

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3151 of 1999

Gulab Singh S/o Khuman Singh Chauhan, aged About 23 Years
R/o Village Pendri, Police Station Dhamda, R/o Ghasidas Nagar,
Shiv Hanuman Mandir Chowk, Jamul, Tehsil and District Durg, MP
(Now CG)

-- Appellant

Versus

State Of M.P. through District Magistrate Durg, (Now CG)

--- Respondent

AND

CRA No. 322 of 2001

Sanjay Das, S/o Devanlal Sahun, aged about 20 years, R/o
Ghasidas Nagar, Jamul, permanently residential Gram Kokadi,
Thana Chhattisgarh, District Bhandara (Maharashtra)

---- Petitioner

Versus

State of Chhattisgarh through P.S. Jamul, District Durg,
Chhattisgarh.

---- Respondent

For Appellant/s	:	Mrs. Kiran Jain, Advocate and Mrs. Savita Tiwari, Advocate
For Respondent	:	Ms. Shriya Mishra, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

04/07/2019

As these two appeals arise out of the same judgment dated 30.10.1999 passed by Additional Sessions Judge, Durg in Sessions Trial No.24/1999 convicting the accused/appellants under Section 304 (Part-1)/34 IPC twice, for assaulting the deceased Umashankar and Suresh who consequently succumbed to the injuries caused to them, and sentencing each of them to undergo RI for 7 years and pay fine of Rs.2000/- on two counts plus default stipulation, they are disposed of by this common judgment.

2. Facts necessary for disposal of these two appeals in brief are that on 11.05.1998 at about 9:30 PM when deceased Umashankar and

Suresh accompanied by their companion Bramhadev were going towards the betel kiosk and as soon as they reached near the house of Lallan Sharma (PW-1), the accused/appellants herein came there and started conversing with them. As there was some dispute between Bramhadev and Khuman Singh – the father of accused Gulab Singh over construction of wall, the accused/appellants picked up verbal feud with said Bramhadev and when the deceased persons asked the accused/appellants not to indulge in the quarrel with Bramhadev, they started assaulting both the deceased persons with the knife carried with them saying that as to why they were coming in between taking the side of Bramhadev. As a result of injuries caused to Umashankar and Suresh on their hand and stomach they fell down on the ground and were not even in a position to speak. On hearing commotion, people of the locality came to the spot and thereafter Lallan Sharma (PW-1) with the help of the people residing nearby took the deceased to the Police Station where the offence under Section 307/34 IPC was registered against them vide report Ex.P-1. Station House Officer, Basant Kumar Mishra (PW-11) dispatched both the injured persons to District Hospital Durg where Umashankar was declared brought dead. Injured Suresh was however referred to Sector-9 Hospital where he too died in the night during the course of treatment being provided to him. After postmortem examination on the two dead bodies and effecting seizure of plain and blood stained soil, clothes and the knife used in commission of the crime was made under Ex.P-2, Ex.P-3, Ex.P-4 and Ex.P-7. After completion of investigation charge-sheet was filed against the accused/appellants under Section 302/34 IPC on both counts followed by framing of charge accordingly.

3. On the basis of material available on record learned Court below has convicted both the accused/appellants under Section (304 Part-

1)/34 IPC twice for killing Umashankar and Suresh and imposed the sentence as referred to above.

4. Counsel for the accused/appellants submit that the judgment under challenged in these two appeals is not based on due appreciation of the evidence of the witnesses and rests only on conjecture and surmises. They further submit that even the evidence of PW-1 and PW-3 who are said to be the witnesses to the incident is not consistent and suffers from number of contradictions and omissions. The best witness to the case of the prosecution would have been Bramhadev who all throughout was present on the spot and witnessed the entire incident but unfortunately he has been given up by the prosecution for the reasons best known to it causing serious jolt to its case. According to them, looking to the serious shortfall in the evidence of the witnesses learned Court below has fallen in grave legal error in convicting and sentencing the accused/appellants as described above and being so, they are entitled for acquittal by setting aside the judgment impugned.

5. State counsel however supports the judgment impugned and submits that the findings recorded by both the Courts below holding the accused/appellants guilty for killing two deceased persons without there being any fault on their part are fully justified. She submits that the two eye witnesses i.e. PW-1 and PW-3 have been fully consistent in narrating the incident witnessed by them and there is no reason for this Court to disbelieve or discard the same. She thus submits that the impugned judgment is based on due appreciation of the evidence of the witnesses and no infirmity or illegality is lurking therein warranting any interference by this Court.

6. The two eye witnesses Lallan Sharma (PW-1) and Rajkumar (PW-3) have duly supported the case of the prosecution stating that they saw the accused/appellants assaulting the deceased persons with knife carried with them. They have stated that on account of assault, the two deceased persons suffered injuries on their stomach and left hand and subsequently with the help of the people of vicinity they were taken to Police Station and from there they were shifted to hospital where they succumbed to the injuries in quick succession while taking treatment. PW-1 has stated that after receiving injuries, the deceased persons were not in a position to speak anything and had become almost unconscious. These witnesses however have not been specific in stating as to which of the accused/appellants assaulted whom but have categorically stated that they both used knife in assaulting both of them. Omprakash (PW-4) and Ashok Singh (PW-5) - the witnesses to seizure of knife and clothes made under Ex.P-8 and Ex.P-9 have duly supported the case of the prosecution. Doctor Prafull Tamaskar (PW-8) who examined injured Suresh and gave his report Ex.P-12 has categorically stated that there was bleeding injury in his stomach and looking to the seriousness of his injuries he recommended him for surgical operation. Another doctor PW-9 who attended on the injured persons has categorically stated that the condition of injured was serious and he was in semi-conscious state. He also described two injuries – one in the stomach and another on the left arm. These witnesses also answered the query in affirmative that the injuries suffered by injured Suresh could have been caused by the knife produced before him. Doctor P.C. Deshmukh (PW-13) who conducted postmortem on the body of the deceased has also supported the case of the prosecution describing the injuries including the one on their vital part such as stomach and that they were ante mortem in nature. This

witness has also stated vide Ex.P-29 that the injuries present on their body could positively be caused with the knife seized by the prosecution. Investigation Officer (PW-11) has also supported the case of the prosecution describing the procedural formalities undertaken during investigation. Thus it is apparent from the record that it is these accused/appellants who caused injuries to two injured persons who ultimately succumbed to the same one after another in the hospital while taking treatment. The record shows that the accused/appellants had no previous enmity with the deceased persons and all the developments involving the death of the two deceased persons took place just to save Bramhadev who at the relevant time was involved in verbal exchange of hot words with the accused/appellants. The record further goes to show that when the deceased persons tried to intervene in the matter, the accused/appellants instead of Bramhadev pounced on them and inflicted injuries to them with the knife carried with them which ultimately resulted in their death. The record however does not speak that the accused/appellants were predetermined to commit the murder of deceased while inflicting injuries to them. Since the death of two persons was the direct result of the injuries inflicted by the accused/appellants though without there being any intention to cause their death on the part of the accused/appellant, they cannot escape the rigor of Section 304 (Part-1)/34 IPC and being so their conviction as such by the Court below appears to be justified and is liable to be maintained.

7. The view taken by the Court below in convicting the accused/appellants as described above is strictly in accordance with the evidence adduced by the prosecution. No illegality or infirmity is noticeable in conviction part of the judgment impugned and it is accordingly maintained.

8. As regards sentence, keeping in mind the incident being quite old and that the accused/appellants have already faced a lot by facing long drawn prosecution since 1998 and also not being forgetful of the fact that they have already completed the jail sentence of more than 3 years, this Court is of the opinion that interest of justice would be met if their sentence is reduced to the period already undergone. Order accordingly.

9. With the observations made above the aforementioned two appeals stand allowed in part.

**Sd/-
(Vimla Singh Kapoor)**

Judge

Jyotishi/Ajay