

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1938 OF 1999

1. Hajari @ Santosh Yadu, son of Ganesh Ram Yadu, aged 20 years, resident of village Pousri.
2. Laxman Yadu, son of Devnarayan, aged 60 years, resident of Akaltara.
3. Tejram, son of Ramdayal Yadu, aged 67 years, resident of village Pousri.
4. Ramkibai, wife of Ramji Yadu, aged 60 years, resident of village Akaltara.
5. Paniyabai, wife of Ganeshram Yadu, aged 50 years, resident of Pousri.

All Police Station Bhatapara (Gramin), District Raipur (M.P.) (now C.G.)

... Appellants

Versus

State of Madhya Pradesh (now Chhattisgarh)

... Respondent

For Appellants	:	Mr. K.N. Nande and Mr. Aditya Khare, Advocates.
For Respondent	:	Mr. Neeraj Mehta, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

23/09/2015

1. The Appellants stand convicted under Sections 147, 148, 302/149 and 325 IPC to life imprisonment and lesser with fine of Rs.500/- each, failing which they would have to undergo maximum six months of further imprisonment, as ordered on 26.6.1999 by the Second Additional Sessions Judge, Balodabazar, in Sessions Trial No. 432 of 1997.
2. PW-3 Narottam, son of the deceased Shriram, lodged the First Information Report (FIR), Exhibit P-6, on 2.7.1997 at 10:35 p.m. with

regard to an occurrence the same day in the fields at about 2:30 p.m. The deceased and other named prosecution witnesses are alleged to have come upon the lands and attempted cultivation when the assault took place leading to injuries also to PW-4 Arjun, PW-5 Lalji, PW-6 Nathuram and PW-7 Shatruhan. The post-mortem of the deceased, Shriram, Exhibit P-17, was conducted on 3.7.1997 at about 11:00 a.m. by PW-14, Dr. Rakesh Bawa, who found (1) lacerated wound 5cm x 1cm over right parietal bone (2) contusion 5" x 2" over left frontal bone (3) contusion 5½" x 2" over left scapula (4) fracture of vertex, fracture line extending up to the left temporal bone, right temporal and parietal bone with some area depressed. Extra dural hemorrhage was present and the whole scalp was covered with clotted blood with bloodstains around the nostrils and left of the mouth, opining that the injuries were caused by hard-blunt substance and death was attributable to Syncope due to head injuries about 12 to 18 hours earlier, homicidal in nature.

3. When this appeal was called out, there was no representation on behalf of the Appellants and therefore we requested Shri Aditya Khare, Advocate, Panel Lawyer of the High Court Legal Services Committee to assist us in the matter. Later, Shri K.N. Nande, Counsel for the Appellants, also appeared and apprised us of his difficulties because of which he could not appear on the previous day. We have heard both the learned Counsel on behalf of the Appellants.

4. It was submitted on behalf of the Appellants that the spot-map, Exhibit P-18, by PW-15 Komalband Kosle, the Patwari, identifies the occurrence having taken place on Khasra No. 563. The Revenue records of 1992-93 and 1997-98 record the name of Appellant Ramkibai and Paniyabai as the owners. The Appellants in their defence under

Section 313 Cr.P.C., specifically pleaded that partition had taken place between them and the prosecution witnesses who are related to each other, much earlier in time. Unnecessary dispute was being created by the prosecution witnesses. The Appellants were in cultivating possession of the lands. While the Appellants were cultivating their lands and tending to the crops sown by them, the prosecution witnesses came and indulged in an altercation followed by assault. The Appellants acted in self-defence. Evidently, from the facts and sequence of events, there was no intention to kill but only an expression of anger on the spur of the moment pursuant to the verbal duel occasioned by the unnecessary and non-existent dispute sought to be created by the prosecution witnesses. At a moment of heated passion, if an assault took place, it cannot be measured in golden scales for the manner in which it should have been done and when it should have stopped. Matters have to be adjudged from the view point of common human behaviour. The conviction under Section 302 IPC in any event is not justified and the Appellants may at best be convicted under Section 304 (Part II) IPC with the exception of the two lady Appellants who are not alleged to have indulged in any assault. It is highly improbable that if four male members of the family were already assaulting the deceased and others, the two ladies would have jumped into the fray, taking the risk of possible assault and injury to them. PW-3 Narottam, both in the FIR and in his statement under Section 161 Cr.P.C., as also the other witnesses have not attributed any exhortation to the two lady Appellants at the time of assault. On the contrary, the evidence is that they were sitting on the boundary of the fields and talking from there. Their conviction, merely because they happened to be present in the fields

