

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Reserved on 06.12.2019

Delivered on 05.3.2020

**Criminal Appeal No.1202 of 2003**

1. Latel alias Shivprasad, aged 46 years, S/o. Kaliram Suryavanshi
2. Shyamlal, aged 46 years, son of Sadhuran Suryavanshi (Dead & deleted)
3. Bedram, aged 41 years, S/o. Kaliram Suryavanshi (Dead & deleted)
4. Bihari aged 41 years, S/o. Kaliram Suryavanshi
5. Girdhari aged 25 years, S/o. Kaliram Suryavanshi
6. Kashiram aged 19 years, S/o. Bedram Suryavanshi

All are R/o. Village Dhurkut Police Station Janjgir Distt.  
Janjgir-Champa (CG)

---- Appellants

**Versus**

State of Chhattisgarh, through Station House Officer, Janjgir  
Distt. Janjgir-Champa (CG)

---Respondent

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For the appellants : Shri Harsh Vardhan Sharma, Advocate  
For the respondent/State : Shri Afroj Khan, Panel Lawyer

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

1. This appeal has been preferred against judgment dated 31.10.2003 passed by Fourth Additional Sessions Judge (FTC), Janjgir (CG) in Session Trial No.531/2001 wherein the said Court convicted the appellants for commission of offence under Section 304 Part-I, 323 and 147 of the Indian Penal Code, 1860 and

sentenced to undergo rigorous imprisonment for 07 years and to pay fine of Rs.500/-; RI for 03 months and RI for 01 year with default stipulation.

2. During the pendency of the appeal, appellant No.2 Shyamlal and appellant No.3 Bedram died and their appeal is finally abated. Now the appeal is being heard and decided for remaining appellants namely Latel, Bihari, Girdhari and Kashiram.

3. As per the version of the prosecution, complainant Sanjay Kumar was a student of class-X. On the date of incident, i.e. 02.9.2001, he was returning on bicycle after taking bath in a pond and when he reached near the house of appellant Latel Ram, son of the said appellant came running towards the bicycle and dashed against the cycle. Thereafter appellants Bihari and Girdhari assaulted complainant Sanjay Kumar. The matter was narrated by Sanjay Kumar to his mother Dashmat and after some time, all the appellants came and assaulted Ramnath, Dashmat Bai and Narmada Prasad. Injured Ramnath was admitted in Govt. hospital, Janjgir where he succumbed to the injuries. The matter was reported, investigated and the appellants were charge sheeted and convicted as mentioned above.

4. Learned counsel for the appellants submits as under:

(i) The trial Court has relied on the evidence of witnesses who are the accused persons in the counter case and their version is not supported by medical evidence.

(ii) The witnesses have failed to explain the injury found on the body of the appellants. Therefore, they have suppressed the true story and case of the prosecution is suspicious.

(iii) The appellants have exercised their right of private defence, therefore, their act falls within the exception to Section 100 of the IPC and the same is not an offence.

(iv) The finding arrived at by the trial Court is not sustainable and the same is liable to be set aside.

5. 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.

6. I have heard learned counsel for the parties and perused the judgment impugned and the record.

7. In the present case, date of incident is 02.9.20014. Report was lodged as per Ex-P/26 on the same day at Police Station Janjgir naming all the appellants as culprits and their act of assault to Ramnath, Dashmath Bai and Narmada is also mentioned in the said report. There is no delay in lodging the

report and there is nothing regarding identification of the appellant.

8. Sanjay Kumar (PW-13) is the eyewitness account of the incident. As per the version of this witness, on the date of incident, son of appellant Latel dashed against his bicycle and after the incident all the appellants came to a place named as Neem Square where he was sitting with his uncle namely Ramnath. All the appellants assaulted Ramnath and again they assaulted Dashmath Bai and Narmada and this witness. As per the version of this witness, Ramnath was taken to hospital at Janjgir where he succumbed to the injuries. Version of this witness is unrebutted during cross-examination and there is nothing in his statement that any of the injured was aggressor in the present case. His version is supported by version of Dashmat Bai (PW-10) and Narmada Prasad (PW-14).

9. Dr. SN Jangde (PW-4) conducted autopsy of deceased Ramnath and found following injuries:

- (i) Compound fracture with contusion and associated depressed areas seen over right side occipital parietal region a T shaped bony crepitation of 5cm x 1cm x 4cm x 1cm
- (ii) Lacerated wound of 5cm x 1cm x bony deep with clotted blood on oblique occipital region
- (iii) Lacerated wound of 4cm x 1cm x bony deep over left parietal region posterior part with red clotted blood

- (iv) Lacerated wound of 4cm x 1 ½ cm x bony deep with red clotted blood
- (v) Lacerated wound of 3cm x 1 ½cm x bony deep parallel to each other over right lateral aspect of frontal region
- (vi) Lacerated wound of 1 ½ cm x ½ cm x bone deep parallel to each other over right lateral aspect of frontal region
- (vii) Lacerated wound of 2cm x ½ cmx bony deep parallel to each other over right lateral aspect of frontal region
- (viii) Contusion reddish bluish of 3 cm x 2 cm over posterior part of left arm
- (ix) Lacerated wound of 2cm x 1cm on posterior lateral aspect of left elbow

As per the version of this expert, all the injuries were caused within 24 hours of the examination and were ante mortem in nature. The deceased died due to shock and syncope and nature of death is homicidal in nature. There is no other expert opinion contrary to the opinion of this expert and version of this expert is unrebutted, therefore, death of the deceased was proved to be homicidal.

10. Dr. SN Jangde (PW-4) also examined injured Narmada and noticed following injuries:

- (i) Lacerated wound of 1 ½ cm x ½ cm oblique red clotted blood over the middle part of the forehead.
- (ii) Lacerated wound of 2 ½ cm x ½ cm red clotted blood oblique over dorsal aspect of right index finger

- (iii) Contusion diffuse reddish blueish lower 3<sup>rd</sup> of left arm
- (iv) Abrasion of 3cm x ¼ cm oblique over lateral aspect of right arm
- (v) Abrasion of 1 cm x ½ cm red over parallel to injury No.2.
- (vi) Lacerated wound of 3 cm x ¼ cm x bony deep oblique over posterior part of frontal region
- (vii) Contusion of 10 cm x 01 cm oblique reddish blueish from left shoulder joint to left supra scapular region
- (viii) Contusion of 8 cm x 1 cm reddish blueish oblique left side in (between) intra scapular region
- (ix) Contusion of 10cm x 01cm oblique reddish blueish lower back

As per the version of this witness, injuries were caused by hard and blunt object within six hours of the examination. This witness has examined articles (weapons) made by iron and club and opined that injuries can be caused by these weapons. From the evidence of this witness, it is established that Narmada Prasad sustained injuries on his body.

11. Dr. RS Prabhakar (PW-9) examined complainant Sanjay Kumar on 06.9.2001 at District Hospital, Janjgir Champa and he also examined Dashmat Bai on the same day. He noticed following injuries on the body of Sanjay Kumar:

- (i) Bruise mark on lateral side of right shoulder of ½ cm x ½ cm
- (ii) Thread mark of 2cm width seen on the posterior aspect of neck – blueish colour peeling of scab

- (iii) Abrasion on right leg on middle front region of  $\frac{1}{2}$  cm x  $\frac{3}{4}$  cm

12. From the entire evidence, it is not established that any of the injured was the aggressor in the incident. The trial Court after evaluating the entire evidence, recorded finding that it is a case of unlawful assembly by more than five persons and again it is a case of assault on the body of injured namely Narmada Prasad, Sanjay Kumar and Dashmat Bai. The trial Court recorded finding that intention to kill deceased Ramnath is not established, but the case of the appellants falls within mischief under Section 304 Part-I of the IPC.

13. After reassessing the entire evidence, this Court has no reason to take a contrary view. In view of this Court, arguments advanced on behalf of the appellants are not sustainable. Accordingly, conviction of the appellants for the said offence is hereby affirmed.

14. Two of the appellants have died during the pendency of the appeal and rest of the appellants have been awarded sentence on the basis of their common intention. The appellants have suffered jail term for more than 02 years and 03 months. In view of this fact, this Court is of the view that ends of justice would be met if the jail sentence awarded to the appellants for commission of offence under Sections 304 Part-I of IPC is reduced to the period

undergone and it is reduced accordingly. However, sentence for the offence under Sections 323 & 147 of IPC and fine amount imposed by the trial Court shall remain as it is.

15. With these modifications, the appeal is allowed in part.

**Sd/-**

**(Ram Prasanna Sharma)**

**JUDGE**

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