

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1134 of 1997****Judgment Reserved on 15.03.2017****Judgment Delivered on 29.05.2017**

1. Pardeshi S/o Pitamber aged about 35 years,
2. Bhujbal S/o Meghnath, aged about 25 years,
3. Meghnath S/o Dukalu, aged about 60 years,
4. Pitamber s/o Pyarelal aged about 50 years,
5. Budhram s/o Pitamber, aged about 30 years,
6. Mangal Chand S/o Pitamber, aged about 22 years,

All resident of village Kotmi Sunar, P.S. Akaltara, Tehsil Janjgir, District Bilaspur, Madhya Pradesh (now Chhattisgarh).

----Appellants

Versus

State of Madhya Pradesh through P.S. Akaltara, Janjgir, District Bilaspur, Madhya Pradesh (now Chhattisgarh)

---- Respondent

For the Appellants	:	Shri Gajendra Kumar Sahu, 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, in Sessions Trial No. 109 of 1991 convicting Appellants No. 1 to 6 under Section 148 of the Indian Penal Code (for short 'the IPC') and sentencing them to undergo rigorous imprisonment for six months with fine of Rs.400/-, Appellants No.2 to 6 under Section 325/ 149 of the IPC and sentencing them to undergo RI for two years with fine of Rs.500/-, Appellants No. 4 & 5 under Section 323/ 149 of the IPC and sentencing them to

undergo RI for four months with fine of Rs.300/-, Appellant No. 4 under Section 323/ 149 of the IPC and sentencing him to undergo RI for four months with fine of Rs.300/- and Appellants No.2 & 6 under Section 323/ 149 of the IPC and sentencing them to undergo RI for four months with fine of Rs.300/- with default stipulations and with a direction to run all the sentences concurrently.

2. The case of the prosecution is that the agricultural fields of accused – Budhram and complainant – Ramaiya are adjacent. A dispute arose between the complainant and accused party on the date of incident with respect to thorny fencing on the boundary of their fields, which resulted in exchange of words and manhandling with each other. The accused persons later on came and intercepted the complainant party on their way to home and assaulted them with clubs causing injuries. Complainant – Ramaiya (PW-1) lodged the First Information Report in P.S. Akaltara on 10.7.1988 at 10:30 am. Injury reports of Naresh (PW-2), Arjun, Ramaiya (PW-1) and Ajeet (PW-3) are marked as Exs. P/2, P/3, P/4 and P/5. Dr. P. Mahajan (PW-4) opined vide his report Ex. P/6 that the injuries suffered by Naresh are grievous in nature and he had a fissured fracture on frontal bone of head. During the investigation, clubs were seized vide Ex. P/7 from appellant No.4 – Pitamber, vide Ex. P/8 from appellant No.1 – Pardeshi vide Ex. P/9 from appellant No.5 – Budhram. Spot map was prepared vide Ex. P/10. Spot map was prepared by the Revenue Officer vide Ex. P/12. Statements of the witnesses were recorded and on completion of the investigation, the appellants were charge-sheeted.

3. The appellants were charged under Sections 148, 307/ 149 and 323/

149 of the IPC. The appellants/ accused persons denied the charges, pleaded innocence and demanded for trial. The prosecution examined as many as 11 witnesses. The defence did not examine any witness. On being examined under Section 313 of the Cr.P.C., denying all the incriminating evidence against them, the appellants pleaded innocence and false implication. It was submitted by them that it was the accused party who were assaulted by complainant – Ramaiya and others. In this regard, a report was also lodged and the complainant was being prosecuted. After giving opportunity of hearing and leading evidence to the prosecution and the defence, the impugned judgment has been passed by which the appellants have been convicted and sentenced as mentioned above. Hence, this appeal.

4. During pendency of this appeal, appellant No.3 – Meghnath and appellant No.4 – Pitamber have expired. Hence, their appeal has become infructuous. An application was moved on behalf of appellant No.6 – Mangal Chand under Section 7-A of the Juvenile Justice (Care & Protection of Children) Act, 2000 praying for an enquiry to be made on the question, whether appellant No.6 – Mangal Chand was a juvenile on the date of incident or not? An enquiry was ordered by this court vide order dated 18.12.2015 and in this regard a report dated 23.2.2016 was submitted by the First Additional Sessions Judge, Janjgir, District Janjgir-Champa. On the basis of oral and documentary evidence produced, it has been held, that the date of birth of appellant – Mangal Chand had been 4.5.1973 and on the basis of this, his age was 15 years two months and seven days on the date of incident i.e. 10.7.1988 and that he was a juvenile.

5. The application under Section 7A of the Juvenile Justice (Care & Protection of Children) Act, 2000 was filed on 15.6.2015 before coming into force of Juvenile Justice (Care & Protection of Children) Act, 2015 on 15.1.2016. On the basis of which, the order was passed and the enquiry has been made. Section 7A of the Juvenile Justice (Care & Protection of Children) Act, 2000 provides that whenever a claim of juvenility is raised before any court such claim shall be decided on the basis of the evidence adduced by the parties claiming juvenility and the party opposing it. Sub-section (2) of Section 7A of the Act, 2000 provides that if the court finds a person to be a juvenile on the date of commission of the offence then it shall forward the juvenile offender to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.

6. On the basis of the law in force at the time of commission of offence and at the time of enquiry of juvenility initiated in this case, the report of the enquiry officer confirming the juvenility of appellant No.6 – Mangal Chand on the date of incident has to be taken into consideration and acted upon in accordance with sub-section (2) of Section 7-A of the Act, 2000. Accordingly, with respect to appellant No.6 – Mangal Chand, it is held that he was a juvenile on the date of incident i.e. 10.7.1988 and as such his case is forwarded to Juvenile Justice Board to conduct the proceedings against him and thereafter to pass appropriate orders in accordance with law prevailing at the time of incident. The prosecution agency, P.S. Akaltara, District Janjgir is directed to do the needful in this regard.

7. The grounds urged in this appeal are that the trial Court has erred in passing the judgment of conviction and order of sentence against the

appellants on the basis of the evidence of the prosecution which was not legally acceptable. The facts of the counter case against the complainant party have not been taken into consideration by the trial Court. The trial Court has failed to appreciate that the accused persons in this case also suffered injuries in the same incident and that dangerous weapons were seized from the possession of the witnesses in this case. During investigation of the counter case, namely, Sessions Trail No.210 of 1991, the admissions made by the prosecution witnesses also make it clear that the members of the complainant party were the assailants. Without taking into consideration the aforesaid facts, the impugned judgment was passed in a unfair manner and against the principles of law. On these grounds, it is prayed that the appellants be acquitted of all the charges framed against them.

8. Learned counsel for the appellants submitted that the injury reports in the counter case with respect to the appellants in this case needed consideration, which establish that the complainant party was the aggressor. Learned counsel for the appellants further submitted that deceased Jugan Bai was the member of the accused party, who was assaulted and done to death in this case and which resulted in prosecution of complainant – Ramaiya and others under Section 302 of the IPC. Hence, the appellants simply exercised their right of private defence whereas the complainant party was the aggressor party, whose act resulted in commission of offence of murder. The injuries caused to the members of the complainant party were of less gravity compared to the offence committed by complainant – Ramaiya and others. For these reasons, the appellants are entitled for acquittal.

9. Ramaiya (PW-1) has stated that on the date of incident in the morning, there had been an altercation and manhandling between the complainant and appellant No.5. After intervention, the parties were pacified. Later on, when he alongwith his sons Arjun, Naresh (PW-2) and Ajeet (PW-3) were returning to their place of residence, they were intercepted by the appellants and were abused. At that time, Ex-Sarpanch Chaturlal came on the spot and on his intervention the parties were pacified. Later on, when he arrived at his residence and was entering inside, appellants No.4 and 5 – Pitamber and Budhram assaulted him with wooden planks and clubs causing him injuries. At the same time, Naresh (PW-2) was also assaulted by the appellants. Later on, he arrived at P.S. Akaltara and lodged FIR Ex. P/1. He came to know that his sons Naresh (PW-2), Arjun and Ajeet (PW-3) were also injured in the incident. In cross-examination, he denied that Jugan Bai died due to injuries caused by him and others. He admitted that a case is being prosecuted against him and others with respect to charge of murder of Jugan Bai.

10. Naresh (PW-2) has also stated similar version as has been stated by Ramaiya (PW-1) about the incident that took place in front of his house. In cross-examination, he denied that the accused persons were going to lodge a report and at that time he and others intercepted and assaulted the accused persons. He denied that Jugan Bai was assaulted with a spade and Budhram and Pitamber were also assaulted in this incident. He further admitted that he and others are being prosecuted for murder of Jugan Bai in the court. He further denied that accused persons were injured in the same incident while defending themselves. Ajeet (PW-3) has also made the same statement in his examination-in-chief and has made similar admissions in his

cross-examination.

11. Kholbehra (PW-5) has stated that when he was passing from near the market, he saw the appellants and complainant Ramaiya in the market. He then saw the appellants/ accused persons assaulting Ramaiya, Naresh, Arjun and Ajeet, in which Ramaiya (PW-1), Arjun and Ajeet (PW-3) suffered injuries. In cross-examination, he remained firm on his statement and denied that it was Ramaiya (PW-1) and two others were assaulting appellants and wife of appellant No.1 Pardeshi. There is no admission in his statement that the complainant and others were assailants in this incident. Chaturlal (PW-6) has stated that at the time of incident near Mata Choura Temple, he saw the appellants/ accused persons assaulting Arjun, Ajeet (PW-3), Ramaiya (PW-1) and Naresh (PW-2). He saw that the accused persons were armed with clubs and wooden planks whereas complainant and others were empty handed. In cross-examination, there is no statement in admission that it was the complainant who started the assault.

12. Chandan Singh (PW-7) has stated the version of other eyewitnesses in this case and there is no admission in his cross-examination that the complainant party were the aggressor. Rest of the witnesses were examined with respect to investigation procedures. Dr. P. Mahajan (PW-4) has examined Naresh Kumar (PW-2) and opined that he had suffered simple injuries caused by hard and blunt object vide report Ex. P/2. He further examined Arjun Kumar and in his report, he opined that Arjun Kumar had suffered simple injuries caused by hard and blunt object vide report Ex. P/3. He also examined Ramaiya vide his report Ex. P/4 and opined that Ramaiya (PW-1) has suffered simple injuries caused by hard and blunt object. He has further examined Ajeet (PW-3) and found him having suffered simple injuries

vide his report Ex. P/5. He further replied to the query made with respect to the injuries caused to Naresh (PW-2) and by observing the x-ray report he gave opinion that the injuries caused to Naresh (PW-2) were grievous in nature vide Ex. P/6. This statement has remained unchallenged, which establishes that the members of the complainant party suffered injuries in the alleged incident and Naresh (PW-2) suffered injuries of fracture in skull vide report Ex. P/11 proved by Dr. C.S. Sharma (PW-10). This evidence corroborates the evidence of the prosecution witnesses, who were present on the spot of incident.

13. Station House Officer, Anil Tiwari (PW-8) has given statement about the investigation conducted by him. In cross-examination, he has admitted that he investigated a counter case in which Section 302 of the IPC was registered. There is no other statement given by him to the effect that the complainant party were the aggressor in this incident.

14. After closely scrutinizing the evidence of the prosecution, it is apparently clear that the evidence in this case is directed only against the act of offence committed by the appellants/ accused persons. There is no admission by any of the witnesses of the prosecution to suggest that the complainant party had been aggressor in this case. Although, there is admission, that a case was prosecuted against the complainant party on the charge of murder of the wife of appellant No.1 - Pardeshi, but there is no statement of any of the witnesses that the murder of wife of Pardeshi was the result of the same incident in which complainant Ramaiya (PW-1) and others were assaulted and injured. No evidence has been led in defence. The ground urged in the arguments submitted that the facts of counter case should have been appreciated by the trial court is misconceived. A case has

to be decided on the basis of the evidence produced in the case itself. The evidence in a counter case cannot be referred to directly to corroborate or contradict any statement of the witness in a particular case. It was the burden of the defence to establish by production of documents and oral evidence that the prosecution against the accused persons and the counter case have resulted from the same incident, however the appellants have failed to do so. Hence, the grounds taken in this appeal have no substance and deserves to be dismissed.

15. For the foregoing reasons, the appeal of appellant No.3 - Meghnath and appellant No.4 – Pitamber is dismissed as having become infructuous as they have expired during pendency of this appeal and the appeal of appellants No.1 Pardeshi, No.2 Bhujbal and No.5 Budhram is also dismissed. However, as appellant No.6 – Mangal Chand was a juvenile on the date of incident i.e. 10.7.1988, his case is forwarded to Juvenile Justice Board to conduct the proceedings against him and thereafter to pass appropriate orders in accordance with law prevailing at the time of incident. Order of conviction and sentence against him in the impugned judgment is declared a nullity. The prosecution agency, P.S. Akaltara, District Janjgir is directed to do the needful in this regard.

16. Appellants No.1 – Pardeshi, No.2 – Bhujbal and No.5 – Budhram are on bail. Their bail bonds are cancelled and they shall be taken in custody and sent to jail to serve out the remaining part of the sentence awarded in the impugned judgment.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