along with the male members of the family is not justified and they deserve to be acquitted. PW-3 Narottam, for the first time deposing in the Court sought to build up and embellish the allegations against the lady Appellants contending that they were exhorting to kill.

5. Learned Counsel for the State submitted that the presence of the Appellants at the time of the assault and participation is not disputed. The nature of injuries on the deceased reveal that he was assaulted by more than one person even after he fell down and was helpless reflecting the intention to kill. PW-4 Arjun, PW-5 Lalji, PW-6 Nathuram and PW-7 Shatruhan are injured witnesses and their credibility is high and evidence reliable. The conviction calls for no interference. Even if there was land dispute, the plea of private defence is not available to the Appellants as evidently they exceeded the right and caused injuries more than necessary in absence of the prosecution witnesses having assaulted the Appellants.

6. We have considered the submissions on behalf of the parties and perused the evidence on record also.

7. The prosecution witnesses and the Appellants were closely related to each other. Even if the names of the two lady Appellants were mentioned in the revenue records as owners of the lands in question, and partition had taken place, nonetheless the existence of a land dispute between them is evident and was also urged in defence by the Appellants under Section 313 Cr.P.C., itself.

8. PW-3 Narottam, stated that the deceased Appellant Ganeshram Yadu pushed the deceased who fell down after which the Appellant Laxman Yadu assaulted leading to omnibus assault thereafter by the others. The witness in cross-examination acknowledged that he along

with others came on the lands subsequently while the Appellants were cultivating. In the FIR and in his statement under Section 161 Cr.P.C., he did not attribute any exhortation to the two lady Appellants except for mentioning their presence, and in his court deposition for the first time stated that they were exhorting the Appellants to kill the deceased. The FIR also states that PW-4 Arjun, PW-5 Lalji, PW-6 Nathuram and PW-7 Shatruhan also suffered injuries on their head, hands and legs.

9. PW-4 Arjun, who is an injured witness also deposed that Laxman first assaulted on the head followed by omnibus assault. PW-5 Lalji, an injured witness also stated likewise. PW-6 Nathuram, also an injured witness stated likewise. PW-7 Shatruhan who is also an injured eye-witness similarly stated of the first assault by the Laxman followed by omnibus allegation of assault. In his cross-examination, he stated that first a verbal duel ensued between the Appellants, the deceased and PW-4 after which the assault took place. PW-3 Narottam and PW-6 Nathuram have both stated that the two lady Appellants were sitting at a distance. PW-2 Purohit, Kotwar, proved the inquest report, Exhibit P-4.

10. The evidence led by the prosecution and the defence taken by the Appellants under Section 313 Cr.P.C., does not leave any doubt with regard to the manner in which the occurrence has taken place and the cause for the same being the land dispute. The presence of the Appellants on the lands and of the deceased as also the injured witnesses during the occurrence is also not in dispute. The assault was made by *lathis*, a common item carried by villagers and it cannot be described as a deadly weapon of assault and that the Appellants had come well armed with the common object to kill. The only question for our consideration is if the conviction as ordered was justified. It has to

