

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 396 of 2003

1. Ramnarayan S/o. Radhey Shyam, aged about 18 years,
2. Radhey Shyam S/o. Panduram, aged about 50 years,
3. Anshu Bai W/o. Radhey Shyam, aged about 45 years,
4. Purnima W/o. Suraj, aged about 18 years,

All residents of Chunabhatti, Gudhiyari, Raipur District Raipur (CG)

---- **Appellants**

Versus

State of Chhattisgarh, through District Magistrate, Raipur, District Raipur (C.G.)

---- **Respondent**

For Appellants : Mr. Shivendu Pandya, Advocate.

For Respondent : Mr. Sameer Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

01.09.2020.

As per prosecution story, the incident is said to have taken place on 31.05.2002 at about 6.00 PM, when complainant Mantora Bai was fetching water in a public tap, there was some quarrel took place between the appellants and the complainant regarding collection of water from the said tap. It is alleged that the accused/appellant Ramnarayan and his family members abused and committed *marpit*

with complainant Mantora Bai and her daughter-in-law namely Pushpa Bai with hands and fists, they sustained injuries on their faces thereafter son of complainant namely Ramesh intervened in the matter, then appellant and co-accused pressed the neck of Ramesh, committed marpit with hands and fists with him and pushed on the ground subsequently he was admitted in the hospital for treatment where he died. The dead body of Ramesh was sent for postmortem under (Ex.P-1). The incident was seen by Thaneshwari, Pusiya Sahu, Bhagi Yadav and Sukhballi. Dehati Nalshi (Ex.P-2) was recorded by the complainant (PW-2) and on the basis of which FIR (Ex.P-3) was registered against the appellants. After completion of investigation, charge sheet was filed under Sections 323 and 302/34 IPC against the appellants followed by framing of charge accordingly.

2. As accused/appellant No.2 (Radhey Shyam) died during the pendency of the appeal, his appeal stood abated and dismissed such on in his respect. Now the present appeal is in respect of accused/appellants Ramnarayan, Anshu Bai and Purnima only.

3. Learned Court below vide judgment impugned dated 06.03.2003 passed in Sessions trial No. 447/2002 acquitted the accused/appellants under Sections 323, 302/34 but has held them guilty under Section 325/34 IPC with imposition of sentence of two years RI and to pay fine of Rs. 200/- each under Section 325/34 IPC. Hence, this appeal.

4. Counsel for the appellant submits that the judgment of conviction and order of sentence passed by trial court is arbitrary, illegal and

contrary to the evidence collected by the prosecution. He submits that there are number of contradictions and omissions in the statements of witnesses which makes the case of the prosecution doubtful. As a last resort counsel for the appellants submits that if this Court does not interfere with the conviction part of the judgment impugned at least the sentence imposed on them may be reduced to the period already undergone.

5. On the other hand, state counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

6. Heard counsel for the parties and perused the material available on record including the judgment impugned.

7. The evidence of the witnesses in particular that of victim Mantora Bai (PW-2) and Pushpa Bai (PW-5) makes it explicit that on the date of incident the dispute arose between the parties merely on the trivial matter and after some verbal altercation both the group parted their ways. Evidence on record further shows that when Ramesh came to intervene in the matter, the appellant Ramnaray caught the neck of Ramesh and his family members also thrashed him with hands and fists causing number of injuries on his body thereafter he was hospitalized where he died. Rajkumar (PW-4) and Shivbati (PW-6) are the witnesses to the incident. They deposed that when altercation took place deceased Ramesh came there and intervened in the matter

thereafter appellants and other co-accused committed *marpit* with him as a result of which Ramesh fell on the ground, became unconscious and died in the hospital during treatment.

8. In the present case, injured persons namely victims Mantora Bai (PW-2) and Pushpa Bai (PW-5) have stated about the assault caused by the appellants. Testimony of these witnesses was duly corroborated by Shivbati (PW-6) and Rajkumar ((PW-4). That testimony was also corroborated by timely lodged Dehati Nalisi (Ex.P-2) and various medical reports proved by Dr. Sanay Kumar Dadu (PW-1). He submitted his report under (Ex.P-1) in which he found number of injuries at various parts on the deceased Ramesh and according to him, the deceased died due to asphyxia and the duration of death within 24 hours. Therefore, it cannot be said that the appellants could not attend the meeting after participating in the incident as is evident from the merg intimation (Ex.P-10). Similarly, Shivbati (PW-6) the eyewitness to the incident has stated that appellant Ramnarayan caught the neck of Ramesh and his family members committed *marpit* with him with hands and fists when he intervened in the trivial dispute for saving wife (PW-6) and mother (PW-2). Rajkumar (PW-4) is the witnesses to the incident who supported the testimony of Shivbati (PW-6). The incident narrated by the victims wherein it is stated that the appellants have voluntarily caused grievous hurt to Ramesh as a result of which he died in the hospital. Evidence of the witnesses also get corroboration from Dehati Nalisi (Ex.P-2) and FIR (Ex.P-3). The statement of this witness is fully corroborated from the statement of

(PW-4) and (PW-6). Previous enmity between the victims and the accused/appellants has also been established by the prosecution and therefore, there is no reason as to why the complainant would implicate the accused/appellants in a false case for committing the offence punishable under Section 325/34. Thus, the statement of all these witnesses are quite consistent and therefore the conviction of the accused/appellants recorded by the trial Court is based upon just & proper appreciation of evidence available on record which needs no interference by this Court.

9. However, looking to the incident being of the year 2002, and that since then the accused/appellants have already faced a long drawn prosecution and even the appellant No. 1 remained inside about ten months and the appellant No. 3 and 4 remained inside about 2 and half months, interest of justice, in the opinion of this Court, would be served if their sentences are reduced to the period already undergone. Order accordingly.

10. Appeal is thus allowed in part to the extent indicate above. As the appellants are already on bail, their bail bonds stand discharged.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh