

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 740 of 2013**

1. Parasram Kol S/o Ram Khilawan Kol, aged about 50 years.
2. Ramesh Kol S/o Parasram Kol, aged about 22 years.
3. Teju Kol S/o Purushotam Kol, aged about 20 years.

All resident of village Kateltola, Padavniya, Police Station Gorella,
District Bilaspur, Chhattisgarh, Revenue and Civil District Bilaspur
(C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through : Station House Officer Gorella, District
Bilaspur, Chhattisgarh

---- Respondent

For Appellants.	:	Smt. Savita Tiwari, Advocate.
For Respondent.	:	Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgment on Board**By Pritinker Diwaker, J****16/02/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 30.07.2013 passed by the Additional Sessions Judge, Pendra Road, District Bilaspur (C.G.), in S.T. No.40/2011 convicting accused/appellant No.1 and 3 namely Parasram and Teju Kol under Sections 302/34, 324/34 & sentencing them to undergo imprisonment for life with fine of Rs.200/-, R.I. for two years with fine of Rs.200/- and accused/appellant No.2 under Sections 302, 324 IPC and sentencing him to undergone imprisonment for life with fine of Rs.200/- and R.I. for two years with fine of Rs.200/-, plus default stipulation.

02. In the present case, name of the deceased is Shankarlal Kol.

On 06.06.2011 at 00.50 AM, dehati nalisi (Ex.D-2) was recorded on the report lodged by deceased himself wherein it is alleged that on 04.06.2011 a quarrel had taken place between Narbad Kol (PW/2), son of the deceased, and one Khannu Yadav, over which the accused persons, taking favour of Khannu Yadav, came to his house on 05.06.2011 at 9.30 PM carrying club and spear in their hands and started using filthy language which was objected by the deceased and thereafter accused/appellant No.1-Parasram gave spear (बल्लम) blow on his abdomen and when his son PW/2 intervened in the matter, he too was beaten as a result of which his two right hand's fingers were literally chopped. When he entered his house to save himself, the accused/appellants broke open the door and that the incident was witnessed by his wife Budhwaria Bai (PW/5), Anita Kol (PW/1) and Gyanik Ram (PW/3). Based on this dehati nalisi (Ex.D-2), FIR (Ex.P-30) was registered on 06.06.2011 at 01.10 PM under Section 307/34 against the accused persons. On 06.06.2011, deceased was medically examined vide Ex.P-15 by Dr. A.I. Minj (PW/10) noticing one stab wound of 4 cm long over left lower side of abdomen. During treatment, on 07.06.2011 the deceased succumbed to his injury in the hospital. On 08.06.2011 at 7.30 am, merg intimation (unexhibited) was recorded. On the same day, inquest on the body of deceased was conducted vide Ex.P/1 and dead body was sent for postmortem examination to Chhattisgarh Institute of Medical Science, Bilaspur (CIMS) which was conducted by Dr. Anil Kumar (PW/16) who gave his report (Ex.P/36) noticing following injuries:-

- (i) Stitched wound (25 stitches) of 2 cm over left

abdomen.

- (ii) Operated stitched wound (16 stitches) of 16 cm over mid line of abdomen.
- (iii) Large intestine perforated (surgical stitched)
- (iv) Abdominal cavity filled with watery blood.

Autopsy Surgeon opined the cause of death of deceased to be cardio respiratory failure as a result of shock due to injuries to abdomen.

03. On 06.06.2011, memorandum of accused/appellant No.1-Parasram Kol, accused/appellant No.2-Ramesh Kol and accused/appellant No.3-Teju Kol were recorded vide Ex.P/7, P/8 and P/9, based on which, one spear (बल्लम), club and bamboo stick were seized from their possession vide Ex.P/10, P/11 and P/12 respectively. Seized articles were subjected to chemical examination and as per FSL report (Ex.P/37), presence of blood on the seized articles was confirmed, however, there is no serological report on record to confirm its origin. After filing of the charge sheet, the trial Judge has framed the charge against the accused/appellants under Sections 302 or 302/34, 324 or 324/34 IPC.