be kept in mind that both sides are closely related to each other. Despite what may have been entries in the revenue records they perceived a difference of opinion with regard to the lands and were at cross-purposes with each other. It is the case of the Appellants that their names stood in the revenue records. The prosecution witnesses are alleged to have come on the lands and a verbal duel ensued after which the assault followed. The assault was first made by one of the Appellants when the others jumped into the fray. It is difficult to accept that when the male members were fighting from both sides and considering the number of persons present, the two ladies and who were the only ladies present on the spot would have participated in the assault risking injuries to themselves. Prior to the deposition in court of the prosecution witnesses, nothing has come on record attributing any role to them except ownership of the lands and the exhortation to kill attributed to them in court for the first time appears to be an embellishment. If they were merely present on the lands as members of the family or were sitting while the male members were cultivating in a disputed land, we find it difficult to hold that the principles of vicarious liability would apply to them because of their mere presence. The two lady Appellants are held entitled to acquittal.

11. The principle was considered in (2013) 4 SCC 607 (Subal Ghorai v. State of W.B.) observing as follows:-

“But this concept of constructive liability must not be so stretched as to lead to false implication of innocent bystanders. Quite often, people gather at the scene of offence out of curiosity. They do not share common object of the unlawful assembly. If a general allegation is made against large number of people, the court has to be cautious. It must guard against the possibility of convicting mere passive onlookers who did not share the common object of the unlawful assembly. Unless reasonable direct or indirect circumstances lend assurance to the prosecution case that they shared common object of the unlawful assembly, they cannot be

convicted with the aid of Section 149 IPC. It must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all stages. The court must have before it some materials to form an opinion that the accused shared common object. What the common object of the unlawful assembly is at a particular stage has to be determined keeping in view the course of conduct of the members of the unlawful assembly before and at the time of attack, their behaviour at or near the scene of offence, the motive for the crime, the arms carried by them and such other relevant considerations. The criminal court has to conduct this difficult and meticulous exercise of assessing evidence to avoid roping innocent people in the crime. These principles laid down by this Court do not dilute the concept of constructive liability. They embody a rule of caution.”

12. In so far as the male members are concerned, we find it difficult in the facts of the case to hold that in the existing land dispute they had any intention to kill. The post-mortem report undoubtedly reveals an assault by more than one Appellant but it does not reveal a brutality which could have followed if there was a deliberate and intentional murderous assault by four persons.

13. In the facts of the case and the nature of evidence available, we are satisfied to hold that the acts of the Appellants amount to culpable homicide not amounting to murder under Section 304 (Part II) IPC since their case comes under the 4th Exception to Section 300 IPC as having been committed without pre-meditation in sudden fight in the heat of passion and on a sudden quarrel without having taken undue advantage or acted in a cruel or unusual manner.

14. In the nature of the occurrence, the close relationship between the parties, a land dispute between them, we are satisfied to convert the conviction of Appellants No. 1 to 3 from under Section 302/149 IPC to under Section 304 (Part II)/149 IPC. The fact that the number of accused is reduced to four, does not alter the principle of vicarious

liability with regard to them as observed in (2013) 2 SCC 197 (Haradhan Das v. State of W.B.) holding as follows:-

“26. If five or more accused are charged with an offence under Section 302 read with Section 149 IPC and the court finally finds that the person's identification, role and object in participation against some of those accused is not proved, still other persons forming the unlawful assembly and against whom the prosecution is able to prove its case beyond reasonable doubt can be punished for an offence under Sections 302/149 IPC. The statutory principle provided under the provision of Section 149 IPC will include the persons who were acquitted because that is the case of prosecution. The conviction recorded by the trial court cannot be vitiated on that ground...”

15. Appellants No. 1 to 3 are stated to have already undergone over seven years of custody. Resultantly, the period of custody undergone by Appellants No. 1 to 3 in the facts of the case, the relationship between the parties, is considered sufficient punishment and they are not required to undergo any further custody.

16. The appeal is allowed in so far as the two lady Appellants are concerned and partly allowed in so far as Appellants No. 1 to 3 are concerned.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge