

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.589 of 2002

Judgment Reserved on : 4.12.2017

Judgment Delivered on : 21.2.2018

- 1. Guddu alias Ram Prasad, S/o Ram Kumar, age 30 years,
 - 2. Raju alias Imtiyaz, S/o Abdul Samar, age 24 years,
- Both R/o Ganesh Chowk, Krishna Nagar, Supela, District Durg, Chhattisgarh

---- Appellants

versus

The State of Chhattisgarh

--- Respondent

For Appellants	:	Shri R.N. Jha, Advocate
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 18.5.2002 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989') and Additional Sessions Judge, Durg in Special Case No.79 of 2001 convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304 Part II of the Indian Penal Code	Rigorous Imprisonment for 5 years and fine of Rs.1,000/- with default stipulation

2. Facts of the case, in brief, are that 10th day of March of 2001 was a day of Holi festival. At about 1:30 p.m., Rajkumar (PW1), along

with Ishwar (PW2) and other persons, went to the house of Dereshwar (PW3). From there, they went to the house of Mahilang. Dereshwar and Panchram alias Panchu stopped behind. It is alleged that near Maldar Bhawan (a mansion), accused/Appellant Guddu alias Ramprasad, accused/Appellant Raju alias Imtiyaz and acquitted accused Shahid and two other persons abused Rajkumar in the name of his caste and they also assaulted him, Dereshwar and Panchram with fists, danda and bricks. Dereshwar and Rajkumar immediately went to Police Station Supela and Rajkumar lodged First Information Report (Ex.P1). Meanwhile, Panchram, staggeringly, fell down in front of the house of Sohadradevi (PW7), wife of Dereshwar. He was immediately taken to the hospital where he was found dead. Information thereof was sent to the police station vide Ex.P12 on the basis of which morgue intimation (Ex.P11) was registered. Inquest (Ex.P8) was prepared. Post mortem examination of the dead body of Panchram was conducted by Dr. Lal Mohammed (PW5) on 11.3.2001. He gave his report (Ex.P10) in which he found a hematoma of 10x20 cms. in the scalp, ½ portion of which was placed in front of the scalp. Brain was congested. A hematoma of 10x15 cms. was present in both hemisphere of the brain. A 6 cms. lengthy linear fracture was found in the left side of the base of skull bone. He opined that mode of death was coma as a result of fracture of skull bone and head injury. Other injured persons were also examined. On 11.3.2001, memorandum statement of Appellant Guddu alias Ramprasad was recorded vide Ex.P21 and on the basis of which seizure of a danda was made from him vide Ex.P22. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On

completion of the investigation, a charge-sheet was filed against the Appellants and 5 other accused Lokesh, Shahid, Dinesh, Khileshwar and Manish for offences punishable under Sections 294, 323, 506B, 147, 148, 149, 302 of the Indian Penal Code and Section 3(1)(x) and 3(2)(v) of the Act of 1989. Charges were framed against all of them under Sections 147, 148, 302/149, 506B/149, 323/149 of the Indian Penal Code and Sections 3(1)(x) and 3(2)(v) of the Act of 1989.

3. To rope in the accused, the prosecution examined as many as 10 witnesses. Statements of the accused were also recorded under Section 313 Cr.P.C. in which they denied the guilt and pleaded innocence. 1 witness has been examined in their defence.
4. After Trial, the Trial Court, except the Appellants, acquitted the rest 5 accused of the charges framed against them, but convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants argued that there is nothing on record to show that the injury suffered by deceased Panchram on the head was caused by the Appellants only. As per the First Information Report, all the assailants were involved in assaulting the deceased. It was further argued that only single injury was found on the head of the deceased. The Appellants are facing the *lis* for about 16 years. They have already undergone about 20 months. In these circumstances, the sentence imposed upon them may be restricted to the period already undergone by them. Reliance has been placed on **(2015) 11 SCC 588 (Ravinder Singh v. State of Haryana)** and **1999 (1) JLJ 69 (Dulesingh v.**

State of M.P.).

6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence and argued that the FIR is a named one. Rajkumar (PW1), Dereshwar (PW3) and Ramadhar (PW4) are eyewitnesses of the incident. All these three eyewitnesses have stated before the Court the names of the Appellants as the assailants. The finding of the Trial Court is based on the material available on record and, therefore, the same does not warrant any interference by this Court.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record minutely.
8. Rajkumar (PW1), injured eyewitness of the incident, has stated that on the date of incident at about 1:30 p.m. they took some breakfast at the residence of Dereshwar (PW3) and thereafter Sampatlal Mahilange invited them to his house. He along with Dereshwar and Panchram began to go to the house of Sampatlal. On the way, he went inside his house. After 10 minutes, he came out of his house. He saw that Dereshwar and Panchram were not present there. He alone began to go to the house of Sampatlal. At that time, he saw near the Maldar Bhawan that the Appellants and other accused were assaulting Dereshwar and Panchram with lathi and stones. On being intervened, he was also assaulted by the accused. He has further stated that he ran away and went to Bhandari Mahilang. Santu, Ishwar (PW2) and Ramadhar (PW4) were present there. He informed them about the incident. When all these persons reached the place of occurrence, leaving Panchram and Dereshwar there, the accused ran away from there.

He has further stated that he along with Dereshwar went to Police Station Supela and lodged First Information Report (Ex.P1). He has further stated that in the evening of the same day, he came to know that Panchram had died.

9. Ishwar (PW2) has stated that when he was sitting at the resident of Bhandari along with Ramadhar (PW4), they heard shout of Rajkumar (PW1) for help. When they reached the spot, they saw that the Appellants along with their friends were assaulting Rajkumar (PW1) and Dereshwar (PW3) with lathi and fists. When he caught the lathi of Appellant Guddu alias Ramprasad, he assaulted him with kick and rest of the accused also assaulted him with fists. He has further stated that he along with Rajkumar and Dereshwar went to Police Station Supela. The police sent them to the hospital for medical examination. While return from the hospital, he came to know that Panchram was admitted in Chandulal Chandrakar Memorial Hospital. He has further stated that Panchram was assaulted by the Appellants and their friends. In paragraph 2 of his cross-examination, he has admitted that he did not see any injury on the body of Panchram. He has further stated that he did not see Panchram on the spot. In paragraph 6 of his cross-examination, he has further stated that by whom Panchram was assaulted was not known to him.
10. Another eyewitness Dereshwar (PW3) has stated that at the time of incident, Appellant Guddu alias Ramprasad came to him, abused and assaulted him with fist. He has further stated that accused Raju and other acquitted accused also came there and assaulted him as well as Panchram with lathi, kick and bricks. On

being intervened by Rajkumar (PW1), he was also assaulted by the assailants. He has further stated that Panchram had fallen down near the house of Devkumar and he saw that accused Guddu and Raju were assaulting Panchram. Thereafter, he along with Rajkumar went to Police Station Supela where First Information Report was lodged by Rajkumar.

11. Ramadhar (PW4) has stated that having heard the shout of Rajkumar (PW1), he along with Ishwar (PW2) reached the spot where they saw that Rajkumar and Dereshwar (PW3) were being assaulted by accused Guddu, Manish and other persons. He has further stated that Panchram was also being assaulted by Guddu with a danda. Other accused were also present there and they also assaulted Panchram.
12. Dr. Lal Mohammed (PW5) has examined Rajkumar (PW1) and prepared his M.L.C. Report (Ex.P9). On 11.3.2001, he performed post mortem examination on the dead body of Panchram. He gave the post mortem report (Ex.P10) in which he found a hematoma of 10x20 cms. in the scalp, ½ portion of which was placed in front of the scalp. Brain was congested. A hematoma of 10x15 cms. was present in both hemisphere of the brain. A 6 cms. lengthy linear fracture was found in the left side of the base of skull bone. He opined that mode of death was coma as a result of fracture of skull bone and head injury.
13. Bedu (PW6) has deposed that mother of Dereshwar (PW3) came to him and informed that Rajkumar (PW1) and Panchram were assaulted by some persons. Dereshwar has taken Rajkumar to the police station and Panchram was lying unconscious on the spot

and she asked him for taking Panchram to the hospital. He has further stated that he along with Sohadradevi (PW7) took Panchram to Chandulal Chandrakar Memorial Hospital where the doctor informed them that Panchram had died.

14. Sohadradevi (PW7) has stated that her husband Dereshwar (PW3), Rajkumar (PW1) and Panchram had gone out saying that they were going to the house of Bhandari. They returned after 10-15 minutes and told that a fight had taken place. She has further stated that her husband had taken Rajkumar to the police station and at that time Panchram, staggeringly, came to the door of her house and fell down there. Panchram was taken to the hospital by them in a tempo. After some time, the doctor told them that Panchram had died.
15. Sub-Inspector D.C. Singh (PW8) is the witness who recorded morgue intimation (Ex.P11) on the basis of memorandum (Ex.P12) of the hospital. This witness recorded the FIR (Ex.P1) also.
16. Deputy Superintendent of Police Tilak Singh (PW9) is the Investigating Officer who investigated the offence in question. He prepared inquest (Ex.P8). He seized one brick from the spot vide Ex.P6. He prepared spot-map (Ex.P13). He recorded memorandum statement (Ex.P21) of Appellant Guddu alias Ramprasad and on the basis of the said memorandum statement, he recovered and seized a danda from the possession of Appellant Guddu alias Ramprasad vide Ex.P22.
17. Dr. S.R. Sengupta (PW10) is the witness who sent the information of death to Police Station Supela vide Ex.P12.

18. Aditya Prasad (DW1) has stated that accused Guddu was assaulted by Dereshwar (PW3) and his 15-20 companions. He has not stated anything about the injuries sustained by Panchram, Rajkumar (PW1) and others.
19. A minute examination of the evidence available on record makes it clear that at the time of incident, first Rajkumar (PW1), Dereshwar (PW3) and Panchram (deceased) were assaulted by the Appellants and their companions. In his Court statement, Rajkumar (PW1) has categorically named both the Appellants as the assailants. Eyewitnesses Dereshwar (PW3) and Ramadhar (PW4) have also stated the names of the Appellants as the assailants. Though Ishwar (PW2) has admitted that he had not seen Panchram (deceased) on the spot and he did not know who assaulted Panchram yet he has also corroborated the statements of Rajkumar (PW1), Dereshwar (PW3) and Ramadhar (PW4) and stated that both the Appellants were present there and they assaulted Dereshwar and Rajkumar. The FIR (Ex.P1) was also lodged immediately after the occurrence which reflects the names of the Appellants as the assailants. All the above prosecution witnesses have remained firm during their cross-examination. From the above, it is clear that Panchram was assaulted by both the Appellants. From the statement of Dr. Lal Mohammed (PW5) and his post mortem report and opinion (Ex.P10), it is also clear that mode of death of Panchram was coma as a result of fracture of skull bone and head injury. From the evidence on record, it is also clear that the fight took place all of a sudden and the deceased had sustained only single injury on the head.

20. Considering the above aspect of the matter, I find that the Trial Court has rightly convicted the Appellants under Section 304 Part II of the Indian Penal Code.
21. It was submitted by Learned Counsel appearing for the Appellants that out of the total jail sentence of 5 years, the Appellants have already undergone about 20 months. They are facing the *lis* since 2001. The matter is pending for about 16 years. In these circumstances, they may be sentenced to the period already undergone by them and the amount of fine imposed upon them may be enhanced. He has relied upon **Ravinder Singh case** (supra).
22. In **Ravinder Singh case** (supra), the matter was pending for about 22 years and the accused had been sentenced to undergo rigorous imprisonment for 7 years and pay fine of Rs.25,000/-. Considering the facts that some of the accused of that case were students, one of them was a police personnel and one was aged about 72 years, the High Court had reduced the sentence to the period already undergone by them and enhanced the amount of fine. While affirming the said order of the High Court, the Supreme Court has observed thus:

“11. The question of sentence is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual cases. The law courts have been consistent in the approach that a reasonable proportion has to be maintained between the seriousness of the crime and

the punishment. While it is true that a sentence disproportionately severe should not be passed that does not clothe the court with an option to award the sentence manifestly inadequate. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime.

12. In *State of Karnataka v. Krishnappa*, (2000) 4 SCC 75, this Court held thus: (SCC pp. 83-84, para 18)

“18. the sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced. The High Court, in the facts and circumstances of the case, was not justified in interfering with the discretion exercised by the trial court and our answer to the question posed in the earlier part of the judgment is an emphatic – No.”

13. Considering the facts of the present case as submitted by the learned counsel for the two respondent-accused, namely, Raj Kumar (A-3) and Narender (A-6) were students at the time of the incident while Manphool (A-5) has crossed the age of

72 years. The occurrence was in the year 1993 and more than 22 years have elapsed from the date of the incident. For the conviction under Section 304 Part II IPC read with Section 149 IPC reduction of sentence from seven years to the period already undergone, though, appears to be inadequate, at this distant point of time, we are not inclined to interfere with the exercise of discretion by the High court in reducing the sentence of imprisonment from seven years to the period already undergone by each of the accused. As far as the award of compensation is concerned, particularly in the case of homicidal death, monetary benefits cannot be equated with the life of a person and the society's cry for justice. The objection is just to mitigate hardship that is caused to (*sic* dependants of) the deceased.”

- 23.** Keeping in view the above observation of the Supreme Court and in the instant case taking into consideration that on the date of occurrence, Appellant No.1 and Appellant No.2 were aged about 28 years and 22 years, respectively, they are facing the *lis* for the last 16 years, now they are aged about 44 years and 38 years, respectively and they have no known criminal antecedent, it would be in the interest of justice to reduce the sentence of the Appellants to the period already undergone by them. Ordered accordingly. The amount of fine imposed upon them is enhanced to Rs.1,01,000/- each. They shall deposit the enhanced amount of fine before the Trial Court within a period of two months from the date of receipt of a copy of this judgment. In default of payment, each of them shall be liable to undergo the same substantive sentence of imprisonment as imposed upon them by the Trial Court

vide the impugned judgment by way of default stipulation in case of default of payment of fine. Once the aforesaid amount of Rs.1,01,000/- is deposited by each of the Appellants, the Trial Court shall disburse the total amount of Rs.2,02,000/- among the legal representatives of deceased Panchram in equal proportion within a period of one month from the date of the deposit. If any amount has already been deposited by the Appellants towards fine, the same shall be adjusted in the amount of fine enhanced today.

24. Consequently, the appeal stands disposed of in the aforesaid terms.
25. 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