04. So as to hold the accused/appellants guilty, the prosecution examined as many as 16 witnesses. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellants as mentioned above. Hence, this

appeal.

06. Learned counsel for the appellants submits :

- (i) That the incident occurred all of a sudden without there being any premeditation and even the accused party have also sustained injuries.
- (ii) That considering the fact that both the parties have sustained injuries and it has not been proved as to who was the assailant, at best, the accused/appellants are liable to be convicted under Section 304 Part-I or Part-II of IPC.
- (iii) That the spear blow has been given by accused/appellant No.2- Ramesh Kol and other persons have not caused any grievous injury, therefore, they could not have been convicted under Section 302 IPC. She placed her reliance on the decisions of the Apex Court in the matter of **Ravi Kumar Vs. State of Punjab¹, Azizullah alias Azizul Haq V State of U.P.² and Lakshmi Singh & Ors V State of Bihar³**.
- (iv) That as per Anita Kol (PW/1) and injured Narbad Kol (PW//2), it is knife which has been used for commission of offence and not the spear (बल्लम) as alleged by the deceased.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that Anita Kol (PW/1), injured Narbad Kol (PW/2), Gyanik Ram (PW/3) and Laxmi Bai Kol (PW/4) are the eye-witnesses to the incident and all of them have supported the prosecution case. It has been further argued that dehati nalisi (Ex.D/2) and FIR (Ex.P/30) lodged by the deceased himself, after his death, can be treated as his dying declaration wherein he has categorically

1 (2006) 1 SCC (Cri) 738

2 2003 CRI. L.J. 663

3 1976 CRI L.J. 1736

described as to the manner in which he was assaulted by the accused/appellant as a result of which deceased died in the hospital. It has been also argued that considering the gravity of injury sustained by the deceased and weapon used for commission of offence, conviction of the accused/appellants is in accordance with law.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Anita Kol (PW/1) is relative of the deceased and the appellants. She has stated that on the date of incident at 8.00 PM, all the three accused persons came to the house of deceased and started abusing him. Narbad Kol (PW/2), son of the deceased and injured witness, came out from his house and asked the accused persons as to why they are abusing and then accused/appellant No.2-Ramesh Kol assaulted him (PW/2) by a knife and when deceased Shankarlal Kol made an attempt to come out from his house, his daughter-in-law Laxmi Bai Kol (PW/4) did not permit him to come out and then the accused/appellants broke open door, entered the house and Ramesh Kol (A-2) caused knife injuries to the deceased, whereas other accused/appellants (A-1 & A-3) were holding him. She has further stated that after committing the offence, all the accused/appellants fled from the spot. In cross-examination, but for minor contradiction she remained firm and has reiterated as to the manner in which the deceased was done to death.

10. Narbad Kol (PW/2), son of the deceased, has stated that on 05.06.2011 at about 8.00 PM when accused/appellants came to his house, his father abused them, came out from his house and thereafter there was scuffle between accused/appellant No.1-Parasram Kol, No.3-

Teju Kol and Purushottam, father of A/3. When he intervened in the matter, he was also thrown on the ground and by that time other accused/appellant Ramesh (A-2) also reached there and then it is Ramesh (A-2) who gave knife blow to him (PW/2) and when he tried to save himself, his two fingers were literally chopped and thereafter he became unconscious. He has further stated that his wife also came to save the deceased, took him (deceased) inside the house but the accused/appellants broke open the door and thereafter caused injuries to deceased by knife. He has also stated that after assaulting all his family members, accused persons fled from the spot. In para 4, this witness has stated that he is not aware as to what was the cause of quarrel and that accused/appellant Parasram (A-1) and Teju (A-3) came peacefully to his house and it is his father who first abused Parasram (A-1) and had he (deceased) been alive, he could have told the reason for the said abuse. There are material contradictions in cross-examination of this witness from that of his diary statement.

