

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1218 of 1997**

1. Charan Singh S/o Kanak Singh, by caste Dhawad, aged about 54 years.
2. Arun Singh S/o Kanak Singh, aged about 44 years.
3. Ranjan Singh S/o Chain Singh, aged about 29 years.
4. Kamdev S/o Kanak Singh, aged about 59 years.
5. Pratap Singh S/o Kanak Singh, aged about 28 years.
6. Nando S/o Kamdev, aged about 30 years.
7. Ramdhar S/o Kamdev, aged about 29 years.

All residents of Balod, Thana Dantewada, District Bastar, MP (now CG)

---- Appellants

Versus

1. State of Madhya Pradesh through District Magistrate, Bastar MP (now CG)

---- Respondent

For Appellants:	Shri Vishnu Koshta, Advocate
For Respondent/State:	Shri vivek Sharma, GA

AND**CRA No. 28 of 1998**

1. State of Madhya Pradesh through District Magistrate, Bastar MP (now CG)

---- Appellant

Versus

1. Charan Singh S/o Kanak Singh, by caste Dhawad, aged about 54 years.
2. Arun Singh S/o Kanak Singh, aged about 44 years.
3. Ranjan Singh S/o Chain Singh, aged about 29 years.
4. Kamdev S/o Kanak Singh, aged about 59 years.
5. Pratap Singh S/o Kanak Singh, aged about 28 years.
6. Nando S/o Kamdev, aged about 30 years.
7. Ramdhar S/o Kamdev, aged about 29 years.

All residents of Balod, Police Station Dantewada, District Bastar, MP (now CG)

---- Respondents

For Appellant/State:	Shri vivek Sharma, GA
For Respondents:	Shri Vishnu Koshta, Advocate

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice CB Bajpai

Judgment on Board by Pritinker Diwaker, J

27/10/2015

As these two appeals arise out of the same judgment dated 8.5.1997 passed by Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No. 534/1993, they are disposed of by this common judgment.

2. By the judgment impugned the Court below has convicted accused Charan Singh u/s 147, 302; accused Aran u/s 323 and other remaining accused u/s 147 IPC. At the same time, the Court below however has acquitted accused Charan Singh of the charge u/s 324 and accused Aran of the charge u/s 147 IPC. The other remaining accused have also been acquitted of all the charges levelled against them except the one u/s 147 IPC.

3. As per the case of the prosecution, there existed some land dispute between the accused persons of Sessions Trial No. 534/1993 and that of 195/1994 as allegedly on 7.7.1993 both the parties had a quarrel in the field which culminated in assault to each other with deadly weapons. FIR Ex. P-1 was lodged by Ishwari Singh (PW-1) vide Crime No. 70/1993 alleging that the accused persons of Sessions Trial No. 534/1993 had assaulted the deceased namely Yaad Singh resulting in his death. Another FIR was lodged by one Aran Singh (PW-1) vide Crime No. 71/1993 against the accused persons in Sessions Trial No. 195/1994 alleging that in the incident the injuries were caused to him as well as one Nandu alias Nandlal (PW-2). Based on the FIR registered at Crime No. 70/1993 offences were registered under Sections 147, 148, 149 and 302 IPC against the accused persons of Sessions Trial No. 534/1993 whereas based

on the FIR at crime No. 71/1993 the offences under Sections 147, 148, 149 and 326 IPC were registered against the accused persons of Sessions Trial No. 195/1994. Since both the sessions trials i.e. 534/93 and 195/1994 involve the case and the counter case, the trial thereof was carried out by the Additional Sessions Judge, Bastar at Jagdalpur leading to delivery of two separate judgments. In these two cases accused Charan Singh has been convicted under Sections 302, 147, accused Aran has been convicted u/s 323 and remaining accused persons u/s 147 IPC. Accused Charan Singh has been sentenced to undergo imprisonment for life u/s 302 and SI for one year u/s 147; accused Aran has been sentenced to undergo one year SI u/s 323 IPC. The other remaining accused persons namely Ranjan Singh, Kamdev, Pratap Singh, Nando and Ramdhar have been awarded the sentence of one year simple imprisonment for the offence under Section 147 IPC.

4. Being aggrieved by conviction part of the judgment impugned the accused persons have preferred Criminal Appeal No. 1218/1997 whereas the State has preferred appeal (Criminal Appeal 28/19098) against acquittal of the accused persons of some of the charges by the same judgment which is under assail.

5. In the present appeals the FIR Ex. P-1 was lodged on 7.7.1993 at 10 am by Ishwar (PW-1) and the postmortem examination on the dead body of Yaad Singh was conducted by Dr. B.K. Tirki (PW-5) who gave his report Ex. P-6 stating that he noticed number of grievous injuries on his cervical region and the cause of death was excessive bleeding.

6. The Court below framed the charge against accused Charan Singh under Section 147, 302, in the alternative u/s 302/149 and 324 IPC and likewise against accused Aran Singh, Ranjan Singh, Kamdev, Pratap Singh, Nando and Ramdhar the charge was framed u/s 147, 302/149 and 323/149 IPC.

7. In order to prove its case the prosecution has examined 6 witnesses in support of its case. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they have denied

their guilt and pleaded innocence and false implication in the case.

