

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 573 of 1998**

1. Punau aged 65 yrs. S/o Kelhawa
2. Ganpati aged 45 yrs. S/o panau
3. Dhajaram aged 40 yrs. S/o Punau
4. Mayaram aged 30 yrs. S/o Punau
5. Jogeshwar aged 20 yrs. S/o Dhanjaram
6. Yadram @ Yashwant aged 25 yrs. S/o Dhajaram
7. Lochan Prasad aged 25 yrs. S/o Ganpati
8. Netram aged 20 yrs. S/o Meghram
9. Pardeshi, aged 55 yrs. S/o Dasroo
10. Devkumar aged 20 yrs. S/o Meghram
11. Kalicharan aged 50 yrs. S/o Dhalaree
12. Malikram aged 35 yrs. S/o Dhalaree
13. Mansharam aged 50 yrs. S/o Dhalooram
14. Budhram aged 26 yrs. S/o Panchram
15. Gadaram aged 48 yrs, S/o Sewaram
16. Mahtoo aged 55 yrs. S/o Kaliram
17. Chatoo S/o Tantiram aged 50 yrs
18. Achheram aged 25 yrs. S/o Samaroo
19. Samaroo aged 45 yrs, S/o Kriparam
20. Mohan aged 22 yrs, S/o Malikram
21. Vishram aged 25 yrs, S/o Deleram
22. Dhaniram aged 30 yrs S/o Muthoo
23. Balaram aged 25 yrs, S/o Punau

All are residents of Gram – Ureha, P.S. Paamgarh, Distt – Bilaspur (M.P.) (Now Chhattisgarh)

---- Appellants.

Versus

State of Madhya Pradesh (Now Chhattisgarh)

Respondent.

For Appellants	:	Smt. Renu Kochar, Advocate.
For Respondent/State	:	Shri Vinod Deshmukh, Deputy Govt. Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

C A V JUDGMENT

Per P. Sam Koshy, J.

Delivered on 27/08/2015.

1. The present appeal under Section 374(2) Cr.P.C. has been preferred challenging the judgment passed by the First Additional Sessions Judge, Bilaspur, in Sessions Trial No.157 of 1990. By the said judgment, the Appellants No.2 & 23 had been convicted for the offence under Section 302 IPC and sentenced to undergo RI for life imprisonment with fine of Rs.1000/- each with default stipulations.
2. Likewise, the Appellants No.1,3,4,5,6,7 and 8 to 22 were convicted under Section 302/149 IPC and sentenced to undergo RI for life with fine of Rs.1000/- each and default stipulations.
3. Similarly, the Appellants No.3,4,7 and 23 were also convicted for the offence under Section 323 IPC and sentenced to undergo RI for one year each. The Appellants No.1,2, 5,6,7 & 8 to 23 were also convicted for offence under Section 148 IPC and sentenced to RI for two years each. The Appellant No.3 has also been convicted for offence under Section 324 IPC and sentenced to undergo RI for two years. The

Appellant No.4 has also been convicted for offence under Section 325 IPC and sentenced to undergo RI for two years with fine of Rs. 500/- with default stipulation. The Appellants No.1 and 3 to 22 were also convicted for offence under Section 302/149 IPC and were sentenced to undergo RI for life imprisonment with fine of Rs. 1000/- each with default stipulations.

4. Pending the appeal before this court, seven Appellants namely; Punau, Ganpati, Pardeshi, Kalicharan, Mansharam, Gadaram and Chatoo i.e. Appellants No.1,2,9,11,13,15 and 17 respectively have died and as such the appeal in respect of these deceased Appellants stand abated and the appeal is being pursued by the remaining Appellants.
5. The case of prosecution, in brief, was that on 22.03.1989, a day of Holi festival, in the afternoon at around 12 o'clock when the members of the complainants group namely Govardhan, Firatram, Ramsai and Jagannath were sitting on a platform under the tree in Village Chandipara, the first group of Appellants side arrived and started abusing the complainants side. Likewise, under another Tree, another group from among the complainants like Manharan, Chhotelal and Narad were having a discussion when the first group of Appellants started abusing the complainants and the accused Appellant Balaram, Appellant No.23, who had Lathi in his hand assaulted on the head of Jagannath causing injuries and Appellant No.23 Balaram further assaulted Gowardhan, PW-5 with the Lathi. In between, one Teejram who was standing near another tree came to intervene when the deceased Appellant No.2- Ganpati assaulted Teejram with a sword and

the other Appellants assembled together and started to assault the complainants side and in the course Gowardhan, Suritram, Manharan, Chhotelal, Gorelal, Narad and Firat also got injured.

6. Immediately after the incident Gowardhan, PW-5 took all the complainants and injured persons to the Police Station where First Information Report (FIR), Ex. P/13 was lodged and the police, in turn, registered a case as Crime No.53 of 1989. Later on, in the evening, Jagannath succumbed to his injuries at the Govt. Hospital, Pamgarh. Injured Teejram was referred to the Govt. Hospital at Bilaspur. Teejram also succumbed to his injuries on the next day i.e. 23.03.1989. The intimation about death of Teejram was given to the police station vide Ex. P/84. Later on, injured Gowardhan, Surit, Chhotelal, Manharan and Firat were also sent for medical examination. Body of both the deceased were sent for postmortem on 23.03.1989. Postmortem report of deceased Jagannath was Ex.P/23 whereas; postmortem report of deceased Teejram was Ex.P/81. Postmortem of deceased Jagannath was conducted by Dr. B.L. Mishra, PW-6, who opined the cause of death as brain injury caused by multiple hard and blunt injuries over left side of skull due to hemorrhage and neurogenic shock. Death was homicidal. Postmortem of deceased Teejram was conducted by Dr. Kiran Deoras, PW-14, who opined the cause of death due to shock and hemorrhage because of head injury.
7. Meanwhile, the Appellants herein also lodged FIR for the same incident at the same police station which was registered as Crime No.52 of 1989. The police authorities after investigating the matter

submitted two sets of charge sheet in respect of the two FIRs. The FIR wherein the Appellants herein are the complainants, was put to trial before the First Additional Sessions Judge, Bilaspur, in Sessions Trial No. 77 of 1992. The complainants who were the accused acquitted from the said charge levelled by judgment dated 26.02.1998.

8. So far as present trial i.e. S.T.No.157 of 1999 is concerned, the prosecution examined as many as 19 witnesses. The court below on due consideration of evidences which have come on record finally held that prosecution has been able to prove the charges leveled against the Appellants beyond all reasonable doubts and on basis of evidence particularly relying upon the deposition of all the injured eyewitness wherein they have consistently given almost the same version, have convicted the Appellants for the offence committed by them as has been discussed in paragraphs 1,2 & 3 of this judgment.
9. Learned counsel for the Appellants submitted that the findings arrived at by the court below was not proper inasmuch as the court below failed to appreciate the fact that there was long standing dispute between the Appellants as well as complainants side in respect of a pond in the village. According to the Appellants, the pond was situated on government land and as such it was a government pond whereas, according to complainants, the pond was in fact on the land belonging to their ancestors, and therefore, it had status of a private pond. As per the Appellants, they were in occupation and possession over the said pond. It was further submitted that the court below did not appreciate the fact that the dispute between two groups also stands proved from

the fact that against the Appellants the Magistrate had on an earlier occasion initiated action under Sections 107 and 116 of Cr.P.C.

10. Likewise, according to the Appellants the court below has further erred in not appreciating the fact that there were injuries among both the groups i.e. Appellants side as well as complainants side. In addition, the prosecution has also not explained so far as the injuries which have been sustained by the Appellants themselves. She would further contend that the number of injuries was not commensurate to the number of assailants who had assaulted the complainants group causing death of Jagannath and Teejram and also causing injuries to the person in the complainants group who were there along with the deceased persons and were relaxing in the open.
11. Counsel for the Appellants further submitted that it is in fact a case of free fight between the two groups where there are case and counter case in as much as the Appellants herein are the complainants in the counter case registered as Crime No.52 of 1989 at police Station Pamgarh, District Bilaspur (now district Janjgir-Champa) and the present Appeal arises out of Crime No. 53 of 1989 and both the cases were registered within a short span of time i.e. 3 to 3.30 p.m. According to the counsel for the Appellants, since there were injuries on both sides which stands proved from the medical evidence which has come on record, it is difficult to hold and describe that the Appellants were the aggressors, rather it is a case where the Appellants have taken right to self defence.

12. Counsel for the Appellants further submitted that there are contradictions and omissions in the evidences which have come before the Court below when compared to the statements given by the witnesses to the Police immediately after the incident which gives rise to a great element of doubt on the prosecution story and benefit of which should be given to the Appellants. Counsel for the Appellants submitted that the prosecution witnesses have also not been able to point out the individual overt-act on the part of each of the Appellants so as to implicate them in the offence levelled against them. According to the counsel for the Appellants, the prosecution witnesses have not been able to substantiate the charges against the individual Appellants in as much as the weapon used by the Appellants and the manner of assault made by them on the deceased as well as the injured persons have much variation and contradiction.
13. In support of his contention counsel for the Appellants relied upon AIR 76 SC 2263 (Lakshmi Singh & Others etc. Vs. State of Bihar), AIR 2011 SCW 5678 (Raghubir Singh Vs. State of Rajasthan & Ors.) and 2013 (2) CGLJ (SC) 339 (Dr.Mohammad Khalil Chisti Vs. State of Rajasthan & Ors.)
14. Per contra, State counsel opposing the Appeal submitted that the judgment of conviction passed by the Court below is a well reasoned judgment and on due appreciation of the evidence which has come before the Court below and that it does not warrant any interference. He submitted that the prosecution case has been fully established by the injured eye witnesses as well as the other eye witnesses as such

the prosecution case stands fully proved beyond all reasonable doubts. It was further submitted that from the evidence which have come on record it is clearly established that the Appellants were the aggressors which stands established from the fact that there are two persons who had died in the attack made by the Appellants and there are about five injured persons who have also deposed before the Court below substantiating the charges levelled against the Appellants. On the contrary, the Appellants have received only minor and simple injuries that too only a couple of Appellants which by itself proves that it was the Appellants who were the aggressors. According to the State counsel, all the Appellants were armed with some weapons which also proves from the seizure of the weapons. On the contrary, it was not a case where the victims in the instant case are said to be armed with any weapon. He submitted that regarding individual overt-act not being established, in a case where there is a mob attack, the members of the mob in the present case were armed with some weapon, they had surrounded the victims and jointly and simultaneously attacked the deceased persons and the injured, it is not necessary to establish the overt-act on the part of each of the accused persons. It was also submitted that under the said factual back ground even if there was no overact on the part of some of the accused persons, merely participating in the attack and surrounding the deceased and the injured persons with an intention of blocking them from escaping is sufficient to implicate them in the charge levelled against them. In support of his contention, counsel for the State relied upon the

decision of the Supreme Court reported in (2012) 4 SCC 776 (Surendra and Others Vs. State of Uttar Pradesh).

15. Having considered the submissions rendered by the counsel appearing for either side if we peruse the evidence which have come on record what would reveal is admittedly two persons from among the complainant side namely Jagannath and Teejram died by virtue of attack by the Appellants. Further, PW-6, Dr. B.L. Mishra and PW-14, Dr. Kiran Deoras are the doctors who have conducted postmortem of the deceased Jagannath and Teejram vide Ex.P/23 and Ex. P/81 respectively.
16. So far as postmortem report of deceased Jagannath is concerned, PW-6, Dr. B.L. Mishra, in his court statement substantiating the postmortem report has stated that in the course of examination of dead body of deceased Jagannath following injuries were found-
 - i. incised injury 2 x 1 x 1 cm over forehead between two eyes. Injury is horizontally situated.
 - ii. Incised injury 3 x 2 x 1 cm over right maxillary prominence.
 - iii. Incised injury 3 ½ x 2 x 1 cm below left maxillary prominence.
 - iv. Incised injury 2 x 2 x 1 cm right side of upper lip.
 - v. Lacerated wound 8 x 3 x 2 cm fracture over frontal & parietal bone which is 10 cm from eyebrow & 6 cm from mid line.
 - vi. Lacerated wound 2 x 2 x 1 cm over occipital prominence.
 - vii. Lacerated wound 3 x 2 x 1 cm middle of the lower lip.
 - viii. Lacerated wound 5 x 2 x 1 cm lower jaw two incisor, 1 premolar and one molar teeth extracted by injury.
 - ix. Contusion 8 x 3 cm on right scapula caused by Lathi.

All injuries (incised) caused by sharp weapon and lacerated & contusion by Lathi.

17. In respect of deceased Teejram, PW-14, Dr. Kiran Deoras, who has conducted the postmortem, found following injuries-

- i. A stitched wound over left hand index finger dorsal aspect extending towards middle finger.
- ii. Two stitched wound over skull post aspect occipital parietal region one on right side 5 cm and on left side 6 cm length.

Cause of death of deceased Jagannath was opined as brain injury caused by multiple hard blunt over left side of skull due to hemorrhage and neurogenic shock. Death was homicidal in nature whereas, cause of death of deceased Teejram was opined due to shock and hemorrhage because of head injury.

18. Both the deceased Jagannath and Teejram had succumbed to the injuries mainly which they had sustained in their head. Likewise, PW-1, Dr. C.S. Sharma also upon examining PW-5, Gowardhan has proved the injuries sustained by the said PW-5 Gowardhan with a finding that Gowardhan had sustained fracture of his right arm.

19. As far as PW-6 is concerned, PW-6, Dr. B.L. Mishra apart from conducting postmortem of deceased Jagannath had also conducted the MLC of injured persons PW-5 Gowardhan, PW-8 Manharan, PW-9 Chhotelal, PW-10 Surit ram, PW-11 Gorelal, PW-12 Narad, PW-13 Firat and PW-17 Dhanau and in his deposition before the court he has also proved Ex.P/16, Ex.P/17, Ex.P/18, Ex.P/19, Ex.P/20, Ex. P/21 and

Ex.P/22. The said witnesses have also stated that on the same day he had also conducted MLC of Appellants No.1,3,4,10 and 23.

PW-2, R.P. Dewangan, Tehsildar has witnessed before the court proving Ex.P/3 and Ex.P/4 i.e. proceedings initiated against the Appellants under Sections 107 and 116 Cr.P.C.

20. As far as eyewitness are concerned, PW-5 Gowardhan, PW-8 Manharan, PW-9 Chhotelal, PW-10 Surit ram, PW-11 Gorelal, PW-12 Narad and PW-13 Firat are the eyewitnesses who have supported the case of prosecution with regard to assault which has been made by the Appellants upon the injured persons.
21. A plain reading of deposition of these witnesses would establish the presence of Appellants at the place of incident inasmuch as, all the above referred injured eyewitnesses have named most of the accused/Appellants. Like PW-5, Gowardhan in his deposition has named all the Appellants in the assault and has also deposed before the court that deceased Appellant No.2/Ganpati, Appellant No.3/Dhajaram, Appellant No.4/Mayaram and Appellant No.23/Balaram had assaulted the deceased and the complainants with Sword. Likewise, deceased Appellant No.1/Punau was carrying Chatwar, Appellant No.12/Malikram and Appellant No.6/Yadram assaulted with Farsa, Meghram and Appellant No.9/Pardeshi assaulted with Bhala. Similarly, Appellants namely Yadram, Dhaniram, Mansharam, Lochan Prasad, Netram, Devkumar, Kalicharan, Mohan, Accheram, Budhram and Dhansai assaulted the deceased and injured persons with Lathi.

22. This statement of PW-5, Gowardhan stands fully corroborated by other injured witnesses i.e. PW-8 Manharan, PW-9 Chhotelal, PW-10 Surit ram, PW-11 Gorelal and PW-13 Firat, who have also named all the Appellants including the weapons which they were carrying at the time of incident and all of them have given consistent version of incident and as such there is hardly any reason made out to disbelieve the versions of these eyewitnesses who were also injured in the said incident. All these witnesses have also established motive for the assault as related to the pond which further stands established from the version of prosecution witnesses about the proceedings under Sections 107 and 116 of Cr.P.C. being initiated against the Appellants.
23. So far as contention of the Appellants that it is a case of free fight between both sides is concerned, consistent versions of prosecution witnesses establishes the incident and also proves the fact that it was the Appellants who had attacked the deceased as well as the injured persons. All the injured eyewitnesses have been consistent in their version so far as the deceased and the injured persons sitting on a platform under the tree near their house after celebrating Holi festival and it is then that the Appellants came in a mob and started assaulting the complainants group as a result of which two persons Jagannath and Teejram from the complainants side succumbed to the injuries and rest i.e. PW-5, PW-8, PW-10, PW-11, PW-12 and PW-13 sustained injuries. All the witnesses have also been consistent in their version so far as the assault being made by the entire mob.

24. As regards the contention of counsel for the Appellants that there are contradiction and omissions in the prosecution witnesses so far as overt-act played by individual Appellants are concerned, the fact remains that all the witnesses have almost made the similar version i.e. deceased Appellant No.1/Punau was carrying Chatwar, Appellant No.12/Malikram and Appellant No.6/Yadram assaulted with Farsa, Meghram and Appellant No.9/Pardeshi assaulted with Bhala. Similarly, Appellants namely Yadram, Dhaniram, Mansharam, Lochan Prasad, Netram, Devkumar, Kalicharan, Mohan, Accheram, Budhram and Dhansai assaulted the deceased and injured persons with Lathi. Further, all the witnesses have made similar statements that the Appellants being armed with weapons in their hand had attacked the members of the complainants side causing grievous injuries as a result of which Jagannath and Teejram later on succumbed to the injuries. Further, the contradictions which have been pointed out by the Appellants like the manner of assault and weapons used by the Appellants are concerned, these are too trivial contradictions so as to disbelieve their versions in its entirety particularly when there are large number of witnesses making the same versions. The versions of injured eyewitnesses are all corroborating to each other and also establishes the fact that it is the Appellants who are the aggressors and these witnesses have also proved the fact that it is the Appellants who were armed with weapons with clear intention of attacking and assaulting deceased and injured persons.

25. So far as the argument of the counsel for the Appellants that number of injuries are not commensurate to the number of assailants is concerned, the said submission may not have much force in the factual background of the present case where all the eyewitnesses have categorically and consistently deposed before the court that all the Appellants had come in a mob armed with weapons, surrounded the deceased and injured persons, and attacked them as a result of which, two persons sustained grievous injuries who later on succumbed whereas, others sustained injuries and as such, the blows given by the respective accused/Appellants got distributed among the deceased and injured eyewitnesses and which is a natural consequence and it may not be of much relevance as to what is the overt-act on the part of each of the Appellants. This view stands fortified by the decision of the Supreme Court in case of Surendra (Supra) in which it has been observed as under :

“13. The legal position is well established that inference of common object has to be drawn from various factors such as the weapons with which the members were armed, their movements, the acts of violence committed by them and result. We are satisfied that the prosecution, from the entirety of the evidence, has been able to establish that all the members of the unlawful assembly acted in furtherance of the common object to cause the death of Ramchandra Singh”

26. So far as the judgments cited by the Appellants are concerned, the facts of the cases cited by the Appellants are entirely different from the facts of the present case. Though, admittedly there was a case and a counter case registered for the same incident, but if we see the nature of allegations levelled against the Appellants in the present case and

compare the same with the nature of allegations made in the counter case and the injuries sustained by the Appellants who were the complainants in the counter case, it would be evidently clear that by no stretch of imagination the present case can be termed to be a case of free fight as there is a categorical finding of fact by the Sessions Court in S.T. No. 77 of 1992 of the prosecution having failed to establish its case. So far as the accused persons in that case coupled with the fact that the Sessions Court has acquitted them of the said crime is concerned, a perusal of the evidence of the Doctor who conducted MLC upon the injured persons in S.T. No.77 of 1992 would also establish that the nature of injuries sustained were simple and minor in nature.

27. So far as the prosecution witnesses not explaining the injuries sustained by the Appellants is concerned, if we look into the nature of injuries sustained by the injured Appellants, it would show that the injuries sustained by the Appellants must have gone unnoticed by the prosecution witnesses. The reason for the prosecution witnesses in not noticing the injuries on the Appellants also seems to be plausible on account of fact that the prosecution witnesses some how managed to escape from the clutches of the Appellants and in the process they might have not been able to witness the injured Appellants. Thus, in the given facts and circumstances of the case, non explanation of the prosecution witnesses about the injuries sustained by the Appellants by itself cannot be considered to be a serious lacuna on the part of the prosecution in establishing the charges levelled against the Appellants

particularly when there are other cogent, convincing and reliable evidences both ocular as well as medical to prove the charges against the Appellants.

28. Further, the prosecution has been able to prove the motive of the crime in present case which has also been established from the prosecution witness PW-2, R.P. Dewangan, Tehsildar, whereby initiation of proceedings against the Appellants under provisions of Sections 107 and 116 Cr.P.C. stands established with regard to the pond. Further, all the accused Appellants were armed with weapons and the nature of attack which has been consistently reiterated by the eyewitnesses establishes the fact that the Appellants had come per-planned and premeditated and the injuries sustained by the two deceased persons and also other injured persons show that the Appellants had brutally and badly assaulted them. Under the given facts and circumstances, the judgments relied upon by the Appellants in the instant case would not come to their aid as the factual matrix of those cases are entirely different from that of present case.
29. So far as submission of Appellants that considering the aspect of dispute between two groups over the pond in village and the fact that the members of Appellants group also received injuries which proves that there was free fight between the parties and therefore, the case at best could be not under Section 302 IPC but a case under Section 304-Part-II IPC is concerned, the said submission of Appellants is not sustainable for the reason that all the eyewitnesses have deposed, proved and have established before the trial court that it was the

Appellants who had attacked the deceased and injured persons when they were sitting under a tree after celebrating Holi festival which establishes that it was the Appellants who were aggressors and it also establishes the fact that it was not a case where fight took place because of sudden provocation on the part of deceased or the injured persons nor was it a case where the incident occurred on the spur of the moment neither have the Appellants established that there was a heated altercation between two groups on the particular day and in the heat of passion the Appellants had assaulted the deceased and the injured persons. On the contrary, the evidence proves the Appellants being aggressors armed came with weapons and first assaulted the complainants group resulting into death of two persons of complainants group and as such it cannot be said that the Appellants did not have any intention or knowledge in respect of assault. It can not also be said that the Appellants were not premeditated of committing the said offence. Thus, it is fully established that the act on the part of Appellants would squarely fall within the definition of culpable homicide amounting to murder.

30. So far as the findings of trial court in the counter case i.e. S.T. No.77 of 1992 is concerned, it clearly establishes the fact that there was neither unlawful assembly nor there was any common object or intention on the part of deceased and the injured persons to cause harm to the Appellants. In addition, the charge leveled against the injured persons also could not be established before the court below and all the accused persons have been acquitted of the charges. Likewise, the

Appellants who were the complainants in their evidence have not given any proper justification or explanation so far as the death of Jagannath and Teejram is concerned.

31. All these submissions and facts stated in the preceding paragraphs leads us to the conclusion that there is no infirmity in the findings of guilt arrived at by the court below and the prosecution infact has been able to prove the charges leveled against the Appellants beyond all reasonable doubts.
32. Consequently, the appeal fails and is dismissed. Conviction of Appellants is affirmed and maintained. The Appellants are on bail. Their bail bonds are cancelled and they are directed to surrender forthwith and/or be taken into custody for serving out remaining sentence.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P.Sam Koshy)
JUDGE