11. Gyanik Ram (PW/3) is husband of PW/1. He has stated that when he was sleeping in his house, PW/2 came to him and informed about the quarrel and that he was beaten by the accused/appellants as a result of which blood was oozing from his one hand. He thought to bandage the injury of PW/2 but by that time he fled from the spot. He has further stated that when he came out from his house, he saw the deceased in injured condition and that the accused/appellants were fleeing from the spot. In cross-examination, this witness has also stated that the place where the incident had taken place was dark.

12. Laxmi Bai Kol (PW/4) is wife of injured PW/2 and daughter-in-law

of the deceased. She has stated that in the incident her father-in-law (deceased Shankar Lal) was assaulted by accused/appellant Parasram (A-1) and Teju Kol (A-3). When she bolted her father-in-law inside the room, accused/appellants (Parasrama and Teju Kol) broke open the door, they caught hold of her father-in-law and accused/appellant Ramesh Kol (A-2) gave knife blow over his abdomen as a result of which his intestine came out.

13. Budhwaria Bai (PW/5), wife of the deceased, has stated that on the date of incident when she was in her house, the accused/appellants came, broke open the door and assaulted his son PW/2 and the deceased. She has further stated that accused/appellant Parasram (A-1) and Teju Kol (A-3) caught hold of her husband and it is accused/appellant Ramesh (A-2) who caused injury to deceased by knife.

14. Kishun Lal Kol (PW/6) is a witness to memorandum of accused/appellant Parasram, Ramesh and Teju made under Ex.P/7, P/8, P/9 and seizure thereof made under Ex.P/10, P/11 and P/12 respectively, by which one spear (बल्लम) and club were seized from their possession.

15. Pyare Lal Kol (PW/7) turned hostile.

16. Dr. Santosh Uddesh (PW/8) is a witness who treated the deceased when he was brought in the hospital.

17. Arvind Marawi (PW/9) is a Patwari who prepared spot map vide Ex.P/2.

18. Dr. A.I. Minj (PW/10) did MLC of deceased Shankarlal, injured Narbad (PW/2), accused Parasram and Teju Kol vide Ex.P/15, P/16,

P/19 and P/19 respectively. This witness had also advised for x-ray of accused/appellant Parasram (A-1).

19. A.S. Kanwar (PW/11) - Investigating Officer has duly supported the prosecution case.

20. Ram Prasad (PW/12) and Salik Ram (PW/14) are the witnesses before whom the deceased made oral dying declaration that it is accused/appellant Ramesh (A-2) who caused knife injury to him. In cross-examination, these witnesses remained firm.

21. Manbahor (PW/13) turned hostile.

22. S.S. Rajput (PW/15) - Sub Inspector, did part of investigation.

23. Dr. Anil Kumar (PW/16) conducted postmortem examination on the body of deceased and gave his report (Ex.P/36) opining the cause of death of deceased to be cardio respiratory failure as a result of shock due to injuries to abdomen.

24. Close scrutiny of the evidence makes it clear that over a quarrel between Narbad Kol (PW/2) and Khannu Yadav, deceased Shankar Lal scolded Khannu Yadav as a result of which accused persons got annoyed and taking his (Khannu Yadav's) favour assaulted the deceased by knife. When his son Narbad Kol (PW/2) tried to save his father, he too was beaten by the accused persons by knife as a result of which his two fingers of right hand were literally chopped. The deceased, after sustaining injury, expired in the hospital. The incident was witnessed by Anita Kol (PW/1), injured Narbad Kol (PW/2), Gyanik Ram (PW/3), Laxmi Bai Kol (PW/4) and Budhwaria Bai (PW/5) who have categorically stated that accused/appellants Parasram (A-1) and Teju Kol (A-3) caught hold of the deceased and it is accused/appellant Ramesh

Kol (A-2) who caused injuries to the deceased by knife, and on the memorandum of the accused/appellants, one spear (बल्लम) and clubs have been seized from them vide Ex.P/10, P/11 and P/12 respectively and as per FSL report (Ex.P/37), presence of blood was confirmed thereon. The defence has cross-examined these witnesses at length but has not been able to elicit anything in their cross-examination to discredit their testimonies especially on the point that the accused/appellants have not killed the deceased and not caused injuries to PW/2. Evidence of these eye-witnesses gets corroboration from medical evidence according to which injuries on vital part i.e. abdomen of the deceased were noticed and the same were caused by hard and blunt object. The Autopsy Surgeon in his query report (Ex.P/17) has opined that the injuries sustained by the deceased and PW/2 could have been caused by spear (बल्लम) club. Considering the statements of injured witness (PW/2) and other eye-witnesses coupled with the medical evidence, the complicity of accused/appellants in crime in question stands proved beyond reasonable doubt.

25. The next question which arises for consideration before this Court is as to whether the act of the accused/appellants would fall under any of the Exceptions to Section 300 IPC.

26. On the date of incident, according to evidence of injured PW/2, it is the deceased who first came out from his house, abused accused/appellant Parasram (A-1) and thereafter both of them assaulted each other by hands and fists. PW/2 has further stated that both accused/appellant Parasram (A-1) and his father deceased Shankarlal fell on the floor and he intervened in the matter, however,

he was also assaulted by accused/appellant Ramesh Kol (A-2) resulting injury on his right hand finger. In para 4 of examination-in-chief, he has reiterated that he is not aware as to why the deceased and accused/appellant Parasram (A-1) were quarreling and that accused/appellant Parasram (A-1) and Teju Kol (A-3) came to his house in quiet manner and it is his father (deceased) who was abusing accused/appellant Parasram (A-1) and had his father been alive, he (deceased) could have told the reason thereof as to why he was abusing accused/appellants. As per PW/1, the incident took place inside the house and she is not aware as to what had happened inside the house. She has stated that she saw the accused/appellants fleeing from the spot and that they were carrying spear (बल्लम) and club but one of the accused/appellant was carrying knife. She has also stated that there was no dispute among the accused persons, the deceased and injured PW/2. She has further stated that the deceased never came out from his house. As per other eye-witness (PW/3), the incident was informed to her by injured (PW/2) and the time when he reached the place of occurrence, the incident had already been taken place. This witness has further stated that the incident had taken place in the dark and there was no electric light. Yet another important aspect of the case is that accused/appellant Parasram (A-1) and Teju Kol (A-3) had also suffered injuries and their MLC are Ex.P/18 and P/19.

27. From the evidence of prosecution witnesses, the picture emerges that it is only after appellant Parasram (A-1) being abused by the deceased, the present appellants caused injuries to him and to

PW/2 when he tried to intervene in the matter. Thus, it is crystal clear that when appellant Parasram (A-1) was provoked by the act of the deceased, accused/appellant Parasram (A-1) and Teju Kol (A-3) caught hold of the deceased, and accused/appellant Ramesh Kol (A-2) assaulted him by knife leading to his unfortunate death. Thus, considering the facts and circumstances of the case giving rise to the incident where the appellants assaulted the deceased by knife resulting in his death, we are of the considered opinion that the act of the accused/appellants does not fall within the ambit of Section 302 IPC and it is covered by Exception 4 to Section 300 IPC. Further, considering the manner in which assault was made by deadly weapon on the vital part abdomen of the deceased as a result of which his intestine came out from abdomen and the cause of death was abdominal injury, we are of the opinion that while inflicting such injuries on the person of the deceased, the accused/appellants had the intention of causing such bodily injuries as is likely to cause his death. Being so, they are liable to be convicted under Section 304 Part-I IPC.

28. Accordingly, the conviction of the accused/appellants under Sections 302, 302/34 IPC is altered to Section 304 Part-I IPC and they are sentenced to undergo R.I. for ten years. Their conviction under Sections 324 and 324/34 of IPC is hereby maintained. As per record, the accused/appellant No.1 and 3 are reported to be on bail. They be taken into custody forthwith and send back to jail for serving out the remaining sentence. As the accused/appellant No.1 is already in jail, no further order regarding his arrest etc is required.

29. The appeal is thus partly allowed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE