

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.206 of 2010**

- State Of Chhattisgarh

---- Appellant

Versus

- Rajesh Yadav, aged about 22 years, S/o. Gangaram Yadav, R/o. Rajiv Nagar, Basantpur, Police Station Basantpur, Rajnandgaon, Distt. Rajnandgaon (CG)

---- Respondent

For Appellant/State : Shri PK Bhaduri, Govt. Advocate
For respondent : None present.

**DB: Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma**

Judgment On Board**Per Ram Prasanna Sharma, J.****13.02.2018.**

1. This acquittal appeal arises out of judgment dated 15.02.2001 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') in Special Case No.25/2000 wherein the said Court acquitted the respondent from the charges of commission of offence under Section 302 of the Indian Penal Code, 1860 and under Section 3(2)(v) of the Act for commission of murder of one Dinesh Mandavi member of Scheduled Tribe while the respondent is not a member of the Scheduled Tribe/Scheduled Caste.

2. In the present case, name of the deceased is Dinesh Mandavi, son of one Rambha Bai. It is alleged that on 17.01.2000 Rambha Bai was talking to her daughter-in-law namely Divya that some dogs are eating food and making the place dirty. Upon

hearing these words, the respondent made quarrel with Rambha Bai as if she was describing him as dog. In the evening when Dinesh, son of Rambha Bai returned home, he came to know about the incident and went to Gourah Chourah square of the village. After sometime, there was some noise and when Rambha Bai reached to the spot, she found that Dinesh was inflicted with knife injury and was shifted to hospital in a rickshaw. When she reached to the hospital she found that Dinesh has died. The matter was reported to Police Station Basantpur. After investigation, charge sheet was filed and after completion of investigation, the trial Court acquitted the respondent as aforementioned.

3. Learned counsel for the State submits as under:

(i) As per the version of Divya (PW-5), her husband Dinesh made oral dying declaration to her that the respondent inflicted knife injury over his chest and there are other corroborative piece of evidence regarding commission of offence by the respondent, but the judgment of acquittal by trial Court is based on conjunctures and surmises.

(ii) The trial Court failed to appreciate the evidence of Rambha Bai in its right perspective.

(iii) The weapon of offence was recovered at the instance of the respondent, but the same was ignored by the trial Court and came to a wrong conclusion.

4. Heard learned counsel for the State and perused the record.

5. Rambha Bai (PW-1) deposed that certain heated exchange of words occurred between her and the respondent on the date of incident and on the same day her son went to the shop of one Kishore and thereafter she heard some noise and when reached on the spot she found that her son has sustained knife injuries. In her cross-examination she admits that when she reached to the Gourah Square, she was informed that her son has been shifted to hospital by rickshaw. Looking to her entire version, it is established that she has not seen the incident and reached to the spot only after the incident.

6. Premu Nishad (PW-2) deposed that Dinesh was lying on the ground then he brought one rickshaw and Dinesh was shifted from that place. Rajendra (PW-3) deposed in his examination in chief that he has not seen the incident. Rafique Khan (PW-4) deposed that Dinesh was lying on the ground and he called one rickshaw and shifted him to the hospital. Jagnath (PW-6) deposed on the same line. Sunderlal @ Sunderdas Manikpuri (PW-7), Umendra (PW-8), Ratiram Sahu (PW-9), Constable 186 Girdhar Lal (PW-10), Asst. Sub Inspector KL Sahu (PW-11), Home guard (PW-12), Anand (PW-13), Dy. Superintendent of Police Rohit Kumar Kurre (PW-15), Chandulal (PW-17), Head Constable Ghanshyam Singh (PW-18) are the witnesses who assisted during investigation after registration of the FIR.

7. Dr. Murlidhan Dulani (PW-19) deposed that he examined the respondent on 18.01.2000 at the District Hospital, Rajnandgaon and noticed following injuries:-

- (1) one abrasion of 2 cm x $\frac{1}{2}$ cm over suprasternal region
- (2) abrasion on the left side of face above zygomatic process of 3 cm x $\frac{1}{2}$ cm
- (3) abrasion above left eyebrow of $\frac{1}{2}$ cm x $\frac{1}{2}$ cm
- (4) abrasion below left eye $\frac{1}{2}$ cm x $\frac{1}{2}$ cm
- (5) abrasion on the outer corner of right eye of 2cm x $\frac{1}{2}$ cm
- (6) incised wound on upper $\frac{1}{3}$ rd of thumb palmer aspect deeper aspect of upper palmer of 1 $\frac{1}{2}$ cm x $\frac{1}{2}$ cm with clotted blood

8. As per the opinion of the medical expert, all the injuries were simple in nature and sustained since 24 hours of the examination. He further opined that injuries were caused by hard and blunt object. Version of this witness is unrebutted during cross-examination and there is no other expert opinion contrary to the said information. From the statement of this witness, it is established that injuries were found on the body of the respondent.

9. Dr. Anil Mahakalar (PW-16) examined the deceased and found one knife injury on the left side of the chest. Dr. YK Tiwari (PW-14) conducted autopsy on 18.01.2000 at District Hospital Rajnandgaon and noticed following injuries on his body.

(1) abrasion at left knee of ½" x ½"

(2) incised wound of 2.5" away from left nipple obliquely
placed clear at margin of 1" x 1/2" x 7" deep

He opined that cause of death is due to cardiac arrest and filling of blood in the thorax cavity. He further opined that duration is since 48 hours of the examination.

10. It is contended by learned counsel for the State that as per the version of Divya (PW-5), the deceased made oral dying declaration to her and as per the oral dying declaration, it is the respondent who inflicted the knife injury. Divya (PW-5) further deposed before the trial Court that one small girl informed her about the incident that the respondent is assaulting the deceased and thereafter she reached to the spot where the deceased made oral dying declaration that the respondent inflicted injury upon him.

11. It is settled law that dying declaration is a substantive piece of evidence and if it is satisfactorily established before the court by proving it, conviction can be based on it. In the present case, date of incident is 17.01.2000 and on the same day statement of Divya (PW-5) was recorded by City Superintendent of Police Rohit Kumar Kurre under Section 161 of the CrPC. As per her statement recorded under Section 161 of CrPC, she has not stated that deceased Dinesh made any oral dying declaration. In her earlier statement, she stated that when she reached to the spot she was informed that her husband was shifted to hospital. It

means that her husband was not present at the place of incident and therefore, her statement before the Court is contrary to her earlier statement because there is material omission with her previous statement regarding oral dying declaration and it would not be safe to act on the statement of Divya.

12. As earlier stated Dr. Murlidhar found six injuries on the body of the respondent. No one has witnessed the incident. Therefore, the prosecution is not able to establish the genesis of the origin of the occurrence. It is not clear as to who was the aggressor at the time of the incident and who was in possession of the arm. In absence of any direct evidence and evidence regarding origin of occurrence, it was not safe for the trial Court to come to a conclusion that the respondent was the aggressor at the time of the incident. Though one knife was seized from the respondent but it was not established that human blood was found in the said article, therefore, the same is not incriminating circumstance against the respondent. Looking to the overall assessment, finding of the trial Court is based on proper appreciation of the evidence and it would not be proper for us to disturb the same.

13. In the result, the appeal is liable to be and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)