

(2007) 09 CHH CK 0007
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 576 of 2003

Shiv Ratan Singh @ Ratan Singh and Others	APPELLANT
Vs	
State of C.G.	RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Evidence Act, 1872 — Section 32, 32(1)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 302

Citation : (2008) 1 CGLJ 236

Hon'ble Judges : Sunil Kumar Sinha, J; L.C. Bhadoo, J

Bench : Full Bench

Advocate : V.K. Pandey, s No. 1 to 5 and Rajesh Pandey, No. 6, for the Appellant; Sudhir Bajpai, Deputy Govt. Advocate and Akhil Mishra, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the judgment of conviction and order of sentence dated 16.4.2003 passed by the Additional Sessions Judge and Special Judge under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Surguja, Ambikapur in Sessions Trial No. 320/2000, whereby the Appellants were convicted under Sections 147, 148, 302/149, 307/149 and 323/149 I.P.C. and sentenced to undergo R.I. for one year, R.I. for 1 1/2 year, R.I. for life and fine of Rs. 1,000/-, in default of payment of fine to further undergo additional imprisonment for 1 month, R.I. for 4 years and fine of Rs. 2,000/-, in default of payment of fine to further undergo R.I. for 1 month and R.I. for one year and fine of Rs. 500/-, in default of payment of fine to further undergo R.I. for 15 days with a further stipulation to run the sentences concurrently.

2. The accused persons, 14 in numbers, were charged with the offence punishable under Sections 147, 148, 302, 302/149, 307, 307/149 and 323/149 of the I.P.C. The allegations are that they being the members of an unlawful

assembly, in prosecution of common object of that assembly, committed murder of the deceased-Ramprasad, attempted life of Gangaram (P.W.-5) and caused simple injuries to Rajnath (P.W.-7) and Shiv Prasad (P.W.-8).

3. The brief facts are that on 22.6.2000 at about 11.00 p.m., Ramjeet Ram (P.W.-4) lodged the First Information Report in police station, Ambikapur that on account of certain land dispute, Shiv Prasad, Ramprasad (since deceased), Gangaram and Rajnath were assaulted by Durjan Gond, Shiv Ratan Gond, Nand Lal Gond, Sonsai, Roopnath and Bunu Gond, who were armed with deadly weapons like Lathi, Tangia, Baluwa, etc., on account of which, these persons have received injuries. On the said report, firstly an offence under Sections 147, 148, 294, 506 (Part-II) and 323/149 I.P.C. was registered and Gangaram, Rajnath & Shiv Prasad were sent for medical examination through requisition slips Ex.-P/ 27, P/28 and P/29. Ramprasad was also sent for medical examination. They were examined by Dr. J.K. Jain (P.W.-3). The injuries sustained by Ramprasad were mentioned in Ex.-P/6 (bed-head-ticket) and the injury reports of Gangaram, Rajnath and Shiv Prasad were prepared as Ex.-P/7, P/8 and P/9. They received the following injuries:

Injuries sustained by Gangaram:

- (i) An incised wound, 8 cm x 2 cm x bone deep on left side of the chest with heavy bleeding;
- (ii) An incised wound, 7 cm x 1 cm x bone deep of left fronto parietal region with bleeding;
- (iii) One lacerated wound, 5 cm x 1 cm x bone deep on the left parietal region;
- (iv) One lacerated wound, 3 cm x 1 cm x 0.5 cm on the left upper portion of face;
- (v) One lacerated wound, 4 cm x 1 cm x 1 cm on the right side of forehead;
- (vi) One lacerated wound, 3 cm x 1 cm x 1 cm on the right parietal region with bleeding;
- (vii) One lacerated wound, 6 cm x 1 cm x 1 cm on the right parietal region and
- (viii) One lacerated wound, 5 cm x 1 cm x 0.5 cm on the back portion of right parietal region with bleeding.

According to report Ex.-P/7, injuries No. 1 and 2 were caused by sharp edged weapon, whereas injuries No. 3 to 8 were caused by hard and blunt object. He was admitted in District Hospital from 23.6.2000 to 8.7.2000.

Injuries sustained by Rajnath:

- (i) One contusion with bluishness, 6 cm x 2 cm x 2 cm on the back portion of right elbow causing pains on touch and
- (ii) One contusion, 4 cm x 2 cm x 1 cm on the left upper portion of face. There

was abrasion on this portion, 1.5 cm x 1 cm.

According to report Ex.-P/8, both the injuries were caused by hard and blunt object.

Injuries sustained by Shiv Prasad:

- (i) One contusion with bluishness on the left wrist and back portion of left hand, 8 cm x 4 cm x 2 cm causing pains on touch;
- (ii) One contusion, 12 cm x 6 cm x 2 cm on the upper left portion of left forearm on the back and lateral aspect, lowering down movement of left elbow joint;
- (iii) One lacerated wound, 5 cm x 1 cm x 1 cm on the left frontal region with bleeding;
- (iv) One abrasion, 3 cm x 2 cm on the front side of left knee joint and
- (v) One abrasion, 4 cm x 2 cm on the left lower portion of stomach.

According to report Ex.-P/9, all the injuries were caused by hard and blunt object for nature orthopedic examination was advised.

Injuries sustained by Ramprasad:

- (i) One lacerated wound 1.5 cm x 0.5 cm x 1 cm on the back side of lower portion of left arm;
- (ii) Contusion of the lower portion of left forearm causing pains on touch;
- (iii) One lacerated wound, 9 cm x 1 cm x 1 cm on the left parietal region and
- (iv) One lacerated wound, 4 cm x 1 cm x 1 cm on the left gluteal region.

He was admitted in hospital on 22.6.2000. His injury report is contained in Ex.-P/6. At about 8 a.m. in the morning, he became unconscious and died during the course of treatment in the hospital on 23.6.2000, which was reported to the police through Ward-boy Ramji (P.W.-11) by producing memo Ex-P/30, on which Merg Intimation No. 58/2000 was registered under Ex-P/31.

4. During the course of investigation, the Investigating Officer gave notice to Panchas under Ex.-P/25, prepared inquest on the body of Ramprasad under Ex.-P/26 and send it for postmortem examination under Ex.-P/2, The post-mortem examination was conducted by Dr. B.P. Chandra (P.W.-2), who prepared his report Ex.-P/3. In the internal examination, he found that there was fracture of left humerus bone and there was a linear fracture on scalp extending from left temporal region to right parietal region and there was haematoma in brain. He opined that the death was caused due to extradural and subdural haematoma resulting from injuries over scalp.

5. In further investigation, after taking Shiv Ratan into custody, his memorandum was recorded under Ex.-P/12, in pursuance of which, a bamboo

club was seized under Ex.-P/13. Memorandum of Udai Rajwade was recorded under Ex.-P/14, on which a club was seized under Ex.-P/15; memorandum of accused Laxman was recorded under Ex.-P/16, on which, a club was seized under Ex.-P/17; memorandum of Nand Lal was recorded under Ex.-P/18, on which, a bamboo club was seized under Ex.-P/19, one Safl (piece of clothe) was also seized from him under Ex.P/20; memorandum of Bhola Singh was recorded under Ex.-P/21, on which, a bamboo club was seized under Ex.-P/22 and memorandum of Narayan was recorded under Ex.-P/23, on which, a Tangia was seized under Ex.-P/24. The plain soil and blood stained soil were seized under Ex.-P/11. The site plan was prepared by Patwari under Ex.-P/33. The seized articles were sent for chemical examination to F.S.L, Sagar under Ex.-P/36, from where the report Ex.-P/37 was received.

6. After usual investigation, the charge-sheet was filed in the Court of Chief Judicial Magistrate, Ambikapur, who in turn committed the case to the Court of Sessions Judge, Ambikapur from where the matter was received on transfer by the Special Judge, Atrocities, where the trial was conducted.

7. Learned trial Judge convicted and sentenced 6 accused persons/ Appellants as aforementioned. However, 8 accused persons were acquitted. It is against this judgment of conviction and order of sentence, the Appellants have preferred this appeal.

8. Learned Counsel for the Appellants argued that Ramjeet Ram (P.W.-4), Gangaram (PW-5), Rajnath (P.W.-7) and Shiv Prasad (P.W.-8) are interested witnesses being in close relation with the deceased, therefore, they should not be relied on. They also argued that the presence of Harishankar (P.W.-9) is doubtful. Apart from above, they also argued that there was a land dispute between the parties and the land in question was in possession of the accused party and the complainant party had ploughed the land in the morning, thereafter, the accused party had also ploughed the land in the day time and then, in retaliation of that action by the accused party, the complainant party had attacked over them and a free fight took place in which the complainant party received injuries. About Durjan (Appellant No. 6), it was specifically argued that as per oral dying declaration made by the deceased Ramprasad before his wife namely Jugan Bai (D.W.-1), he has categorically stated that Durjan has not participated in marpit, as he was on duty at the time of incident, therefore, in view of this evidence, he is entitled for acquittal.

9. On the other hand, Learned Counsel for the State opposed these arguments and supported the judgment of conviction and order of sentence passed by the trial Court.

10. We have heard the Learned Counsel for the respective parties at length and have also perused the records of the Sessions Case.

11. So far as relative witnesses are concerned, it has been held by the Apex Court in the matter of Rizan and Anr. v. State of Chhattisgarh through the Rizan

and Another Vs. State of Chhatisgarh, through The Chief Secretary, Govt. of Chhatisgarh, Raipur, Chhatisgarh, , in para 6, that the relationship is not a factor to affect credibility of a witness. It is more often than not a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such a case, the Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

12. Relying upon the decision of the Apex Court in State of U.P. Vs. Paras Nath Singh and Others, , the Division Bench of the Kerala High Court also held in the matter of Sahadevan Rajan and Others Vs. State of Kerala, , that the straightforward and trustworthy evidence of relations of the deceased need not corroboration for sustaining the conviction. Such evidence cannot be discarded on the sole ground of interestedness in the prosecution case.

13. In Namdeo v. State of Maharashtra AIR 2007 SCW 1835, the Apex Court held that a witness who is a relative of deceased or victim of the crime cannot be characterized as "interested". The term "interested" postulates that the witness has some direct or indirect "interest" in having the accused somehow or other convicted due to animus or for some other oblique motive. The Apex Court also observed that a close relative cannot be characterized as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one. The Apex Court also referred to the decision rendered in the matter of Harbans Kaur and Anr. v. State of Haryana AIR 2005 SCW 2074, in which, it was held that there is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown When a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused.

14. If we look into the evidence of Patwari-Krishna Prasad Singh (P.W.-12), it would appear that during the course of investigation, the Investigating Officer has called for a report regarding ownership and possession of land in question and Patwari has given a report vide Ex.-P/32, in which he has mentioned that in village Chhatarpur P.C. No. 33 total 16 plots, admeasuring 3.4 hectares, were the land of ownership and possession of Roopnath, Sonsai and Durjan (accused). In his cross-examination vide Para-4, he has admitted that these persons were holding the possession of 16 plots, which has been shown in Ex.-P/32. He has also said that the above lands are not in possession of Ramji, Rajnath and his other brothers. Apart from this, it also comes in the evidence of Ramjeet (P.W.-4), vide Para-17, that some litigation, pertaining to the land, had taken place in Surajpur Court. It also comes in the First Information Report (Ex.-P/I 0)

that there has been a partition in between two branches of family and lands were allocated to them. The case of the prosecution is that a particular land situated in village Chhatarpur was firstly ploughed by the complainant party and thereafter, it was ploughed by the accused party and when the complainant party was returning from the field, they were attacked by the accused party in the way. Therefore, it is established that the land in question was in possession of the accused party and in the morning, firstly, the complainant party had ploughed the land and thereafter, the accused party had also ploughed it but no quarrel took place at the time of ploughing the land by both the parties and when in the evening, the complainant party was returning after seeing the land, the occurrence took place.

