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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1538 of 1996**

1. Ramjatan, S/o Late Laxmi Prasad Harijan (Chamar), aged 22 years, R/o Junapara, P.S. Baikunthpur
2. Lehri Prasad, S/o Laxmi Prasad Harijan, aged 20 years, R/o Junapara, P.S. Baikunthpur
3. Indralok, S/o Laxmi Prasad Harijan, aged about 30 years, R/o Junapara, Distt. Surguja (M.P.) (Now Chhattisgarh)

---- Appellants**Versus**

State of Madhya Pradesh Through
Baikunthpur, Distt. Surguja (M.P.) (Now
State of Chhattisgarh)

---- Respondent

For Appellants:	Smt. Kiran Jain, Advocate
For Respondent/State:	Shri Ravindra Agrawal, PL

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

CAV Judgment**Per Chief Justice****21/04/2015**

1. Appellants 1 and 3 have been deceased during the pendency of the appeal. The surviving Appellant has been convicted under Section 302 IPC to life imprisonment along with fine of Rs.1,000, in the event of failure to pay which he was required to undergo further one month rigorous imprisonment. He has also been convicted under Section 325 IPC to three years rigorous imprisonment with fine of Rs.100, in the event of failure to pay which, he was required to undergo further three months simple imprisonment.

2. The deceased Om Prakash is alleged to have been assaulted at 5:00 pm on 7.10.1991. Dehati Nalisi, Exhibit P-4 was lodged by Ravinder, PW-4 the same day at 21:40 hours stating that the Appellant suspected the deceased to have instigated the Harijan labour Bandu Gore to lodge complain before the labour inspector. The Appellant came to the house of the witness at 5:00 pm with a 'tabbal', along with his family members who carried 'lathi', 'farsa' and assaulted in an omnibus manner along with others. The deceased was dragged to the house of the Appellant and killed. FIR, Exhibit P-4A was lodged at 22:20 hours the same day. The postmortem of the deceased was done by Dr. M.K. Oswal, PW-16 on 8.10.1991 at about 1:00 pm. The report Exhibit P-27 noticed both hands were broken, lacerated wound of 3 cm x 1cm x1cm over left parietal area bone deep, lacerated wound over right parietal area 8 x 1cm x1cm and a lacerated wound 1 cm x ½ cm over left leg. Death was estimated to have occurred 18 to 24 hours earlier. Death was opined to have been caused due to head injury.

3. Learned Counsel for the Appellant submitted that except for Parsuram, PW-8 who was a hearsay witness, the other prosecution witnesses Sonai Ram, PW-1, Ramsunder, PW-2, Ramnarayan, PW-3, Ravinder, PW-4, Jagdish Prasad, PW-5, Indra kunwar, PW-6 and Kansi Bai, PW-12 are all related to each other and to the deceased. The Appellant was also related to them. There existed a land dispute between them. The deceased accompanied by the others came to the house of the Appellant and assaulted. They were the aggressors. The Appellant and his family members acted in the right of private defence. This defence was specifically taken under Section 313 Cr.P.C. which has not been considered appropriately.

4. Ramnarayan, PW-4 deposed that the assault on the deceased was made by the blunt and not the sharp edge. It indicates that the Appellant had no intention to kill. Unnecessary force was therefore not used. Dr. M.K. Oswal, PW-16 who conducted postmortem also opined that the injury on the head of the deceased was not caused by the sharp edge but may have been possible by the blunt edge or wooden handle. The prosecution witnesses have deposed that the deceased had just finished his meal. The Doctor has stated that undigested food would have been found in the stomach in that event which makes the prosecution story about the manner of occurrence doubtful. The place of assault was not mentioned in the Dehati Nalisi, Exhibit P-4. The story was made in the Court for the first time of assault near the well and washing of blood stains. It was not mentioned in the 161 Cr.P.C statement of the witnesses even. The door of the house of the deceased and the Appellant was situated on opposite sides. PW 17, Ajay Kumar Gupta who prepared the spot map Exhibit P-34, stated that the assault on the deceased as alleged near the well or the door of the Appellant could not have been seen from the door of the deceased.

5. Dr. M.K. Oswal, PW-16 has deposed that he did not find any marks on the body of the deceased suggesting he had been dragged. The prosecution feigned ignorance about injuries caused to the Appellant on the head and back in the same occurrence despite his MLC being an exhibit along with the FIR lodged by the Appellant earlier in time and the prosecution witnesses being an accused in the pending Sessions Trial. The evidence led by DW-1 in this regard, has not been questioned in cross examination. It was against normal human behaviour that the Appellant after fatally assaulting the deceased would drag the body inside

his own house, keep it there waiting for the police to come creating evidence against himself. If the allegations of assault were omnibus against three persons by a hard blunt substance, in absence of any specific attribution it cannot be said with certainty that the fatal assault was made by the Appellant alone. There was no injury on the neck of the deceased contrary to the statement of the witnesses. If another version of the occurrence appeared probable from the defence version, the benefit of doubt had to be given to them. DW-1 had also deposed that the other prosecution witnesses ran away leaving their weapons of assault behind in the house of the Appellant.

6. Except for the deceased, the injuries on all other prosecution witnesses were simple in nature. The Trial court has committed grave error of law by complete mis-appreciation of evidence to hold the Appellant guilty.

7. Learned Counsel for the State submitted from the evidence that the Appellant was the aggressor who went to the house of the deceased and assaulted him first near the well. The mere absence of blood near the well, explained to have been washed, cannot lead to conclusion of the prosecution story being doubtful. The fact that the Doctor may not have found any injuries on the deceased suggesting he had been dragged cannot be considered crucial to doubt the prosecution story. If the deceased was assaulted by three persons, the possibility that he may have been lifted and taken inside the house cannot be ignored. Semi digested food has been found in the stomach of the deceased which lends credence to the fact that the deceased was assaulted immediately after having food as deposed by prosecution witnesses. The dead body

was found inside the house of the Appellant, a fact which speaks for itself.

8. We have considered the submissions of behalf of the parties as also the evidence available on the record.

9. PW-4, Ravinder the author of the Dehati Nalisi, Exhibit P-4, stated of an omnibus assault by the Appellant along with others on the deceased and his being dragged inside the house of the Appellants. But the place of assault was not mentioned in Exhibit P-4. The assault on the deceased was acknowledged not to have been made by the sharp edge. The witness acknowledged that the Appellant had gone to the police station to lodge a report. The story of assault near the well was spun for the first time in Court stating that it had been told to the police earlier but no questions were put in this regard to PW 13, Pannalal who recorded Exhibit P-4.

10. PW-3, Ramnarayan, also deposed of an omnibus assault on the deceased and his having been dragged to the house of the Appellant. The witness stated of assault by the Appellant on the neck of the deceased, but the Doctor found no such injury. The witness also stated in Court for the first time of assault near the well and the area washed. The witness denied knowledge of any injuries to the Appellant during the same occurrence but asked no questions in cross examination to DW-1 regarding the same. PW-5, Jagdish Prasad, father of PW-3 Ramnarayan, likewise stated of an omnibus assault on the deceased and being dragged to the house of the Appellant. The witness also acknowledged that the police report of the assault on the deceased had been written at the village after the police had come and not at the police station.

11. PW-6 Indra kunwar, wife of PW-4 Ravinder also deposed of an omnibus assault by the Appellant along with others near the well and dragging the body to the house for the first time in Court. PW-12, Kanshi Bai, step-daughter of the deceased also for the first time in Court alleged omnibus assault against the Appellant along with others near the well and then dragging the deceased to their house. The witness acknowledged that the mother of the Appellant was about 70 years old incapable of walking properly and that the wife of deceased/Appellant no.1 was eight months pregnant at the time of occurrence.

12. PW-17, Ajay Kumar Gupta prepared the Crime Spot Map Exhibit P-34, deposed that the door of the house of the Appellant and the deceased was in opposite directions and that the assault near the well or the door of the Appellant could not have been visible from the house of the prosecution witnesses. PW-13 Pannalal, the police officer deposed having recorded Exhibit P-4 as narrated but no questions were put to him in cross examination by PW-4 Ravinder that it had not been recorded correctly. The witness confirmed the presence of the body of the deceased inside the house of the Appellants and deposed that the Appellant had lodged the FIR regarding the occurrence at 7:30 pm at the police station after which he came to the house of the Appellant. PW 4, Ravinder was then called by the police to the house of the Appellant about 9:30 pm after which the Dehati Nalsi, Exhibit P-4 was recorded at the village itself. PW-9 Thuru proved the Inquest Report Exhibit P-18.

13. PW-14 Dr. G.K.Tiwari and PW-18 Dr. A. Hussain proved the MLC report of the prosecution witnesses opining the injuries to be simple in nature.

14. DW-1, an accused himself, subsequently deceased, deposed that the deceased accompanied by the named prosecution witnesses came to his house armed with sabbal, lathi, tangi and assaulted him and his family members proving Exhibit D-5, Baikunthpur Police Case No. 438 of 1991 lodged by him at the police station at 7.30 pm leading to Sessions Trial No.203 of 1994. The witness further stated that the prosecution witnesses ran away on retaliation leaving behind their weapons of assault. He also proved the MLC reports of the accused regarding injuries suffered in the same occurrence. No questions were asked to the witness in cross examination.

15. The Appellants in their defence under Section 313 Cr.P.C. took a plea of false implication due to land dispute stating that the deceased and others came to their house and assaulted them and that the prosecution witnesses were also accused in the Sessions Trail pursuant to the police report lodged by the defence earlier in time.

16. The Trial Judge has relied heavily on the mere fact that the Appellant had been named by all the prosecution witnesses. The omnibus nature of the assault by hard blunt substance by three persons does not find consideration by a reasoned conclusion that the fatal assault on the head was attributable to the Appellant alone. Despite observing that the evidence of the prosecution witnesses regarding assault near the well was not mentioned in Exhibit P-4 the Dehati Nalisi and the FIR, and the prosecution offered no explanation for the same, it was accepted as gospel truth merely because more than one witness said so. Despite doubting the prosecution story of an assault by the old mother and pregnant wife, the prosecution version of the deceased

having been dragged to the house of the Appellant was accepted without any supporting evidence or consideration of the spot map Exhibit P-34 and the evidence of PW-17, Ajay Kumar Gupta in this regard. There has been complete misappreciation and non consideration of the defence taken under Section 313 Cr.P.C for having acted in self defence and that the prosecution were the aggressor. Mere presence of blood on the shirt of the Appellant has been considered an incriminating factor holding that the defence had led no independent evidence in support of its defence ignoring the fact that the assault is alleged inside the house of the Appellant when no independent witness would be available.

17. Exhibit P-4, the Dehati Nalisi was the first report of the occurrence by the prosecution recorded at the village itself and not at the police station. The police report by the Appellant was earlier at 7:30 pm lodged at the police station after which the police came to the village and PW-4 was called where after his statement was recorded at 9:30 pm. If the Appellant was the aggressor and the body of the deceased had been dragged to his house there had to be some explanation why the prosecution did not lodge a police report first. It stands to reason as an unnatural conduct that the Appellant would have killed the deceased elsewhere and then dragged the body to his house to create evidence against himself. The Doctor who conducted the post mortem did not find any signs of dragging on the body of the deceased.

18. The prosecution has offered no explanation with regard to not having stated the place of occurrence in the Dehati Nalisi Exhibit P-4 and neither have they stated during investigation under section 161 Cr.P.C but made the disclosure for the first time in Court that the

deceased was assaulted near the well. This is considered a crucial omission in view of the unrebutted evidence of DW-1 that the deceased and others came to the house of the Appellant and assaulted. The fact that the Appellant did not use more force than necessary is apparent from the assault made from the blunt edge of the sharp cutting instrument displaying that they had no intention to kill but act only in self defence. The right of self defence cannot be weighed on a golden scale for acts done in the heat of passion driven by the desire for self preservation. In (2005) 12 SCC657 (Bishna v. State of West Bengal) it was observed :-

“79. In a large number of cases, this Court, however, has laid down the law that a person who is apprehending death or bodily injury cannot weigh in golden scales on the spur of the moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force. All circumstances are required to be viewed with pragmatism and any hypertechnical approach should be avoided.”

19. The fact that the prosecution witnesses were not stating the true version of the manner in which the occurrence took place is evident from their denying knowledge of any injury to the Appellant despite the evidence in this regard led by DW-1 including their MLC reports as also the injuries caused to the two female inmates of the Appellant. Despite the defence under Section 313 Cr.P.C. that the prosecution witnesses were also made accused in the FIR first lodged by the Appellant and the pendency of a Sessions Trial in which they were accused no question has been asked in this regard during cross examination.

20. In the facts of the case and nature of evidence available it cannot be said that the defence version was completely unacceptable for the manner the occurrence may have taken place and that the Appellant was the aggressor. The fact that there could be another version of the occurrence that the deceased and the other prosecution witnesses came to the house of the Appellant and assaulted because of the land dispute cannot be outright rejected as fanciful and devoid of merit not worth consideration. If there were two versions of the occurrence and that put forth by the defence could not be outright rejected the benefit of doubt has to go to the Appellant.

21. A discussion of the evidence placed on record raises a genuine possibility of the deceased and other prosecution witnesses having gone to the house of the Appellant due to land dispute being aggressors when the Appellant and others acted in self-defence leading to injuries on both sides. It is difficult to hold beyond all reasonable doubt that the Appellant was the aggressor and went to the house of the deceased, assaulted him and then dragged him to his house. Considering the possibility of another version of the occurrence, benefit of doubt has to be given to the Appellant. Once there existed a possibility of the Appellant having acted in self defence acquittal has to be granted as observed in (1979) 4 SCC 399 (Chanan Singh v. State of Punjab). Where there existed two versions of the occurrence acquitting the accused on benefit of doubt in (1991) 2 SCC 612 (Buta Singh v. State of Punjab) it was observed as follows :-

“8.....When two versions are before the court, the version which is supported by objective evidence cannot be brushed aside lightly unless it has been properly explained.....”

22. In 1995 Supp (3) SCC 734(State of Punjab v. Gurbux Singh) it was observed as follows ;-

“6. It is well-settled that when the accused set up a plea of self-defence, they need not prove their case beyond all reasonable doubt and within the parameters under Section 103, if by preponderance of probabilities, the plea taken by them becomes plausible then the same should be accepted or at least, a benefit of doubt arises.....”

23. The conviction of the Appellant is therefore held to be not sustainable and is set aside subject to the conditions in Section 437A Cr.P.C.

24. The appeal is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE