

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 05.11.2019****Judgment delivered on 20.12.2019****Criminal Appeal No.726 of 2001**

1. Ramnarayan S/o. Sunder, Aged 22 years,

2. Jagnarain S/o. Sunder Aged 30 years,

3. Tilak S/o. Dhanpat Aged 20 years,

All are R/o. Village Panchavati, Police Station Ramanuj Nagar

----Appellants**Versus**

State of Chhattisgarh

---Respondent

For appellants	: Shri Gajendra Sahu, Advocate
For respondent/State	: Shri Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. The appeal is directed against judgment dated 06.8.2001 passed by 6th Additional Sessions Judge (FTC), Surajpur (CG) in Session Trial No.158/2000 wherein the said Court convicted all the three appellant for commission of offence under Section 325 read with Section 34 of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for five years and to pay fine of Rs. 3500/- each with default stipulation.

2. In the present case, the appellants were charge sheeted for commission of offence under Section 302 and 302/34 IPC for committing murder of one Ram Singh on 20.3.2000 on the date of holi festival at about 4.00 pm at village Panchavati, Police Station

Ramanujnagar. FIR was lodged at Police Station Ramanujanagar by one Bheem Sen on 22.3.2000 in which names of three appellants were mentioned as culprits. As per the version of the prosecution witnesses, appellant Ramnarayan called the deceased and took him towards his house. On reaching there, the appellant abused the deceased. In the meanwhile, other two appellants namely Jagnarain and Tilak also reached there and all three conjointly started beating him with fists and kicks. Hriday Sing (PW-5) and Subran Singh intervened and thereafter Ramsingh informed the incident to his father Bheem Sen (PW-1), his mother Smt. Karmi Bai (PW-10) and his wife Smt. Manmati (PW-9). The matter was reported and investigated and the appellants were charged and convicted as mentioned above.

3. Learned counsel for the appellants submits as under:

(i) Subran Singh (PW-4) and Hriday Singh (PW-5) have not supported the version of the prosecution and version of Manmati (PW-9) is also not dependable as she has not given statement before the Police authority during investigation.

(ii) Narration of the incident by the deceased prior to his death does not reveal that it is a dying declaration, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. As per the version of Bheem Sen (PW-1), who is the father of the deceased, the deceased made declaration before him that all the three appellants namely Ramnarayan, Jagnarain and Tilak assaulted him. Version of this witness is unrebutted during cross examination and it is supported by version of Manmati (PW-9) and Karmat (PW-10) and further supported by FIR lodged by this witness (Ex-P/2) in which name of all the appellants is mentioned as culprits and their act of assault is also mentioned in the said report. The deceased uttered words against the appellants just after the incident and the same is so connected with the facts in issue as to form part of the same transaction, therefore, it is relevant as per Section 6 of the Indian Evidence Act, 1872. Further the declaration made by the deceased to the witnesses regarding cause of his death and circumstances of transactions resulted into death is dying declaration because cause of death of deceased is issue in the present case. Looking to the dying declaration of the deceased made before the witnesses, it is established that all the three appellants are involved in crime in question.

7. Dr. RB Prajapati (PW-7) examined the body of deceased Ramsingh before his death on 23.3.2000 and noticed following injuries (Ex-P/12) and referred the injured to Distt. Hospital, Ambikapur as per Ex-P/13.

- (1) abrasion of 2 x 2 cm over dorsal aspect of the left second toe
- (2) abrasion of 2 x 2 cm just above the left eyebrow
- (3) abrasion of 2 x 2 cm on the left side of the face below the left eye
- (4) abrasion of 2 x 2 cm on the right shoulder

Version of this witness is unrebutted during cross examination and there is no other medical expert opinion contrary to the opinion of this witness. Version of this witness is again supported by version of Dr. DK Vishwakarma (PW-11), who conducted autopsy of deceased on 23.3.2000 at Community Health Centre, Ramanujnagar and noticed following injuries:

- (i) Contusion of 4cm x 3.5 cm on left parietal part of face
- (ii) Abrasion of 3cm x 1.5 cm on anterior aspect of left knee
- (iii) Abrasion of 2.5 cm x 2 cm on the upper end of the left leg
- (iv) Abrasion on 1.5 cm x 1 cm on middle of left toe
- (v) Abrasion of 3 cm x 2 cm on left side of the back
- (vi) Contusion of 2.5 cm x 3 cm on right shoulder region
- (vii) Abrasion of 2.5 cm x 2 cm on left lower end of arm

As per the version of the doctor the death normally may have caused due to injuries.

8. One defence witness Phuleshwar @ Phulas (DW-1) was examined before the trial Court who deposed that the deceased fell in a ditch of manure. This witness is examined after long lapse of the incident, and there is nothing in his statement as to why he did not inform anyone about falling of the deceased in a

ditch. Therefore, version of this witness was rightly rejected by the trial Court.

9. The trial Court convicted the appellants for commission of offence under Section 325 read with 34 of IPC and no appeal was preferred against said finding though it have been a case under Section 304 Part II IPC, but no such appeal is preferred by the State, therefore, this Court has no option but to upheld finding of the trial Court. The trial Court awarded sentence of five years to each of the appellants. Looking to the death caused by the appellants to the deceased the same cannot be termed as harsh, disproportionate or unreasonable. Therefore, sentence part is also not liable to be interfered with.

10. Accordingly, the appeal is liable to be and is hereby dismissed. The appellants are reported to be on bail and their bail bonds are cancelled. The trial Court will prepare super-session warrant and issue warrant of arrest against the appellants and after their arrest, they be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial Court shall submit compliance report on or before 30.4.2020.

Sd/-
(Ram Prasanna Sharma)
JUDGE