

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 579 of 2014

Judgment reserved on 21.4.2017

Judgment delivered on 16.5.2017

1. Dilesh @ Dillu, S/o Mayaram Yadav, aged about 23 years
2. Rajendra Kumar S/o Mayaram Yadav, aged about 26 years
3. Mayaram yadav S/o Jhaduram Yadav, aged about 75 years

(Wrongly mentioned impugned order 65 years)

All R/o Village Bhilauni, Police Station Takhatpur, District Bilaspur, CG

---- Appellants

Versus

1. State of Chhattisgarh through District Magistrate, Bilaspur, CG

---- Respondent

For Appellants	:	Shri Dheerendra Pandey, Advocate
For Respondent/State	:	Shri Ravindra Agrawal, PL

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice Rajendra Chandra Singh Samant**

CAV Judgment

16/05/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 17.6.2014 passed by the Additional Sessions Judge Bilaspur, in Sessions Trial No. 210/2009 convicting the accused/appellants under Sections 302/34 (twice) and 307/34 IPC and sentencing each of them to undergo imprisonment for life with fine of Rs. 500/- (twice) u/s 302/34 and RI for five years with fine of Rs. 500/- u/s 307/34, plus default stipulations.

2. As per the case of prosecution, two groups – one comprising accused Dilesh, Rajendra, Mayaram, Raj Kumar alias Bade Guddu

and the other comprising Ramsharan (deceased), Shatrughan (deceased), Ved Prakash, Jai Shankar, Rani Bai and Rakesh, and both had their agriculture land adjacent to each others. Allegedly, on 31.7.2009 there was some dispute between the members of these groups over removal of barbed wire fencing made by accused Dilesh. On that day at about 8.45 AM accused Dilesh, Rajendra, Mayaram and the accused in Criminal Appeal No. 752/2015 namely Raj Kumar alias Bade Guddu had assaulted Ramsharan, Shatrughan and Jaishankar with axe and club. In the incident Ramsharan and Shatrughan died instantaneously whereas Jaishankar (PW-13) suffered injuries. Jaishankar was medically examined by Dr. Dharmendra (PW-20) who gave his report Ex. P-30. Information regarding the incident was given by Rakesh Kumar Kaushik (PW-26) to Ved Prakash who then rushed to the spot and came to know through Rani Bai (PW-11) about the incident of assault. *Merg* intimations for the death of Shatrughan and Ramsharan (Ex. P-20 and P-22 respectively) were recorded at the instance of Ved Prakash (PW-10) on the same day at 9.35 AM followed by FIR Ex. P-21 registered at the instance of same person against the accused/appellants in this appeal and also against Raj Kumar alias Bade Guddu for the offences punishable under Sections 302, 307, 34 IPC. On that very day, inquest on the body of Ramsharan was conducted vide Ex. P-27 and that of Shatrughan vide Ex. P-28. Thereafter, bodies of two deceased persons were sent for postmortem examination which was conducted by Dr. M.K. Samuel (PW-7) who gave his reports Ex. P-15 (in respect of deceased Shatrughan) and Ex. P-16 (in respect of deceased Ramsharan). After completion of investigation, charge-sheet was laid by the police against the accused/appellants under Sections 302/34 and

307/34 IPC showing the other accused Raj Kumar alias Bade Guddu as absconding, followed by framing of charges accordingly.

3. To hold the accused/appellants guilty the prosecution has examined 28 witnesses in support of its case. Statements of the accused/appellants have also been recorded under Section 313 of the Code of Criminal Procedure in which they denied the allegations made against them and pleaded innocence and false implication in the case. Defence also examined one witness namely Dr. Anil Kumar Gupta (DW-1) in support of its case.

4. Accused Raj Kumar alias Bade Guddu has subsequently been arrested and put to trial separately and eventually convicted by the trial Court vide judgment and order dated 12.5.2015. His appeal (Cr.A. No. 752/2015) is also being heard along with the present appeal though the judgment is passed separately.

5. On the report lodged by accused Dilesh Crime No. 271/2009 was registered against Ved Prasad (in deposition sheet name is mentioned as Ved Prakash), Rakesh, Shatrughan (deceased and Ramsharan (deceased) and others under Sections 294, 323, 506-B/34 IPC. As Ramsharan and Shatrughan died in the same incident, charge-sheet was filed against Ved Prasad, Rakesh & Rani Bai and they were tried for the offences punishable under Sections 294, 506-B and 326/34 IPC and vide judgment dated 17.6.2014 passed in Sessions Trial No. 105/2013 accused Rani Bai has been acquitted of all the charges but accused Ved Prasad and Rakesh have been convicted under Sections 326/34 and 324/34 IPC.

6. After hearing the parties the Court below has convicted and sentenced the accused/appellants as detailed in paragraph No.1 of this judgment.

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

(i) that the accused/appellants have been falsely implicated in the case;

(ii) that Ramsharan and Shatrughan have died after sustaining injuries which were intended to be caused to someone else but unfortunately the blow fell on them that too dealt by Ved Prasad and Rakesh;

(iii) that the eyewitnesses to the incident namely Rani Bai (PW-11) and Jaishankar (PW-13) are not reliable and their statements cannot be made basis for conviction of the accused/appellants;

(iii) that the act of the accused/appellants is covered with exception 4 to Section 300 and therefore they can, at the most, be convicted under Section 304 (Part-II) IPC and not under Section 302 as the incident took place all of sudden without there being any premeditation;

(v) that there was dispute over removal of the barbed wire fencing made in between the agriculture lands of two groups where this unfortunate incident took place;

(vi) that there is a case and counter case where accused Dilesh and Mayaram also suffered injuries and therefore also the accused/appellants cannot be convicted under Section 302 IPC;

(vii) that during pendency of this appeal, accused Mayaram has already expired and therefore the present appeal remains only in respect of accused Dilesh and Rajendra; and

(viii) that as the accused/appellants have already remained in jail for about seven and a half years and therefore after convicting them under Section 304 (Part-II), they may be sentenced to the

period already undergone.

8. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the Court below has been justified in recording the conviction on the basis of material available on record and there is no infirmity in the same. He submits that it is the accused/appellants who were aggressors and committed murder of Ramsharan and Shatrughan and caused injuries to Jaishankar (PW-13). State counsel submits that even assuming that the incident took place all of a sudden, the accused/appellants have taken undue advantage and acted in a cruel manner while opening assault on them. Referring to the reports of autopsy surgeon and the doctor medically examining Jaishankar, the State counsel submits that the injuries inflicted on the deceased persons as also the injured over head were grievous in nature and therefore their conviction under Sections 302/34 and 307/34 IPC is proper. State counsel further submits that injured eyewitness Jaishankar (PW-13) and eyewitness Rani Bai (PW-11) have duly supported the case of the prosecution.

9. Heard counsel for the parties and perused the material on record.

10. Rani Bai (PW-11) – eyewitness to the incident has supported the case of the prosecution by stating that deceased Ramsharan was her elder brother whereas the other deceased Shatrughan was her father. She has stated that on the date of incident when she was working in her agriculture field along with her father, brother (both deceased) and nephew (injured), some dispute cropped up between the members of both the groups over removal of barbed wire fencing put by deceased/accused Mayaram. According to her,

first the elderly people were to be consulted but none came to settle the dispute, rather deceased/accused Mayaram, accused Dilesh, Rajendra and Bade Guddu assaulted her father and brother with axe who on account of the head injuries fell down on the field and died. She has stated that when her nephew Jaishankar (PW-13) came to intervene in the matter, accused persons assaulted him also as a result of which he too fell down on the bund after becoming unconscious on account of the injuries inflicted on his head. Thereafter, her another brother Ved Prakash came there and put the dead-bodies of her father and brother on the bund. Her unconscious brother, according to this witness, was bleeding profusely and when taken to hospital at Bilaspur, he was referred to Raipur. In her lengthy cross examination, this witness remained firm to what has been stated by her in the examination-in-chief and nothing could be elicited by the defence to the contrary. This witness has then reiterated the entire incident in detail as to the manner in which her brother and father were killed and her nephew injured. She has specifically stated that on account of the injuries inflicted by the accused persons with axe and pick-axe her brother and father died. Jaishankar (PW-13) – the injured eye witness to the incident while supporting the case of the prosecution has stated that deceased Ramsharan was his father whereas deceased Shatrughan was his grandfather. According to this witness, on the date of incident his father and grandfather were working in the field and at that time he was also present there. He has stated that at the relevant time accused namely Mayaram (since deceased), Dilesh, Rajendra and Bade Guddu were also present at the spot. According to this witness, as the accused persons had erected a barbed wire fencing on the bund for which it was difficult for them

to get into and out of the field and, his father and grandfather asked them to remove the said fencing but the accused persons told for convening a *Panchayat* meeting and left the field saying that they would call elderly people of the village and came again 10-15 minutes thereafter. When his father and grandfather were ploughing the field, all the accused persons, four in number, started assaulting them with axe and pick-axe, and when he tried to intervene in the matter, they assaulted him also with axe causing injuries on head as a result of which he became unconscious, and was not aware as to who lifted and shifted him to the hospital. This witness is stated to have remained in the hospital for about one and a half month and when he reached home after being discharged from the hospital, he came to know about the death of his father and grandfather. In cross-examination, barring certain minor contradictions, he remained firm on material particulars stated by him in his examination-in-chief. Dr. M.K. Samuel (PW-7) is the witness who conducted postmortem examination on the dead-bodies of Shatrughan and Ramsharan and gave his reports Ex. P-15 and P-16 respectively. On the body of deceased Shatrughan he noticed following injuries:

- (i) Lacerated wound 2 x 1 x 1 inch above left ear.
- (ii) Lacerated wound 2 x 1 x ½ inch on upper portion of left ear, and fracture of temporal bone.
- (iii) Lacerated wound 3 x 2 x 3 inch and lacerated wound 2 x 1 x 3 inch in the occipital region of head, and compound fracture from occipital region to mastoid region, brain material was crushed. On internal examination he also noticed that the bones of temporo-parietal and occipital region were fractured. Cause of death of

Shatrughan according to him was hemorrhage and hypovolemic shock due to head injury which was antemortem in nature.

On the body of deceased Ramsharan he noticed following injuries:

Lacerated wound 3 x 2 x 3 inch oval position on the back side of head.

(ii) Lacerated wound 2 x ½ x 2 inch deep below occipital region;

(iii) Sharp cutting injury 2 x 1/2 x 2 inch on the left side of occipital region, and compound multiple fracture of tempo-parietal and occipital region. Cause of death of Ramsharan according to him, was hemorrhage, hypovolemic and neuralgic shock due to head injury which was antemortem in nature.

Dr. Dharmendra (PW-20) is the witness who medically examined injured Jaishankar (PW-13) and gave his report Ex. P-30 noticing the following injuries:

(I) Lacerated wound 6 x 3 x ½ cm over the occipital bone.

(ii) Lacerated wound 4.5 x 1.2 x 1.2 cm over the parietal bone

Injuries were caused by hard and blunt object.

Rakesh Kumar Kaushik (PW-26) is the relative of the deceased who while supporting the case of the prosecution has stated that he was present in the field when the initial dispute began between the two groups after the deceased persons had asked the accused persons to remove the barbed wire fencing. According to him, as soon as the accused persons went to call the elderly people of the village, he also left the place as he was not feeling well. On the way he is stated to have met accused Raj Kumar alias Bade Guddu who had

threatened him of life. Thereafter, he also met Ved Prasad and informed him about the dispute cropped up in the field between the two groups. Shailendra Kaushik (PW-1) is the witness who reached the spot after coming to know about the incident and saw the bodies of two deceased persons lying in the field, as well as the injured (PW-13) who was writhing in pain. Keshavlal (PW-2) is the witness who had accompanied Shailendra (PW-1) to the spot and saw the bodies of the deceased persons lying in the field, and injured – drenched in blood, was taken to CIMS but looking to his condition he was shifted to Raipur. Suresh Yadav (PW-3) and Tulsiram (PW-9) have not supported the case of the prosecution and have been declared hostile. Panna Ram (PW-4) is the witness to memorandum Ex. P-6, seizure made under Ex. P-7 and arrest memo Ex. P-8 to P-10. Niranjana Prasad Kaushik (PW-5) is the witness to seizure of plain and blood stained soil made under Ex. P-12 and P-13. Ved Prakash (PW-10) – the son of deceased Shatrughan and brother of deceased Ramsharan has stated that on the date of incident his brother and father were in the field of his sister Rani Bai and at that when she was removing the barbed wire fencing, accused Mayaram, Bade Guddu, Rajendra and Dilesh asked her not to do so and told her of calling elderly people of the village. When his sister, brother and father did not listen to the accused persons, they started quarrel with her and assaulted his father with axe and pick-axe and caused injury on his head as a result of which he died. They also assaulted his nephew Jaishankar. In cross-examination also this witness remained firm to what he has stated in the examination-in-chief and nothing to the contrary has been elicited by the defence. Santosh Verma (PW-12) is the Patwari who prepared spot map Ex. P-23. Naresh Sahu (PW-14), Shirish Pal (PW-

15), Sevaram Chandra (PW-16), Durgesh Verma (PW-19), D.K. Rathore (PW-21), Dev Charan Maravi (PW-22) and Harendra Khunte (PW-24) are the police people who assisted in the investigation have also supported the case of the prosecution. Ratan Das (PW-17) and Bihari Lal (PW-18) are the witnesses who conducted inquest on the dead-bodies Ex. P-27 and Ex. P-28. K.S. Rathia (PW-23) is the investigating officer who has duly supported the case of the prosecution. Biharilal Kaushik (PW-25) is the witness who came to know about the incident through Ved Prakash after it had taken place. Dr. Dipika Minj (PW-27) is the witness who took CT scan of injured Jaishankar (PW-13) and noticed fracture on the right temporal and parietal bone. Dr. Rajesh Jain (PW-28) is the witness who treated injured Jaishankar and noticed head injury and blood clot in his brain. Dr. Anil Kumar Gupta (DW-1) is the witness who medically examined accused Mayaram and noticed four injuries on his body. He also examined accused Dilesh and noticed three simple injuries on his body.

11. From the material available on record including the evidence of the witnesses though the incident appears to have taken place over a trivial issue of removal of barbed wire fencing, however, at the same time if the evidence of Rani Bai (PW-11) and Jaishankar (PW-13) is looked into, it goes to show that the accused persons caused number of injuries to Ramsharan and Shatrughan (both deceased) as well as Jaishankar – the injured with axe and pick-axe. Evidence further goes to show that the injuries which have been opined by the autopsy surgeon to be grievous in nature, proved fatal leading to on-the-spot death of Ramsharan and Shatrughan whereas injured Jaishankar also suffered grievous injuries including fracture making him remain in the hospital for number of days.

Thus considering the evidence of Rani Bai (PW-11) and injured eyewitness (PW-13) which gets further corroboration from the medical evidence as well, the trial Court appears to have been fully justified in convicting the accused/appellants under Sections 302/34 twice for committing the murder of Ramsharan and Shatrughan and 307/34 IPC for causing grievous injuries to Jaishankar (PW-13). We do not find any substance in the arguments of the counsel for the accused/appellants that since it has not been proved by the prosecution as to members of which party were the aggressors, case would fall under exception 4 to Section 300 IPC. Exception 4 to Section 300 IPC reads as under:

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

In the present case, not one but number of injuries have been caused to deceased Ramsharan and Shatrughan that too with deadly weapons i.e. axe and pick-axe which makes it clear that the accused/appellants have taken undue advantage of the situation while opening the brutal assault. Had they really not intended to kill the two deceased persons, they would have controlled their passion after causing one or two injuries but instead of doing that they went on raining blows with the deadly weapons which resulted in their instantaneous death. Evidence further reflects that after the verbal dispute arose between both the groups over removal of barbed wire fencing, the accused/appellants went away in the name of calling the elderly people of the village to take some decision, however, they returned after a while not with the elderly people but with the axe and pick-axe and opened assault in a most

cruel manner where two persons lost their lives and one person suffered grievous injuries. All these things, if viewed cumulatively, go to show that the barbaric act of the accused/appellants in snatching the lives of two and causing grievous injuries to injured (PW-13) was quite intentional coupled with premeditation and beforehand planning, which, by no stretch imagination, bring the case within the sweep of exception 4 to Section 300 IPC and therefore, the submission of the counsel for the appellants in this regard is turned down.

12. In the aforesaid view of the matter, this Court is of the considered opinion that the findings recorded by the Court below convicting and sentencing the accused/appellants as described above are based on proper appreciation of the evidence of the witnesses, and call for no interference in this appeal. Appeal, therefore, being without any substance is liable to be dismissed and it is dismissed as such.

13. Accused/appellant Maya Ram is reported to be on bail. Let him be arrested forthwith and sent to jail to serve out the sentence imposed on him. However, the other two accused/appellants are already in jail and therefore, no order like this is necessary.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge