

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.942 of 2001**

1. Lalchand, S/o Punaram Lodhi, aged about 28 years
2. Sampat Lal, S/o Ram Gulal Lodhi, aged about 35 years,
Both R/o Village Maritarai, P.S. Dongargarh, District Rajnandgaon

---- Appellants**versus**

The State of Chhattisgarh through P.S. Dongargarh, District
Rajnandgaon

---- Respondent

For Appellants	:	Smt. Renu Kochar, Advocate
For State/Respondent	:	Shri Raj Kumar Gupta, Deputy Advocate General

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**Per Navin Sinha, Chief Justice****6/5/2016**

1. The Appellants stand convicted under Section 304 Part I IPC to life imprisonment with fine of Rs.1,000/- each, in the event of failure to pay which they were required to undergo three months' further rigorous imprisonment, ordered on 28.9.2001 by the 1st Additional Sessions Judge, Rajnandgaon in Sessions Trial No.44 of 1999.
2. FIR, Exhibit P-1 was lodged by PW-1, Mainabai, wife of deceased Kahatlal naming six persons including the Appellants. The accused and deceased were co-villagers. Their fields were adjacent to each other. The accused suspected the deceased and his family of stealing their crops. On 8.2.1999 when the deceased and his family were in their fields sitting by the bonfire, at about 8:30 pm the accused are stated to have come and assaulted them. Appellant No.2 is also stated to have suffered injuries. They were all taken to the hospital where the deceased succumbed at about 3:50 am on 9.2.1999.

3. Learned Counsel for the Appellants submitted that the deceased and his family were the aggressors who entered the field of the Appellants and would steal crops. The accused had acted in self defence evident from the injury report, Exhibit D-3 of Appellant No.2. Appellant No.1 had also stated in his defence under Section 313 Cr.P.C. that he had suffered injuries. PW-2, Dorelal and PW-3, Jitendra, both sons of the deceased, have also stated that Appellant No.1 was taken to the hospital along with Appellant No.2. It was therefore a case of either self defence or free fight. In both situations the nature of assault made cannot be measured in golden scales. The deceased did not die of any specific injury caused due to assault. Most of the injuries were bruises. PW-18, Dr. A.K. Tamrakar, who conducted the post mortem stated that considering the age of the deceased, the ribs may have broken because of the fall attributable to the low calcium in the body. No assault was made on any sensitive part of the human body such as the head. Death was attributable to breathing problems leading to the neurogenic shock. There was long standing enmity between the parties with some litigations also. If the accused had any intention to kill they had several opportunities in the past to do so. The Appellants therefore did not have any intention to kill. At best they may be stated to have the intention to teach a lesson to the deceased and his family for stealing crops. There is no material to conclude any intention to cause such injury which may cause death or was likely to cause death. The conduct of the Appellants in having taken the deceased and the injured to the hospital for treatment along with themselves militates against any intention to kill. Conviction under Section 304 Part I IPC was therefore not sustainable and at best if they are liable the conviction ought to be under Section 325 IPC which provides for a maximum imprisonment of seven years. Reliance was placed on AIR 1993 SC 2323 (Bajinath Mahton v. State of Bihar) that in the facts of the case sentence of two years shall suffice.

4. In the FIR, PW-1, Mainabai said that the assault took place while they were returning from their fields while in Court she stated that it took place while she was in her fields. The story that the witness and the deceased were tied to a pole in front of the shop of Babulal and beaten up again has been disbelieved inter-alia on the ground of finding no mention in the FIR. The presence of four co-accused has been disbelieved on the reasoning that they were all related and in view of past enmity the possibility of false implication of the entire family cannot be ruled out. If the witnesses were unreliable with regard to some of the co-accused in a common incident of assault there was no justification for relying upon the same witnesses to distinguish the present two appellants and convict them. The Appellants were also entitled to acquittal.

5. Learned Counsel for the State submitted that there is no evidence that Appellant No.1 had sustained any injuries. The only MLC, Exhibit D-3 is of Appellant No.2 and that too the injuries were simple in nature. If four persons PW-1, Mainabai, her two sons PW-2, Dorelal and PW-3, Jitendra and the deceased were assaulted by the Appellants and only Appellant No.2 also sustained some simple injury no case of self defence is made out. The spot map, Exhibit P-2 prepared by PW-17, Mukesh, the Patwari confirms that the place of occurrence was the fields of the deceased. The Appellants were the aggressors. If a witness has been disbelieved partly it does not lead to any conclusion that the entire evidence was false. Existence of previous enmity can cut both ways. There can rarely be direct evidence of intention and it will have to be culled out cumulatively from the entire evidence. The deceased undoubtedly died from the injuries sustained during the assault. There was more than one injury on the person of the deceased and PW-1, Mainabai. The latter has deposed that after assaulting them in the fields, on way to the police station before taking them to the hospital they were tied to a pole in front of the shop of Babulal and beaten up again. But, for

the intervention of villagers, the deceased may have been assaulted more severely. Even if death was not directly attributable to a single injury, it was the cumulative result of the injuries leading to breathing difficulties by neurogenic shock.

6. We have considered the submissions on behalf of the parties and examined the evidence on record led by the prosecution, the defence of the Appellants under Section 313 Cr.P.C. and appreciation of the same by the Trial Judge. The deceased suffered multiple bruises on his arms, back, chest, knee, thigh and finger. He died of respiratory distress caused due to multiple injuries leading to neurogenic shock.

7. Merely because there be some variation between the statement of PW-1, Mainabai in the FIR and her Court statement how the assault originated cannot lead to doubting the entire prosecution case especially when the place, date and time of occurrence and injuries to Appellant No.2 in course of the same are not in dispute. Events took place in quick succession, the witness lost her husband before dawn on the next day, the police station was eleven kilometers away. The FIR was nonetheless lodged at 9:00 am the next morning. Having suffered the trauma for loss of her husband hours ago, minor discrepancy naturally could have occurred. In 1995 SCC (Cri.) 149 (Ramesh Maruti Patil v. State of Maharashtra) it was observed :-

“3....We are mindful of the position that the FIR is not a substantive piece of evidence and has a limited use. It is also not an encyclopaedia of the prosecution case. It is from the nature of the FIR and other surrounding circumstances to be seen whether there was any scope for any confusion at the time when the informant gave it or was it a version which merited explanation at the eventual trial.....”

8. The spot map, Exhibit P-2, confirms the place of occurrence was the fields of the deceased. The Appellants were therefore the aggressors. The plea of self defence is not available to an aggressor. Baijnath Mahton

(supra) relied upon by the Appellants is distinguishable as the deceased were the aggressors and the Appellants therein were held to have exceeded the right of self defence. In the present case three persons were injured and one succumbed while only the Appellant No.2 suffered minor injuries. PW-1, Mainabai was an injured witness, Exhibit P-43. She was also tied to the pole and assaulted during the second part of the occurrence. The question of self defence at this second stage simply does not arise. The credibility of an injured witness is high as the law presumes that such a witness injured in the same occurrence was speaking the truth. The witness was taken to the hospital by the Appellants. Merely because past enmity may have existed, her evidence regarding the second assault cannot be brushed aside and has not been appreciated by the Trial Judge appropriately.

9. The evidence of PW-1, Mainabai regarding the assault in the fields finds corroboration from PW-2, Dorelal and PW-3, Jitendra, who are also injured witnesses, Exhibit P-36 and Exhibit P-44. The latter has also corroborated the second incident in front of the shop of Babulal. They are also injured witnesses. The first had suffered 7 injuries which were opined to be simple in nature caused by hard blunt substance. The second suffered 5 injuries which were all simple in nature as deposed by PW-18, Dr. A.K. Tamrakar and the last suffered three simple injuries by hard blunt substance. All of them required hospitalisation. The injury suffered by Appellant No.2 from his MLC, Exhibit D-3 is one, simple in nature. There is no evidence of any injury suffered by Appellant No.1 supported by his MLC which makes his claim unacceptable. Merely because they were the sons of the deceased and past enmity existed their evidence cannot be rejected or viewed with suspicion. Evidence has to be considered collectively and objectively and not minutely to discover minor differences to reject the same or doubt it.

10. The Appellant nonetheless, in the entirety of the facts and circumstances notwithstanding long standing enmity between the parties with more than one litigation cannot be said to have the intention to kill. They were co-villagers co-existing together despite their differences. Undoubtedly, they must have had more than one opportunity to kill earlier. It appears the only intention was to teach a lesson to the deceased and his family as they were suspected of stealing crops.

11. The conduct of the Appellants at this stage also assumes relevance. If they had the intention to kill they would not have taken the deceased and PW-1, Mainabai to the hospital along with them on the bullock cart. In the entirety of the matter we find it difficult to sustain the conviction under Section 304 Part I IPC. But, considering their conduct of dragging the deceased who had multiple injuries on his person and then tying him up along with his wife to the pole and assaulting them when they were rescued by intervention of villagers, the Appellants can easily be said to have knowledge that death was likely to ensue. It is not necessary that death must be attributable to a particular specific injury. If death ensues as a cumulative result of the injuries caused conviction will follow. The conviction is therefore required to be altered from Section 304 Part I IPC to Section 304 Part II IPC.

12. We are not impressed with the argument that the Appellants are entitled to acquittal like the co-accused. The Trial Court has doubted the presence of those acquitted at the time of occurrence. The aspect of credibility of an injured witness has not been discussed. In any event no appeal against acquittal has been preferred. Appellant no. 2 was injured in the same incident and took the plea of self defence which has been disbelieved. Appellant No.1 took the plea of having been injured in the same episode but led no evidence in support of the same. The Appellants went to the hospital with the deceased. The case of the Appellants is

therefore completely distinguishable from those acquitted.

13. The Appellants have remained in custody for approximately two years and two months. The next question for our consideration is the appropriate sentence to be imposed. Again the conduct of the Appellants becomes relevant. As discussed, the parties were co-villagers, there was a long standing dispute between them. Injuries have been caused on both sides. The Appellants did not proceed for treatment all by themselves and took PW-1, Mainabai and the deceased with them also to the hospital. Death was not a direct outcome of the assault. In the entirety we are of the considered opinion that a sentence of five years will suffice in the interest of justice.

14. The conviction of the Appellants is therefore altered from Section 304 Part I IPC to one Section 304 Part II IPC and they are sentenced to five years of simple imprisonment. The bail bonds of the Appellants are cancelled and they are directed to surrender forthwith and/or be taken into custody immediately for serving out the remaining period of sentence.

15. With the aforesaid modification of the conviction and the sentence, the appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE