

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 486 of 2013**

1. Sahdev Singh S/o Deepchand Singh, aged about 26 years.
2. Shrisingh S/o Mangal Singh, aged about 66 Years.

Both are R/o Uparpondi, P.S.-Lundra, District Surguja (C.G.)

---- Appellants

Versus

1. State Of Chhattisgarh Through - P.S. Lundra , Distt. Surguja C.G. Civil & Revenue Distt. Surguja C.G.

---- Respondent

And

CRA No. 315 Of 2013

1. Deo Sharan Singh S/o Sri Singh, aged about 28 years.
2. Dipchand Singh S/o Sri Singh, aged about 40 years, Both are R/o Village Uperpodi, Police Station, Lundra, Distt. Surguja C.G.

---- Appellants

Vs

1. State Of Chhattisgarh, Through Station House Officer, Police Station Lundra, Distt. Surguja C.G.

---- Respondent

For Appellants. - Mr. Utkal Pradhan, counsel in Cr.A.No.486/2013 and Mr. Govind Dewangan, counsel in Cr.A.No.315/2013.

For Respondent. - Mr. Ramakant Pandey, Panel Lawyer for the State.

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgment on Board

(15/04/2015)

Per T.P. Sharma, J

1. Criminal Appeals Nos. 486/2013 and 315/2013 filed against the common judgment dated 31.01.2013 passed by the Ist Additional Sessions Judge, Ambikapur, in Sessions Trial No.368/2006, are being disposed of by this common judgment.

2. By filing Criminal Appeal Nos. 486/2013 and 315/2013, appellants have challenged the legality and propriety of the judgment of conviction and order of sentence dated 31.01.2013 passed by the 1st Additional Sessions Judge, Ambikapur, District Surguja, in Sessions Trial No.368/2006, whereby & whereunder learned 1st Additional Sessions Judge after holding the appellants guilty for formation of unlawful assembly armed with deadly weapon having its common object to commit murder of Laxman Singh and in furtherance of common object of unlawful assembly committed murder of Laxman Singh and caused injuries to Prithvinath Singh, Bhola Singh, Kharbhan, Tulsi and Narayan Singh, convicted the appellants under Sections 147, 148, 323/149 & 302/149 of the IPC and sentenced them to undergo R.I. for two years, R.I. for 3 years, R.I. for 1 year and imprisonment for life respectively & fine of Rs. 1000/- each, in default of payment of fine to further undergo additional R.I. for 4 months.
3. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted & sentenced the appellants as aforementioned and thereby committed illegality.
4. As per case of prosecution, appellants and complainant party were occupants of part of the land. On 30.06.2006 at about 7:00 am, both were ploughing their part of land then appellants formed unlawful assembly armed with deadly weapons having its common object to commit murder of Laxman Singh and in furtherance of common object of unlawful assembly caused homicidal death of Laxman Singh amounting to his murder and also caused injuries to Prithvinath Singh, Bhola Singh, Kharbhan, Tulsi and Narayan Singh. Prithvi Singh (PW/6) went to police station, Lundra, and lodged F.I.R. vide Ex.P/9, merge was recorded vide Ex.P/18. Investigating officer left for scene of occurrence, after summoning the witnesses vide Ex.P/6, inquest over the dead body of deceased was prepared vide Ex.P/7, bloodstained soil and plain soil were recovered from the spot vide Ex.P/4. Dead body of deceased was sent for autopsy to Community Health Center, Dhourpur where Dr. K.P. Vishwakarma (PW/10) conducted autopsy vide Ex.P/19 and found following injuries:-

- i) Lacerated wound of 8cm x .5cm x .5 cm over left side of head, depressed in nature with fracture of parietal bone and laceration of brain.

Death was as a result of injuries and it was homicidal in nature.

Injured Prithvi Nath Singh was also examined by Dr.K.P. Vishwakarma (PW/10) vide Ex.P/20 and found following injuries

- i) Lacerated wound of 7 x .5 x .5 cm over right parietal region.
- ii) Lacerated wound of 4 x .5 x .5 cm over frontal region.

Dr. K.P. Vishwakarma (PW/10) also examined injured Tulsi Singh vide Ex.P/21 and found following injuries.

- i) Lacerated wound of 5 x .5 x .5 cm over right parietal region.
- ii) Lacerated wound of 6 x .5 x .5 cm over left parietal region.
- iii) Lacerated wound of 4 x .5 x .5 cm over occipital region.
- iv) Lacerated wound of 6 x .5 x .5 cm over right parietal region.

He also examined injured Narayan Singh vide Ex.P/22 and found following injuries.

- i) Lacerated wound of 6 x .5 x .5 cm over left side of frontal region.
- ii) lacerated wound of 4 x .5 x .5 cm over left parietal region.

Injured Bhola Singh was examined by Dr. Durga Prasad Sandilya (PW/12) vide Ex.P/28-A and found following injuries.

- i) Abrasion of 3 cm over right shoulder joint.
- ii) Lacerated wound of 4 x .5 x .5 cm over left parietal region.
- iii) Multiple abrasions over left shoulder joint.

Dr. Durga prasad Sandilya (PW/12) has also examined injured Kharbhan vide Ex.P29-A and found following injuries.

- i) Lacerated wound over central of head of 6 x .5 x .5. cm.
 - ii) Pain over right shoulder.
 - iii) Contusion over right palm (dorsal side).
- He opined that injuries were caused by hard and blunt object.

5. During the course of investigation, appellant Dipchand was taken into custody. He made disclosure statement of iron-rod vide Ex.P/2, same was recovered at his instance vide Ex.P/5. One stick was recovered from the appellant Sri Singh vide Ex.P/3. Clothes of Prithvi Singh were seized vide Ex.P/10. One *Kudali* was also seized from deceased co-accused Mahadev Singh vide Ex.P/11. One stick was seized from appellant Sahadev Singh vide Ex.P/12. Seized articles were sent for chemical examination to FSL, Raipur, and presence of blood over weapon has been affirmed vide Ex.P/39.
6. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure (for short the 'Code'). After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Ambikapur, who in turn, committed the case to the Court of Sessions, Ambikapur. Learned Ist Additional Sessions Judge, Ambikapur, received the case on transfer for trial.
7. In order to prove the guilt of the accused/appellants, prosecution has examined as

many as 12 witnesses. Accused/appellants were examined under Section 313 of the Code where they denied the circumstances appearing against them and innocence & false implication in the crime in question is claimed.

8. After providing opportunity of hearing to the parties, learned Ist Additional Sessions Judge, convicted & sentenced the appellants as aforementioned.
9. We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
10. Mr. Utkal Pradhan and Mr. Govind Dewangan, learned counsel for the appellants, vehemently argued that conviction is substantially based on the evidence of Kharbhan Singh (PW/2), Bhola Singh (PW/4), Tulsi (PW/5), Prithvi Nath (PW/6) and Dilip Singh (PW/8), but their evidence do not inspire confidence and trustworthy. Their evidence are not sufficient for convicting the appellants. Learned counsel for the appellants further argued that Prithvi Nath (PW/6), who lodged the FIR, has specifically admitted in paras 6, 9, 11, 14 and 15 that they were ploughing the field, there was no dispute amongst them, they were ploughing the land on the basis of will and the incident took place all of a sudden. Appellants have also received injuries, which shows that it was not pre-meditated and incident took place all of a sudden. They have not formed unlawful assembly, it was a case of firefight, in which, as per case of prosecution, deceased/co-accused Mahadev has caused injuries to Laxman resulting into his death. Therefore, conviction of the appellants with the help of Section 149 is not sustainable under the law. Even otherwise, this is a case of Section 304/149 Part II of the IPC. Learned counsel for the appellant has placed reliance in the matter of **Bagdi Ram V. State of M.P.**¹ in which Supreme Court has altered the conviction of the appellant under Section 304 Part-I of the IPC on the ground that case was squarely falls within Exception 4 to Section 300 of the IPC.
11. Par contra, learned Panel Lawyer for the State opposed the appeal and submitted that evidence of aforesaid witnesses are sufficient for proving the guilt of the appellants.
12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the parties.
13. In the present case, homicidal death as a result of fatal injuries found over the body of deceased Laxman and injuries found over the body of Prithvinath Singh, Bhola

¹ (2004) 12 SCC 302

Singh, Kharbhan, Tulsi and Narayan Singh have not been substantially disputed on behalf of the appellants, on the other hand, same is also established by the evidence of Kharbhan Singh (PW/2), Bhola Singh (PW/4), Tulsi (PW/5), Prithvi Nath (PW/6) and Dilip Singh (PW/8), FIR Ex.P/9, merg Ex.P/18, evidence of Dr. K.P. Vishwakarma (PW/10), autopsy report Ex.P/19, injury reports Ex.P/20, Ex.P/21, Ex.P/22, Ex.P/28-A and Ex.P/29-A that death of deceased was homicidal in nature.

14. As regards complicity of the appellants in the crime in question, conviction is substantially based on the evidence of Kharbhan Singh (PW/2), Bhola Singh (PW/4), Tulsi (PW/5), Prithvi Nath (PW/6) and Dilip Singh (PW/8). As per evidence of Prithvi Nath (PW/6), both were occupant of part of same land, both were ploughing the land. Incident took place all of a sudden. Appellants were holding the weapons, they have caused injuries resulting to death of Laxman and have also caused injuries to Prithvinath Singh, Bhola Singh, Kharbhan, Tulsi and Narayan Singh. Kharbhan Singh (PW/2), Bhola Singh (PW/4) and Tulsi (PW/5) have substantially corroborated the evidence of Prithvi Nath (PW/6). In their cross-examination, they have admitted the fact that both were present on the field and incident took place all of a sudden. Prithvi Nath (PW/6) has specifically admitted in paras 6, 9, 11 and 15 of his cross-examination that prior to incident there was no dispute; they were ploughing the field on the basis of will. They have also not received injuries. On account of sudden fight, he is not in a position to depose that who caused injuries to whom. These evidence clearly reveal that members of unlawful assembly have caused injuries to the aforesaid persons. They have admitted that appellants have also received injuries, but appellants have failed to prove the injuries caused to them and its nature. Therefore, it would be difficult to hold that appellants have received grievous injuries of considerable size, but the fact remains that all the appellants were holding weapons and have caused injuries to aforesaid persons resulting to death of one person. Appellants have not received substantial injuries. They were ploughing the land on the basis of will, at the time of incident they assaulted. They were holding weapons, which shows formation of unlawful assembly armed with deadly weapons and have caused injuries to aforesaid persons. Incident took place all of a sudden without premeditation and at the time of causing injuries appellants were having right of exercise of private defence but they have exceeded their right of private defence by causing death of deceased Laxman and also caused simple injuries to other complainants, which shows that they have caused injuries to other complainants without any propriety.

15. Aforesaid evidence clearly reveals that appellants have committed offence punishable under Sections 147, 148, 307/149 and 323/149 of the IPC, but have not committed the offence punishable under Section 302/149 of the IPC *interalia*, they have committed the offence, which squarely falls within the ambit of Section 304/149 Part-II of the IPC.
16. Consequently, the aforesaid appeals are partly allowed. Conviction and sentences of the appellants under Sections 147, 148, 307/149 & 323/149 of the IPC are hereby affirmed. Conviction of the appellants under Section 302/149 of the IPC is altered to Section 304 Part II read with Section 149 of the IPC and they are sentenced to undergo R.I. for four years. Appellants are in custody. They are entitled for the set off for the period of detention already undergone by them.

JUDGE

JUDGE