

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 821 of 2000**

1. Mahavir Satnami S/o Chatram, aged 25 years.
2. Gauri Bai Satnami, Wife of Buddhar Singh, aged 23 years.
3. Amla Bai Satnami daughter of Chatram, aged 26 years.
4. Budhiyarini Bai Wife of Hetram, aged 45 years.

All residents of village Maldhapara, Bhilaigarh, District Raipur, Madhya Pradesh
(Now Chhattisgarh).

---- Appellants

Versus

State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellants	:	Smt. Kiran Jain, Advocate for the Appellants.
For Respondent	:	Shri Neeraj Mehta, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Judgment on Board****Per Navin Sinha, Chief Justice****23/04/2015**

1. There were eight Appellants originally. The appeal stood abated with regard to Appellants No. 1, 3 and 7 by order dated 10.5.2013 on their death during the pendency of the appeal. Subsequently, Appellant No. 2 has been deceased. The appeal stands abated with regard to her also, leaving the appeal for consideration with regard to Appellants 4 to 6 and 8 only.

2. The accused were convicted under Section 148 IPC to two years rigorous imprisonment and under Section 302/149 IPC to life imprisonment alongwith fine of Rs. 1000/-, in the event of failure to pay which they were required to undergo six months further simple imprisonment, as ordered by the Second Additional Sessions Judge, Balodabazar, District Raipur on 16.02.2000 in Sessions Trial No. 72 of 1999.

3. Deceased Ganesh Ram @ Lotu is alleged to have been assaulted by all the accused on 8.11.1998 at about 5 p.m. Dehatinalishi (Exhibit P-2) was lodged the same day by PW-1, Banshilal at about 8:35 p.m. Formal First Information Report (Exhibit P-32) was also lodged by him on 9.11.1998 at 1:55 p.m. The witness stated that on hearing commotion he ran in that direction and witnessed that the deceased was being assaulted by accused Chatram accompanied by his sons, wife, daughter, daughter-in-law and sister with Lathis, Hasiya and Kalari. Accused Chhatram held the neck of the deceased in his grip while the others were assaulting with Lathis. Two of the female accused held Hasiya and Kalari in their left hand and were assaulting the deceased with their right fists. Accused Chatram told the witness to go away lest he would be killed also and assaulted him near the left eye. Son of the witness, PW-4, Kundan Lal, also came there and they managed to rescue the deceased from the clutches of accused Chatram, and when he tried to flee, accused Chatram again held the deceased and exhorted his sons to kill him. The deceased was again assaulted with Lathis by the sons of Chatram who were all accused. Accused Ganesh @ Mandwa also reached there and exhorted to finish the deceased and smash his face. Accused Chatram was agitated because his elder brother Sonau, before his death had willed his lands to the deceased and the accused wanted the lands back.

4. Post-mortem of the deceased, Exhibit P-29 was done by PW-12, Dr. Chandrashekhar Patel who found the following injuries on the deceased opining that death was a cumulative result of the injuries due to shock:-

1. An open wound on the outer left side of the head, transverse in direction measuring 5.5 x .5 x .5 cm;
2. An open wound in front of the head, measuring 6.75 x .5 x .75 cm;
3. An open wound near left eye, measuring 2.5 x .5 x .5 cm;
4. An open wound below left eye transverse, measuring 1.25 x .75 x 1.5 cm piercing the eye which got busted;
5. An open wound near nose, measuring 4 x 1 cm with broken bone

visible;

6. An open wound below the nose, measuring 4 x .5 cm down till jaw;
7. An open wound on the right external side of the head, bone deep measuring 5.5 x .75 cm;
8. An open wound on the lower side of the left face, measuring 2.5 x 5 cm with swelling;
9. An open wound on the left cheek, measuring 3.5 x .5 cm bone deep;
10. An abrasion on the left cheek, measuring 6 x .5 cm;
11. Injury on the left back;
12. Similar injury on the right back;
13. Three abrasions in the lower part of the back;
14. Abrasion on the lower right back.

The nose bone near the skull was fractured and left and right jaw was also broken. The injuries were grievous in nature.

5. Learned Counsel for the Appellants submitted that the alleged motive attributed by the prosecution is a land dispute. There are no life threatening grievous injuries caused to the deceased. No single injury has been attributed as the cause of death. It cannot be said in these circumstances that there existed any common object to cause death of the deceased. The Appellants, at best may have had the common object to teach a lesson to the deceased because of Sonau having willed his lands to the latter, depriving the Appellants of the same.

6. PW-1, Banshi Lal was negotiating purchase of the lands from the deceased and therefore has deliberately and falsely impleaded the entire family including the wife, daughter, sister and daughter-in-law so that he faces no impediment or obstruction from anyone in the family from enjoying the lands. If there were four males assaulting the deceased after surrounding him, there was no need and it is highly improbable that female accused also participated in the assault. They may have been present at the place of occurrence but in absence of any overt-act attributed to them, the possibility of

their false implication so as to ensure that the entire family is made accused with no opportunity to pursue the land matter, cannot be ruled out. The benefit of doubt must be given to the female accused at least. Reliance was placed on 2004 (2) C.G.L.J. 374 (Rudrappa Ramappa Jainpur v. State of Karnataka) to submit that in the present nature of assault, conviction ought to be altered to one under Section 326/149 I.P.C. Likewise, relying on 1993 (1) Cri.L.J 426 (Nadodi Jayaraman v. State of Tamil Nadu), it was submitted that there existed no intention to kill, is apparent from the nature of the injuries. The injuries were not on the vital parts of the body. The sole male Appellant can at best be attributed the knowledge that the death may ensue and therefore in the alternative, the conviction at least ought to be altered to Section 304 II IPC.

7. Learned Counsel for the State submitted that there are two injured witnesses, PW-1, Banshi Lal and his son PW-4, Kundan Lal apart from PW-5, Gopal, PW-6, Mangluram, PW-7, Jagannathiya and PW-9, Paragram who are also eye witnesses. The occurrence is not in dispute. The nature and number of injuries on the person of the deceased is evidence by itself that the accused had the common object to kill the deceased, and not merely to teach him a lesson. If the deceased was assaulted so mercilessly the cumulative effect of which led to death, it cannot be a defence to contend that no single injury by itself was sufficient to cause death in the ordinary course of nature to evade liability under Section 302 IPC.

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

9. PW-13, Ram Singh had deposed that Sonau, elder brother of accused Chatram, possessed two acres of land and had willed it to the deceased as the latter looked after him in his old age. The witness was a signatory to the will, marked Exhibit P-47.

10. PW-1, Banshi Lal reiterated his statement in the FIR. The allegations of

assault during the deposition in the Court remained primarily same against all the accused. He proved the Dehatinalishi and FIR. The witness also deposed with regard to the will executed by Sonau in favour of the deceased. In cross-examination, the witness sought to deny that he was negotiating purchase of the lands from the deceased. No question was put to the witness during cross-examination to doubt or suspect his presence as an injured eyewitness to the assault. The injuries caused to the witness during the scuffle, when he sought to intervene, were proved by PW-12, Dr. Chandrashekhar Patel opining that they were all simple in nature. PW-4, Kundan Lal son of PW-1, Banshi Lal was also an injured eyewitness and the presence of the former was mentioned in the F.I.R also. His injury report during the scuffle was also proved by PW-12, Dr. Chandrashekhar Patel opining that they were all simple in nature. The witness also likewise stated that all the accused were assaulting the deceased. No questions were put to the witness during the cross-examination that he was not an eyewitness to the assault.

11. PW-5, Gopal was also an eyewitness to the assault naming the accused as the assailants. Again, no question was asked to the witness to doubt or suspect his presence during the occurrence. Likewise, PW-6, Manglu Ram was also an eyewitness to the assault. Though he turned hostile, in cross-examination, he stated that he could not say with certainty who assaulted in what manner as all the accused had surrounded the deceased and were assaulting him. PW-7, Jagannathiya whose presence was also mentioned in the FIR was also an eyewitness to the assault and no question was put to him in cross-examination to suggest that he had not eye-witnessed the assault. PW-9, Parag Ram was also an eyewitness to the assault, who also deposed with regard to the injuries inflicted on PW-1, Banshi Lal and PW-4, Kundan Lal and the deceased by the accused.

12. The memorandum and consequent recovery of one Lathi from the

accused is not considered very relevant in view of the nature of the ocular evidence available and lack of any cross-examination to doubt or suspect the presence of the eyewitnesses including the injured eyewitnesses whose credibility undoubtedly has to be high.

13. PW-8, Budhram Prasad Dewangan was the Patwari, who prepared the spot map. PW-11, S.L.Chouhan was the Investigating Officer who deposed primarily with regard to the memorandum and recovery and sending the Lathi recovered for forensic report, Exhibit P-47, which did not confirm the presence of blood on the same.

14. Common object is not something discernible in a tangible form. Whether there existed any common object or not will have to be culled out from issues like, whether all the accused came together, if they were all armed, nature and manner of assault, and number of injuries caused taken cumulatively alongwith other attendant relevant circumstances. Even if the common object may have originally been to teach a lesson to the deceased only, the evidence suggests that the common object escalated to kill the deceased on the spot after the assault started. It is not the case of the defence that the death was attributable to any specific injury caused by any one of the accused, who may have exceeded common object of teaching a lesson to the deceased only.

15. The evidence reveals that all the accused came together and started to assault the deceased indiscriminately even after he fell down evident from the nature of the injuries. After the deceased managed to escape from the clutches of the accused and tried to flee he was again caught and assaulted even while the accused exhorted to kill him and smash his face. PW-7, Jagannathiya asked the accused to let the deceased go but accused Ganesh alias Mandwa again exhorted to kill the deceased after which assault started again. The Appellant Mahavir has been specifically named by PW-1, Banshi

Lal and PW-4, Kundan Lal and PW-9, Paragram as having assaulted the deceased. Even if originally the common object may have been only to teach a lesson to the deceased, the act of the accused in catching hold of the deceased after he managed to escape from their clutches and proceeding to assault the deceased again on fresh exhortation coupled with number and nature of injuries leaves us satisfied that the common object escalated during the assault to do away with the deceased.

16. The motive for the assault undoubtedly existed in the will executed by Sonau in favour of the deceased but for which after the death of the former the lands would have reverted to the accused. Patently, if the deceased was done away with, there would be no claimants for the lands but the family members of Sonau. PW-1, Banshi Lal was negotiating purchase of the lands from the deceased which was also not to the liking of the deceased.

17. The Supreme Court, in (2013) 16 SCC 383 (Kishan Ram v. State of Uttarakhand) observed as under:

"22. The facts of the present case, however, are different from the aforesaid cases cited by the learned counsel for the appellants. The oral testimony of the eyewitnesses, the recovery of rope from the spot and the medical evidence in this case established beyond reasonable doubt that the five accused persons tied the hands and legs of the deceased and gave him jointly 27 injuries with lathis and dandas. Hence, the common object of the assembly was to commit the offence under Section 302 IPC. The trial court and the High Court, therefore, rightly held the appellants guilty of the offence of murder under Section 302 read with Section 149 IPC."

18. The prosecution allegations however appear to be suffering from exaggeration insofar as the female accused are concerned. It is difficult to accept that the female accused held weapons of assault in their left hand and assaulted the deceased with their right fist. Even otherwise, the allegations against the female accused are omnibus. The mere fact that some broken bangles may have been found at the place of occurrence cannot lead to any

inescapable conclusion that the female accused actively participated in assaulting the deceased. The benefit of doubt has to be given to the female accused. Their mere presence at the time of occurrence cannot lead to any presumption of their being assailants also. There are no allegations of exhortation against them. In absence of any cogent evidence with regard to any overt-act by them, their conviction is held to be unsustainable for the additional reason that if the male members of the accused were assaulting the deceased, we find it a little difficult to accept the prosecution case that simultaneously, the female accused were also assaulting the deceased.

19. In their defence under Section 313 CrPC, the accused did not deny the presence of the eyewitnesses including the injured eyewitnesses and took a plea of alibi but without leading any evidence in support of the same. A false unsubstantiated plea therefore become an additional incriminating factor against them. Though, some of the accused took a defence that PW-1, Banshi Lal and PW-4, Kundan Lal came to their door and assaulted, it is not supported by the spot map with regard to the place of occurrence prepared by PW-8, Budhram Prasad Dewangan, marked Exhibit P-24 showing that the deceased was assaulted about 20 feet away from the road.

20. DW-1, Sewadas did not make any statement of occurrence having taken place at the door of the accused. Likewise, DW-2, Lakhanlal also did not make any such statement and neither did DW-3, Sampat Ram or DW-4, Fattelal.

21. The reliance by the Appellants on Rudrappa Ramappa Jainpur (supra) is wholly inappropriate in the facts of the present case and the nature and number of injuries caused. In the facts of that particular case, it was held that the common object of unlawful assembly was not to commit murder of the deceased but only to cause grievous hurt. We have already noticed that the assault was confined primarily to the head area of the deceased which is a sensitive part of the human body and the accused did not stop after the

deceased managed to escape. He was caught again and assaulted repeatedly with exhortation to kill him and smash his face.

22. We are unable to consider the submission for converting the conviction to one under Section 304 Part II IPC also in view of the fact that the accused were the aggressors. There was no grave and sudden provocation and the nature of the assault definitely indicates that it was made in a manner more than necessary to merely teach a lesson. We have already held that the common object did exist to kill the deceased. In *Nadodi Jayaraman (supra)* some of the co-accused had been acquitted and common intention to cause death had not been established. No appeal had been preferred against those acquitted who were also armed with iron rods and pipes leading to the conclusion that it was to be hazardous to guess who gave the fatal blow, those convicted or those acquitted, giving the benefit of which, conviction was altered to Section 304 Part II IPC. The case is completely distinguishable on its own facts.

23. In conclusion, the appeal is allowed with regard to Appellants Gauri Bai Satnami, Amla Bai Satnami and Budhiyarin Bai, subject to the conditions in Section 437-A CrPC. The appeal is dismissed with regard to Appellant Mahavir Satnami. His bail bond is cancelled and he is directed to be taken into custody and/or surrender forthwith for undergoing the remaining period of his sentence.

24. The appeal is partly allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P.Sam Koshy)
JUDGE