

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.963 of 2007**

1. Bansidhar Patwa, S/o. Ramkumar Patwa, aged about 29 years, R/o. Village Jhilmili, Police Station Jhilmili, Distt. Surguja (CG)
2. Munna @ Ramnarayan, S/o. Shri Pancham Patwa, aged about 30 years, R/o. Village Jhilmili, Police Station Jhilmili, Distt. Surguja (CG)

---- Appellants**Versus**

- State Of Chhattisgarh Through District Magistrate, Distt. Surguja (CG)

---- Respondent

For the appellants : Shri Pragalbh Sharma, Advocate
 For the Respondent/State : Smt. Smita Jha, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****22.01.2020**

1. The appeal is preferred against judgment dated 26.9.2007 passed by Second Additional Sessions Judge (FTC), Surajpur Distt. Surguja (CG) in Session Trial No.24/2007 wherein the said Court convicted both the appellants for the commission of offence under Section 304 Part-I read with Section 34 of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for 10 years and to pay fine of Rs.500/- each with default stipulation.

2. In the present case, name of the deceased is Puran Ram Thakur. As per the version of the prosecution, on 08.8.2006 at about 4.00 pm when deceased Puran Ram Thakur was going to

his farm, he was accosted by the appellants, abused him and thereafter appellant No.1 Bansidhar Patwa assaulted him in his stomach which resulted to internal injury, eventually he died in the intervening night of 10.8.2006 and 11.8.2006. The matter was reported, investigated and the appellants were charge sheeted and after completion of trial, they were convicted as mentioned above.

3. Learned counsel for the appellants submits as under:

(i) On the basis of the evidence, it cannot be said that any act was done with intention to cause death or with knowledge that it was likely to cause death.

(ii) The appellants have been convicted on the basis of statement of partisan witnesses, overlooking the fact that their deposition before the trial Court is full of omissions and contradictions.

(iii) The trial Court has not evaluated the evidence in its proper manner, 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 judgment impugned.

6. Dr. Uttam Singh (PW-10) who conducted autopsy of the deceased on 11.8.2006 noticed abdominal injury in the body of the deceased and he opined that cause of death is syncope due to ileal perforation and peritonitis on the part of abdomen and the same is caused due to peritonitis. From the evidence of the medical expert, it is established that the cause of death is injuries sustained to him as mentioned above.

7. Now the question for consideration before this Court is whether both the appellants have participated in the commission of crime. Bharat Ram (PW-1), Kamla (PW-2), Shivnarayan (PW-3), Usha (PW-4), Satish Thakur (PW-6) are the persons who reached to the spot just after the incident. These witnesses have no occasion to see as to what had really happened at the time of the incident. Case of the prosecution is based on FIR (Ex-P/14) which is lodged by the deceased himself on the date of incident i.e. 08.8.2006 at Police Station Jhilmili. This FIR has been treated as dying declaration as per Section 32 of the Indian Evidence Act, because same statement is made by the deceased as to any of the circumstances of the transaction which resulted in his death. The other piece of evidence is oral dying declaration which is made by the deceased to his wife namely Kamla (PW-2). In FIR it is mentioned that appellant Munna @ Ramnarayan and acquitted co-accused Rampyare caught hold the deceased and appellant Bansidhar assaulted him. As per the statement of Kamla, the deceased made declaration that appellant Ramnarayan called him and thereafter Bansidhar assaulted him on his abdomen by axe.

Version of Kamla (PW-2) is more inspiring confidence because the medical expert has also found injury on abdominal part of the deceased which is the cause of his death. Though Bharat Ram (PW-1) deposed that the deceased informed him that both the appellants have assaulted him by axe but his version is not supported by medical evidence because the expert Dr. V. Toppo (PW-7) who examined the deceased just after the incident found single injury on his abdominal part.

8. Taking into consideration of the entire evidence which includes FIR, the statement of the witnesses and statement of the medical expert, the common evidence is clear that it is the appellant Bansidhar who assaulted the deceased by axe on his abdomen which was fatal.

9. The trial Court acquitted co-accused Rampyare who was also named in the FIR and his case is equated with the case of appellant Munna @ Ram Narayan. Looking to the statement of Kamla (PW-2), appellant Ram Narayan did not commit any other act at the time of commission of offence. The only fact which is brought against him is that he called the deceased to his house. Mere calling of any person cannot be equated with criminal intention. After reassessing the entire evidence, this Court has come to a conclusion that participation of appellant Munna @ Ramnarayan in crime in question is not established while involvement of appellant Bansidhar Patwa is substantiated by the evidence. The trial Court recorded finding against appellant Bansidhar that his act falls within mischief under Section 304

Part-I of IPC which may be arguable one that falls within the definition of murder or culpable homicide but the fact remains that no appeal is preferred against the finding of the trial Court, therefore, finding of the trial Court against appellant Bansidhar and his conviction under Section 304 Part-I IPC are hereby affirmed. The trial Court has awarded sentence of ten years with fine of Rs.500/- against appellant Bansidhar which is not liable to be interfered with.

10. Accordingly, appeal filed by appellant Bansidhar Patwa is hereby dismissed. As per the report of the jail authorities, he has served the full jail term, therefore, no further order for his arrest etc. is required.

11. So far as appellant Munna @ Ramnarayan is concerned, his involvement in crime in question is not established, therefore, his appeal is allowed and conviction and sentence passed by the trial Court against him is hereby set aside and he is acquitted of charge under Section 304 Part I IPC. He is reported to be on bail. His bail bonds shall continue for further period of six months from today as per Section 437A of CrPC.

12. Accordingly, the appeal is allowed in part.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**