

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1066 OF 2002

Ghurawa S/o Alen Sahu, aged 38 years, R/o Village Sarekha, P.S. & Distt. Kawardha (C.G.)

... Appellant

Versus

State of Chhattisgarh, through Station House Officer, Police Station Kawardha, Distt. Kawardha (C.G.)

... Respondent

CRIMINAL APPEAL NO. 1105 OF 2002

1. Ramji S/o Jodhan, aged 30 years
 2. Rambharosa S/o Ali Ram Sahu, aged 25 years
 3. Narayan S/o Ali Ram Sahu, aged 35 years
 4. Bhagwantin Bai, W/o Ramji Sahu, aged 28 years
 5. Jodhan S/o Subharan Sahu, aged 80 years
 6. Ali Ram S/o Jodhan Sahu, aged 45 years
- All Appellants R/o Village Sarekha, P.S. & Distt. Kawardha (C.G.)

... Appellants

Versus

State of Chhattisgarh, through Police Station Kawardha (C.G.)

... Respondent

CRIMINAL APPEAL NO. 1158 OF 2002

1. Ramjhul Gond S/o Jhadu, aged 24 years
 2. Sumrit Bai W/o Jhadu Gond, aged 40 years
- Both R/o Village Sarekha, P.S. & Distt. Kawardha (C.G.)

... Appellants

Versus

State of Chhattisgarh, through Police Station Kawardha (C.G.)

... Respondent

Mr. Yashwant Tiwari, Mr. Amiyakant Tiwari and Mr. Alok Nigam, Advocates, for the respective Appellants.

Ms. Smita Ghai, Panel Lawyer, for Respondent-State.

Hon'ble Shri Deepak Gupta, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

C A V JUDGMENT

Reserved on : 27/07/2016

Delivered on : 24/08/2016

Per P. Sam Koshy, J.

1. Since all these Criminal Appeals arise out of the same judgment dated 30.9.2002, these are being decided by this common judgment.
2. Challenge in the present appeals is to the judgment of conviction and order of sentence dated 30.9.2002 passed by the Additional Sessions Judge (F.T.C.), Kawardha, in Sessions Trial No. 186 of 2000 convicting the Appellants for the offences punishable under Sections 302/149, 325/149 and 148 of IPC. They have been sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.1000/- and in default to pay fine amount, they were further required to undergo rigorous imprisonment for six months under Section 302/149 of IPC. Further, for the offence punishable under Section 325/149 of IPC they have been sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.500/- in default to pay which, they were required to suffer further rigorous imprisonment for six months. Similarly, for the offence punishable under Section 148 of IPC, the Appellants have been sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.500/- with default stipulation of rigorous imprisonment for six months. All the sentences were directed to run concurrently.
3. Case of the prosecution in brief is that on 27.8.2000 *Sadhuram* (deceased) and his wife *Mithlabai* (injured), PW-10, went to the field at Village Sarekha and when they reached the field at around 12 O'clock they saw that the field of one *Ramji* had already been filled with water and therefore *Sadhuram* went to get water to his field which was opposed to by the accused persons and it is said that all the accused persons armed with

lathi, tangia, farsha, kudali and *hansia* surrounded *Sadhuram* and objected of his taking water to his field and *Sadhuram* is said to have told *Ramji* that since their fields are already full with water he would be filling his field. It is then that one of the accused persons i.e., *Aliram* is said to have assaulted *Sadhuram* with a *barchhi* which was blocked by *Sadhuram* with his hands and tried to save himself by fleeing from the spot. But as soon as *Sadhuram* reached the field of one *Nakul* the accused persons is said to have again surrounded him and assaulted him with *lathi, tangia, barchhi, kudali, tabbal* and *hansia*. Seeing the assault, the wife of *Sadhuram*, namely, *Mithlabai*, PW-10, also went to save *Sadhuram* but the accused persons is said to have assaulted her also and injured her. *Sadhuram* had succumbed to the injuries on the spot itself. It is alleged that PW-2, Mohan and PW-9, minor Asharam are the eye-witnesses to the incident. It is said that PW-1, Makhanlal, brother of the deceased, reached the spot immediately thereafter and found his brother *Sadhuram* lying dead on the field and his sister-in-law i.e., wife of the deceased, *Mithlabai*, PW-10, lying injured on the field. It is said that PW-10, *Mithlabai*, the injured witness, disclosed the entire facts to PW-1, Makhanlal and on the same day it is said that PW-1, Makhanlal, is said to have gone to the police outpost and lodged a report (Exhibit P-1) upon which Crime No. 186 of 2000 was recorded.

