

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No. 404 of 2001**

Dev Kumar S/o. Mewalal Panika, Aged 29 years, R/o. Village Bade Salhi, P.S. Khadgawan, District Korla (C.G.)

---- **Appellant**

**Versus**

State of Chhattisgarh Through P.S. Khadgawan, District Korla, (C.G.)

---- **Respondent**

with

**Criminal Appeal No. 372 of 2001**

1. Birijlal S/o. Sukhlal Panika, Aged about 38 years,
2. Devnarayan @ Ramnarayan, S/o. Sukhlal Panika, aged about 20 years,  
R/o. Village Badesalhi, P.S. Khadgawan, District Koriya (C.G.)

---- **Appellants**

**Versus**

State of Chhattisgarh Through P.S. Khadgawan, District Korla, (C.G.)

---- **Respondent**

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For Appellants : Ms. Sareena Khan, Advocate  
For Respondent : Mr. Ishan Verma, Panel Lawyer  
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**Hon'ble Smt. Justice Vimla Singh Kapoor**

**Order on Board**

**30.09.2019**

1. Since both the appeals arise out of the same order dated 27.03.2001, they are being disposed of by this common order.

2. In this case, the appellants in both the appeals have been convicted under Section 304 Part-II read with section 34 IPC and sentenced them to undergo rigorous imprisonment for 7 months.
3. As per prosecution case, On 03.02.2001 FIR (Ex.P-14) lodged by Chandikeshwar- son of the deceased in Police Station Khadgawan, where it is alleged that on 02.01.2000 at about 6.00 PM, his father Harpratap was returning after taking meal from his brother's house. On the way, Ramkumari caught hold Harpratap with the help of his Gamchha and called the other co-accused. On hearing the voice of Rajkumar, the appellants reached there and assaulted Harpratap with hands, fists, lathi and stone, and thereafter ran away from there. The relatives of Harpratap namely Gulab, Prem Kumar and santosh came over there on hearing hue and cry to rescue the deceased and they claimed themselves to be the eye-witness to the incident. Harpratap was taken to his house and there he had disclosed to Raibhan and his son that the appellants assaulted him with hands, fists and lathi. At about 4.00 AM, the deceased died in his house. Based on this Information, FIR (Ex.P-14) was registered against the accused/appellants. The dead body was sent to Government Hospital, Khadganwa, for post-mortem examination where Dr. O.L. Verman (PW-6) conducted the same and gave his report (Ex.P-9, Ex.P-10 to Ex.P-13), stating that apart from number of external injuries, left part of the testicles was crushed and swelling was present over there, left side of chest were broken, right rib were fractured and left lungs of the deceased was also

ruptured causing of death of the deceased due to shock and the death was homicidal in nature. After completion of the investigation, charge sheet was filed against the appellants in the Court of Judicial Magistrate First Class, Manendragarh, who, in turn, committed the case to the trial Court to which the appellants did not plead guilty, therefore, trial was conducted. After completion of evidence of the prosecution side, statement of the appellants under Section 313 of the Cr.P.C. was recorded and after completion of trial, the trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellants as mentioned above.

4. Counsel for the appellants/accused would argue that the impugned judgment is contrary to the facts, law and circumstances of the case. She would argue that the Court below failed to consider the prosecution the guilt of the appellants beyond all reasonable doubts. She would argue that there is hardly any reliable evidence on record to warrant the conviction of the appellants under the aforementioned sections of IPC. She further argue that the Court below failed to consider that Gulab Singh (PW-1), Prem Kumar (PW-2), Santosh Singh (PW-3) and Chandikeshwar Singh and Raibhan (PW-8) are the close relatives of the deceased and their statements were required to be scrutinized with due caution as they are interested witnesses. She would further argue that the court below failed to consider the aforesaid witnesses are not the fully reliable and the

conviction cannot be sustained on their testimonies, therefore, the appellants may be acquitted of the charges.

5. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellants as mentioned above are based on the proper appreciation of the evidence on record and, therefore, no illegality or infirmity is traceable in the same worth interference in this appeal.
6. I have considered the submissions of learned counsel for the parties and perused the record. The record shows that as there was some conflict between the deceased and the appellants. Because Rambai- the sister-in-law of the appellants wants mutated her name in the revenue records after the death of her husband and for which deceased Harpratap helped her. The appellants being the brother-in-law of Rambai did not like this attitude of the deceased and on this wanted to teach lesson Harpratap, therefore, on the date of incident when the deceased was returning from his brother's house. On the way, Ramkumari caught hold the deceased with his *Gamchha* and called the appellants and on hearing the voice of Ramkumari, the appellants rushed there and assaulted the deceased with hands, fists, lathi and stone which ultimately proved fatal to him and ultimately on the next day at about 4. 00 AM, Harpratap died in his house. This apart, three eye witnesses Gulab (PW-1), Premkumar (PW-2) and Santosh (PW-3) are also there who have supported the case of the prosecution stating that they saw the

accused/appellants opened an assault with hands and fists and that on the next morning, the deceased died. In addition to number of external injuries, the doctor PW-6 who conducted the post mortem examination on the body of the deceased vide report Ex.P-9, Ex.P-10 to Ex.P13 and has also noticed number of external injuries, left part of the testicle was crushed and swelling was present over there, left side of chest was broken, right rib was fractured and left lungs were also ruptured causing death of the deceased due to shock and the death was homicidal in nature which was sufficient in nature to cause his death in the ordinary course of nature. While answering to the query, this witness (PW-6) has clarified that the injuries suffered by the deceased could have been caused with the hands and fists. Thus the finding recorded by the Court below that while causing injuries to the deceased with the hands, fists, lathi and stones, the accused/appellants had knowledge that such injuries are likely to cause his death in the ordinary course of nature and thereby convicting them under Section 304 Part-II read with section 34 IPC cannot be said to be at fault particularly when there are three eye witnesses to the incident. Being so, their conviction recorded by judgment impugned is hereby maintained.

7. As regards sentence, the accused/appellants appear to have completed the entire sentence imposed upon them by the Court below and therefore, this point too does not require any

deliberation by this Court. Being so, the appeals are hereby dismissed.

Sd/-

**(Vimla Singh Kapoor)**  
JUDGE

Santosh