

(2021) 11 CHH CK 0031
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1150 Of 2002

Pardesi Ram

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 12-11-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304II, 325, 341
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2021) 11 CHH CK 0031

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : B.P. Sharma, Nitesh Jain, Subha Shrivastav

Final Decision : Partly Allowed

Judgement

1. The present appeal arises out of the impugned judgment of conviction and order of sentence dated 07.11.2002 passed by the learned Ist Additional Sessions Judge, Raipur (C.G.), in S.T. No. 419/2000 whereby, the learned Ist Additional Sessions Judge has convicted and sentenced the appellants as under :-

Conviction

Sentence

U/s 304 Part-II Read with Section 34 of IPC

R.I. for 5 years and fine of Rs. 3000/- in default of fine additional R.I. for 1 year.

2. Brief facts of the case are that on 03.09.2000 at about 09:30 O'clock Dehati Nalshi was lodged by Hulasram (since deceased) at police station Dharsiwa alleging that he resides in village Mohandi and was a teacher in high school, Mandhar. It is alleged that on 03.09.2000 at about 08:00 pm, when he was going to market square from his house, on the way, the villagers Pardeshi Lodhi, Motiram Yadav and Munna Sahu stopped him and asked as to why he was forcing the children for the bad work and assaulted him with kicks and fists and were

attempting to kill him. It is stated that some more villagers also involved in the assault. However, when the police came there and Hulasram was taken to hospital at Dharsiwa. Where Hulasram was medically examined and from where he was referred to Medical College Hospital, Raipur. Dying declaration of Hulasram Ex. P/3 was recorded. FIR Ex. P/18 was registered and body was sent for postmortem examination. Panchnama was prepared. After investigation, charge-sheet was filed and charges were framed under Sections 302, 341/34 of IPC.

3. So as to hold the accused/appellants guilty, the prosecution has examined as many as 15 witnesses. Statement of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them and pleaded their innocence and false implication in the case.

4. Upon consideration of oral and documentary evidence, the trial Court held that the prosecution has established the guilt of the accused/appellants under Section 304 part-II read with Section 34 of IPC and sentenced them as mentioned above. Hence, this appeal.

5. Learned counsel for the appellants submits that impugned judgment of conviction and order of sentence is contrary to law and facts available on record. He next submits that the learned Court below has failed to view the whole case from proper perspective, and did not appreciate the dying declaration, which has been recorded by the Investigating Officer and not by any Magistrate at Primary Health Center, Dharsiva and thereafter the deceased was referred to Medical College Hospital, Raipur thus, there was every occasion for the Investigating Officer to call an Executive or Judicial Magistrate for recording the dying declaration, therefore, the dying declaration is not reliable as the same has not been proved in accordance with law. He further submits that the prosecution has failed to prove that the appellants have a common intention to cause death of the deceased, therefore, the conviction of the appellants with the aid of Section 34 of IPC is not sustainable in the eye of law. It is clear from the statements of the witnesses that appellants and the villagers have not intention to cause death of the deceased and the only intention was to cause simple injuries. He lastly submits that the learned trial Court has failed to apply the principles of law applicable in the present case, therefore, the impugned judgment of conviction is liable to be set aside. In support of his argument he has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of Ram Lal Vs. Delhi Administration reported in (1973) 3 SCC 466.

6. On the other hand State counsel supported the impugned judgment of conviction and order of sentence.

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

8. Kejiya Bai (PW-2) and Ku. Satya Verma (PW-4) have stated that deceased was

assaulted by the appellants and other villagers. Surendra Kumar (PW-1), Doman Singh (PW-5) and Gendlal (PW-10) have stated that the deceased has told them about the incident and also disclosed the name of the appellants who assaulted him.

9. Ex.-P/3 is the dying declaration of deceased Hulasram, which is in question-answer form and the important questions are as under ;-

10. The dying declaration (Ex.-P/3) was recorded by R.K. Lalwani (PW-13) and was signed by Doman Singh (PW-5), Dr. A.K. Khandekar (PW-11) and R.K. Lalwani (PW-13). In detailed cross-examination of the witnesses, this Court has not found any ground to disbelieve the dying declaration of the deceased and it is also supported by the eye-witnesses as well as other witnesses. The FIR (Ex.-P/18) was lodged without any delay and the deceased was examined by the doctor and dying declaration was also recorded on the same day, therefore, the prosecution has proved its case beyond all reasonable doubt that the deceased was assaulted by appellants and other villagers.

11. The postmortem examination was conducted by Dr. Sanjay Kumar (PW-14) and he opined in Ex.-P/19 that death was due to shock and hemorrhage as a result of thoracic injury and the death was homicidal in nature. It is clear from the statements of the witnesses that no weapon was used by the appellants and other villagers. Kejiya Bai (PW-2) has stated that she saw the accused persons beating the deceased with fists and kicks. In Ex.-P/3 the deceased has also stated that he was beaten by the accused persons with fists and kicks. Hon'ble the Apex Court held in the matter of Ram Lal Vs. Delhi Administration reported in (1973) 3 SCC 466 as under ;-

(i) Where the assailants attacked the deceased with non-lethal weapons with the common intention of causing grievous hurt and not death and though death resulted owing the fatal blows on the head and it is not certain who gave those fatal blows, the conviction of all the assailants could only have been under Section 325, read with Section 34, IPC.

12. In the present case also, it is proved that the appellants and other villagers were trying to teach him a lesson and the said incident took place. It is also clear from the evidence and statements of the witnesses that the appellants and their companions had a common intention only to cause grievous hurt. Hence, they can be convicted only under Section 325 read with Section 34 of IPC.

13. As discussed above, the appeal is partly allowed. Conviction of the appellants is altered to one under Section 325 read with Section 34 of IPC instead of Section 304 part-II read with Section 34 of IPC. The appellants have remained in jail for more than five months during the trial and it would not be proper to sent them back to jail again therefore the appellants are sentenced to the period already undergone by them. As the appellants are on bail, they need not surrender and their bail bonds and sureties stand discharged.