8. After hearing the parties and going through the record the Court below has convicted accused Charan Singh u/s 147, 302; accused Aran Singh u/s 323 and other remaining ones u/s 147 IPC. However, it acquitted the accused Charan Singh of the charge u/s 324 and accused Aran Singh of all the charges except 323. The Court below also acquitted other remaining accused persons of the charges u/s 302/149 and 323/149 IPC.

10. Counsel for the accused persons in Criminal Appeal No. 1218/1997 submits that as all the accused persons have already served out the entire sentence imposed on them, they are not interested in prosecuting these appeals. According to him, so far as the appeal preferred by the State is concerned, there is no substance in the same as the acquittal of accused Aran Singh, Ranjan Singh, Kamdev, Pratap Singh, Nando and Ramdhar under Section 302/149 and 323/149 is just and proper.

11. Counsel for the appellant/State in Criminal Appeal No. 28/1998 submits that considering the statements of the witnesses, the conviction of accused Charan Singh under Section 302,147 is in accordance with law. He however submits that the Court below has erred in law in acquitting accused Aran of the charge under Section 302/149. In sum and substance it is argued on behalf of the State that Criminal Appeal No. 1218/17 is liable to be dismissed whereas Criminal Appeal No. 28/1998 deserves to be allowed.

12. Heard counsel for the parties and perused the evidence of the witnesses available on record.

13. Ishwar Singh (PW-1) – an eyewitness to the incident and the lodger of FIR supporting the case of the prosecution has stated that deceased Yaad Singh was his brother and that on the date of incident at about 6 am he himself, his brother and other persons had gone to their field carrying agricultural equipments with them and when they were working there, the accused persons came and tried to cultivate cultivate the land and thereafter assaulted the deceased. He has stated that accused Charan Singh was carrying axe whereas

the other accused persons were carrying club with them. According to this witness, deceased Yaad Singh was done to death by accused Charan Singh and other accused persons assaulted Jhagru as a result of which he sustained grievous injuries in his hand. Except some minor contradictions, this witness remained firm in cross-examination also. Jhagru Singh (PW-2) – another eyewitness to the incident has also stated that accused Charan Singh was carrying axe and the others were having clubs in their hands and they assaulted deceased Yaad Singh and other persons including him. Bhagat Singh (PW-3) yet another witness to the incident has also made similar statement like Ishwar Singh (PW-1) and Jhagru Singh (PW-2). Kamlu Ram (PW-4) - the witness to seizure made under Ex. P-2 to P-5 though has not fully supported the case of the prosecution but has admitted his signature on these documents. Dr. B.K. Tirki (PW-5) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-6 stating that he noticed number of grievous injuries on his cervical region and the cause of death was excessive bleeding. This witness also medically examined Jhagru Singh (PW-2) vide report Ex. P-11 and Bhagat Singh (PW-3) vide report Ex. P-12 and noticed injuries on their person. H.P. Shukla (PW-6) is the investigating officer who has duly supported the case of the prosecution.

14. Close scrutiny of the evidence of the witnesses makes it clear that on 7.7.1993 accused Charan Singh committed the murder of deceased Yaad Singh by causing grievous injuries with axe. There are three eyewitnesses to the incident namely Ishwar Singh (PW-1), Jhagru Singh (PW-2) and Bhagat Singh (PW-3) who have clearly stated that accused Charan Singh was having axe and others were having clubs in their hands and assaulted the deceased including them. There is nothing on record on the basis of which the case of the prosecution and the evidence of the witnesses could be disbelieved. Even the doctor (PW-5) who conducted the postmortem examination has stated that he noticed number of grievous injuries on the cervical region of the deceased and the excessive bleeding resulted in his death. In this view of the matter, conviction of accused Charan Singh for committing the murder of Yaad Singh appears to

be fully justified. As regards the remaining accused persons, considering the role played by them their conviction under section 147 IPC is also in accordance with law and there is no infirmity in the same. Likewise, keeping in mind the material available on record, the conviction of accused Aran Singh under Section 323 IPC is just and proper and calls for no interference by this Court. So far as sentence imposed on them is concerned, as all the accused persons have already completed the entire sentence and have been set free, no further order thereon is necessary. Thus the Criminal Appeal No. 1218/1997 being devoid of any substance is liable to be dismissed and it is dismissed as such.

15. Now come to Criminal Appeal No. 28/1998 preferred by the State against the acquittal part of the judgment impugned. The material available on record goes to show that the Court below has taken note of the evidence of the witnesses in its proper perspective while acquitting accused Charan Singh of the charge u/s 324; accused Arun Singh of the charge u/s 147 IPC and the other remaining accused namely Ranjan Singh, Kamdev, Pratap Singh, Nando and Ramdhar under Section 302/149 and 323/149 and there does not appear any illegality or infirmity in the same. Further, being conscious to the settled legal position that if the material available on record suggests two views to be drawn in the matter, the one favouring the accused has to prevail, no interference with the finding of acquittal can be made. Accordingly, Criminal Appeal No. 28/1998 also does not have any substance calling for interference in the State appeal. This too is hereby dismissed.

16. Conclusion is thus dismissal of both the aforesaid mentioned appeals.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(C.B. Bajpai)
Judge