4. Later on, *Merg* (Exhibit P-2) was registered. Subsequently, the body of the deceased, *Sadhuram*, was sent for post-mortem. PW-8, Dr. I.S. Thakur, conducted post-mortem and submitted his report vide Exhibit P-25 and found the following injuries on the body of the deceased :-

1. Incised wound of 5x1cm in size present above occipital region skull near about centre of scalp, red in colour. It is upto bone deep.

2. Lacerated wound of 2x1cm in size on the left forehead, red in colour.
3. Lacerated wound of 2x1cm in size at junction of upper and middle part of right leg; fracture & dislocation of right patella seen.
4. Lacerated wound of 2x5cm in size on medical aspect of right leg at junction of mid 1/3 & low 1/3 leg.
5. Lacerated wound of 1x1cm in size and fracture & contusion on entire up arm up to shoulder.
6. Lacerated wound of 3x5cm in size on shin middle part of left leg.
7. Abrasion of 2x1.5cm in size on middle and post part of left forearm.

The Doctor gave an opinion that the cause of death was due to coma and syncope due to shock and hemorrhage resulting from head injury and multiple injuries over body and the time elapsed since death was approximately 18 to 24 hours.

5. Similarly, PW-10, Mithlabai, the injured, was also subjected to medical examination by PW-11, Dr. K.K. Sharma who submitted his report vide Exhibit P-38 and found the following injuries on the body of the injured:-

1. Swelling, tenderness and contusion over right leg sized 10x6x3 cm. Advised to X-ray. As per Exhibit P-40, on X-ray oblique crack fracture was found on the upper end of right Tibia.
2. Abrasion and tenderness present over right scapula area 6x4cm, for which X-ray advised.
3. Abrasion and tenderness present over left thigh 6x3cm and on the left upper arm 4x3cm.
4. Swelling and tenderness present over occipital area 3x4cm and lacerated wound present 1.5x1x5cm.

6. After investigation, the matter was put to trial before the Sessions Court. During trial, the prosecution examined as many as 12 witnesses and on behalf of the defence two witnesses were examined.

7. After conclusion of the trial, the Court below vide impugned judgment acquitted two of the accused persons, namely *Paras* and *Ramanuj* and held guilty the remaining accused persons for the offences punishable under Sections 302/149, 325/149 and 148 of IPC, leading to the filing of the present appeals.

8. Learned Counsel for the Appellants submitted that the Court below was not justified for holding the Appellants guilty for the offence under Section 302 IPC for the reason that necessary ingredients for constituting the offence under Section 302 IPC is not present in the evidence which has come on record. According to the Counsel for the Appellants, the facts of the case would show that the accused persons were not the aggressors in the instant case and it was the deceased and his wife who had reached the field of the accused persons and were trying to make way for water from the field of *Ramji* to enter into the field of the deceased.

9. He further submitted that from the nature of allegations levelled also it is not established as to which of the accused persons had inflicted which injuries and therefore the Appellants cannot be held guilty of having committed the said offence. He further submits that the nature of dispute that arose between the parties clearly reflect that it was the trivial issue of sharing of water from the field that led to the assault and which proved fatal. According to the Counsel for the Appellants, the incident took place on the spur of moment and that there was no premeditation or for that matter preplanned conspiracy in any manner to eliminate the deceased.

10. It was next submitted by the Counsel for the Appellants that the evidence would also reveal that all the instruments which have been used for commission of the alleged offence are all agricultural instruments and cannot be as such said to be 'weapons' in its literal meaning as all these

agricultural instruments are available with all the cultivators and farmers in their houses. It was further contended that on the same set of facts two of the accused persons have been acquitted from the charges levelled against them and it is only the Appellants who have been found guilty from the same set of facts and on the same set of evidence which therefore is not proper, legal and justified and therefore the Appellants also deserve to be treated at par with the two accused persons who have later been acquitted. According to the Counsel for the Appellants, it is also therefore the case that all these accused persons were in their respective fields when the incident took place and it is only when the deceased had tried to enter into the field of *Ramji* and *Nakul* for getting water to flow into the fields of the deceased that all the alleged accused persons have gathered against the deceased.

11. Lastly, as an alternative plea, learned Counsel for the Appellants submitted that accepting the case of the prosecution as it is, what is an admitted position is the fact that the accused persons were working in the fields when the deceased and his wife is said to have reached there with an intention of cutting the fields of *Ramji* and *Nakul* so that water could flow to the field of the deceased, which was objected to by the accused persons and which later on turned into a fight between the parties, and the present Appellants is said to have got together and assaulted the deceased and his wife, Mithlabai, PW-10. According to the Counsel for the Appellants, since there was no motive, *mens rea* and intention on the part of the Appellants coupled with the fact that the incident occurred because of the spur of the moment, the case would not fall within the ambit of Section 302 of IPC, but, rather, at best would be a case under Section 304 Part-II of IPC and that since the Appellants have already remained in

custody for a period of about three years, they may be held guilty under Section 304 Part-II of IPC and sentence may be reduced to the period already undergone by them.

12. Learned Counsel for the State however opposes the appeal and submits that it is a clear case where the incident took place on 27.8.2000 and that on the said date all the Appellants is said to have armed with different weapons/agricultural instruments with which injury could be easily caused and surrounding the deceased and his wife is said to have assaulted them. State Counsel further took the Court through the evidence of PW-2, Mohan and PW-9, Asharam supported by other witnesses and submitted that there is no reason to disbelieve the eye-witnesses account and neither is there any substantive material which could be extracted from the cross-examination of the prosecution witnesses particularly the eye-witnesses so as to disbelieve them and also to doubt the judgment of conviction and thus prayed for the rejection of the appeal.

13. We have heard learned Counsel for the parties, perused the evidence on record as also the impugned judgment.

14. Having considered the submissions put forth by the learned Counsel appearing for either side, it would be pertinent at this juncture to consider the evidence of the two eye-witnesses i.e., PW-2, Mohan and PW-9, Asharam in addition to the version of the injured witness herself i.e., PW-10, Mithlabai. A perusal of the deposition of PW-2, Mohan clearly stipulates that on the fateful day when *Sadhuram*, the deceased, was filling water on his field the accused persons led by *Aliram* who asked the deceased as to why he was filling water from their fields to which the deceased is said to have responded by saying that their field was already full and therefore he was taking water to his field which was objected to by *Aliram* and he first

assaulted the deceased with a *barchhi* which was blocked by the deceased with his hands and then to save himself he (deceased) ran towards the field of *Nakul* where it is said that the accused persons armed with weapons, i.e., as per the evidence of PW-2, Mohan – Aliram armed with *barchhi*; Jodhan, Ramji and Ramanuj with *tangia*; Ramjhul, Rambharosa and Narayan with *lathi*; Ghurawa with *tabbal*; Paras with *kudri*; Sumrit Bai and Bhagwantin Bai with *hansia* assaulted the deceased. Immediately thereafter, PW-10, Mithlabai, ran to save her husband, but the accused persons is said to have assaulted her also and all of them subsequently fled away from the place of incident. PW-2, Mohan states that immediately after the accused persons had fled from the scene, he reached the spot and found *Sadhuram* already dead and PW-10, *Mithlabai*, wife of the deceased, lying injured. PW-2, Mohan, in his cross-examination, also has categorically stated in paragraph 4 that he had seen the entire incident from the place where he was working in the field.

15. Likewise, if we refer to the evidence of other eye-witness, PW-9, Asharam also it would reflect that he was a minor aged about 12 years at the time of deposition before the Court below, that is to say, at the the time of his deposition he was roughly 11 years of age. He was working just near the place of incident when he saw that the accused persons, naming each one of them, assaulting the deceased, *Sadhuram*, with weapons like *lathi*, *barchhi*, *tangia* in their hands and later on when *Mithlabai* reached the spot and raised an alarm seeking for help then the accused persons is said to have assaulted her also and after the assault all the accused persons is said to have run away from the scene. PW-9, Asharam, further in his deposition has stated that he immediately ran to his house and there he had informed about the incident to Makhanlal, PW-1.

16. The statement of PW-9, Asharam, stands corroborated from the evidence of PW-1, Makhanlal, who in his Court statement has categorically informed that *Asharam* coming from the place of incident informed him about the assault made by the accused persons on the deceased and his wife, Mithlabai, and he immediately along with *Asharam* went to the place of incident and found the deceased lying dead on the field and PW-10, Mithlabai, also lying injured there. He immediately inquired from the injured, PW-10, Mithlabai, about the incident, who, in turn, informed him that the accused persons had assaulted them. Thus, the evidence of PW-2, Mohan stands fully corroborated with the evidence of PW-9, minor Asharam and PW-1, Makhanlal.

17. Further, if we refer to the evidence of the injured witness, PW-10, Mithlabai, there also the injured witness has very emphatically with all clarity has referred to the accused persons objecting the deceased in taking water from the field of *Aliram* and thereafter when the deceased did not accede to their objection they surrounded him and is said to have started assaulting the deceased and when *Mithlabai* herself reached the spot in aid of her husband and cried for help she too was assaulted. There is not much which the accused persons could extract from the cross-examination of PW-10, Mithlabai; nor is there any substantial omission or contradiction in the statement of this witness when compared to the statement recorded at the time of investigation.

18. Thus, it can be safely said that the prosecution in fact has been able to prove its case against the accused persons having assaulted the deceased and his wife beyond reasonable doubt and the finding of the Court below to the extent of holding the accused persons guilty for killing

the deceased, Sadharam, and assaulting his wife, PW-10, Mithla Bai, does not warrant any interference and the same stands confirmed.

19. Now all that has to be seen is that whether the act on the part of the accused persons be brought into the ambit of Section 302 of IPC or whether the same would fall under Section 304 Part-II of IPC. From the evidence which have come on record one thing which is very clear is that the incident occurred because of trivial issue of the deceased and his wife insisting to fill their field by taking water from the field of *Aliram*. Another aspect which has to be borne in mind is that from the evidence of the eye-witnesses as well as the injured witness, presence of all the accused persons also stands established. Further, all the accused persons were armed with some sort of instruments which have been used by them as a weapon of assault to the deceased and PW-10, Mithlabai, the injured witness. From the evidence of the doctors also, number of injuries found on the body of the deceased as well as the injured shows that it is not a case where the deceased is said to have been assaulted by only one or two persons. The nature of injuries itself shows that the deceased and the injured were assaulted by a group which stands established from the deposition of PW-2, Mohan. True it is that there appears to have been no motive or premeditation on the part of the Appellants/accused persons in assaulting the deceased or his wife. The incident occurred at the instance of the deceased insisting for filling water from the field and trying to take water through the field of *Aliram*. There is also no evidence to show that all the accused persons had assembled together with an intention of assaulting the deceased and his wife. From the deposition what could be gathered is that all these accused persons is said to have assembled immediately after the deceased refused to accede the request of *Aliram*

not to fill water and he (deceased) in spite of warning tried to take water to his field and it is then that the accused persons gathered together and assaulted the deceased and his wife.

20. Thus, we are of the opinion that there was no premeditation, *mens rea* or intention to cause death and therefore the case may not fall within the definition of murder as is defined under Section 300 of IPC as the intention is totally missing. Rather, the manner in which the incident occurred and the subsequent assault made by the accused persons meets the requirements all that is required for making out a case under Section 304 Part-II of IPC, i.e., punishment of culpable homicide not amounting to murder.

21. Another fact which cannot be lost sight is the fact that the incident occurred in the heat of passion and the spur of the moment on the dispute which arose on the issue of taking water from the field of *Aliram*. The case can be said to be one which would fall within the ambit of 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 Appellants and that the act committed by the Appellants was 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 Appellants under Section 304 Part-II IPC.

22. The view of this Court stands fortified by the decisions of the Hon'ble Supreme Court made in the cases of **Sree Vijayakumar and Another Vs. State by Inspector of Police, Kanyakumari** [2005 AIR SCW 3067], **Hafiz Vs. State of U.P.** [2005 (12) SCC 599] and **S. Ganesan Vs. Rama Raghuraman and Others** [2011 (2) SCC 83].

23. From the given facts and circumstances of the case and also following the judgment cited herein above, we are of the considered opinion that the present is a case which would squarely fall within the ambit of Section 304 Part-II of IPC and the conviction of the Appellants in the instant case under Section 302 of IPC is not proper and justified and instead, they are found guilty of the offence under Section 304 Part-II of IPC. Accordingly, the impugned judgment of conviction to the extent of convicting the Appellants for the offence under Section 302 of IPC is set aside/quashed and Appellants are held guilty of having committed the offence punishable under Section 304 Part-II of IPC.

24. Now coming to the issue of appropriate sentence, in a case where the act of the accused amounts to culpable homicide not amounting to murder if we look into the period of sentence already undergone by the accused persons it would reflect that the maximum sentence which the accused persons have undergone till now is just about three years of time. One should not forget the fact that it is not just a case where the deceased was done to death by assault made by the accused persons but it is also a case where the deceased was done to death in front of his wife who was screaming for help and yet the accused persons paid no heed to the request and cry made by the injured, Mithlabai, PW-10. It is also a case that after killing the deceased the accused persons is also said to have assaulted PW-10, Mithlabai, also on account of which she too had sustained grievous injuries. Therefore, we are of the opinion that it is not a case where the Appellants could have been given the sentence of the period that they have already undergone as the gravity of the offence and the nature of injuries sustained by the injured speaks volume of the gruesome attack made by the accused persons armed with weapons and

thus the accused persons deserve to be sentenced to undergo minimum seven years of rigorous imprisonment.

25. Resultantly, the impugned judgment stands set aside/quashed to the extent of the conviction of the Appellants for the offence under Section 302/149 of IPC and in stead, they are held guilty for the offence under Section 304 Part-II read with Section 149 of IPC and are sentenced to undergo rigorous imprisonment for seven years. The conviction and sentence of the Appellants under Section 325/149 and Section 148 of IPC are affirmed. The Appellants are reported to be on bail. Their bail-bonds stand cancelled and they are directed to immediately surrender before the Court below and/or be taken into custody forthwith.

26. With the aforesaid modification of the conviction and sentence, all the three Criminal Appeals stand allowed in part.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE