

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL NO. 2539 OF 2000**

Mohanlal Binjhwar, S/o Sadharam Binjhwar, age 55 years, Post – Village Dhandhani, Chowki – Urga, Police Station – Korba, District – Korba (C.G.)

... Appellant**Versus**

State of Madhya Pradesh (now Chhattisgarh), through – Police Outpost Korba, Chowki – Urga, District – Korba (C.G.)

... Respondent

For Appellant	:	Mrs. Kiran Jain, Advocate.
For Respondent-State	:	Mr. Neeraj Mehta, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Judgement on Board****Per NAVIN SINHA, C.J.****29/07/2015**

1. The Appellant stands convicted under Section 302 IPC to life imprisonment with fine of Rs.5000/-, in the event of failure to pay which, he was required to undergo six months further rigorous imprisonment.

2. The deceased, Natthuram, on 24.3.1998 went to the fields of the Appellant for measurement, to partition the lands between the Appellant and his cousin sister, PW-10 Ramwati Bai. The deceased was the husband of PW-10. During measurement the Appellant gave a single blow with a spade on the head of the deceased leading to death at about 4:30pm. FIR, Exhibit P-1, was lodged by PW-1, Gajanand, at 19:25hrs, the same day. The post-mortem, Exhibit P-5, conducted by PW-4, Dr. N.P. Rathore, at 12:45 p.m. on 25.3.1998

found penetrating injury in the centre of scalp and fracture of skull opining that death had taken place within 24:00hrs with the following injuries on the person of the deceased:-

“Punctured (penetrating) wound size 3.5cm x 2.5cm x 10.5cm at centre of scalp is present. Hemorrhage on scalp. Brain material is seen. Clotted blood in both temporal regions of scalp, chest region and both side of neck region is present.”

3. Learned Counsel for the Appellant submitted that the deceased along with PW-10 Ramwati Bai, suddenly came on his lands with several others, without any prior notice and started measurement for partition between him and PW-10, Ramwati Bai. The Appellant, taken by surprise acted on grave provocation finding himself alone and helpless. PW-1, Gajanand, stated that he was not aware if the deceased had given any application to the Panchayat for partition and if it had been approved. The witness admitted absence of any notice to the Appellant before measurement and that the fields were in cultivating possession of the Appellant. PW-10, Ramwati Bai, had already received her share of the lands in a partition earlier. PW-2, Chaituram, also deposed that the deceased along with others including PW-10, Ramwati Bai had gone on the lands of the Appellant for delineating the lands for partition. The Appellant had a spade in his hand, which was a normal instrument for any agriculturist especially if he was in the agricultural fields. It cannot be said that the Appellant was possessed of any weapon of assault. The witness further stated that he had been called to the fields by the deceased and PW-10, Ramwati Bai and had not been told that measurement was to be done. The witness further acknowledged that earlier certain lands had already come to the share of PW-10,

Ramwati Bai on partition which she had sold. Her name had not been entered in the government records as co-owner with the Appellant for the lands in question which stood recorded in the joint name of the Appellant and his deceased father. The deceased and PW-10, Ramwati Bai were illegally and forcibly claiming a share in the lands.

4. PW-3, Laxmi Narayan, also stated that he was asked to come to the lands for partition but no written notice had been given to him. PW-6, Ghasiram Rathore, the Patwari, acknowledged that nothing had been given to him in writing and neither had his consent been taken for coming to the lands and partitioning it. The witness acknowledged that partition of lands is normally done after the revenue records were corrected, admitting that in the present case after the death of the co-owner necessary corrections in the records had not been made. It was further admitted that the jurisdiction to effect the partition by measurement lay with the Tahsildar and not with the Patwari. The witness also admitted that if there was a dispute with regard to the lands, the proper forum was the Court of the Tahsildar. He also proved the spot-map, Exhibit P-9.

5. PW-8, Jankuram, also acknowledged that the assault by the Appellant took place while the deceased was having his lands measured. The Appellant gave a single blow. The witness further acknowledged that he never asked PW-6, Ghasiram Rathore, the Patwari, that before calling the witness to the lands for measurement any resolution had been obtained from the Panchayat or the applicant had given any application for partition. The witness acknowledged that he went blindly. The lands were possessed and

cultivated by the Appellant was admitted. PW-10, Ramwati Bai, acknowledged that an altercation took place during measurement. PW-11, Chandrama Singh Rajput, was the Investigating Officer who proved the FIR, seizure of the bloodstained earth on which blood has been found in the FSL report, Exhibit P-17.

6. It was next submitted that the Appellant was the co-owner of the lands along with his deceased father, Sadhram. PW-10, Ramwati Bai, related to the Appellant, also wanted a share in the lands but did not move the authorities appropriately for recording her name in the government documents and on the contrary, in a manner contrary to the law, came on the lands suddenly accompanied by the deceased and others and started forcible measurement. The fact that the prosecution witnesses may have consistently stated that the Appellant assaulted the deceased on the head, in the facts of the case, will not justify the conviction under Section 302 IPC but it ought to be converted under Section 304 Part-II IPC. Only a single assault was made. The Appellant did not come with a pre-meditated design to kill but was possessed of a spade, a normal agriculture instrument for any agriculturist present in his fields.

7. If the deceased suddenly came with a mob of persons and started forcible measurement of the lands, admittedly in possession of the Appellant, without taking recourse to any procedure in law, the Appellant found himself helpless in view of the number of persons accompanying the deceased and present during measurement. He feared forcible dispossession of his lands, the lifeline of an agriculturist. The actions of the Appellant cannot be measured in a

golden scale but have to be understood and appreciated from the point of view of a normal rural human being and the manner he would react when his own lands were being forcibly intruded upon and taken away in a manner completely unknown to the law.

8. Strong reliance was placed on (2006) 13 SCC 587 (Vadla Chandraiah v. State of A.P.) to support the submission that in the facts of the case, the conviction ought to be converted under Section 304 Part-II IPC as the Appellant acted under grave and sudden provocation.

9. Learned Counsel for the State submitted that more than one eye-witness has stated that the Appellant assaulted on the head with a spade. The intensity of the assault is evident from the post-mortem report causing, inter-alia, a punctured penetrating wound 3.5cm x 2.5cm x 10.5 cm deep in the middle of the head. The entire brain material had spilled out. The skull was fractured. The intensity of the assault itself reveals the intention of the Appellant. A single assault in the manner done was therefore sufficient to uphold the conviction under Section 302 IPC. Even if others had come to his lands and were measuring it, in absence of any overt-act on their part to assault the Appellant, he could have resisted them in a different manner or requested them not to measure rather than to suddenly assault the deceased while he was sitting in the fields during the measurement and that too taking him by surprise by an assault from behind. In Vadla Chandraiah (supra) relied upon by the Appellant, the conviction was converted from 302 IPC to 304 Part-II IPC primarily because the deceased was not related to the Appellant but had only intervened to

settle the ongoing dispute with regard to purchase and sale of guavas between the Appellant and another. The case is therefore distinguishable on its own facts.

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

11. There is no dispute that the Appellant is the assailant. The intensity of the assault is evident from the post-mortem report. It is true that even a single assault can invite the application of Section 302 IPC and it is not necessary that there must be a repetition of blow to attract Section 302 IPC. The entirety of the evidence will have to be seen taking a holistic view also of the entire occurrence. The prosecution evidence is that the Appellant was in cultivating physical possession of the lands. His father, the co-owner in the government records, had been deceased. No application had been made by PW-10, Ramwati Bai before the revenue authorities for deleting his father's name and entering her name in the government records. Before the deceased came on the lands with the Patwari and others for measurement, no notice was given to the Appellant or to any other. A large number of persons suddenly descended on his lands along with the deceased and started to take measurement for partition without his consent. There is no evidence that the Appellant was possessed of any other sufficient lands. If the present were his only lands, quite naturally he must have got perturbed and seeing the number of persons in his fields must have felt quite helpless fearing loss of his lands and livelihood. He therefore reacted in a manner which cannot be weighed in a golden scale to hold that he should

have acted in a more restrained manner. In the heat of the moment, an altercation having ensued during measurement, with passions running high, the actions of the Appellant cannot be tested or put at par or be equated with a cool calculated mind making an assault with a deliberated intention.

12. In *Vadla Chandraiah* (supra) relied upon by the Appellant, the assault was also sudden on a provocation by the deceased intervening to separate two quarreling persons. The injuries were far more than serious with two elliptical shape penetrating incised wounds 6cm in length and 8cm & 10cm deep. There were two further incised injuries on the left shoulder and the back. It was held that even in absence of any motive, the episode was nonetheless a sudden one and the injuries were inflicted in the heat of passion making out a case for conversion from 302 IPC to 304 Part-II IPC. Reliance for the purpose was placed on clause 4 of Section 300 holding that at best knowledge that the act of assault was so imminently dangerous that it was likely to cause death could be attributed and no more.

13. For like reasons, in view of the discussions aforesaid, we are satisfied that the conviction of the Appellant under Section 302 IPC is not maintainable and is required to be converted to one under Section 304 Part-II IPC. It is ordered accordingly.

14. The Appellant has already completed nearly 8 years short of one month in custody. In the facts of the case for the reasons discussed, we are satisfied that it is sufficient punishment.

15. With that modification of the conviction, the appeal is allowed in part only.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

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