

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 484 of 2008**

1. Ajay son of Shri Kamparam Satnami, aged about 19 years
2. Batarna alias Jai Prasad S/o Shri Kamparam Satnami, aged about 23 years
3. Heera Prasad son of Shri Kamparam, aged about 26 years
4. Kamparam S/o Shri Ravidas, aged about 50 years,

{All the caste of Satnami & residents of village Aamagaon, Police station Jaijaipur, District Janjgir Champa, CG}

---- Appellants**Versus**

1. State of Chhattisgarh through PS Jaijaipur, District Janjgir Champa, CG

---- Respondent

For Appellants: Ms. Sangita Mishra, Advocate
 For Respondent/State: Shri Ravindra Agrawal, PL

Hon'ble Acting Chief Justice, and
Hon'ble Shri Justice Sanjay Agrawal

Judgment on Board by Acting Chief Justice**15/03/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 22.1.2008 passed by the Additional Sessions Judge Sakti, District Janjgir Champa in Sessions Trial No. 227/2006 convicting the accused/appellants under Sections 449, 302/34, 325/34, 323/34 and 323/34 IPC and sentencing each of them to undergo RI for 10 years with fine of Rs. 200/- u/s 449; imprisonment for life with fine of Rs. 500 u/s 302/34; RI for 2 years with fine of Rs. 1000/- u/s 325/34 and RI for 6 months with fine of Rs. 500/- u/s 323/34 IPC twice, plus default stipulations.

2. As per the case of prosecution on 25.7.2004 at 12.05 in the mid-night FIR Ex. D-1 was lodged by Hirabai (PW-3) alleging that on that night at 9.30 PM her husband Madanlal Satnami (deceased herein) returned home and started abusing accused Kamparam and his sons saying that in spite of being told not to dump garbage in his compost pit, they did not stop doing so. It is alleged that on hearing abusive words, accused Kamparam and his sons namely Heera Prasad Satnami, Batarna and Ajay also came near her house carrying clubs in their hands and called her husband by name hurling abuses. As is further alleged, when her husband was to get out of the house carrying sword, the accused persons got into, started beating him with the clubs, dragged him out to the lane and continued with the assault. Even after her husband fell down, the accused persons dealt number of *lathi* blows on his head which resulted in his instantaneous death. It is further alleged that when she along with her mother-in-law Pancho Bai and daughter Savitri tried to intervene, accused persons did not spare even them and caused injuries to them also with club. Based on this FIR, offences under Sections 302, 323, 34 IPC were registered against the accused/appellants followed by recording of *merg* intimation Ex. P-40. Inquest was made on 25.7.2004 vide Ex. P-22 and dead-body was sent for postmortem examination which was conducted by Dr. S.C. Banjare (PW-26) vide report Ex. P-39. Injured Hirabai, Savitri and Pancho Bai were also medically examined by the same doctor vide their reports Ex. P-35, P-37 and P-36 respectively. However, on 21.8.2004, Panchobai also expired. After investigation, charge sheet was filed against the accused/appellants under Sections 302, 323, 34, 460 and 307 IPC. However, the Court below framed the charge against them under Sections 449, 302, 307, 323 twice and

34 IPC.

3. In order to prove the complicity of the accused/appellants in the crime in question, the prosecution has examined 27 witnesses. Statements of the accused/appellants under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case. In addition to this, one Nakul Banjare (DW-1) has also been examined by the defence in support of its case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellants as mentioned above.

5. Counsel for the accused/appellants submits as under:

(i) That the accused/appellants caused injuries to deceased Madanlal, Hirabai (PW-3), Savitri (PW-5) and Pancho Bai only when the assault was opened at them by deceased Madanlal.

(ii) That the fact that accused Heera Prasad also suffered injuries has been admitted by other witnesses also and therefore it is apparently a case of right of private defence.

(iii) That the doctor (PW-26) has admitted that he had noticed injuries on the bodies of accused Kamparam and Ajay and that nature of said injuries could be given after receiving the x-ray report.

(iii) That even assuming that the accused/appellants have exceeded to their right of private defence, their act falls within exception 2 to section 300 and therefore they can be convicted under Section 304 (Part-I or Part-II). According to her, as the incident took place all a sudden and on account of provocation, exception to section 300 also comes into the picture to convict

them under Section 304 (Part-II) but not under Section 302 IPC.

(iv) That as the appellants have already remained in jail for about 4 years, they may be sentenced to the period already undergone by convicting them under Section 304 (Part I or Part-II) IPC.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same. According to him, there is no legally admissible evidence to show that any of the accused suffered injury at the hand of deceased Madanlal.

7. Choukin Bai (PW-1) and Dujeram Satnami (PW-2) have not stated anything specific against the accused/appellants. Hirabai (PW-3) - wife of the deceased has stated that on the date of incident in between 8.30 and 9.00 PM when her husband Madanlal (deceased) returned home from the betel shop, all the accused/appellants came there and assaulted him with iron rods and clubs and on account of repeated blows his head was badly injured, and that when she went to intervene, they assaulted her also. She has stated that at the time of incident, her daughter Savitri (PW-5) and Sheela (PW-4) were also present and that the accused persons assaulted her mother-in-law Panchobai and daughter Savitri also. This witness has clarified that the incident took place on account of throwing garbage in the compost pit. On confrontation with the FIR, this witness has stated that she did not inform the police that her husband went out of the house carrying sword in his hand. According to her, for two years there was a dispute between both the parties as the accused/appellants used to throw garbage into the compost pit belonging to family of the

deceased even though they were asked not to do so. In paragraph No. 28, this witness has admitted that when she went to the police station to lodge the report, accused Kamparam and Heera Prasad were present there. Ku. Sheela Satnami (PW-4) - the minor daughter of the deceased aged about 12 years has stated that accused/appellants caused injuries to her father with crowbar and also subjected Panchobai to beating. This witness has stated that when she went to intervene in the matter, accused/appellants assaulted her also with club. Savitri Bai (PW-5) - another daughter of the deceased has stated that on the date of incident the accused/appellants who were carrying iron rods and clubs entered her house after breaking open the door and assaulted the deceased and all this happened on account of a dispute over throwing garbage into the compost pit. She has stated that when her grandmother Panchobai tried to intervene in the matter, accused/appellants assaulted her also causing injuries on her head and fracture to her hand and leg. In paragraph No. 16 this witness has stated that accused Kamparam caused injury to the deceased on hand with sword. Subhkaran Singh (PW-6) is the Patwari who prepared spot map Ex. P-1A. Ganesh Kumar Satnami (PW-9) - son of the deceased is a hearsay witness who was informed by the Kotwar of the village that the accused/appellants had killed his father. He however did not see the incident. Fagudas (PW-10) - the witness to memorandum Ex. P-13 and seizure of certain articles made under Ex. P-14 to P-19 has not supported the same but admitted his signatures thereon. He is also the witness to arrest of some of the accused persons. Kanhaiya Lal Sahu (PW-11) - another witness to memorandum and seizure though not supported the same but has admitted his signature thereon. Shanta Kumar

Barman (PW-12) has stated that on 24.7.2004 when he was in his house, he heard the deceased abusing accused Kamparam and that Kamparam had asked him not to abuse. This witness has further stated that thereafter he heard the sound of lathi blows and on his door being knocked by the Sapranch when he came out of the house, he saw Madanlal lying dead in front of his house with injury on head. Ghasiram Satnami (PW-13) has not supported the case of the prosecution and has been declared hostile. Dr. (Smt.) Rajni Makhija (PW-20) is the radiologist who gave x-ray report of Hirabai Ex. P-29 stating that she noticed fracture of first metatarsal bone. A.S. Gyani (PW-21) and Devcharan Chandra (PW-22) are the witnesses who assisted in the investigation. Dr. R.K. Gupta (PW-24) - the treating doctor of injured Hirabai has not noticed any grievous injury on her person. Dr. A.R. Ben (PW-25) - who medically examined Hirabai (PW-3) also noticed fracture on her left leg and left shoulder. According to this witness also, first metatarsal bone of Hirabai was fractured. Dr. S.L. Banjare (PW-26) is the witness who conducted postmortem examination on the body of deceased Madanlal and gave his report Ex. P-39 stating that he noticed following injuries on his body:

- (i) LW on temporal area 6 x 2 x 1 & 1/2 inch
- (ii) LW on sagittal area 2 x 1 & 1/2 inch
- (iii) LW on zygomatic area 4 x 2 x 4

Cause of death has been opined due to head injury which was homicidal in nature.

This witness medically examined Hirabai (PW-2), Savitri (PW-5) and Panchobai also. He noticed three lacerated wounds on the skull of Hirabai (PW-2) and swelling vide medical report Ex. P-35; one

lacerated wound on skull and swelling in the arm of Savitri (PW-5) vide medical report Ex. P-37; and abrasion, scratches and swelling on frontal area, orbital area and shoulder of Panchobai vide medical report Ex. P-36. Arjun Kumar Singh (PW-27) is the investigating officer who has duly supported the case of the prosecution. He however has admitted the fact that during investigation he came to know that when accused Kamparam went near the house of deceased, he (deceased) took out the sword and started abusing and it is after hearing such abusive words, the accused/appellants went to the place of incident. He has further admitted that had the deceased not used abusive language, the accused/appellants would not have gone to the place of occurrence and the incident would not have taken place. In paragraph 41, this witness has admitted that in the incident members of both the groups were injured and they all were sent for medical examination by him. He has further admitted that he did not record the statements of the doctors who treated the injured persons. In paragraph 49 he has further admitted that when he thought it proper, arrest of Hirabai was made by him. He has stated that being the investigating officer, the proceedings in the counter case were based on his own sweetwill and looking to the seriousness of the offence in the counter case the arrest was made by him on 31.1.2005. He has reiterated that accused Heera Prasad opened the assault on the deceased and his family members when he (deceased) first attacked the accused Kamparam with sword. According to this witness, accused Heera Prasad remained in hospital for about five days and accused Kamparam for about ten days but he did not make any effort to know the details of injuries suffered by these two persons. Nakul Banjare (DW-1) has stated that at the time of

incident accused Ajay was not there in his village and was prosecuting his studies by residing in the house of his maternal uncle at village Mudpar and returned to his village after coming to know about the incident.

8. Close scrutiny of the material available on record including the evidence of the witnesses makes it clear that on 24.7.2004 after returning home from the betel shop deceased started abusing the accused persons over dumping the garbage by the accused persons in his compost pit and after hearing the said abusive language accused/appellants came out from their house carrying lathi and at that time deceased took out sword, there was quarrel between two groups in which members of both the groups sustained injuries. Record further goes to show that deceased died on the spot after sustaining injuries whereas Hirabai (PW-3), Savitri (PW-5) and Panchobai (since deceased) suffered injuries on various parts of their body. Though there is no medical examination report of accused Heera Prasad and Kamparam but this fact has been admitted by the investigating officer that they too suffered injuries and remained in hospital for number of days. Investigating officer has admitted in his evidence that incident occurred only when deceased started abusing the accused/appellants and that had there been no hurling of abuses by deceased Madanlal, incident would not have taken place. Even the doctor (PW-26) has admitted in his evidence that accused Heera Prasad and Kamparam had suffered injuries. Having thus seen the evidence of the witnesses as a whole, complicity of the accused/appellants in the commission of crime in question cannot be negated. However, the evidence speaks volumes that there was no premeditation on the part of accused/appellants to commit the murder of the deceased, as they

went to the spot only after hearing the abuses from the deceased and all of a sudden got provoked and having been subdued by the fit of fury this unfortunate incident took place where members of both the families suffered injuries. Investigating officer has been very categorical in stating that had the deceased not provoked the accused/appellants by abusing first, the incident would not have taken place. The factum of accused Heera Prasad and Kamparam suffering injuries has been corroborated by the investigating officer and the doctor (PW-26) also. In this view of the matter, the act of the accused/appellants makes them liable for conviction under Section 304 (Part-II) and not under Section 302 IPC. That apart, as Hirabai (PW-3), Savitri (PW-5) and Panchobai were also assaulted by the accused/appellants, their conviction under other sections of the Indian Penal Code slapped by the Court below does not call for any interference by this Court.

9. In the result, the appeal is allowed in part. Conviction of the accused/appellants under Section 302/34 is hereby set aside and in place thereof they are hereby convicted under Section 304 (Part-II) IPC and sentenced to undergo rigorous imprisonment for seven years. Their conviction under Sections 449, 325/34 and 323/34 IPC twice is however maintained. Since the accused/appellants are on bail, let them be arrested forthwith and sent to jail for serving out remaining part of the sentence.

Sd/-

(Pritinker Diwaker)
Acting Chief Justice

Sd/-

(Sanjay Agrawal)
Judge