

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on: 04/04/2017****Judgment delivered on: 03 /07/2017****CRA No. 115 of 2004**

1. Mukesh Kumar @ Khanna, S/o Ram Prasad Khande, Aged about 18 years,
2. Dilip Kumar S/o Ramprasad Khande, Aged about 22 years,
3. Bhagirathi S/o Chedi Lal Khande, Aged about 20 years,
4. Pardesi, S/o Lalla Ram, Aged about 24 years,
5. Surendra Kumar S/o Birju Ram Mathur, Aged about 24 years,

All Cultivators and residents of Village Turkadeah, P.S. Sarkanda,
District Bilaspur.

---- Appellants**Versus**

State of Chhattisgarh Through Police Sarkanda, Bilaspur (C.G.).

---- Respondent**And****CRR No. 325 of 2004**

Ashwani Kumar Patel, Aged about 26 years, S/o Late Anand Ram, R/o
Village Turkadih, P.S. Sarkanda, District Bilaspur (Chhattisgarh)

---- Applicant**Vs**

1. State of Chhattisgarh, through : P.S. Sarkanda, District Bilaspur (C.G.)
2. Rajkumar, Aged about 20 years, S/o Shri Kanhaiyalal Khande,
3. Mukesh Kumar alias Khanna, Aged about 18 years, S/o Shri Ramprasad Khande,
4. Dilip Kumar, Aged about 22 years, S/o Shri Ramprasad Khande,
5. Bhagirathi, Aged about 20 years, S/o Shri Chhedilal Khandey,

6. Pardeshi, Aged about 24 years, S/o Shri Lallaram,
7. Surendra Kumar, Aged about 19 years, S/o Shri Birjoram Mathur,
8. Krishna alias Lakhan, Aged about 19 years, S/o Shri Maniram Goyal,
9. Ghasiram, Aged about 30 years, S/o Shri Sonsai,
10. Ashok Kumar, Aged about 30 years, S/o Shri Vishram Prasad Mandal,
11. Videshi Kumar, Aged about 21 years, S/o Shri Lallaram Mandal.
12. Santosh Kumar, Aged about 23 years, S/o Shri Vishram,
13. Ramprasad alias Budhwa, Aged about 60 years, S/o Shri Mahettar Khande,
14. Lallaram, Aged about 40 years, S/o Shri Sonsai Mandal,

Sl. No. 2 to 14 are residents of Village – Turkadeeh, P.S. Sarkanda,
District Bilaspur (C.G.)

---- Respondents

For the Appellants	:	Shri B.M.K. Bajpai & Shri Malay Kumar Bhaduri, Advocates
For the State	:	Shri Vivek Sharma, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice R.C.S. Samant

C A V JUDGMENT

Per R.C.S. Samant, J.

1. Both the cases have arisen from the judgment dated 30-01-2004 passed by Third Additional Sessions Judge, Bilaspur in Sessions Trial No.187 of 2003, hence are being disposed of by a common judgment.
2. The case of the prosecution in brief is that about a week before the incident, a dispute arose between the brother of Awadhesh, Complainant Ashwani Kumar Patel (PW-6) and other boys at the time of playing cricket, for which reason some exchange of blows took place between Awadhesh and others. One deceased Anandram

came to know of this incident, he scolded the son of Budhwa and grand son of Budhwa on 26-02-2003 warned them not to engage in such fight in future and he returned. They quarreled with Anandram and threatened to kill him. On 27-02-2003, Anandram was present on the spot of construction of a new house, where the appellants came armed with clubs and battle axes, with common intention all of them abused Anandram with filthy words threatened to kill him and then assaulted him with clubs and battle axes causing various injuries on the body of Anandram.

3. FIR was lodged by Ashwani Kumar Patel (PW-6), son of deceased Anandram on 27-02-2003 at 9.55 P.M. in Police Station Sarkanda, Bilaspur by which offence under Sections 147, 148, 149, 294, 307, 506 B and 323 of the IPC were registered against the appellants and acquitted accused persons. Sukhram @ Sukhandi (PW-1) was also injured in this incident because of assault made on him by the appellants. Sukhram (PW-1) was medically examined for injuries by Doctor M. Pandey (PW-19) vide Ex. P.50 on finding injuries on his body advised for X-ray examination. Anandram (deceased) was also brought for examination of injuries in his person, who had lacerated wounds on left elbow below right knee, a big swelling on his left thigh, swelling on right ankle joint and one lacerated wound on back portion of his head, these injuries were reported vide Ex. P-51 and it was opined that injuries were caused by hard and blunt object. Anandram Patel succumbed to his injuries and died on the same day of incident. Inquest on the dead body was conducted vide Ex. P-5. Postmortem on the dead body of the deceased was conducted by Dr. R. Jitpure (PW-17) vide Ex. P-47 who found bony injuries on right leg below the

knee, on left leg above the knee, left upper arm with lacerations and lacerated wound on the back side of the head of the deceased, on the basis of which he opined that cause of death was shock and hemorrhage because of anti-mortem injuries.

4. Conducting the investigation, spot map Ex. P-2 was prepared. At the instance of appellant No.2, vide his memorandum Ex. P-6, appellant No.4 vide memorandum Ex. P-7, appellant No.5 vide memorandum Ex. P-8, accused Pardeshi vide Ex. P-9, Appellant No.8 vide memorandum Ex. P-10, Appellant No.3 vide memorandum Ex. P-11, clubs wooden and of bamboo were recovered and seized vide Ex. P-14, P-15, P-16, P-17, P-18 and P-19. Plain and blood stained soil preserved and seized vide Ex. P-33 from the spot of incident. Seized clubs of wooden bamboo were examined by Dr. M. Pandey (PW-19) and reported vide Ex. P-24, P-25, P-26, P-27, P-28, P-29 and P-30 and opined that the clubs and wooden articles could have been used to cause injuries and injuries caused to Anandram may have been possibly caused by these articles. Another spot map Ex. P-46 was prepared by IO. Statements of witnesses were recorded under Section 161 of Cr.P.C. Seized articles were sent for FSL examination, Report Ex. P-58 is on record. On completion of investigation, the appellants and co-accused persons were charge-sheeted.
5. The appellants were charged under Sections 147, 148, 149, 294, 307, 506 B, 341 and 302 of the IPC. On denial of charges, prosecution has examined as many as 23 witnesses. One witness was examined by the Court. On being examined under Section 313 of Cr.P.C., appellants denied all the incriminating evidence against them brought by the prosecution, pleaded innocence and false implication. One

witness was examined in defence. The impugned judgment was passed in which appellants Mukesh Kumar @ Khanna, Dilip Kumar, Bhagirathi and Surendra Kumar were acquitted of charges under Sections 148, 302, 506-B, 294, 307, 302/149, 307/149, 341 and 341/34 of IPC. Appellants Dilip and Pardeshi were further acquitted of charges under Sections 323 and 323/34 of IPC. Appellants Mukesh, Dilip, Bhagirathi, Pardeshi and Surendra each were convicted under Section 147 and 325/149 of IPC and sentenced with RI for one year along with fine of Rs.1000/-, under Section 147 of IPC and sentenced with RI for 4 years along with fine of Rs.2000/- under Section 325/149 of IPC as assailants of deceased Anandram. Appellants/accused Mukesh, Dilip, Bhagirathi, Pardeshi and Surendra each were convicted under Section 325/149 and sentenced to undergo RI for two years along with fine of Rs.1000/- as the assailants of Sukhiram.

6. The grounds in this appeal are that an erroneous judgment of conviction against the appellants has been passed by the trial Court. Co-accused persons have been acquitted in this case of all the charges whereas the appellants have been convicted on the same evidence. There is discrepancies in the evidence of eyewitnesses which makes them unreliable. The identification of persons armed with weapons from long distance is also unreliable as it is impracticable. Motive for committing the offence has not been proved by the prosecution. On these grounds, acquittal of appellants is prayed for.
7. The grounds in the revision are that the impugned judgment is bad in law, perverse and the findings are contrary to the facts and circumstances of the case. Learned Trial Court has wrongly discarded

the testimony of the eyewitnesses. FIR was promptly lodged which has been duly corroborated by the evidence of the eyewitnesses and further corroborated by the medical evidence as well. Learned trial Court has wrongly acquitted the accused persons of charge under Section 302 of IPC whereas some of the accused persons were liable to be convicted under this section. The conviction of accused persons under Section 325 read with Section 149 of the IPC is misconceived and that as the conviction was recorded along with Section 149 of IPC rest of the accused persons could not have been acquitted by the trial Court. It has been wrongly held in the impugned judgment that the accused persons had no intention to murder the deceased whereas it was held that the accused persons were the members of unlawful assembly and were involved in rioting armed with deadly weapons. The statement of Dr. M. Pandey (PW-19) has been wrongly discarded and disbelieved by the trial Court for acquitting the accused persons under Section 302 and 307 of IPC. Learned trial Court has given weightage to minor contradictions and omissions which could not have affected the prosecution case. Prayer has been made to set aside the impugned judgment and remand the case for a fresh trial of all the accused persons.

8. It is submitted by learned counsel for the appellants that statements of eyewitnesses in this case suffer from material contradiction and omissions which cannot be relied upon. Sukhram @ Sukhandi Patel (PW-1) is interested witness as the deceased Anandram was his real brother and he is not the witness to the assault of Anandram. He has admitted in his statement, on being questioned by the Court that the incident occurred because of some dispute among the children when

they were playing cricket which cannot be regarded as motive for committing this offence. Pramod Kumar Patel (PW-3) stated in his cross-examination that his statement was recorded twice which suggests concoction. Learned trial Court has not given any credence to the evidence in defence. The prosecution has failed to prove its case beyond reasonable doubt. The appellants should have been treated at par with the acquitted accused persons. Hence, for these reasons, the appellants are entitled for acquittal.

9. Learned counsel for the applicant has submitted that trial Court has ignored the fact that deceased Anandram died as a result of this incident and has convicted accused persons with offences only of causing grievous injury and simple injuries to Anandram and Sukhram which is a perverse finding. There had been no reason to discard the statement of eyewitnesses in this case, on the basis of minor contradictions and omissions and disbelieve the prosecution evidence. Hence, for these reasons the impugned judgment is bad in law against the facts and circumstances of the case which should be set aside and fresh trial should be ordered.

10. The questions for determination in this appeal and revision case are that :

- (i) Whether the prosecution has proved its case beyond reasonable doubt against all the accused persons?
- (ii) whether the appellants' stand in the same footing as the acquitted accused persons and are entitled for acquittal?
- (iii) whether the case be remanded for fresh trial?

11. The incident in this case has occurred in two places but in the same transaction. Sukhram @ Sukhandi Patel (PW-1) has stated that on 27-02-2003 between 7-00 – 7-30 a.m. he was at home when his nephew came and informed that his brother Anand is being beaten near the new house and he told that sons of Lalla, sons of Budwa and many others were doing the *mar-peet*. He started for the place of incident and was passing through the house of Badri Patel when Dilip, Mukesh, Rajkumar, Bhagirathi, Krishna and Surendra all of them came armed with clubs who stopped him on his way, accused Pardeshi said that they have killed Anandi and they will also kill him, saying this Pardeshi assaulted with club and rest of the persons also started assaulting him causing in various injuries. Accused Lalla, Budwa and Ashok also arrived on the spot and encouraged all the accused persons asking them to kill him. Budhu Yadav (PW-14) came on the spot and intervened to rescue him. He has stated that he has not seen the assault on deceased Anand.

12. Ganesh Prasad Patel @ Totaram (PW-9) was in company of Sukhram (PW-1) when this incident took place. He has named Surendra, Pardeshi, Mukesh, Raju, Dilip, Krishna and Bhagirathi the persons present on the spot who stopped Sukhram and assaulted him. Gokul Prasad Patel (PW-13) has supported the version of Sukhram (PW-1) naming the accused persons Pardeshi, Bhagirathi, Dilip, Mukesh, Raju, Krishna and Surendra as assailants. Similar is the statement of Budhu Yadav (PW-14).

13. Mannu Yadav (PW-2) is witness of other part of the incident. He has stated that in the morning of the date of incident between 7-00 to 8-00 a.m., he had been to the house of Badri Patel for some consultation,

when he heard the noise of beating. Hearing the noise, he saw from distance, diseased Anandram was being assaulted and beaten by the accused persons. He has named Pardeshi, Dilip and Bhagirathi as accused whom he knew by name and has stated that he does not know the other accused persons by name, though he identified each of the accused persons in the Court.

14. Pramod Kumar Patel (PW-3) was informed by Manoj Kumar (CW-1) about the incident and on his asking he went to the place of incident near the new house of Anandram where he saw Pardeshi, Krishna, Bhagirathi, Surendra, Dilip, Mukesh and Raju were assaulting Anandram with clubs. When he reached near Anandram, he saw him stained with blood lying on the ground, then he saw Krishna, Bhagirathi, Surendra, Mukesh, Dilip, Raju, Lallaram, Ghasiram, Ashok, Santosh, Videshi, Budhwa and Pardeshi going from the spot who had clubs in their hands. When he was on his way to township, he saw the above named persons assaulting Sukhram with clubs. He then intervened and on his intervention, accused persons left the spot giving threats.

15. Ashwani Kumar Patel (PW-6) was present on the spot when all the accused persons assaulted his father Anandram near the house under construction. He heard the accused persons saying to kill the deceased. When accused persons left the spot, he went near his father who had injuries on his head. His left arm, right leg below knee and left leg below knee were broken. He has stated that his uncle Sukhram (PW-1) was coming towards spot of incident when he was assaulted by Pardeshi, Bhagirathi, Mukesh, Dilip, Krishna, Surendra and Raju with clubs, although he did not see this incident. After

making arrangement for transport, he took his father Anandram, Sukhiram (PW-1) to police station Sarkanda where he lodged report (Ex. P-1). His father and uncle were admitted for treatment in hospital, Bilaspur. His father died during the course of treatment and his uncle had to take treatment for about a week.

16. Badriprasad Patel (PW-7) has stated that he heard the sound of beating and saw that Anandram was being assaulted and the persons who were assaulting were the accused persons. He also saw the injuries of Anandram. He has clarified in cross-examination that he and Munna (PW-2) witnessed the incident from a distance of about 60-70 feet and he was able to identify the deceased and accused persons even from such a distance.

17. Manoj Kumar Patel (CW-1) was examined as Court witness. He has stated that he was working in his field at the time of incident when he heard the commotion in the direction of new house of Anandram, he approached the spot and saw that all the accused persons were present who were assaulting Anandram with clubs, seeing him accused persons left the spot.

18. Ramsharan Patel (PW-4) has stated that on the day before the incident, he and others were were playing cricket when some persons came and asked them to stop playing on which one boy named Kapil slapped another boy and who in turn slapped Kapil. Later on, both the teams compromised. Next day, he met with Mukesh, Krishna, Bhagirathi, Pardeshi near the pond, when he was slapped by Mukesh stating that he has slapped his brother. Awadhesh told about this incident to his father Anandram on which Anandram talked to Dilip and

Krishna about it and on the next day, Anandram was done to death. His statement about the incident of cricket and some exchange of blows between both the teams has remained un rebutted. It is believed that this dispute on the cricket ground had been the reason of this incident. Awadhesh Patel (PW-5) has stated similarly. He has not witnessed to the assault of his father Anandram or his uncle Sukhram.

19. Dr. M. Pandey (PW-19) examined Sukhram on 27-02-2003 who was in conscious state. He had swelling on his left leg between knee and ankle joint, swelling on index finger of his left hand, two abrasions on his right ankle. He advised for X-ray examination of the injuries of Sukhram vide report Ex. P-50. He also examined Anand Patel and found that he was in conscious state, he had swelling on his elbow of left hand, other lacerated wounds profused swelling on left thigh and right ankle joint. He also had a lacerated wound on the back side of his head. Anandram was admitted for treatment by orthopedic surgeon. X-ray for his injury was advised vide Ex. P-51.

20. Dr. Archana Singh (PW-12) has reported vide Ex. P-20 that on X-ray examination of Sukhram, fracture of Distal Meta carpel was found on the basis of x-ray report (Ex. P-21).

21. Anandram succumbed to the injuries and died. After preliminary procedures and conducting of inquest, postmortem was conducted on the dead body of the deceased. Dr. R. Jitpure (PW-17) found following the antimortem injuries on the body of the deceased Anandram:

(1) Closed fracture on right leg at lower third part;

- (2) A lacerated wound over left leg, upper third part in the size of 3 cm x 1 cm x bone deep;
- (3) Fracture on left tibia fibula upper third part;
- (4) A lacerated wound over left humerces at lower third size of 2 ½ cm x 1cm x bone deep;
- (5) Fracture left humerous bone at lower third;
- (6) A lacerated wound over occipital region in the size of 2 ½ cm x 1 cm x bone deep;
- (7) Nail abrasion on right Thumb;
- (8) Abrasion near the nail of right thumb.

On internal examination, he found hamotoma inside the skull of the deceased, 10th rib was fractured. He opined vide his report Ex. P-47 that death of deceased occurred due to excessive bleeding and shock. This statement has remained unrebutted, that injuries were caused to the deceased Anandram which has resulted in his death.

22. Rest of the witnesses examined by the prosecution connected with investigative procedure. Kamal Patel (PW-8) is witness of inquest (Ex. P-5). Patwari Tularam Dindore (PW-15) has prepared spot map vide Ex. P-2. Nikolas Xalxo (PW-16) is the Investigation Officer who has recorded the memorandum of accused Raju vide Ex. P-6. Dilip, vide Ex. P-7, Bhagirathi vide Ex. P-8, Pardeshi vide Ex. P-9, Krishna vide Ex. P-10, Mukesh vide Ex. P-11 and Surendra vide Ex. P-12. In presence of witnesses in which all of them made statement for getting recovered the clubs in their possession. He further seized one club from accused Rajkumar vide Ex. P-13, one club from accused Mukesh vide Ex. P-14, one club from accused Dilip vide Ex. P-15, one club

from accused Bhagirathi vide Ex. P-16, one club from accused Pardeshi vide Ex. P-17, one club from accused Surendra vide Ex. P-18 and one club from accused from Krishna vide Ex. P-19. Witnesses of this procedure Ramdulari Patel (PW-10) and Shashi Kumar Patel (PW-11) have supported to some extent. However, they have not been able to give each and every particular procedure conducted, even then their statements corroborates the statement of Investigation Officer Nikolas Xalxo (PW-16).

23. Nikilas Xalxo (PW-16) has recorded the statement of witnesses under Section 161 of Cr.P.C. and done the other investigative procedures.

24. Ishak Xalxo (PW-20) has helped in the investigation procedure, A.S.I, S.B.S. Rana (PW-21) is scribe of Ex. P-1. Prahlad Sahu (PW-22) and Makhanlal Kaushik (PW-23) have also assisted in the investigation procedure.

25. Kaden Mathur (DW-1) has been examined for defence. He has given narration about the relationship with the accused persons but has not made any statement against the prosecution case.

26. Care has been taken while discussing the evidence of witnesses, the admissibility of the evidence has not been commented upon. The question that whether this case be remanded for decision afresh is taken up at first for determination.

27. After closely scrutinizing the evidence of eyewitnesses, circumstantial evidence, medical witnesses and the witnesses of investigation, it is found that the eyewitnesses have named each of the accused persons as the assailants or participants in the two fold incident in which

Anandram was assaulted and fatally injured and then Sukhiram (PW-1) was assaulted and grievously injured. The reasons assigned for acquitting the persons other than accused persons in the impugned judgment are not very clear and cogent. To exclude the acquitted persons, special reasons were required to be assigned by the trial Court so as to distinguish them as to being the member of unlawful assembly which had common object of assaulting deceased Anandram and injured Sukhiram which has not been done. Without such specific reasons being assigned, it could not have been held that the acquitted accused persons were not the members of unlawful assembly.

28. There had been charges under Sections 302/149 and 307/149 against all the accused persons and the provision under Section 149 of IPC does not require that each and every member of unlawful assembly should actively participate in commission of any crime, this needed consideration. Hence, for these reasons, acquittal of the co-accused persons in this case by the impugned judgment is found to be devoid of reasons. Apart from that the fact that Anandram died as a result of injuries caused to him, there was a requirement to assign reasons based on facts and provision of law to justify the acquittal of appellant accused persons from charge under Section 302 IPC and thus conviction under Section 325/149 IPC without which the impugned judgment lacks clarity.

29. Out of the finding of the perversity in the impugned judgment of acquittal of co-accused persons in this case, it has become necessary that the case should be remanded to the trial Court for deciding it afresh. There is no need to give any finding with respect to the appeal

against conviction of the appellants. Hence for the reasons aforementioned and the discussion made above, we are of the considered opinion that this case should be remanded back to be decided afresh by the trial Court. On the basis of this finding, the criminal revision No.325 of 2004 is allowed. The impugned judgment of the trial Court is hereby set aside. The case is remanded back to the trial Court with instructions to afford opportunity to both the parties for submissions of arguments and then to decide afresh the case in accordance with law. Further, the trial Court shall not be bound by any of the observations made as to the admissibility or quality of evidence in this judgment.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.C.S. Samant)
Judge