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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 482 of 2008**

Raghvendra Singh @ Dau Singh S/o Bhagirathi Singh,
33 years, R/o Village Khajri, P.S. Berla, Distt. Durg (CG)

---- Appellant

Versus

State of Chhattisgarh through District Magistrate, Durg (CG)

---- Respondent

Acquittal Appeal No. 412 of 2010

State of Chhattisgarh, through P.S. Berla, District Durg (CG)

---- Appellant

Versus

1. Sudarshan Singh S/o Bhagirathi Singh, aged about 38 years,
R/o Gram Hardi (Aamapara) Navagarh
2. Ganesh Singh S/o Bhagirathi Singh Rajput, aged about 28 years
Both are resident of village Khajri, P.S. Berla, District Durg (CG)

---- Respondents

For Accused/Appellant	:	Smt. Fouzia Mirza, Advocate
For State	:	B. Gopa Kumar, Dy. Advocate General

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

C A V JUDGEMENT**Per P. Sam Koshy, Judge :****27/11/2015**

1. The two Appeals, one preferred by Appellant Raghvendra Singh i.e. Criminal Appeal No.482 of 2008 and the other preferred by the State i.e. Acquittal Appeal No. 412 of 2010, arise out of a common judgment dated 09.04.2008 passed by the Additional Sessions Judge, Bemetara in Sessions Trial No. 1 of 2008 convicting Appellant Raghvendra Singh under Section 302 IPC to life imprisonment and fine of Rs.1,000 with default stipulations and acquitting respondents Sudarshan Singh and Ganesh Singh.

2. As per the prosecution story, on 16.10.2007 around 5 p.m. a fight took place between the deceased Rajkumar and Raghvendra Singh, Sudarshan Singh and Ganesh Singh. In the course of the fight, Appellant Raghvendra along with the two respondents Sudarshan and Ganesh assaulted the deceased Rajkumar with Lathi, hands and fists causing grievous injuries to him. Injured Rajkumar was immediately admitted in the hospital where he succumbed to the injuries on 19.10.2007 at around 1 a.m. FIR was lodged on the date of incident at around 7 p.m. by PW-1 Mohan Singh, father of the deceased mentioning the names of the aforesaid three persons as accused who had assaulted the deceased. Initially, a case under Section 307/34 IPC was registered and after death of the deceased Rajkumar on 19.10.2007, charge under Section 307/34 was converted to Section 302 IPC. Postmortem was conducted by Dr. V. S. Baghel (PW-13) and the report submitted by him is Exhibit P-23. During the course of postmortem, PW-13 found the following injuries on the body of the deceased:-

Stitched wound (9 stitches) 8 cm long present on left side of frontal area obliquely, Stitched wound (7 stitches) 6 cm long placed on left parietal area longitudinally, Stitched wound (7 stitches) placed obliquely 6 cm long in mid occipital area, Stitched wound (5 stitches) 5 cm long on right side of occipital area placed obliquely, Blood stain present on right ear, Abrasion 3 x 2 cm right axilla anteriorly with scab, Abrasion multiple on dorsum of 1st to 4th fingers of right hand with scab, Abrasion 3 x 2 on anterior aspect of left knee with scab, Lacerated wound $\frac{1}{4}$ x $\frac{1}{4}$ cm on dorsum of left index finger and Bruise blackish in colour 15 x 6 cm on right shoulder.

3. The matter was put to trial and the prosecution examined 14 witnesses in support of its case. On the basis of the evidences which have come on record, the trial Court vide its impugned judgment dated 09.04.08 found that it

was only Appellant Raghvendra Singh who had inflicted injuries upon the deceased Rajkumar leading to his death and therefore convicted him under Section 302 of IPC and sentenced to undergo life imprisonment with fine of Rs.1,000 and default stipulations. At the same time, the Court below found that there is not enough material to substantiate the charge levelled against Respondents Sudershan Singh and Ganesh Singh so as to implicate them in the said offence. The Court below also found that the prosecution has not been able to lead sufficient evidence to prove the charges against Sudershan and Ganesh and accordingly, acquitted them from the charges levelled against them.

4. So far as the Appeal preferred by Appellant Raghvendra Singh is concerned, counsel for the Appellant submitted that the finding of the trial Court to the extent of finding Appellant Raghvendra guilty for the offence under Section 302 IPC is contrary to the evidences which have come on record. It was argued that the conviction of the Appellant is solely based upon the evidence of PW-1 Mohan Singh, father of the deceased who claims to be an eye witness. He submitted that on going through the deposition made by PW-1 it would reflect that there are much contradictions, omissions and improvement in the FIR, statement made under Section 161 Cr.P.C. and the deposition that he has made before the Court below. It was argued that the evidence of PW-1 does not build sufficient confidence so as to accept it to be a reliable piece of evidence particularly for convicting and sentencing a person to life imprisonment.

5. Counsel for the Appellant submitted that it is a case where the Appellant is said to have exercised his right of private defence as the deceased in the course of shifting the electric pole from the field of the Appellant would have caused extensive damage to the standing crops in the field which was objected to by the Appellant Raghvendra giving rise to the

argument and fight followed. Therefore, the case of the Appellant would fall within the ambit of second and fourth exception to the definition of murder under Section 300 IPC as there was no premeditation of murdering the Deceased on the part of the Appellant. Alternatively, counsel for the Appellant submitted that if the entire case of the prosecution is accepted as it is, even then it would stand proved that the incident occurred because of an electric pole which was got erected unauthorizedly by the deceased in the field of the Appellant. It was submitted that a heated argument was going on in the field between the deceased and the Appellant which suddenly turn into a fight and because of the heat of passion and on the spur of moment, the Appellant assaulted the deceased. That there was absolutely no intention on the part of the Appellant to kill the deceased nor was there any predetermination in the mind of the Appellant to kill the deceased. It was contended that the nature of injury sustained by the deceased would also show that there was no premeditation or intention on the part of the Appellant to commit an offence of murder. It was also contended that the prosecution story itself proves the fact that the Appellant did not run away from the village or absconded himself after having committed the offence which also proves the fact that he had no intention or predetermination in committing the offence. On these factual backgrounds, counsel for the Appellant submitted that, at best, the Appellant would be charged under Section 304 Part II of IPC and the impugned order deserves to be set aside. Counsel for the Appellant relied upon (2009) 16 SCC 193 and 1994 Supp (1) SCC 460 (Jagpati vs. State of M.P.).

6. Per contra, State counsel submitted that the impugned judgment so far as the conviction of Appellant Raghvendra Singh is concerned does not warrant any interference as the same is based on the finding of facts and sufficient evidence has been proved and established by the prosecution beyond all reasonable doubt. He submitted that there is ample evidence on record by which it has been easily proved and established that it was the

present Appellant alone who had assaulted the deceased with a Lathi that too on a vital part of the body i.e. head. It was also argued that a perusal of the postmortem report would reveal that there was more than one injury on the head of the deceased which proves that there was more than one assault made by the Appellant on the deceased from which it can be inferred that the Appellant had the intention to kill. It was contended that the finding of the trial Court is based upon clear and unambiguous evidence of PW-1, an eye witness to the incident who had promptly lodged the FIR naming the Appellant Raghvendra and the role played by him. Thus, counsel for the State prayed for rejection of the Appeal preferred by Appellant Raghvendra Singh.

7. So far as the respondents Sudershan Singh and Ganesh Singh are concerned, State counsel argued that the finding of the trial Court acquitting them is incorrect. It was argued based on the deposition of PW-1, Mohan Singh stating that there is sufficient and clear evidence of PW-1 in respect of accused Sudershan and Ganesh so far as the role played by them in assaulting the deceased is concerned. State Counsel drew the attention of the Court to the deposition of PW-1 both in the FIR as well as in the Court statement in respect of the respective overtact on the part of the accused Sudershan and Ganesh stating that admittedly the two accused persons were present along with the Appellant Raghvendra Singh at the time of incident and they had also played an active role in assaulting the deceased, therefore they ought to have also been convicted with the aid of Section 34 of IPC. Thus, the State counsel prayed for the impugned order to be modified to the extent that the acquittal of accused Sudershan and Ganesh may be recalled and they may be convicted with the aid of Section 34 of IPC.

8. On due consideration of the submissions made by the counsel appearing on either side and on perusal of the records it is ardent that the

conviction of Appellant Raghvendra was based upon the deposition of the solitary eye witnesses Mohan Singh (PW-1) whose evidence has been substantiated by PW-12, the Investigating Officer. The admitted position from the evidence which has been led by the prosecution is that the incident occurred because of a dispute which existed for almost a decade between the families of the Appellant and the deceased pertaining to an electric pole which the family of the deceased had got erected unauthorizedly in the field of the Appellant from where they have drawn their electric connection to their field. From the evidence it appears that the deceased went to shift the electric pole which stood in the field of the Appellant which was being opposed by the Appellant. Because of this, an altercation took place on the date of incident and suddenly, appellant Raghvendra is said to have assaulted the deceased with a Lathi which he was carrying in his hand and gave couple of blows to the deceased as a result of which the deceased fell down. As soon as the father of the deceased reached the spot, the accused persons are said to have left the place.

9. From the evidence of PW-1 it is also clear that the dispute between the two families existed for almost 10 years and that there had never been any such incident in the past or any sort of assault made by either side. This fact supports the contention of the counsel for the Appellant that the incident arose because of the sudden altercation that took place between the Appellant and the deceased and in the heat of passion and spur of moment, the Appellant is said to have given couple of lathi blows to the deceased which resulted in the deceased sustaining grievous injuries. It is also established from the records that the death of the deceased took place on 19.10.2007 i.e. third day from the date of incident. From the deposition of PW-1 it is reflected that though PW-1 was present near the place of incident, he did not rush to save the deceased as he did not feel the fight to be of serious nature which is also established from his deposition that he was standing near the Nalla cleaning

his slippers when the fight was going on and when he reached the spot, the Appellant had already left the place.

10. From the above said factual matrix it can be safely concluded that if the Appellant and the two acquitted accused persons had any intention of killing the deceased, they could have easily ensured the death of the deceased and would not have left the place giving only a couple of blows on the head of the deceased. Except for the injuries stated to have been caused, there was no other serious injuries on the other parts of the body of the deceased. If the Appellant and the other acquitted accused persons had any plan of killing the deceased, they had sufficient time to do so in the intervening 10 years period of admitted enmity between the two families. The fact that the Appellant Raghvendra as well as respondents Sudershan and Ganesh were available in the village and were freely roaming around the village itself establishes that there was no premeditation to kill the deceased or else they would have at least tried to abscond or flee away from the village to avoid their arrest by the police. The fact that they were available in the village itself forces us to infer the fact that the incident occurred in the spur of the moment and heat of passion.

11. The very fact that the Appellant was not carrying any dangerous weapon in his hand and was only having a Lathi which is commonly found in the hands of all the villagers particularly when they are in the field and the deceased was also having a Lathi in his hand as is evident from the prosecution evidence also forces us to infer that the accused persons were not premeditated to kill the deceased. The fact that PW-1 himself did not find the altercation and fight between the Accused and the deceased to be of very serious nature establishes the fact that there was no premeditation in the mind of the Appellant to kill the deceased. It is also established from the evidence of PW-1 that the altercation was on account of the deceased intending to get

the electric pole in the field of the Appellant shifted to a different place which was being objected to, by the Appellant.

12. The overall evidences which have come on record would clearly establish the fact that the Appellant had no intention of killing the deceased but it was only when the deceased intended to damage the standing crops in the field of the Appellant, the incident occurred. For all these reasons it brings the case of the Appellant to be one which would fall within the ambit of second and fourth exception to the definition of murder under Section 300 IPC as there was no premeditation of murdering the Deceased on the part of the Accused and that the act committed by the Appellant was may be with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death bringing the case against the Appellant under Section 304 Part-II IPC.

13. For the aforesaid reasons, we are of the opinion that the conviction of Appellant Raghvendra under Section 302 of IPC is not justified and the same is accordingly set aside. However, Appellant Raghvendra is found guilty of having committed the offence under Section 304 Part II of IPC.

14. From the record it reflects that Appellant Raghvendra is in jail since 17.10.2007 and as such, he has already remained in jail for a period of more than eight years. Taking into consideration the total facts and circumstances of the case particularly the fact that the incident occurred because of a sudden quarrel that took place between the parties and that the Appellant did not have any intention to kill the deceased, in the opinion of this Court, the period of custody already undergone by the Appellant is to be treated as sufficient sentence.

15. So far as the Acquittal Appeal of the State is concerned, a perusal of the FIR, 161 Cr.P.C. statement and the deposition of PW-1 made before the

Court below it clearly reflects that there are many omissions, contradictions and embellishments regarding the acquitted respondents Sudershan and Ganesh. It further reveals that in the FIR, only an omnibus statement was made by PW-1 about the role played by each of the accused persons. In 161 Cr.P.C. statement which was recorded after one day from the date of lodging of the FIR, the version of PW-1 stood further improved implicating the two respondents Sudershan and Ganesh by stating that they caught hold of the deceased while the Appellant Raghvendra assaulted with a lathi. In his Court statement, PW-1 with a clear intention of implicating other family members because of the admitted previous enmity between the parties has further tried to improve his earlier two versions by stating that with the Lathi which the Appellant Raghvendra was carrying in his hand each of the accused persons assaulted the deceased one after the other using the same lathi turn by turn. From the nature of injuries sustained by the deceased it is not possible that all the three accused persons would have assaulted the deceased. These contradictory statement clearly shows that there is embellishment in the version of PW-1 which does not repose confidence in his version regarding respondents Sudershan and Ganesh. So far as the overtact on the part of the respondents Sudershan and Ganesh are concerned, since there is conflicting views in the version of the solitary eye witness PW-1, it gives rise to a great element of doubt as regards the role played by them. It is a settled position of law that in the event of doubt being created, the benefit of the same has to be given to the accused.

16. For the aforesaid reasons, the acquittal of the two respondents Sudershan Singh and Ganesh Singh does not call for any interference and the Acquittal Appeal being devoid of merit deserves to be dismissed.

17. Accordingly, the Appeal preferred by the State i.e. Acquittal Appeal No. 412 of 2010 is dismissed. The Criminal Appeal No.482 of 2008 is allowed in

part. Conviction of Appellant Raghvendra under Section 302 IPC is set aside. However, he is convicted for the offence under Section 304 Part II IPC and sentenced to the period of custody already undergone by him. Appellant Raghvendra Singh is reported to be in jail. He be released forthwith if not required in any other case subject to the conditions laid down in 437A Cr.P.C.

Sd/-

(Navin Sinha)

CHIEF JUSTICE

Sd/-

(P. Sam Koshy)

JUDGE