

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 323 of 2004

1. Lal Sai, son of Ganesh, aged about 30 years,
2. Ganesh, son of Late Ramal, aged about 57 years,
3. Leela Singh, son of Ganesh, aged about 27 years,

All are resident of Village Sukhdeopur, Police Station –
Pratappur, District-Surguja (CG)

---- Appellants

Versus

- State Of Chhattisgarh through the Police Station-Pratappur, Distt.
Surguja (CG)

---- Respondent

For Appellants	:	Shri VK Pandey, Advocate.
For Respondent/State	:	Shri Adhiraj Surana, Dy. GA.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

30/08/2017

This appeal arises out of the judgment of conviction and order of sentence dated 15.3.2004 passed by the First Additional Sessions Judge, Surajpur, Distt. Surguja in ST No.428/2002 convicting the appellants under Section 304 Part-I of IPC and sentencing each of them to undergo RI for five years and to pay a fine of Rs.500/- with default stipulation.

02. Brief facts of the case are that on 12.6.2002 on account of old land dispute there was quarrel between two groups i.e. the group of the appellants and that of the deceased Revti Raman. It is said that deceased Revti Raman along with others committed murder of Shivilal and in turn, Revti Raman was killed by the accused persons by causing him as many as 10 injuries. On 12.6.2002 itself unnumbered merg Ex.P/18 was recorded on the basis of information received from hospital. Inquest was conducted over the dead body vide Ex.P/20 on 12.6.2002 and thereafter numbered merg Ex.P/9 was recorded on the same day. On 13.6.2002 postmortem was conducted on the dead body vide Ex.P/10 who noticed lacerated wounds on scalp, incised wounds over face, left ear, neck, forearm, left ankle, cutting of trachea and fracture of right parietal bone and left mandible bone. In his opinion, the cause of death was coma due to head injury caused by depressed fracture over right side of skull producing intra-cranial hemorrhage. After merg inquiry, FIR (Ex.P/11) was registered under Section 302/34 of IPC against the appellants and Shivilal (deceased). After completion of usual investigation, charge sheet was filed against the accused persons under Section 302/34 followed by framing of charge by the trial Court accordingly.

03. So as to hold the accused persons guilty, the prosecution examined 13 witnesses in all. Statements of the accused 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. In defence, they examined two witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting them of the charge under Section 302 of IPC convicted and sentenced them under Section 304 Part-I of IPC.

05. On the report lodged by Lalsai, a criminal case was registered against 36 persons for causing death of Shivilal and injuries to some persons, nine persons were tried in the counter case bearing ST No.427/02 and vide judgment dated 15.3.2004 passed by First Additional Sessions Judge, Surajpur, as many as four accused persons were convicted under Sections 323/34 of IPC on three counts. Against their conviction they have preferred an appeal i.e. Cr.A.No.309/04 and assailing the same judgment, Lalsai has preferred a revision Cr.Rev.No.284/04, which are also being decided today by a common judgment separately.

06. Counsel for the appellants submits that it is the other party who was the aggressor as they came to the land of the accused/appellants and opened assault on them. He submits that the appellants are not disputing the incident but they assaulted the complainant party in exercise of right of private defence and in that process if Revti Raman died eventually, the appellants cannot be held guilty of any offence and they deserve to be acquitted of the charge by giving them benefit of doubt.

07. On the other hand, State counsel submits that the conviction and sentence awarded to the appellants are strictly in accordance with law. He submits that the witnesses (PWs-1, 2 & 4) have duly supported the prosecution case. Even if the appellants assaulted the complainant

party in exercise of right of private defence, considering the manner in which the incident took place and they inflicted injuries on the deceased resulting in his instantaneous death, it is evident that they exceeded their right of private defence and as such, their action being covered by Exception 2 to Section 300 of IPC makes them liable for conviction under Section 304 Part-I of IPC.

08. Heard counsel for the respective parties and perused the material on record.

09. PW-1 Sukhdev while supporting the prosecution case has stated that on the date of incident when he was working in his field, he heard some commotion from the nearby field and on being directed by his father when he reached the place of occurrence he saw the accused/appellants damaging the sugarcane crop. When Revti Raman asked them to leave the field, the accused/appellants, who were carrying crowbar, club and axe, surrounded Revti Raman for assaulting. He has assigned specific role to each of the accused while causing injury to Revti Raman. He has further stated that on account of assault being made by the accused/appellants, Revti became unconscious and fell down. The matter was intervened by him, Ajay, Devnarayan and others and they also assaulted Leela and others by club and thereafter, the accused persons fled from the spot. In cross-examination but for minor contradictions this witness remained firm.

10. PW-2 Ajay Kumar, other eyewitness to the incident, has made almost similar statement as has been made by PW-1. PW-3 Dhanushdhari is a witness to seizure, however, he has turned hostile. PW-4 Devnarayan is also an eyewitness to the incident and reached

the place of occurrence after hearing commotion. He too has stated that the accused persons caused injuries to Revti Raman. PW-5 Basant, eyewitness to the incident, and PW-6 Jadunath, have turned hostile. PW-7 Ramadhar Singh, witness to memorandum of the accused/appellants and seizure of certain articles, has supported the prosecution case. PW-8 Shivprasad Singh is a formal witness. PW-9 Dr. Suryakishore Sinha conducted postmortem on the dead body on 13.6.2002 vide Ex.P/10 and noticed lacerated wounds on scalp, incised wounds over face, left ear, neck, forearm, left ankle, cutting of trachea and fracture of right parietal bone and left mandible bone. In his opinion, the cause of death was coma due to head injury caused by depressed fracture over right side of skull producing intra-cranial hemorrhage.

11. PW-10 Anandram, investigating officer, has supported the prosecution case. PW-11 William Toppo and PW-12 Hriday Narayan Singh, police personnel, helped in the investigation.

12. Defence witnesses have stated that it is the complainant party who first caused injury to Shivilal and thereafter the incident started. Thus, according to the defence witnesses also participation of the appellants in the incident is established.

13. Close scrutiny of the evidence makes it clear that on the date of incident i.e. 12.6.2002 cattle of the accused/appellants were damaging the sugarcane crop of the deceased party, on which deceased Revti Raman asked the accused/appellants to drive them away, which led to hot talks between them and eventually culminated into fierce fight between two groups. In the said incident, Revti Raman suffered

grievous injuries and succumbed to the same. It has also come in the evidence that one Shivilal from the side of the appellants also suffered grievous injuries in the said incident and died. The eyewitnesses (PW-1 Sukhdev, PW-2 Ajay Kumar and PW-4 Devnarayan) have duly supported the prosecution case. Even the appellants have not disputed the incident and their only defence is that they assaulted the deceased Revti Raman in exercise of right of private defence of person of Shivilal.

14. From the evidence of the witnesses, it emerges that in the said incident both the parties caused injuries to each other and it is difficult to hold that the appellants herein inflicted injuries on Revti Raman with intention to commit his murder. But the fact remains that they assaulted him in such a manner on his vital part which led to his instantaneous death. According to the medical evidence, the injuries suffered by the deceased, in particular the head injury, were sufficient in the ordinary course of nature to cause his death. Thus, considering the ocular and medical evidence on record, the facts and circumstances giving rise to the incident, the conduct of the appellants viz-a-viz that of the complainant party, even if it is assumed that they caused injuries to the deceased in exercise of right of private defence of person of Shivilal, in our considered view, while doing so the appellants exceeded their right of private defence of person and that they had intention of inflicting such bodily injuries on Revti Raman which were likely to result in his death. Being so, their conviction under Section 304 Part-I cannot be faulted with.

15. On the basis of aforesaid discussions, we are of the opinion that the findings recorded by the trial Court holding the appellants guilty

under Section 304 Part-I of IPC are founded on proper appreciation of the evidence on record and the same need no interference by this Court. Accordingly, the appeal fails and is here dismissed.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(R.P. Sharma)
Judge

Khan