

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1100 of 1997****Judgment Reserved on 15.03.2017****Judgment Delivered on 29.05.2017**

1. Ramaiya S/o Shri Nakul Dhobi, aged 60 years (Dead)
2. Naresh S/o Ramaiya, aged 29 years,
Both r/o Kothmi Sunar, Thana Akaltara, Tehsil Janjgir, District Bilaspur,
Madhya Pradesh (now Chhattisgarh).

----Appellants**Versus**

State of Madhya Pradesh (now Chhattisgarh)

---- Respondent

For the Appellants	:	Shri Rakesh Pandey, Advocate.
For the Respondent/ State	:	Smt. Sobha Kashyap, Deputy Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Judgment**

1. The appellants have preferred this appeal against the judgment and order dated 23.5.1997 passed by the Learned Additional Sessions Judge, Janjgir, District Bilaspur in Sessions Trial No. 210 of 1991 convicting the accused/ appellant No.1 – Ramaiya under Sections 304 (part-II) and 323 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo rigorous imprisonment for five years with fine of Rs.500/- under Section 304 (part-II) and RI for four months with fine of Rs.300/- under Section 323 of the IPC whereas accused / appellant No.2 – Naresh has been convicted under Section 323 of the IPC and sentenced to undergo RI for four months and to pay fine of Rs.300/- with default stipulations.

2. Facts of the case in brief are that on 10.7.1988 at about 10:00 am, the First Information Report Ex. P/11 was lodged by Budhram (PW-7) alleging that on that day at about 6:30 am when he had gone to his field and thrown away the thorns lying there, on which the accused/ appellant slapped him saying as to why he had thrown the thorns in his field. Thereafter, he went back home and narrated the incident to his brother Pardeshi (PW-6) and father Pitamber (PW-3). When he was going to police station to lodge the report alongwith his brother, father and sister-in-law, on the way the appellants alongwith Arjun and Ajit stopped and assaulted them with spade and pickaxe (*gaiti*) saying "finish them" as a result of which he sustained injuries on his chest and back whereas Pardeshi (PW-6) suffered injuries on left arm and Jugan Bai (deceased) on head which resulted in bleeding. It is alleged that the incident was witnessed by Gambhir (PW-1), Ratanlal (PW-2) and several other people and they had intervened in the matter. Based on this report, offences under Sections 341, 323 and 506-B read with Section 34 of the IPC were registered against the present appellants in addition to Ajit and Arjun. As Jugan Bai died on 14.7.1988, offence under Section 302 of the IPC was also registered against them. As during investigation accused Arjun also expired, the challan was filed against the three accused persons i.e. the appellants herein and one Ajit under Sections 341, 323/ 34, 506-B, 326 and 302 of the IPC. The court below, however, framed the charge under Sections 302/ 34 and 323/ 34 of the IPC against the accused/ persons.

3. So as to hold the accused/ appellants guilty, the prosecution has examined 13 witnesses. Statements of the accused persons were also

recorded under Section 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial court acquitted accused Ajit of all the charges levelled against him. The court also acquitted the accused/ appellants herein of the charges under Section 302 of the IPC but convicted and sentenced them as mentioned in paragraph No.1 of this judgment. Hence, this appeal.

5. The appeal was heard and decided by the Single Bench of this Court on 28.2.2012 whereby the appeal was dismissed. Appellant No. 2 – Naresh preferred Criminal Appeal No. 580 of 2014 before the Hon'ble Supreme Court of India which was decided vide order dated 11.3.2014, setting aside the judgment of the Single Bench and remitting the matter back to this High Court to decide it afresh with a direction to dispose this appeal alongwith the appeal in counter case i.e. Criminal Appeal No. 1143 of 1997 pending for decision before this court.

6. The grounds urged in this appeal are that the judgment of conviction and sentence against the appellants is erroneous. The statements of the witnesses in this case suffered from serious contradictions which could not have been made the basis for conviction of the appellants. The trial court should have observed that it was the complainant party who started the quarrel and a counter case, namely, Sessions Trial No. 210 of 1991 was registered against them and in which they have been convicted. Hence, the appellants are entitled for acquittal.

7. Appellant No.1 Ramaiya has expired on 15.02.2016 as per the report of the First Additional Sessions Judge, Janjgir, dated 10.01.2017, hence his appeal has become infructuous.

8. Learned counsel for the appellants submitted that the statements of the witnesses Pitamber (PW-3), Pardeshi (PW-6), Budhram (PW-7) and Ramchand (P-11) are full of contradictions and omissions which cannot be relied upon. It is submitted that Pardeshi (PW-6) and Ramchand (PW-11) have stated that injury on Jugan Bai was caused by appellant No.1 – Ramaiya whereas Budhram (PW-7) and Pitamber (PW-3) have stated in contrary. It is also submitted that the incident has taken place about 29 years back and hence, no purpose would be served if the appellants are sent back to jail to serve out remaining period of sentence awarded to them. The appellants have already undergone about seven months in custody. The sentence imposed upon them may be reduced to the period of custody already undergone by the appellants.

9. Learned State counsel has opposed the grounds taken in this appeal and the arguments submitted in this behalf by counsel for the appellants. It is submitted that the prosecution witnesses have duly supported the case of the prosecution and the minor contradictions and omissions in their statements are of no significance, hence, their statements are believable. There is no reason for interference in the impugned judgment.

10. Considering the material on record and the arguments submitted on behalf of both the sides, the question in this appeal is, whether the conviction against the appellants is supported by the evidence of prosecution beyond all reasonable doubt?

11. Pitamber (PW-3) has stated that on the date and time of the incident when deceased Jugan Bai was going to lodge a report, she was intercepted by the appellants. Appellant No.2 – Naresh armed with pickaxe (*gaiti*) and appellant No.1 – Ramayya armed with spade caused injuries to the deceased. Although he has stated about the incident but he did not saw the incident of assault himself and he was informed by Pardeshi (PW-6). Pardeshi (PW-6) has stated that on account of a previous incident, Budhram (PW-7), Jugan Bai and he himself were going to the police station for the purpose of lodging a report and while passing from front of the house of appellant No.1 - Ramaiya, assaulted the deceased with a spade which caused her injury and as a result of which she fell down. At the same time, both the appellants assaulted Pitamber (PW-3), father of Pardeshi (PW-6) and Budhram (PW-7), brother of Pardeshi (PW-6) with fists and handle of pickaxe (*gaiti*) causing them injuries. Jugan Bai was admitted in the hospital at Bilaspur where she died after two days. In cross-examination, he admitted that the dispute arose between him and the persons of the accused party for putting a thorny fencing on the boundary of their adjacent agricultural fields. Apart from this admission, there is no rebuttal of his statement in examination-in-chief and there is no other statement in cross-examination which can be considered as contrary to his statement in examination-in-chief.

12. Budhram (PW-7) has given the statement about the previous dispute between Budhram (PW-7) and appellant No.1 regarding the thorny fencing being erected by him on the boundary of the field. After some intervention, the dispute and quarrel ceased. He narrated the incident to his father Pitamber (PW-3), Pardeshi (PW-6) and sister-in-law Jugan Bai (deceased).

While proceeding to police station for the purpose of lodging a report, the appellants intercepted them on their way and appellant No.2 – Naresh assaulted Pardeshi (PW-6) with a pickaxe (*gaiti*). Jugan Bai was also assaulted and she suffered head injury. His father Pitamber (PW-3) was also assaulted who suffered one injury on his wrist of the right hand. In cross-examination, his statement has remained unrebutted. Some contradictions have been brought on record compared to previous statement Ex. P/11 which are of no significance.

13. Ramchand (PW-11) is an independent and chance witness, who saw the confrontation between the accused and complainant parties and saw that appellant No. 1 – Ramaiya assaulted Jugan Bai with a spade. On seeing this, he fled away from the spot and has not seen the remaining part of the incident. In cross-examination, though he admitted that both the parties were engaged in fighting but he has not seen specifically who assaulted whom. This cannot be taken as specific denial of his statement in examination-in-chief. Appellant No.1 – Ramaiya assaulted Jugan Bai with a spade.

14. Rest of the witnesses examined by the prosecution are related to investigative procedures and death of deceased Jugan Bai is not disputed. Jugan Bai was initially examined by Dr. P. Mahajan (PW-8) on 10.7.1988, who found one lacerated wound of size 10 x 3 x 1 cm between left and right parietal region coupled with fracture. He opined that this injury was caused by hard and blunt object. He advised for x-ray and submitted a report Ex. P/12. He also examined injury on Pardeshi (PW-6) and found one simple injury on his left shoulder measuring 3 x 1 ½ cm vide his report

Ex. P/13. While examining Pitamber (PW-3), one hematoma with swelling was found on left hand measuring 10 x 6 cm and suspecting of bony injury advised x-ray examination, he opined that the same was caused by hard and blunt object vide report Ex. P/15. This report could not be challenged in his cross-examination.

15. Dr. C.S. Sharma (PW-14) has, on the basis of x-ray examination, deposed that deceased Jugan Bai suffered a depressed fracture on frontal and left parietal region of head vide his report Ex. P/29, which is an unrebutted statement. Jugan Bai succumbed to her injuries and died on 14.7.1988. Thereafter, inquest procedure was conducted and Dr. Surendra Nath Dubey (PW-4) conducted the postmortem examination and vide his report Ex. P/7, he has observed that the deceased had a fracture of size 3 ½ inches on frontal bone in middle of skull and beneath it there was haemorrhage with subdural hematoma over the both frontal lobes. He opined that the death of deceased Jugan Bai was due to antemortem injury caused to her head, which is an unchallenged report.

16. There is evidence on record that it was appellant No.1 – Ramaiya who assaulted the deceased with a spade on her head and there is also evidence of medical experts that the deceased suffered a fracture on her head resulting in her death, which is sufficient corroboration to the statement of the eyewitnesses.

17. Learned counsel for the appellants submits that the statements of the witnesses are self contradictory and have no force. There is clear statements of Pardeshi (PW-6) and Ramchand (PW-11) that it was appellant

No.1 – Ramaiya who assaulted Jugan Bai with a spade. Although, the other witnesses on the spot have not made a clear statement in this respect, the statements given by them cannot be held contrary to the statements given by Pardeshi (PW-6) and Ramchand (PW-12). There is also evidence that the appellants further engaged in assaulting the other injured persons, namely, Pardeshi (PW-6) and Pitamber (PW-3) which has been made the basis for conviction of the appellants by the trial court in the impugned judgment.

18. The grounds urged in this appeal, the directions of the Hon'ble Supreme Court for consideration of this appeal, the facts of the case and the effect of the counter case are taken into consideration. On perusal of the statements of the eyewitnesses, it is apparently clear that no suggestion has been given to Pitamber (PW-3) that initially his party started the assault. Pardeshi (PW-6) has stated in his cross-examination admitting that the accused persons had lodged a report against him and others and on the basis of which he and others are accused in another case. This admission does not indicate that the prosecution against the complainant party is the outcome of the same incident. Budhram (PW-7) has denied that he and others assaulted the accused persons near *Khaiya* lake which appears to be a suggestion of different spot of incident. His admission regarding prosecution against him by itself does not make it clear that the case against the complainant party has arisen from the same incident. Sub-Inspector, Anil Tiwari (PW-13) is the Investigating Officer in this case. He has proved the investigation of this case. No question was put to him in his cross-examination regarding the counter case against the complainant party arising out of the same incident.

19. It was the burden of the appellants/ accused persons to adduce evidence and prove accordingly, that the prosecution case against the complainant party was the outcome of the same incident. The material and evidence on the record in connected appeal i.e. Criminal Appeal No. 1134 of 1997 cannot be directly perused and considered for the purpose of evaluating the evidence in this case. It was a requirement for the purpose of defence to establish clearly that the counter case was an outcome of the same case for which the appellants were prosecuted and on this basis it could have been a ground for consideration as to who was the assailant party and who was the defending party in this incident. Because of lack of appropriate evidence in this respect on the part of the defence, it is held that the appellants/ accused persons have failed to prove their defence. Hence, the grounds raised in this appeal are not supported with any evidence. Simply because a prosecution case was brought against the complainant party in which they have been convicted, for which this case cannot be regarded as a counter case. Hence, this ground taken in the appeal also fails.

20. In the result, it is found that the impugned judgment does not suffer from any infirmity and no interference is required in this appeal. Accordingly, this appeal is dismissed. Appellant No. 2 – Naresh has already undergone the sentence awarded to him. Hence, no order is required for his arrest and for sending him to jail. Appeal of appellant No.1 – Ramaiya, now dead is disposed off as it has become infructuous.

Sd/-

(Rajendra Chandra Singh Samant)
Judge