15. Learned Counsel for the Appellants argued that the complainants were the aggressors and in fact, they had attacked over the accused party and a free fight took place between both the groups. These arguments, advance by the Learned Counsel for the Appellants, cannot be accepted in light of the evidence of eye witnesses. Ramjeet Ram (P.W.-4) has deposed that when they were returning back from the field at about 6.00 p.m., the accused persons met them on the way near the house of Durjan. They were armed with Tangi, Tabbal, Lathi and sword. They ran towards them, surrounded them and after abusing them, said that they will kill all of them and thereafter they started beating them. Gangaram (P.W.-5), who is an injured witness and sustained as many as 8 injuries, has also deposed in similar manner. 2 other injured witnesses Rajnath and Shiv Prasad (P.W.-7 and P.W.-8) have also deposed in the same fashion. Harishankar (P.W.-9) has corroborated the above evidence given by 3 injured witnesses.

16. In appreciation, we find that nothing has been brought on record to show that the members of the complainant party were armed with deadly weapons or they had attacked over the accused party. It is also not shown that the accused persons had also received injuries in the marpit so as to infer that there was a free fight between 2 groups and in fact, the complainant party was the aggressor party. If the complainant party would have been the aggressor party and they had gone to attack over the accused party, then certainly, the members of the complainant party would have armed themselves with weapons and at least some injuries would have been sustained by the members of the accused party. Moreover, the place of occurrence is the public way, which happens to be near the house of accused Durjan, therefore, on this evidence also, it cannot be inferred that the complainant party were the aggressors and they had gone to attack over the accused party to their houses and in fact, they attacked them and then there was a free fight. On the contrary, on the above evidence on record, it is clear that while the members of the complainant party, who were unarmed, were returning from the field in the evening, the members of the accused party, armed with, deadly weapons, attacked them on the way, in which 4 persons sustained injuries, out of them 1 died in the hospital on the next day.

17. Now the question arises that who were the members of the unlawful

assembly and who participated in commission of crime in question? and whether the finding recorded by the trial Court regarding commission of crime by the present Appellants, on the basis of evidence of P.W.-4, P.W.-5 and P.W.-8, who are the real brothers of the deceased as also evidence of P.W.-7 who is also a relative and that of Harishankar (P.W.-9) can be sustained? Ramjeet Ram (P.W.-4) has deposed that on 22.6.2000 in the morning at about 8.00 a.m., he had ploughed the field along with Shiv Prasad, Ganga and Rajnath. After ploughing the field, they return to their house at about 12 Noon, his sons Yashpal, Nikeshwar and Rajkumar told him that Durjan, Roopnath, Narayan, Ratan, Tribhuan, Ram Singh, Nand Lal, Sonsai etc. had again ploughed the field by a tractor. Thereafter, at about 6.00 p.m. they went to see the field, nobody was there and when they were returning back to the house, in the way, near the house of accused Durjan, all the accused persons met them armed with Tangi, Tabbal, Lathi and sword. They ran towards them and surrounded them, used abusive languages saying that they will kill them and all of them, whose names have been deposed in Para-1 of examination-in-chief, started beating them with Tangi, Tabbal and Lathi. He has further stated that the accused persons had assaulted Shiv Prasad, Ramprasad (deceased), Gangaram and Rajnath. In Para-4 of his examination, he has deposed that Gangaram, Ramprasad, Shiv Prasad, who were assaulted by these persons were lying on the ground. He further deposed that he ran away from the place of occurrence, therefore, he did not sustain injuries. He had seen the injuries sustained by his 4 brothers. The matter was reported by him to the police station under Ex.-P/10. In Para-11, he has deposed that at the time of incident, Durjan and Narayan were armed with Tangi, Ratan was armed with Tabbal and Lathi, Nand Lal was armed with Tangi and Lathi, Roopnath was armed with Tangi and other accused persons were armed with Lathis.

18. Ganga Ram (P.W. 5) has also deposed that on the fateful day in the morning he alongwith Ramjeet, Shiv Prasad, Rajnath, Ramprasad had gone to plough the field from where they had returned at about 12 in the noon. His son Somar Sai came to him and told him that Durjan, Ratan, Roopnath, Shiv Mangal, Jai Mangal etc., have again ploughed the field by a tractor. In the evening at about 6 p.m., they had gone to see the field. He was accompanied by Shiv Prasad and Rajnath. When they were returning back from the field, near the house of accused Durjan, all the accused persons met them. Durjan was armed with Tangi, Nandlal was armed with Lathi, Ratan was armed with Bamboo club, Sonsai and Rajnath were armed with Tangi and Tabbal and other accused persons were armed with Lathi. In Para-6, he has specifically stated that he was assaulted by Ratan with Tangi on his head. Ratan and Nand Lal has also assaulted him by Bamboo clubs. Ram Prasad was also assaulted by Durjan, Ratan and Nandlal by Tangi and Lathis. Rajnath was also assaulted by Durjan with a Lathi. He became unconscious after receiving injuries. This is the witness who had received as many as 8 injuries for which an offence u/s 307/149 I.P.C., was registered. P.W.-7 Rajnath has also deposed in similar manner as two other witnesses and more or less the evidence of Shiv Prasad is also similar. All these witnesses have taken the names of the

accused persons and have said that they all were presents in Marpit.

19. About Gangaram (P.W.-5) it is argued that he has admitted in Para 18 of his cross-examination that he could not see as to who among the accused persons, present in the Court, had assaulted Ram Prasad because he became unconscious after sustaining injuries. Admittedly, except Ramjeet (P.W.-4), all the above witnesses are injured witnesses, therefore, their presence at the place of occurrence cannot be denied. The trial Court appreciated their evidence in light of the contents of the First information Report Ex.P/10 lodged by P.W.-4.

20. The contents of the F.I.R., would show that out of 14 accused persons, the names of only 6 accused persons (Appellants herein) are mentioned in the F.I.R. by P.W.-4. The maker of F.I.R., is an eye witness and if the other accused persons were also involved in commission of crime, certainly their names would have found place in the F.I.R. It is on this basis, the trial Court has acquitted the other accused persons, who are not named in the F.I.R., and has convicted the Appellants only. It is argued on behalf of the Appellants that when the witnesses are saying about participation of all the accused persons and the F.I.R., does not contain their names, therefore, the entire evidence of all the witnesses should be discarded. This argument cannot be accepted on the ground that none of the injured witnesses were the maker of F.I.R., and their reliability cannot be tested on the basis of omission in the F.I.R., lodged by P.W.-4 Ramjeet who was not an injured witness. The F.I.R., is a first hand information of the crime in question and the same can be used for the purposes of corroboration or contradiction of maker of the same and it cannot be used to corroborate or contradict other witnesses. If something more is brought on record by the evidence of other reliable witnesses, then, the Court is free to evaluate their evidence independently and to come to a definite conclusion regarding their credibility and also regarding the case. It can also not be ignored that there may be many reasons for omissions in the F.I.R. The maker may not have seen the entire incident, the maker may have deliberately left the names of some persons or he may have left the important facts in the F.I.R., or he may not be a true and reliable witness, who in fact has witnessed the occurrence. Therefore, the credibility of all the witnesses who are otherwise held to be trustworthy, is never destroyed by the contents of the F.I.R., which is lodged by another eye witness in which he has made certain omissions regarding mentioning of the names of the assailants.

21. In the present case, if we leave apart the testimony of P.W.-4 Ramjeet, who lodged the F.I.R., even then, on the basis of testimonies of 3 injured witnesses namely Gangaram (P.W.-5), Rajnath (P.W.-7) and Shiv Prasad (P.W.-8), it has been established that all the 6 Appellants had participated in the Marpit and they had attacked over the complainant party while they were returning after seeing the field in the evening. In the cross-examination of these injured witnesses, many questions have been put to them, but the defence could not brought on record that the present Appellants were not present at the scene of occurrence

and they had not participated in commission of crime in question. Only there are certain minor contradictions in the evidence of these witnesses regarding specific evidence about the nature of assault given by particular accused to a particular victim. Such minor contradictions are bound to come in the evidence in cases where a group of persons had attacked over 3-4 persons. In such a situation, it would not be reasonable for a court to expect that every witness should tell about each and every injury sustained by all the injured persons giving minor details about it. Therefore, in our considered opinion, the credibility of these injured witnesses i.e., P.W.-5 Gangaram, P.W.-7 Rajnath and P.W.-8 Shiv Prasad are never destroyed and conviction of these Appellants on the basis of these 3 injured witnesses can well be sustained. Moreover, P.W.-9 Harishankar has also supported the evidence of all the injured witnesses to the extent that they were unarmed and the members of accused party, who were armed with deadly weapons, had attacked over them near the house of accused Durjan.

22. It was vehemently argued by Learned Counsel for Appellant No. 6 Durjan that Jugan Bai, wife of deceased Ramprasad, who was examined as D.W.-1, has deposed that Ramprasad had made an oral dying declaration before her that Durjan has not participated in Marpit, therefore, presence of Durjan is doubtful and he should be acquitted. He also argued that as per evidence of D.W.-4 Holsai, at about 6.30 p.m. on 22.6.2000, this Appellant was present in village Bojha as he had gone to inspect the centre run under the scheme Padhbo-Padhabo. The copy of register of the centre has been produced. These arguments were opposed by the Learned Counsel for the State. Firstly, he argued that the version allegedly deposed by D.W.-1 that Durjan was not present in marpit would not be admissible in evidence being not covered u/s 32(1) of the Evidence Act. Secondly, he argued that even if same is legally admissible this defence witness is unreliable. About D.W.-4, he argued that the entries produced by him appears to be created entries, therefore, the evidence of this witness as also entries should be disbelieved in light of other evidence on record.

23. We have carefully considered the arguments advanced by both the counsel. Section 32(1) of the Evidence Act, 1872 provides for admissibility of the statement made by a person "as to the cause of his death", or "as to any of the circumstances of the transaction which resulted in his death". The words "as to any of the circumstances of the transaction which resulted in his death" appearing in Section 32 must have some proximate relations to the actual incidence.

24. In case of *Kans Raj Vs. State of Punjab and Others*, , the Apex Court held as under:

The words "as to any of the circumstances of the transaction which resulted in his death" appearing in Section 32 must have some proximate relations to the actual occurrence. In other words the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction. The

test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a strait jacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible u/s 32. The expression "circumstances of the transaction which resulted in his death" mean that there need not necessarily be a direct nexus between the circumstances and death. Even distant circumstance can become admissible if it has nexus with the transaction which resulted in death.

25. In the above judgment, the Apex Court has referred to the decisions of AIR 1939 47 (Privy Council) . The relevant portion, which relates to the phrase "circumstances of the transaction" are quoted as under:

The circumstances must be circumstances of the transaction: general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be "circumstances of the transaction", and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused." "Circumstances of the transaction" is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gestae". Circumstances must have some proximate relation to the actual occurrence: though, as for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose. It will be observed that the "circumstances" are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused for the condition of the admissibility of the evidence is that "the cause of (the declarant's) death comes into question".

26. Shri Rajesh Pandey, Learned Counsel appearing for Appellant No. 6, has also referred to decision of Patna High Court in The State Vs. Ramprasad Singh and Others, . While dealing with the phraseology "any of the circumstances of the

transaction which resulted in his death", the said Court held that the test of relevancy of statement u/s 32(1) is not what the final finding in the case is but whether the cause of the death of the person making the statements comes into question in the case.

The expression "any of the circumstances of the transaction which resulted in his death" is wider in scope than the expression "the cause of his death": in other words, Sub-section (1) of Section 32 refers to two kinds of statements - (1) when the statement is made by a person as to the cause of his death, or (2) when the statement is made by a person as to any of the circumstances of the transaction which resulted in his death. The words "resulted in his death" do not mean "caused his death."

27. Therefore, the statement pertaining to "circumstances of the transaction, which resulted in his death" need not always be having a direct nexus with the death but it must have some relation to the actual incidence. The deceased may tell the names of the culprits, he may tell the manner in which the occurrence took place and the attending circumstances as to how the occurrence took place and that may be exculpatory of the persons allegedly involved in the occurrence.

28. If we examined the present case in light of the above principles, the oral dying declaration of the deceased said to have been given to his wife exculpatory the accused Durjan would be admissible u/s 32(1) of the Evidence Act being covered under the phraseology "as to any of the circumstances of the transaction which resulted in his death" provided such statement, so given by the deceased is proved as a fact in the case.

29. D.W.-1, Smt. Jugan Bai has deposed that when she was told on the fateful day that Gangaram and Ramprasad (her husband) have received injuries, she went running towards the place of occurrence. On the way, her husband met her. He was brought to the house. She had asked her as to who assaulted him, on which, her husband did not tell the names of the assailants but he told that there were many persons, who had assaulted him. Her husband was in a position to talk. She specifically put a question to her husband that Durjan is an educated person, whether he was in quarrel or not? It is on this question, the husband stated that Durjan was not in quarrel. It is a case in which the wife of the deceased is coming as a defence witness against the culprits of her husband. Her conduct would show that she has been used by defence to make out their case in general manner. In Para-2 of her examination-in-chief, she has deposed that when the message was received that the accused persons have ploughed the field then, all decided to go to field. Gangaram and Shiv Prasad were armed with Tangi, Ramjeet and Rajnath were armed with Danda and Tabbal. This is completely a new story, by which the defence has tried to bring on record that the complainant party was also armed with deadly weapons. It nowhere comes in the entire case that the complainant party was also armed with weapons. This statement appears to be totally false because not a single injury has been received by the persons of the accused party and on this count, her testimony

appears to be doubtful. Secondly, in Para-3, she has deposed that at the first instance, her husband did not tell her the names of the assailants but he only told that there were many persons. What was the special occasions for her to pointedly ask about one of the accused persons i.e. Durjan Gond saying that he is an educated person and whether he was present in the incident or not, does not appear on record. She is equally related to all accused persons, therefore, if she was asking in normal way, she would have asked about all of them, or at least about some of them but she only asked about one person which does not show her normal conduct and it only shows that after the death, she was brought by the defence for creating such an evidence. The version of this witness is not reliable. It does not inspire the confidence of this Court so as to hold that such an oral dying declaration was made by her husband to her.

30. So far as evidence of Gondharam (D.W.-2) and Ramdev (D.W.-3) are concerned, D.W.-2 has deposed that he had asked to the complainants as to who assaulted them? on which Ramjeet, Ganga, Rajnath and Shiv Prasad said them that due to darkness they could not identify the assailants. He has also added that he had not listen about Durjan. His such evidence is not reliable in view of the evidence of the injured witnesses, which we have discussed earlier. Almost same is the position of Ramdev (D.W.-3).

31. So far as evidence of D.W.-4 Holsai is concerned, he has deposed that he was working as Teacher under "Padhbo Padhabo" programme in the night school in village Bojha. Accused Durjan used to come for inspection in his school. When he used to come for inspection, he used to reach there at about 6.30 in the evening. Village Bojha is at a distance of 15-16 Kilometers from village Chhattarpur. He used to come by bicycle and a time of 1 1/2 hours was consumed for coming to the village. He has deposed that in the month of June 2000, Durjan had visited his school on 22.6.2002 (perhaps wrongly deposed, which should be 22.6.2000) at about 6.30 p.m., and had signed the attendance register Ex.D-3. The copy of attendance register has been filed as Ex.D-3/C. In the cross-examination, he has denied the suggestion that the checking teacher used to visit on the last day of the month and he has further denied that he had taken the signature in the register on some subsequent date, showing it to be signed on 22.6.2000.

32. If we look into the contents of the attendance register, it would appear that the same is for the month of June and it has been filled in for 31 days showing from 1st day of the month to 31st day of the month. Even the attendance of 31st day has also been filled in the register. The month of June comprises of 30 days only. Filling of attendance in the column of 31st day in the month of June itself shows that the entries in the register are false and on this ground alone, the entries cannot be relied on and the Document Ex. D-3 becomes highly suspicious. Moreover, under the signature of accused Durjan, time has also been mentioned as 6 p.m., which appears to be quite unnatural. On these grounds, no reliance can be placed on the entries of the attendance register and the plea of alibi raised by accused Durjan cannot be sustained on such entries made in this

register.

33. On the foregoing discussions, we do not find any substance in the appeal. There is no force in the appeal filed by the Appellants. The appeal is liable to be dismissed and is accordingly dismissed. The conviction and sentence awarded against the Appellants are confirmed.