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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1598 of 2000**

Kejram S/o Sukalu Satnami aged about 22 years resident of village Dhabadih Police Station Baloda Bazar District Raipur Madhya Pradesh (Now Chhattisgarh).

---- Appellants**Versus**

State of Madhya Pradesh through Police Station Baloda Bazar District Raipur Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellant : Dr. N.K. Shukla, Senior Advocate with Shri Roshan Dubey, Advocate.
For Respondent/State : Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board**Per Deepak Gupta, Chief Justice****10/11/2016**

1. This appeal by the convicted accused is directed against the judgment dated 5.5.2000 delivered by the learned First Additional Sessions Judge, Baloda Bazar, in Sessions Trial No. 192 of 1997 whereby he convicted and sentenced the Appellant as follows:-

Conviction	Sentence
Under Section 147 IPC	6 months rigorous imprisonment
Under Section 148 IPC	1 year rigorous imprisonment
Under Section 302 IPC	Rigorous imprisonment for life and fine of Rs.2000/-, in default of payment of amount of fine, one month rigorous imprisonment

2. The prosecution story, briefly stated is that the deceased Gangaram and accused persons were all residents of village Dhabadih. They belong to different

parties. According to the prosecution, at about 5.30 in the evening when Gangaram (deceased) was sitting alone in the verandah of his house, his wife, children, other family member and neighbour were inside the house. At that time, the Appellant accompanied by 39 other persons entered the house of the deceased. They attacked the deceased with deadly weapons. It is alleged that the Appellant was armed with a spear whereas some of the other members of the party were armed with sharp edged weapons like spear, knife, etc. and some others were armed with *lathis*. According to the prosecution, all these persons gave blows to the deceased. When the family members of deceased Gangaram tried to intervene to save Gangaram, they were also beaten up by them.

3. The First Information Report with regard to this occurrence was given by Deendayal (DW-1), who is Kotwar of the village. He lodged a report which was entered in the diary as *Rojnamchasanha* (Exhibit P/88) at 08.05 pm on 30.5.1996 alleging that in the evening two groups in the village had a fight with each other. Both the groups were armed with *lathis* and *tabbals* etc. According to him, two people were seriously injured in this fight which was still going on when he left to lodge the report.

4. As is the deplorable practice in the State of Chhattisgarh even though this information clearly discloses a cognizable offence, no FIR was lodged by the Police. In fact, at about 9.00 pm *Dehatinalishi* (Exhibit P/103) was lodged at the instance of deceased Gangaram himself, in which his allegations were that at about 5.30 pm, some members of the opposite party entered his house when his wife, children and other family members were inside the house watching TV alongwith some neighbours. On seeing him, Accused Kejram, Samaru and some others dragged him outside the house and gave him blows. First Samaru gave him a blow with *lathi* and then Appellant-Kejram pushed the spear in the stomach of Gangaram. Dhannu gave a blow with a *lathi* on his jaw. Krishna Kumar also

gave a blow with *lathi*. Then Dhannu again gave another blow of knife on his face and he was beaten up by others. Even at this stage, no FIR was lodged. Only one blow of spear in the stomach was attributed to the present Appellant. Thereafter, FIR (Exhibit P/89) was recorded at 10:30 pm on the basis of the *Dehatinalishi*.

5. Unfortunately, Gangaram died soon thereafter. Before Gangaram died, it is alleged that he made two dying declarations. First dying declaration is Exhibit P/46 made in the presence of Dr. R.S.Joshi (PW-7) and second dying declaration was made in the presence of Executive Magistrate, Shri B.C.Sahu (PW-21). In the dying declaration made to the Doctor, the version similar to that in the *Dehatinalishi* was given but in the dying declaration made to the Executive Magistrate, only Appellant-Kejram has been named as having given one blow with a spear. After this FIR was recorded, the police investigated the matter. The body was subjected to postmortem and the postmortem was conducted by Dr. R.S.Joshi (PW-7). After investigation, charge sheet under Section 173 CrPC was filed against the present Appellant and 39 other Accused. They all pleaded not guilty of the charges and claimed trial. After trial, the learned Trial Court acquitted 23 of the accused persons, 17 were convicted out of whom 12 were convicted of very minor offence under Section 323 IPC and were sentenced to only payment of fine. Four Accused were convicted under Section 147, 323, 326 read with Section 149 IPC and sentenced to undergo rigorous imprisonment for four years. The present Appellant was convicted for having committed an offence of murder and was sentenced as aforesaid.

6. It appears that none of the other accused have filed appeals. Even on an order being passed by this Court, the Registry has failed to point out that any other appeal is pending against the impugned judgment.

7. Be that as it may, we now proceed to hear the appeal of the Appellant-Kejram.

8. We have heard learned Senior Counsel appearing on behalf of the Accused-Appellant and learned Panel Lawyer appearing for the State.

9. The first submission of Dr. Shukla is that the Accused-Kejram has been wrongly implicated and that it is a case of self-defence. According to him, there was a free fight between the two groups and during this free fight, an attack was made on the members of the Accused party and in self-defence, they attacked Gangaram who expired. We are unable to accept this submission. The reason is that except for documents Exhibit D-1A, D-2A, D-3A and D-4A, no other documentary evidence has been led with regard to the injuries suffered by the persons belonging to the party to which the Appellant-Accused belonged. From these documents, the only injury we can decipher is to one Panchram on his head. In this regard, no Medico Legal Certificate has been produced but only the record of the hospital showing that they are the persons who were brought to the hospital for treatment, was produced. Therefore, we are unable to decipher that what was the nature of the head injury and whether it was scratch on the head or a much more serious injury. No doubt that some of the witnesses have stated that some members of the party to which the Appellant belonged also sustained injuries but no Doctor has been examined in this behalf. In fact, it appears to us that Dr. R.S.Joshi (PW-7) was the only Doctor available in the area and he has also not been cross-examined as to whether he has treated the Appellant or the other Accused. Therefore, we are unable to accept this version of self-defence.

10. As far as the prosecution story is concerned, that is fully supported by the ocular evidence of eyewitnesses especially the statement of Shyam Bai (PW-1), wife of the deceased, Jethiya Bai (PW-6), sister-in-law of the deceased, Ram Narayan (PW-2), uncle of the deceased and Nirmala (PW-9), daughter of the deceased who were also injured in the attack. From the evidence on record, it is apparent that number of persons belonging to the party of the deceased were

injured and their explanation is that when they came to save the deceased, they were also beaten by the Accused and thus they have received the injuries. There is no reason to disbelieve the version of the prosecution witnesses and we have no hesitation in holding that Appellant-Kejram inflicted a blow with a spear in the stomach of the deceased. The question is whether this would amount to an offence of murder as held by the trial court or not?

11. At the outset, we may note that the learned trial court has convicted the other Accused under Section 147, 326 read with Section 149 IPC. Section 147 IPC deals with punishment for rioting. Section 149 IPC reads as follows:

"149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

12. If Section 149 IPC is to apply, then every member of unlawful assembly who has committed the offence pursuant to a common object of such assembly is liable to punishment regardless of the fact what injury has been caused by any such member of the unlawful assembly. Though the learned trial Court used Section 149 IPC to convict the Accused, he has convicted the Accused under three different groups. The Appellant has been convicted under Section 302 IPC and some of the Accused were convicted under Sections 323 and 326 read with Section 149 IPC and some of the Accused only under Section 323 IPC. It is thus apparent that the learned trial Court did not comprehend what is the meaning of Section 149 IPC. If there is a common object of the unlawful assembly, then all the Accused are to be convicted for the same offence regardless of the action taken by each one of the Accused. Therefore, we feel that Section 149 IPC was wrongly used and this will be a case of Section 147 IPC read with the offence that each individual Accused has committed. In fact, even the learned trial Court has

convicted and sentenced the Accused persons by taking into consideration the individual offence committed by them. It could not have taken the aid of Section 149 IPC which deals with common object.

13. As far as the present Appellant is concerned, the evidence of the deceased reflected in the *Dehatinalishi* as well as the first dying declaration attributes only one blow to the deceased and that is the blow by spear in the stomach of the deceased. Even during the course of evidence led before the Court, all the witnesses have stated that one blow was given by the Accused to the deceased by the spear. The issue which arises is whether the death of deceased was caused due to this one blow or not? In this regard we may refer to the statement of Dr. R.S.Joshi (PW-7). In examination-in-Chief, this Doctor has stated that as per his opinion, the death of the deceased occurred due to excessive bleeding and injuries on the vital parts. In examination-in-chief, he did not indicate as to which injury exactly has caused the death. In answer to the question of the defence counsel, this witness in para 34 of his statement states that cause of death of Gangaram was injuries caused to liver and kidney and bleeding from these organs. He has also stated that injuries to the liver and kidney are mentioned as injury No. 1 and 2 in the postmortem report. On further examination of the statement of the witness, we find that injury No. 1 was caused on the front part of the body just below the chest by a pointed sharp weapon. Injury No. 2 was caused by *farsa* and not by a spear and this injury was on the back side which led to injury in the kidney. These are two separate injuries. Injury No. 1 may be attributed to the Appellant but injury No. 2 cannot be attributed to the Appellant because as per the prosecution evidence the Appellant gave only one blow to the deceased on his stomach. Therefore, the Appellant can only be held guilty of having committed an offence under Section 148 IPC and of an offence punishable under Section 326 IPC because he caused a grievous hurt to the deceased by a spear which is definitely a deadly weapon.

14. The Appellant has already spent more than seven years and eight months behind the bars. We feel that it is more than sufficient punishment to meet the ends of justice. Accordingly, the appeal is partly allowed.

15. We therefore set aside the judgment dated 05.05.2000 of the learned 1st Additional Sessions Judge, Balodabazar, in Sessions Trial No. 192 of 1997 and the conviction of the Appellant is converted from under Section 302 IPC to one under Section 326 read with Section 148 IPC. The sentence is reduced to the period already undergone by him.

16. The Accused/Appellant is on bail. The bail bonds shall remain effective for a period of six months in view of the provisions of Section 437-A CrPC.

17. The appeal is partly allowed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE