile. In his Court statement, he has stated that on the date of incident, he was going along with deceased Ramesh to take *pan* (betel). At that time, wife of Bhagwat, came out shouting that a quarrel was going on. On this, deceased Ramesh went inside the house. After sometime, he came out and told that he had been given a knife injury. After declaring the witness hostile, he has admitted that in his presence, deceased Ramesh had been assaulted by Appellant Sanju with a knife, but in his cross-examination, in paragraphs 12, 13 and 14, he has further stated that no assault took place in his presence and he did not witness Appellant Sanju at the spot. Another eyewitness Dinesh Kumar Sahu (PW9), elder brother of deceased Ramesh has not stated anything about the incident in his Court statement and he denied to give his evidence before the Court. Therefore, the Trial Court has proceeded against him for contempt of the Court.
11. Dr. S.S. Bhatia (PW3), first examined Ramesh (the deceased) on 15.4.2001 in the night. His report is Ex.P4 in which he found following total 4 injuries on the body of Ramesh: (i) contusion on the left side of stomach, 10 cms. x 3 cms., (ii) contusion on the left side of buttock, which was going backward, 10 cms. x 3 cms., (iii) contusion on the left temporal part, 3 cms. x 2 cms., blood was oozing out from the left ear and (iv) incised wound on the right iliac

region, 3 cms. x 1 cm. x ½ cm. As per his opinion, injuries No.1, 2 and 3 were caused by hard and blunt object. He had advised for x-ray examination of all these 3 injuries. Injury No.4 was simple in nature and caused by hard and sharp object. He found that general condition of Ramesh was poor and he was restless. As per the statement of this witness, on 15.4.2001, at about 10:30 p.m., Appellant Raju was brought to him for examination. He found 2 contusions on his body. His report is Ex.P6. In the same night at about 10:30 p.m., he also examined Appellant Narayan and found 3 contusions on his body. His report is Ex.P5. This witness has also performed post mortem examination on the dead body of Ramesh on 17.4.2001. Apart from the injuries mentioned in the M.L.C. Report (Ex.P4) of Ramesh, he found 1 more injury (lacerated wound) on right ring finger of 4 cms. x ½ cm. On internal examination, he found a fracture on the base of the skull. All the above injuries were ante mortem in nature. Injuries No.1, 2, 3 and 5 were caused by hard and blunt object and injury No.4 was caused by hard and sharp object. He opined that Ramesh died of shock and coma as a result of injuries No.1, 2 and 3 and the nature of death was homicidal. His post mortem examination report is Ex.P7. In paragraph 4 of his cross-examination, this witness has admitted that in the M.L.C. Report (Ex.P4) of Ramesh, it was not mentioned that any of the injuries found on his body was dangerous to life or not.

12. Parmeshwar (PW2) is the witness before whom inquest (Ex.P2) of the dead body of Ramesh was prepared. This witness is nephew of the deceased. During his cross-examination, he has stated that during medical treatment, when Ramesh was hospitalised, he had

visited him many times, but no talk had taken place between them.

- 13.** Assistant Sub-Inspector Satyanarayan Mishra (PW5) has stated that he registered the First Information Report (Ex.P1) as narrated by Sangita (PW1). He has admitted the fact that before the report made by Sangita (PW1), Bhagwat Vaishnav had first visited the police station along with Appellants Narayan and Raju and they had also made a report regarding the same incident and Narayan and Raju were sent for medical examination along M.L.C. forms. But, the report made by Bhagwat Vaishnav, Narayan and Raju is not available on record for the reasons best known to the prosecution.
- 14.** Chhatlal Kashyap (PW7) is the witness who prepared spot-map (Ex.P13). Sotilal Sahu (PW8) is the witness before whom memorandum statements of all the Appellants were allegedly recorded and all the weapons were seized in his presence. But, in his Court statement, he has stated that only the memorandum statement of Appellant Sanju was recorded in his presence vide Ex.P15 and on the basis of the said memorandum statement, the police had seized 1 knife vide seizure memo Ex.P16. He has further stated that on the other memorandum statements of other Appellants, he had only put his signatures.
- 15.** Inspector V.K. Mishra (PW10) has stated that he recorded morgue intimation (Ex.P27) on the basis of the written information (Ex.P26) received from the hospital. This witness has also done the inquest proceeding of the dead body of the deceased vide Ex.P2. During investigation, he has recorded statements of Dinesh Kumar Sahu, Umesh, Tilakram, Parmeshwar and Ramkhilawan. He has further

stated that the clothes which were seized from Appellant Sanju and deceased Ramesh and the weapons seized from all the Appellants were sent by him to doctor for examination. Dr. S.S. Bhatia (PW3) examined all the seized articles. The doctor has stated that injuries No.1, 2, 3 and 5 sustained by deceased Ramesh could be caused by the lathi examined by him and injury No.4 could be caused by the knife examined by him.

- 16.** Sub-Inspector N. Khess (PW11) has stated that he recorded statements of Sangita, Chandrika, Dashoda, Bhagwat, Kantibai, Phoolbai under Section 161 of the Code of Criminal Procedure. This witness has also recorded the memorandum statements of all the Appellants and on the basis of those memorandum statements he seized various articles from their possession. He has admitted the fact that on 16.4.2001, after receiving case diary, he did not go to the hospital to see deceased Ramesh because he had been informed by the staff that Ramesh was not in a position to give his statement.
- 17.** Naib-Tahsildar Prakash Chandra (DW1), who recorded the dying declaration (Ex.P36) of the deceased has stated that on 16.4.2001 at about 2:35 p.m., he recorded statement of Ramesh. He has further stated that he frequently asked Ramesh about the names of the assailants, but he did not disclose their names. This fact was mentioned by him in Ex.P36. In his cross-examination, he has admitted that due to the injuries, Ramesh was groaning with pain, therefore, he was not in a position to tell anything.
- 18.** As per the FIR (Ex.P1), the incident first took place in the house of the deceased. Allegedly, all the assailants entered the house of

the deceased and assaulted him. Thereafter, they took the deceased with them outside and there also they assaulted him. But, in their Court statements, Sangita (PW1) and Chandrika (PW4) have stated that first the deceased had gone to the house of Bhagwat along with Tilakram (PW6) and when he returned from there, he was in injured condition. At that time, he told that Appellants Sanju and Narayan had assaulted him with knife in the house of Bhagwat. But, in the statements (Ex.D1 and Ex.D2) of these two witnesses recorded under Section 161 of the Code of Criminal Procedure, this fact is not mentioned nor is it mentioned in the FIR (Ex.P1). Though Tilakram (PW6) has stated that having heard the shout of wife of Bhagwat, the deceased had gone inside the house of Bhagwat and when he returned from there he was in injured condition and he told him that he had been assaulted by knife yet he has admitted the fact that he did not know who assaulted the deceased in the house of Bhagwat nor did any fight take place before him. He has also stated that he did not witness any assailant. As per the statement of Assistant Sub-Inspector Satyanarayan Mishra (PW5), first, a report was made by Bhagwat and Appellants Narayan and Raju. Therefore, even if it is considered for the sake of argument that any such incident had taken place at the house of Bhagwat, in the circumstance, the best evidence could be of Bhagwat and his wife, but none of them have been examined by the prosecution. Sangita (PW1) and Chandrika (PW4) have stated that they themselves had not witnessed the incident. In these circumstances, in absence of evidence of Bhagwat and his wife, any fight had taken place at the house of Bhagwat is not established.

19. As per the Court statement of Sangita (PW1), when the deceased was taking out his scooter, at that time, Appellant Narayan had entered their house and assaulted her father (the deceased) with a rod. But, Chandrika (PW4) has stated that Appellants Narayan and Sanju had entered their house and both had assaulted the deceased. According to the contents mentioned in the FIR (Ex.P1), the incident of fight had taken place in the courtyard of the house of the deceased, but in their Court statements, both Sangita and Chandrika have stated that first the assailants assaulted the deceased in the house and thereafter they fled from there and when the deceased chased them, the assailants again assaulted him at the chowk. At that time, when Chandrika tried to intervene, Appellant Sanju assaulted her also. From further statements of Sangita and Chandrika, it is clear that they have admitted the fact that they were already acquainted with the faces and names of the assailants. But, in the FIR, only the name of Appellant Sanju was got recorded and the names of rest of the assailants are not mentioned therein. Sangita has stated that having seen her father (the deceased) smeared with blood, she had feared and, therefore, she had got the assailants recorded in the FIR as Appellant Sanju and his other 4-5 companions. This explanation is not acceptable because when she got the name of Appellant Sanju recorded in the FIR as one of the assailants and when she was already aware of the names of the other assailants/Appellants, she could mention their names also at the time of recording of the FIR, but she did not do so. Other assailants were brothers of Appellant Sanju was also not got recorded in the FIR by her. According to the diary statements (Ex.D1 and D2) of Sangita and Chandrika, names of the other 3 assailants, i.e., Ramayan, Narayan and Raju had come

to their knowledge from the villagers. Since names of above other 3 Appellants were not known to them and their names were not mentioned in the FIR and both the witnesses came to know about the names of the other 3 Appellants from the villagers, test identification parade was essential. But, no test identification parade was conducted by the police. Other eyewitnesses Tilakram (PW6) and Dinesh Kumar Sahu (PW9) have also not stated anything against the above other 3 Appellants, namely, Ramayan, Narayan and Raju. Though it is on record that along with Appellant Sanju, other 4-5 persons were with him, but it is not established that those persons were Appellants Ramayan, Narayan and Raju. Therefore, no offence is proved against Appellants Ramayan, Narayan and Raju beyond reasonable doubt and, therefore, they deserve acquittal.

- 20.** As regards Appellant Sanju, from the statement of Dr. S.S. Bhatia (PW3), it is clear that Ramesh died of shock and coma as a result of injuries No.1, 2 and 3. All those 3 injuries were caused by hard and blunt object. As per the prosecution story itself, Appellant Sanju was armed with a knife only and the deceased was assaulted by other assailants with lathi and rod. Sangita (PW1) and Chandrika (PW4) have also stated that the deceased was assaulted by Appellant Sanju with a knife only and as per statement of Chandrika, she herself was also assaulted by Appellant Sanju only. Since the death of the deceased was not a result of the injury No.4, which was allegedly caused by Appellant Sanju, in my considered opinion, Appellant Sanju is only liable for the offence under Section 324 of the Indian Penal Code for causing the injury No.4 to the deceased and the offence under Section 323

of the Indian Penal Code for causing the injury to Chandrika (PW4).

- 21.** As a result of the aforesaid discussion, Appellants Ramayan, Narayan and Raju are acquitted of all the charges framed against them. But, the conviction imposed upon Appellant Sanju under Section 304 Part II in the alternative under Section 304 Part II read with Section 34 of the Indian Penal Code is altered to conviction under Section 324 of the Indian Penal Code and the conviction imposed upon him under Section 323 of the Indian Penal Code is affirmed. So far as sentence part is concerned, he has already undergone for about 1 year and 7 months. The incident is of the year 2001. He has no known criminal antecedent. Therefore, I am of the view that interest of justice would be served if, for the aforestated conviction, he is sentenced with the period already undergone by him. Ordered accordingly.
- 22.** Consequently, the appeal is allowed in part to the extent indicated above.
- 23.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE