

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 779 of 2010**

1. Fagu Ram Sinha S/o Laltu Ram Sinha, aged about 23 years.
2. Deovrat Sinha S/o Laltu Ram, aged about 21 years.
3. Laltu Ram S/o Firanta, aged about 55 years.
4. Smt. Lagni Bai W/o Laltu Ram, aged about 50 years.
5. Kumari Nomin Sinha D/o Laltu Ram, aged about 20 years.

All R/o village Sargi, Police Station Magarlod, District Dhamtari (C.G.)

---- Appellants**Versus**

- State Of Chhattisgarh Through – Station House Officer, Police Station : Magarlod, District Dhamtari (C.G.)

---- Respondent

For Appellants.	:	Shri Sudhir Verma & Shri C.R. Sahu, Advocates.
For Respondent/State	:	Shri Rahul Tamaskar, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board**By Pritinker Diwaker, Ag. C.J.****22/02/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 14.10.2010 passed by the Additional Sessions Judge (FTC), Dhamtari in S.T. No.50/2010 convicting the accused/appellants under Sections 302/149, 147 & 148 of IPC and sentencing them to undergo imprisonment for life with fine of Rs.5000/-, R.I. for two years with fine of Rs.2000/- and R.I. for three years with fine of Rs.3000/- respectively, plus default stipulations.

02. There exists an old land dispute between the appellants and

deceased family. It is said that on 29.04.2010 the accused persons were harvesting the crops of field in dispute, at that time deceased Thansingh and his wife Deepak Bai (PW/3) reached the field and asked them not to harvest the crops. Further case of the prosecution is that after some altercation, the accused persons caused sickle injuries to the deceased as a result of which he died instantaneously. Merg intimation Ex.P/9 was recorded on 29.04.2010 at 9.30 am at the instance of Deepak Bai (PW/3). Immediately thereafter at 9.35 am F.I.R. (Ex.P/10) was registered against the accused/appellants except appellant Nomin Sinha under Sections 302/34 and 323 of IPC. Inquest over the body of the deceased was prepared vide Ex.P/1. On 29.04.2010 body of deceased was sent for postmortem to Community Health Center, Magarlod vide Ex.P/19, where Dr. T.R. Dhruv (PW/12) conducted autopsy on the body of deceased and gave his report Ex.P/12 opining the mode of death to be syncope due to excessive bleeding and the death was homicidal in nature. Injured Deepak Bai (PW/3) was also medically examined by Dr. (Mrs.) Sharda Thakur vide Ex.P/15 who found pain on both buttock, back side and left wrist of the injured. After investigation, charge sheet for the offences punishable under Sections 147, 148, 149, 323 and 302 IPC was filed against the accused/appellants, however, while framing the charge the trial Court has framed the charges against the accused/appellants under Sections 302/149, 147, 148 and 323/149 of IPC.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 16 witnesses. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in

which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. The accused/appellants examined one defence witness in support of their case.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellants as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellants submits as under:

(i) that the accused/appellant No.5-Nomin Sinha has not been named either in the merged intimation (Ex.P/9) or in F.I.R. (Ex.P/10) and her involvement shown subsequently is nothing but an improvement;

(ii) that the only overtact alleged against accused/appellant Lagni Bai (A-4) as per the statement of prosecution witnesses is that she caught hold of the deceased and Deepak Bai (PW/3) and not caused any injury to the deceased;

(iii) that the statements of the eye-witnesses Deepak Bai (PW/3), Ratiram Kanwar (PW/4), Naresh Dhritlahare (PW/5) and Gangadhar Sinha (PW/6) are not reliable and there are material contradiction and omission in their statements. It has been argued that even if the entire prosecution case is taken as it is, at best the accused/appellants Fagu Ram (A-1), Deovrat (A-2) and Laltu Ram (A-3) can be convicted under Section 304 Part-I; they have already remained in jail for about seven years and, therefore, after converting their conviction into Section 304 Part-I, their sentence may be reduced to the period already undergone by them.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same.

07. We have heard learned counsel for the parties and perused the material available on record.

08. Rajaram Sinha (PW/1) is mainly witness to inquest (Ex.P/1) and he came to know about the incident subsequently. Babulal Sahu (PW/2) is witness to memorandum Ex.P/7 of the accused/appellant Fagu Ram (A-1) and seizure thereof made under Ex.P/8 has been declared hostile. Deepak Bai (PW/3) is wife of the deceased and eye-witness to the incident. It is she who lodged the merger intimation and F.I.R. She has stated that she knew all the accused persons. On the date of incident at about 8.00 am she had gone to field along with her husband Thansingh (deceased) to see paddy crops which they had sowed. When they reached the field, they saw the accused persons and eight other labours harvesting the crops, which was objected by her and the deceased, however, accused persons caught hold of her husband. Thereafter, accused/appellant Fagu Ram (A-1) caused sickle injury to her husband over eye and head as a result of which he fell down. Then accused/appellant Deovrat (A-2) sat on his chest and pressed his neck. During this period, accused/appellant Laltu Ram (A-3) was holding hands of the deceased and gave fist blow on his face. She has also stated that appellant Lagni Bai (A-4) caught hold the testicle of her husband, whereas accused/appellant Nomin Sinha (A-5) was holding his leg. When she (this witness) tried to intervene in

the matter, she was pushed by the accused persons and Fagu Ram (A-1) and threatened that if anybody came to this field, he would be killed. This witness went on to state that while returning to her house, she met Santu Patel and Suresh Patel whom she informed about the entire incident, thereafter, when she reached her house, she narrated the incident to her father-in-law and Raja Ram Sinha. In cross-examination, in para 7, she has admitted that as the hedge of her field was damaged, water from Laltu's (A-3) field was coming in her field. In para 9, she further admits that when villagers came to the field for harvesting crops, normally they carry sickle with them. This witness, in para 12, has stated that when she tried to intervene in the matter, Lagni Bai (A-4) caught hold of her hair and other labours who were present at the time of incident have not made any attempt to save her husband. This witness also went on to state that Gangadhar Sinha, Ratilal, Suresh Patle, Sant Dhruv and Naresh were not present in the field where incident took place rather they were hiding themselves in a field adjacent to it and had seen the incident from a considerable distance.

09. Ratiram Kanwar (PW/4) is other eye-witness to the incident. He has stated that on the date of incident he had gone to Mannu Sahu's field for watering it. He had heard that Patwari was going to demarcate Chanwari Khar and was under impression that Patwari might have come, so he went towards the spot and saw the accused persons together beating the deceased and that all of them were carrying sickle in their hands. However, from cross-examination of this witness it is apparent that if he had seen the incident, it might have been from a

considerable distance. In para 6, he has stated that all the accused persons had surrounded the deceased, however, he had not seen as to by which weapon they have caused injuries to Thansing. This witness has stated that there was scuffle between the deceased and the accused persons.

10. Naresh Dhritlahare (PW/5) is another eye-witness to the incident. He has stated that when he was returning after attending the nature's call, he saw the accused persons beating deceased but had not seen Deepak Bai (PW/3) there. In cross-examination this witness has stated that he did not see as to by which weapon the accused persons have caused injuries to the deceased and that number of other villagers were also there.

11. Gangadhar Sinha (PW/6) has also been cited as eye-witness to the incident. He has stated that he saw the accused persons causing injuries to the deceased, however, on account of fear he did not approach them. When this witness was confronted with his diary statement Ex.D/3, he states that he had disclosed all the facts to the police but if the same were not written, he could not tell the reason thereof. It is relevant to mention here that in his diary statement Ex.D/3 he has nowhere stated that it is he who saw the actual occurrence and according to him, the incident was narrated to him by Deepak Bai (PW/3).

12. Suresh Patel (PW/7), Kunti Bai (PW/9) and Rajkumar (PW/10) are hearsay witnesses. Sanjay Tiwari (PW/8) is Patwari who prepared spot map vide Ex.P/4. Ramchandra Nirmalkar (PW/11) has not stated

anything specific against the accused/appellants.

13. Dr. T.R. Dhruv (PW/12) is the autopsy surgeon who conducted postmortem on the body of deceased vide Ex.P/12 and found following injuries:-

- (i) Both eyeball were broken and clotted blood over face, mouth, nose, ears.
- (ii) Irregularity over neck.
- (iii) Bruise over flexor component of both upper hand, bruise over neck.
- (iv) Two abrasion over left side of neck of 1 x 1/4 cm.
- (v) Abrasion over left mandibular region.
- (vi) Abrasion over both lower legs and ankle joint.

The autopsy surgeon has opined the mode of death to be syncope due to excessive bleeding and death was homicidal in nature.

14. Dr. (Mrs.) Sharda Thakur (PW/13) medically examined Deepak Bai (PW/3) vide Ex.P/15 and stated that the injured was complaining pain over both buttock, back side and left wrist.

15. Devendra Kumar (PW/14) and Gopal Chand Kosre (PW/15) are the constable who helped in the investigation. Pradeep Sori (PW/16) is Investigating Officer who has duly supported the prosecution case.

16. Faguram Sinha (DW/1) is accused who has stated that when he had gone to the field, the deceased and his wife were already there whom he asked not to harvest the crops. He has further stated that some quarrel took place between them in which deceased caught hold of him and asked his wife Deepak Bai (PW/3) to caused injury by a club. When wife of deceased (PW/3) started to cause injury by a club, he (this witness) sat down immediately and in fact it is the deceased who suffered injury as a result of which he fell down, thereafter, he (this

witness) returned to his house.

17. Close scrutiny of the evidence makes it clear that neither in the merg (Ex.P/9) nor in F.I.R. (Ex.P/10) there is mention of name of Nomin Sinha (A-5) and her name finds place only in 161 Cr.P.C. statement (Ex.D/1) of Deepak Bai (PW/3)- wife of deceased and thereafter in the Court. Considering the statement of this witness, merg Ex.P/9 and FIR Ex.P/10, the presence of Nomin Sinha (A-5) becomes doubtful and, thus, in absence of any incriminating, cogent and reliable evidence, we are of the view that the Nomin Sinha (A-5) is very much entitled to receive the benefit of doubt. Likewise, there is no specific allegation against Lagni Bai (A-4) though her name figures in merg and FIR. As per the evidence of Deepak Bai (PW/3), Lagni (A-4) had caught hold of testicle of her husband, whereas as per her 161 Cr.P.C. statement (Ex.D/1), Lagni had caught of hold her (this witness) hair. There appears contradiction in her Court and 161 Cr.P.C. statements. Further, there is no evidence on record that she (A-4) in any manner caused injury to the deceased, thus, she too is entitled to receive the benefit of doubt.

18. So far as involvement of other accused/appellants namely Fagu Ram (A-1), Deovrat Sinha (A-2) and Laltu Ram (A-3) is concerned, from the statements of prosecution witnesses in particular Deepak Bai (PW/3) it is apparent that there was old land dispute between the appellants and deceased family and on the date of incident accused persons were harvesting the crops of field in dispute, which was objected by deceased Thansingh and his wife Deepak Bai (PW/3) and on account of this some altercation took place between them in which

A-1, A-2 and A-3 have caused sickle injury to the deceased. According to Deepak Bai (PW/3), it is Fagu Ram (A-1) who caused sickle injury on the face and head of the deceased, whereas Deovrat (A-2) sat on his chest and had pressed his neck. Specific role has also been attributed to Laltu Ram (A-3) who was holding hands of the deceased. It was alleged that he too had caused injury to the deceased. Thus, the involvement of these accused/appellants is apparently proved by the prosecution and we have no reason to disbelieve the prosecution story in respect of these accused/appellants.

19. Now the next question which arises for consideration by this Court is as to whether the act of these three accused/appellants would fall within the ambit of Section 304 Part-I of IPC i.e. culpable homicide not amounting to murder.

20. If the evidence of the witnesses and the other material available on record are taken into consideration, prima-facie it appears that on the ground of harvesting crops of disputed field by the accused/appellants, deceased sustained injuries and died on the spot. However, diving little deeper in to the material on record, it comes to the forefront that there was old land dispute between the appellants and deceased family. On the ill-fated day the accused persons were harvesting the crops of field in dispute which was sowed by the deceased and his wife. At the relevant time deceased Thansingh and his wife Deepak Bai (PW/3) reached the field and asked them not to harvest the crops. This attitude of the deceased enraged the accused/appellants and being enslaved by anger Fagu Ram (A-1) gave blow by sickle on face and chest of deceased, Deovrat (A-2) sat

on chest and pressed his neck and Laltu Ram (A-3) caught hold of his hands and gave fist blow which ultimately proved fatal leading to his death. The evidence so collected and adduced by the prosecution goes to show that the incident took place without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. Thus keeping in view the overall facts and circumstances of the case giving rise to the unfortunate incident, the manner in which the accused/appellants caused injuries to the deceased which ultimately led to his death as also the oral and medical evidence on record, it is amply clear that the accused/appellants have caused such bodily injury to the deceased with an intention that the same is likely to cause his death. That being the position, the act of these three accused/appellants make them liable to be convicted under Section 304 Part-I IPC.

21. In the aforesaid view of the matter, conviction of the accused/appellants Fagu Ram, Deovrat Sinha and Laltu Ram under Section 302/149 of IPC as has been done by the Court below is not sustainable in the eye of law and instead they are liable to be convicted under Section 304 Part-I IPC.

22. In the result, the appeal is partly allowed. Conviction of the accused/appellants Lagni Bai (A-4) and Kumari Nomin Sinha (A-5) under Sections 302/149, 147 and 148 of IPC is hereby set aside and they are acquitted of the charges levelled against them by extending them benefit of doubt. Accused/appellants A-4 and A-5 are reported to be on bail, their bail bonds stand discharged and they need not surrender.

23. Conviction of the accused/appellants Fagu Ram Sinha (A-1), Deovrat Sinha (A-2) and Laltu Ram (A-3) under Sections 147 and 148 of IPC and sentence awarded thereunder by the trial Court are hereby affirmed. However, their conviction under Section 302/149 is altered to Section 304 Part-I of IPC and they are sentenced to undergo R.I. for ten years. These three accused/appellants are in jail and, therefore, no further order regarding their arrest etc. is required.

Sd/-

(Pritinker Diwaker)
Ag. Chief Justice

Sd/-

(Sanjay K. Agrawal)
JUDGE