

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 324 of 2001**

1. Badan @ Rambadan, S/o Bhawani Singh Gond, aged about 31 years,

2. Krishn Kumar Singh, S/o Hirawan Singh, aged about 30 years,

Both R/o village- Chirmi, P.S. Khadgawan, District Koriya, C.G.

**---Appellant****Versus**

- State Of C.G., through P.S. Khadgawan, District Koriya

**---- Respondent**


---

|                      |                                 |
|----------------------|---------------------------------|
| For Appellant        | Ms. Sharmila Singhai, Advocate. |
| For Respondent/State | Mr. Santosh Bharat, Advocate.   |

---

**Hon'ble Shri Justice Gautam Chourdiya**  
**Judgment on Board**

18/07/2019

1. This appeal arises out of the judgment of conviction and order of sentence dated 23.03.2001 passed by learned Additional Sessions Judge, Manendragarh, District Koriya, C.G. in Sessions Trial No. 156/97, whereby the appellants stand convicted and sentenced as under:-

| Conviction                                                         | Sentence        |
|--------------------------------------------------------------------|-----------------|
| Under Section 304 Part 2 read with Section 34 of Indian Penal Code | Five years R.I. |

2. Case of the prosecution in brief is that one buffalo of Jageshwar died on or before 10.02.1997, Jageshwar and the accused/appellants had

suspicion that the buffalo was given poison by Ramgopal (deceased) which resulted in his death. The villagers including Jageshwar, Sarpanch Krishn Kumar called upon Ramgopal and on being enquired Ramgopal admitted to have given some poisonous substance to the buffalo of Jageshwar. Thereupon the accused/appellants and one Nayak and other villagers started beating Ramgopal with hands, fists, shoes and slippers. Next day Ramgopal was taken to police station Khadgawan by the Sarpanch Krishn Kumar, Jageshwar, Kotwar and Cheturam where Ramgopal disclosed to the police about beating by the accused persons and other villagers. On medical examination, the Doctor found pain in the stomach of Ramgopal, he was having difficulty in breathing, there was contusion on his forehead and swelling on right temporal region. However, Ramgopal died during treatment on 12.02.1997 in the hospital. Thereafter, inquest was prepared by the police and the body was sent for postmortem to Primary Health Centre, Khadgawan where Dr. B.L. Kaushal PW-1 conducted postmortem and found the following injuries on the person of the deceased:-

1. Contusion over left side of forehead of size 2 ½ " x 1 ½ ".
2. Blue and Black contusion above right arm of size 1" x 1".
3. Abrasion over the head of size ½ x ½ .

Except the above injuries, no other injury was found on the body of the deceased. On internal examination the Doctor found blood clott in the food and wind pipes, both the lungs were deeply congested, posterior side of lower lobe of left lung lacerated and slight ruptured of size 2" x 1" x ¼". According to Autopsy Surgeon, the cause of death was Hypo-volumic shock (Hemerage) due to life threatening internal injuries and the death was homicidal in nature.

3. After completion of investigation charge sheet was filed against the

three accused persons Nayak @ Bhara, Badan @ Rambadan and Krishna Kumar Singh under Sections 302, 34, 330, 201 of IPC. One of the accused namely Nayak absconded during trial, therefore, the trial was conducted only in respect of the present appellants for the offence under Sections 302/34, 330 and 201 of IPC.

4. So as to hold the accused/appellants guilty, the prosecution examined 10 witnesses in all. Statements of the accused 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. However, no witness was examined by them in their defence.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned in para-1 of this judgment, hence this appeal.
6. Learned counsel for the appellants submits that none of the eyewitnesses to the incident has supported the prosecution. Even if the entire case of the prosecution is taken as it is, considering the manner in which the incident occurred, the statements of the witnesses, the nature of injury sustained by the deceased Ramgopal and the medical evidence offence under Section 304 Part II of IPC is not made out against the appellants and at the most they can be held guilty under Section 323 of IPC for voluntarily causing simple hurt to the deceased. The trial Court has

wrongly treated the Roznamcha Sahana Ex.P-20 as dying declaration whereas in the said Roznamcha Sahna, it has been stated by the deceased that he was assaulted by number of villagers including the appellants by hands, fists, shoes and slippers. There is no mention in the Roznamcha Sahna as to who caused fatal injury to the deceased. Thus, from the facts and circumstances of the case, the nature and quality of evidence adduced by the prosecution, it stands proved beyond reasonable doubt that the appellants had neither any intention to cause death of the deceased nor had knowledge of causing any such bodily injury to him which would result in his death. Therefore, the accused/appellants deserves to be acquitted of the charge under Section 304 Part II of IPC and they can be, at the most, held guilty under Section 323 of IPC. Since the appellants have already remained inside the jail for more than four months, they may be sentenced to the period already undergone by them.

7. Opposing the submission of counsel for the appellants, it has been vehemently argued by learned counsel for the State that the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in the light of the provisions of the act and as such there is no illegality or infirmity in it warranting interference by this Court.
8. Heard counsel for the respective parties and perused the material available on record.
9. In this case no any eyewitness has supported the prosecution

case. All the concerned eyewitnesses have turned hostile. As per the prosecution case, the incident happened on 10.02.1997 at 8 pm at village Chirmi where the accused/appellants and other villagers assaulted the deceased by hands and fists and thereafter deceased Ram Gopal was handed over by the villagers to police. In this case no eyewitness supports the prosecution case, the case is only based on Ex.P-20 Roznamcha Sahna and PM report which is proved by PW-1 Dr. B.S. Kaushal. No other evidence is available on record. Looking to Ex.P-20 Roznamcha Sahna, it is recorded by I.Tirkey Sub-Inspector on 11.02.97 at 6:50 pm and thereafter Ram Gopal was sent for medical examination as per Ex.P-1 C and MLC is prepared by Doctor on 12.02.97. As per PM report only simple injuries were found on the body of the deceased and as per Roznamcha Sahna accused persons and other villagers assaulted the deceased. Looking to the PM report and statement of Doctor that the deceased died due to injuries sustained in small intestine but no evidence was adduced before the Trial Court as to who caused that injury. It is not a case of circumstantial evidence nor a case of eyewitness, only on the basis of Roznamcha Sahna that document is treated as a dying declaration by learned Trial Court and accused/appellants have been convicted. As per statement of Cheturram recorded on 12.02.97 under Section 161 Cr.PC. On 11.02.1997 in the evening Ram Gopal was handed over to police by Jageshwar, Cheturam and village Sarpanch but no any statement is given by Cheturam, Krishna Kumar and Jageshwar before the Trial Court regarding Roznamcha Sahna Ex.P20 being recorded at the instance of Ramgopal when they were handing

over Ram Gopal to Police Officer. Only the statement of PW-10 I.Tirkey Sub-Inspector has stated that Ex.P-20 Roznamcha Sahna was recorded according to the statement of Ram Gopal. Looking to the statement of PW-2 Cheturam, who handed over Ram Gopal to police, when he handed-over Ram Gopal to police no any injury was found on the body of the Ram Gopal and accused/appellants did not assault Ram Gopal in presence of Cheturam. Same statement is also made by PW-5 Jageshwar and he also stated in para 1 of his deposition that Ram Gopal admitted to have given poison to buffalo before the villagers, and thereafter Ram Gopal was sent with Cheturam to police station. He also admitted in para 3 that no any injury was found on the person of the deceased when he was sent to Police Station for appropriate action. PW-9 Sampat Ram also stated that accused/appellants never assaulted deceased. These eyewitnesses of the case PW-2 to PW-9 have turned hostile.

10. The prosecution case is based only on the statement of PW-10 I. Tirkey Sub-Inspector and PM report Ex.P-4. I. Tirkey has stated that on 11.02.97 Ram Gopal was brought by Jageshwar, Cheturam and Sarpanch to the police station, at that time story narrated by Ram Gopal was that he had given poison to buffalo at village Chirmi, Ram Badan, Krishn Kumar and Nayak three persons assaulted him by hands, fists and shoes and due to which he sustained injuries on his abdomen, back and head. Thereafter, Ex.P-20 Roznamcha Sahna recorded by I. Tirkey PW-10. As per Ex.P-20 it was promptly recorded by I.Tirkey when Cheturam PW-2 and other village people

handed over the Ram Gopal.

11. As per the evidence of PW-1 Dr. B.S. Kaushal, who medically examined the deceased on 11.02.97, he found only contusion in the middle of forehead, contusion with swelling on the right temporal region and one abrasion in the middle of the head. He also noticed that the deceased was complaining of pain in his stomach and was having difficulty in breath. In para 3 he has stated that when he examined the deceased at 2:00 in the night on 12.02.97. He found that the condition of the deceased had become worse and it was deteriorating with the passage of time and at 3:05 am deceased died. In para 15 he has stated that when the deceased was admitted in hospital on 11.02.97 at 8:20 pm his condition was not serious but his condition got serious at 12:00 in the night. He has further stated that since there was no conveyance facility available at that time in the hospital, the deceased could not be shifted to other hospital.

12. Looking to the entire prosecution case and PM report, injuries sustained by Ram Gopal are simple in nature as admitted by PW-1 Dr. B.S. Kaushal in para 17 of his statement. According to Autopsy Surgeon, the rupture of small intestine of the deceased was due to assault by soft and blunt object because had it been by hard and blunt object, there would have been external injury also. PW-10 I. Tirkey has also admitted this fact in para 1 that no any external injury on abdomen is seen when Ram Gopal was brought before him.

13. Thus, looking to the entire evidence available on record, oral, documentary and medical, it is clear that the injury sustained by the

deceased were simple in nature caused by hands, fists and shoes, rupture of small intestine of the deceased was admittedly due to assault by soft and blunt object and as such there was no intention or knowledge on the part of the accused/appellants to cause death of the deceased. It has also come in the evidence of the prosecution witnesses that when the villagers had detained the deceased for handing him over to the police and he was trying to escape from there, he was assaulted by the accused persons and other villagers. Even as per Roznamcha Sahna Ex.P20 recorded by the police at the instance of the deceased, it is not clear as to who caused fatal injury to the deceased because in the Roznamcha Sahna, it has been mentioned that the accused persons along with other villagers had beaten the deceased with hands, fists, slippers and shoes etc. Therefore, in the given facts and circumstances of the case, it cannot be said that while assaulting the deceased in such a manner, the accused/appellants had knowledge that the bodily simple injuries being so caused by them to the deceased would result in his death. Being so their conviction under Section 304 Part II of IPC cannot be sustained. However, looking to the over all evidence on record, the act of the appellants make them liable for conviction under Section 323 read with Section 34 of IPC for voluntarily causing simple hurt to the deceased.

14. So far as sentence part is concerned, considering the facts and circumstances of the case, the fact that the incident occurred way back in the year 1997, the appellants are on bail since long, from the record, it is found that they have already remained in jail for more

than four months, this Court is of the opinion that ends of justice would be served, if they are sentenced to the period already undergone by them.

15. In the result, the appeal is allowed in part. While acquitting the accused/appellants of the charge under Section 304 Part II of IPC, they are held guilty under Section 323 of IPC and the sentenced to the period already undergone by them. The appellants are reported to be on bail, therefore, their bail bonds shall continue for a period of six months from today in view of provisions of Section 437A of Cr.PC.

Sd/-  
Gautam Chourdiya  
Judge

Akhilesh