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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2304 of 1999****Judgment Reserved on : 05.09.2016****Judgment delivered on : 28.09.2016**

Feru Ram Verma, S/o Ghasiram Verma, Aged about 55 years, R/o village Ghorbhatti, Police Station Kharora, Tahsil and District Raipur, Madhya Pradesh (Now Chhattisgarh).

---- Appellant**Versus**

State of Madhya Pradesh (Now Chhattisgarh) through Station House Officer Incharge, Police Station Kharora, Tahsil and District Raipur, Madhya Pradesh (Now Chhattisgarh).

---- Respondent**Criminal Appeal No. 2884 of 1999**

Raju @ Rajendra Kumar S/o Feru Ram Verma, Aged about 29 years, R/o village Ghorbhatti, Police Station Kharora, Tahsil and District Raipur, Madhya Pradesh (Now Chhattisgarh).

---- Appellant**Versus**

State of Madhya Pradesh (Now Chhattisgarh) through Station House Officer Incharge, Police Station Kharora, Tahsil and District Raipur, Madhya Pradesh (Now Chhattisgarh).

---- Respondent

For Appellants : Shri Kishore Bhaduri and Shri Pawan Kesharwani,
Advocates.

For Respondent/State : Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Sanjay K. Agrawal, J.****C A V Judgment****Per Deepak Gupta, Chief Justice**

1. These two appeals i.e. Criminal Appeal No. 2304 of 1999 and Criminal Appeal No. 2884 of 1999 are being disposed of by a common judgment since they arise out of one incident and one judgment dated 22.07.1999 passed by the learned Third Additional Sessions Judge, Raipur, in Sessions Trial No. 359 of 1993 whereby the Appellants have been convicted and sentenced as under:

Accused/Appellant	Conviction under Section	Sentence
Feru Ram Verma	307 IPC	Rigorous imprisonment for four years with fine of Rs. 200/-. In default of payment of fine, two months rigorous imprisonment.
Raju @ Rajendra Kumar	302 IPC	Imprisonment for life with fine of Rs. 500/-. In default of payment of fine, rigorous imprisonment for one year.
	324 IPC	Rigorous imprisonment for two years with fine of Rs. 300/-. In default of payment of fine, rigorous imprisonment for six months.

2. Briefly stated facts of the case are that on 03.09.1993, at about 6:10 am, Punit Ram (PW-1) lodged an FIR (Exhibit P/1) in the police Station Kharora, District Raipur to the effect that he belongs to village Ghorbhatti. According to him, the relation between his party/family and the party/family of Feru Ram Verma were strained for a long time. A few days earlier, Raju @ Rajendra Kumar son of Feru Ram had beaten his brother Jitendra. In that connection a meeting / panchayat of the villagers was called. In this meeting, his father-Kejau, his uncles Mani Ram, Ram Singh and his younger brother Jitendra and prominent people of the village were present. While the meeting was going on, suddenly Feru Ram, his son Raju @ Rajendra, Suman Thanu and Kartik all came to the place of occurrence. They were armed with knives. Raju gave knife blows to his father and uncle Ram Singh. Feru Ram gave knife blow to Mani Ram and Suman also gave blows with knife to his father Kejau. His father fell down at the spot and died soon thereafter. After causing injuries, the accused ran away from the spot.

3. There are certain undisputed facts. The first undisputed fact is that meeting was taking place. It is also not disputed that during the meeting, an altercation took place. It is also not disputed that a fight took place. It is also not disputed that there was previous enmity between the parties.

4. The defence version is that during the meeting, it was Kejau and his family members who attacked the accused persons and therefore, they had also lodged an FIR and their FIR was lodged before lodging of the FIR (Exhibit P/1). It is urged that when this fight started, all the people started running here and there and during this melee who gave knife blows to whom is not known. It is also urged on behalf of the defence that the two Appellants were badly beaten up and any action which they took was in self-defence.

5. Punit Ram (PW-1) is the first witness. He has obviously supported the prosecution version. According to him, five accused persons came to the spot when the meeting was taking place and they were armed with knives. They came running and said that they would not leave "Rawats" - caste of Kejau and his family members. His father, Kejau stood up with folded hands but his father was given a knife blow below the belly button. His uncle Mani Ram and Ram Singh were present. They went to save their brother Kejau who was caught hold of by Thanu and Kartik. Raju, son of Feru gave a blow on the chest of his uncle Ram Singh. His other uncle Mani Ram was given a knife blow by Feru Ram again near the belly button. His father sat down after the first blow then Raju son of Feru Ram turned around and gave a blow of the knife on the chest of his father near the heart. His father fell down. This witness was carrying a Danda and he raised the Danda and on seeing this, the accused ran away leaving the knife in the chest of his father. The entire sharp portion of the knife was embedded in the chest of his father. He pulled out the knife but his father died on the spot. According to him, the occurrence took place at about 10:00 -11:00 pm. He had to walk 14 Kms to reach the police station and reached there at 06:00 am. In cross-examination, he has admitted that the opposite party had lodged a complaint against him and his family members before he had lodged the complaint. He has denied the suggestion that Feru and his son Raju were called to the spot when the meeting was being held. He denied the suggestion that Feru and Raju were asked to

remain standing in the meeting. A suggestion was put to this witness that he has beaten Feru and Raju @ Rajendra with *Lathi* as a result of which they received injuries on the head and lot of blood came out. He denied the suggestion and also denied that in a melee, the occurrence took place and nobody knows who gave blows to whom. He states that before he reached the police station, Raju and Feru had also reached there.

6. Makhan (PW-2) son of Firangi has not supported the prosecution case and has turned hostile. He however, admits that the meeting was called to discuss the issue of Kejau's son being beaten by the son of the accused Feru Ram. There was an atmosphere of tension at the meeting place. Then Feru Ram and his son wanted to leave the meeting and the entire crowd at the meeting got up and some crossed the road and some remained in the one side of the road and in the meantime, the lights went off and then fight started. He does not know anything else. Though, this witness has turned hostile, but this establishes the presence of the accused at the spot and also the fact that some fight had taken place.

7. The next relevant witness is Kalanath (PW-7). According to him, the fight took place during the meeting. The meeting had been called by Kejau to discuss the fact of his son being beaten up by the son of Feru Ram Verma. On reaching the place of meeting, Feru Ram started using abusive language. Kejau got up with folded hands and he said that he had called the meeting, do not use abusive language. Then all the accused started beating Kejau. Raju @ Rajendra gave a knife blow to Kejau in his stomach. Ram Singh and Mani Ram came to save his brother. Ram Singh was also given a knife blow by Raju @ Rajendra on the thigh and Mani Ram was given a knife blow by Feru Ram in the stomach. Other accused were helping these two accused. The statement of Jitendra Kumar (PW-8) is similar. According to him, when his father was standing by with folded hands, then Raju gave a blow of knife to his father and then Feru Ram gave blow of knife to Mani Ram and thereafter Raju gave knife blows to Ram Singh on his

private part. When his brother Punit Ram and others went to save, then Raju and Feru Ram also gave them beatings. According to him, Feru Ram gave a blow on the chest of his father. However, in the cross examination, he clarified that in fact it was not Feru Ram but Raju son of Feru Ram who had given the knife blow to his father.

8. Nanku (PW-9) also states that Feru Ram caught hold of Kejau and Raju gave knife blow on the stomach of Kejau then Punit Ram (PW-1) picked up a *Lathi* which was 2½ feet long and ran to save his father and gave a blow with the *Lathi*. Mani Ram and Ram Singh also went to save their brother. Feru Ram gave blow of knife to Mani Ram but he does not know who gave knife blow to Ram Singh.

9. Malikram Verma (PW-11) has partly supported the prosecution version and he does say that the accused attacked Kejau and his brother with knives. According to him, when the meeting was taking place, Kejau, during the course of meeting, stood up with folded hands and then Raju Verma gave a blow of the knife in the chest region of Kejau. Feru Ram gave a blow of the knife to Mani Ram on his stomach. He says that he saw only this much.

10. The prosecution did not examine two injured persons namely Ram Singh and Mani Ram. However, the Court summoned them as court witnesses. This action on behalf of the trial court was absolutely justified. Mani Ram has appeared as Court Witness No. 1. He states that when the meeting was going on, Raju @ Rajendra, Feru Ram alongwith Kartik, Thanu and another Raju @ Summan came armed to the meeting. First of all, Summan @ Raju gave blow of the knife to Kejau and when this witness went to save his brother, then Feru Ram gave a blow in his stomach. He also showed the injuries to the Court. Thereafter, Raju @ Rajendra gave a blow of knife to Kejau then Punit picked up a *Lathi* and gave blows to Raju @ Rajendra then the accused ran away.

11. The version of the second Court Witness- Ram Singh is similar. According to him, he also states that Kejaw was first given knife blow by Summan @ Raju in the stomach and when he and Mani Ram went to save Kejaw, then Raju @ Rajendra son of Feru Ram gave a blow to him on his chest. Thereafter, Raju gave a knife blow on the private part of this witness. Thereafter, Raju gave another blow to Kejaw in his chest and left the knife in the chest of Kejaw. Thereafter, Punit Ram gave a blow of *lathi* on the head of Raju @ Rajendra.

12. Coming to the medical evidence, Dr. D.N.Bijve, states that on 03.06.1993 at 08:00 am, he examined the injured Mani Ram and found one incised wound below the stomach measuring $1\frac{1}{2}'' \times \frac{1}{2}'' \times 1''$. The intestine and fatty tissues had come out. This injury had been caused by a sharp weapon within 24 hours. He has proved his report (Exhibit P-12) in this behalf. On the same day, at 08:15 am, he examined Ram Singh son of Chaitrm Rawat. He found one incised wound near the right shoulder bone measuring $1'' \times \frac{1}{2}'' \times \frac{1}{4}''$. The second wound was on the right side of the private part and the size of this wound was $\frac{3}{4}'' \times \frac{1}{4}'' \times \frac{1}{10}''$. Both the injuries were caused by a sharp weapon. He also conducted the postmortem on the deceased Kejaw. He found one incised wound on the left side of the chest 2 inches below the nipple measuring $1\frac{1}{2}'' \times \frac{1}{2}'' \times 2\frac{1}{2}''$ and one another cut injury just above the belly button $1'' \times \frac{1}{2}'' \times 1\frac{1}{2}''$. According to him, the death occurred due to excessive bleeding from these injuries which had been caused by sharp edged weapon. He has proved the postmortem report (Exhibit P-14). He states that on the query by police, he also examined the knife on 06.09.1993 and according to him, these injuries could be caused by the knife in question. He then sealed the knife and sent it back as per report (Exhibit P-15). He also opined that the same knife could have caused injuries on Ram Singh and Mani Ram.

13. Reference may also be made to the MLCs of the Appellants-Feru Ram and Raju @ Rajendra. Feru Ram had one lacerated wound on the scalp $2\frac{1}{4}'' \times \frac{1}{4}''$ in the occipital region. He had another lacerated wound on the scalp on the parietal

area 2"x1/4"x1/4". He had another lacerated wound in the occipital region 1/4"x1/4". He had a contusions on the right and the left arm. As far as Raju @ Rajendra is concerned, he had one lacerated wound on the scalp 1"x1/4"x1/4" and contusion on the right fore arm and one contusion in the left fore arm. He had also an abrasion on the toe.

14. On considering the aforesaid evidence, we are clearly of the view that as alleged by the prosecution, a meeting was taking place and in this meeting, Kejau had alleged his son Jitendra was beaten by Feru Ram's son Raju @ Rajendra. The other three accused have been acquitted but it does appear to us that in the meeting, these Appellants came armed with knives. They had no business of coming to the meeting armed with knives. Irrespective of the fact whether they were summoned to the meeting or whether they came to the meeting on their own accord, the fact that they came armed with knives show that they had an intention of creating violence. A number of witnesses have stated that the accused were not called but came to the spot suddenly armed with knives. To us, this seems to be truthful and correct.

15. The main argument on behalf of the Appellants raised by Shri Kishore Bhaduri, learned counsel is that both the court witnesses have stated that the first blow to Kejau was given by Summan who was the second Raju. This fact is correct. Shri Bhaduri urges that therefore, even if it is assumed that the second blow was given by Raju @ Rajendra son of Feru Ram, there is no evidence to prove that on that blow given on the chest was sufficient by itself to cause death of the deceased. He states that as per the Doctor, the death was a result of excessive bleeding caused due to both the injuries and since it stands proved that Raju @ Rajendra did not cause both the injuries, he cannot be held guilty for the death of Kejau.

16. It is lastly contended that it was Kejau and his side who had beaten up Feru Ram and Raju @ Rajendra and knife blows were given in self defence. We are

unable to accept this argument. It was Feru Ram and his son Raju @ Rajendra and the persons accompanying them including Summan @ Raju who were armed with knives. Unfortunately, before the trial court, because there were two persons known as Raju, one Raju @ Rajendra and one Raju @ Summan, there seems to have been some confusion. But on going through the entire evidence, we have no hesitation in coming to the conclusion that we must believe the statement of Punit Ram (PW-1) and the two court witnesses CW-1 and CW-2. From their evidence, it is more than apparent that the first knife blow was given to Kejau by Raju @ Summan and not by Raju @ Rajendra. However, it stands proved that Raju @ Rajendra also gave two knife blows to Ram Singh, one on his shoulder and one near his private part and Feru Ram gave a knife blow to Mani Ram on his abdomen. Therefore, the injured party suffered five knife blows in all. It is more than obvious that after his father had been given the knife blows, PW-1, Punit Ram wielded *lathi* blows to Raju @ Rajendra and Feru Ram and this explains the injuries on the accused persons. We, therefore have no hesitation in coming to the conclusion that the incident took place in the manner alleged by the prosecution.

17. However, as rightly urged by Shri Kishore Bhaduri, we cannot convict Raju @ Rajendra for the death of Kejau because Kejau died as a result of cumulative bleeding from two injuries. The prosecution has only proved that Raju @ Rajendra gave one knife blow on the chest region which is 2½" deep and almost the entire sharp portion of the knife was embedded in the chest of the deceased. Unfortunately, there is no medical evidence to show that this injury by itself was sufficient in ordinary course of nature to cause death. At the same time, we are of the considered view that Raju @ Rajendra caused at least three stab injuries, one on the person of Kejau and two on the person of Ram Singh. They are aimed at the vital parts of the body. Therefore, his intention was to cause injury which could cause death. Therefore, we are clearly of the view that even if he is to get the

benefit of lack of medical evidence, this is a case fully covered by second proviso to Section 300 IPC because this was an act with an intention as well as knowledge that it is likely to cause death. Since the intention was to cause death, the case falls within Section 304 Part I IPC. Accordingly, we partly allow the appeal of the Accused-Raju @ Rajendra Kumar (Criminal Appeal No. 2884 of 1999) and convert the conviction under Section 302 IPC to one under Section 304 Part I IPC. He is sentenced to undergo rigorous imprisonment for 10 years. He is also directed to pay fine of Rs. 50,000/-. In case the fine amount is deposited, the same shall be paid to the legal heirs of the deceased and in case the fine amount is not paid, the Appellant-Raju @ Rajendra shall undergo further rigorous imprisonment for two years.

18. As far as Appellant-Feru Ram is concerned, it is proved that he has caused stab injury on the stomach of Mani Ram. Therefore, we uphold the conviction and sentence imposed upon him and dismiss his appeal.

19. The Appellants are on bail. They are directed to surrender or be taken into custody forthwith for serving out the remaining part of their sentences.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay K. Agrawal)
JUDGE