

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 935 of 2004

1. Ram Vichar @ Vimal, son of Late Devsharan Yadav, aged about 45 years, Occupation- Agriculture & Animal Husbandry.
2. Akshay Kumar @ Chotka, son of Sevakram Yadav, aged about 25 years, Occupation- Agriculture & Animal Husbandry.
3. Awdhesh Yadav, son of Sevakram Yadav, aged about 35 years, Occupation- Agriculture & Animal Husbandry.
4. Sanwru alias Bullu alias Gullu Yadav, son of Ramvichar alias Vimal alias Vimla Yadav, aged about 19 years, Occupation- Agriculture & Animal Husbandry,
5. Ramchandar alias Ramchandar alias Sukudu, son of Ramvichar alias Vimal Yadav, aged about 20 years, Occupation Agriculture & Animal Husbandry.
6. Sevak Ram Yadav, son of Dasai Yadav, aged about 65 years, Occupation- Agriculture & Animal Husbandry
7. Naresh Yadav alias Natwa, son of Shankar Yadav, aged about 22 years, Occupation- Agriculture & Husbandry

---- Appellants

Versus

- State Of Chhattisgarh, through the Police Station Rajpur, District Sarguja (CG).

---- Respondent

For Appellants	:	Smt. Savita Tiwari, Advocate.
For Respondent	:	Shri V.A. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice R.P. Sharma

Judgement

Per P. Diwaker, J

04/07/2017

1. This appeal arises out of the judgment of conviction and order of sentence dated 14.10.2004 passed by the 3rd Additional Sessions Judge, Ambikapur (Sarguja) in Special S.T. No.321/2001 convicting the accused/appellants under Sections 302/149, 325/149, 323/149, 147/149 & 148/149 of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo R.I. for life & fine of Rs.5,000/-; R.I. for 4 years & fine of Rs.1,000/-; R.I. for 6 months; RI for 6 months and R.I. for 1 year, with default stipulations, respectively.
2. As per the prosecution case, the accused party and the complainant party are relatives and there was a land dispute between the parties. On 2.7.2011 at about 8.30 a.m. the accused persons armed with club, axe & spear had gone to the field of Lalta Prasad (PW-13) and caused injuries to Shobhnath (since deceased), Ramprakash (PW-11) & Lalta Prasad (PW-13). Incident was witnessed by Ramvilas (PW-2) & Dharmu (PW-9). The injured were immediately taken to the hospital where Ramprakash (PW-11) was medically examined vide Ex.P-16, Lalta Prasad (PW-13) vide Ex.P-17 and Shobhnath vide Ex.P-17 by the doctor (PW-17). On report being lodged by Lalta PW-13, FIR (Ex.P-31) was registered on 2.7.2001 under Sections 147, 148, 149, 447 & 307/34 IPC against as many as seven accused persons including juvenile accused Babla. However, during the course of treatment Shobhram succumbed to his injuries and after his death, the offence was converted to the offence of murder. Unnumbered Merg Intimation (Ex.P-35) and numbered Merg (Ex.P-35A) was registered on the basis of oral information given by Lalta Prasad (PW-13).

Body of deceased was sent for post mortem examination which was conducted by Dr. Rajesh Bhajagwali (PW-7) and he noticed following injuries:-

- Bruise of blue colour of 5x5cm over left temporal region above left ear.
- Abrasion of 3x2cm size at the back.
- Wound of 3x 1.5 cm over right arm near elbow joint lateral side, bone deep with sharp edges.
- Lacerated wound of 1.5 x 1 cm over anterior surface just below knee joint.
- Lacerated wound of 4x1cm over medial malleolus part of right leg.

The autopsy surgeon has opined the cause of death to be syncope due to severe blood and the death was homicidal in nature. Injured Ramprakash (PW-11) & Lalta Prasad (PW-13) have also been examined by the doctor (PW-7) vide Ex.P-16 & P-17 respectively and following injuries were noticed on their body;-

Injuries suffered by Ramparkash (PW-11)

- Lacerated wound of 10x 2 cm over skull.
- Lacerated wound of 1 x 1 cm over left leg at anterior aspect.
- Swelling over left elbow.

Injuries suffered by Lalta Prasad (PW-13)

- Swelling of 2x2cm over right side of skull.
- Two bruises of 6x1cm size over left shoulder.
- Swelling of 3x3cm over right shoulder.

In the course of investigation, disclosure statement (Ex.P-19) of accused/appellant No.1 was recorded and based on which one bamboo stick was recovered vide Ex.P-26. Disclosure statement of accused/appellant No.2 was recorded vide Ex.P-20 and based on which one club was seized vide Ex.P-27. Accused/appellant No.3 has also made disclosure statement (Ex.P-21) and on the basis of said disclosure statement, one axe was seized vide Ex.P-28. On the basis of disclosure

statement (Ex.P-16) of accused/appellant No.4, one spear at his instance was seized vide seizure memo Ex.P-23. On the basis of disclosure statement (Ex.P-17) of accused/appellant No.5, one axe was seized vide Ex.P-24. On the basis of disclosure statement (Ex.P-18) of accused/appellant No.6, one club was seized vide seizure memo of Ex.P-25. Appellant No.7 also made disclosure statement vide Ex.P-22 regarding club which was kept by him in his house and the same was recovered at his instance vide seizure memo of Ex.P-29. The articles seized at the instance of accused/ appellants were sent for chemical examination to the FSL from where report of Ex.P-65 was received in which human blood was found on the weapons & shirt seized at the instance of accused/appellants respectively.

3. Accused No.5 Ramchandrar is also said to have suffered injuries in the incident, who was medically examined vide Ex.D-4, and on his report, FIR (Ex.D-5) was also registered against Ramprakash (PW-11) & deceased Shobhnath under Sections 324, 294/34 IPC.
4. After investigation, charge sheet against 07 accused persons was filed. The Court below framed the charges under Sections 147, 148, 323/149, 307/149 & 302/149 of IPC against the accused persons. The prosecution in order to bring home the charges levelled against the accused persons examined 23 witnesses in all. Statements of accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication. They have examined three witness in their defence.
5. After hearing counsel for the parties and considering the material available on record, the trial Court while acquitting the accused/appellants of the charge under Section 307/149 IPC, convicted & sentenced them by the impugned judgment in the manner as described above.

6. Learned counsel for appellants submits that;-

- the appellants cannot be convicted with the aid of Section 149 IPC because there is no evidence that any unlawful assembly was formed. Further, there is nothing on record to show that the appellants were members of unlawful assembly with the common object of attacking the complainant party including deceased.
- as per post-mortem report, injuries suffered by the deceased were caused by hard & blunt object, whereas it has come in the evidence of the prosecution witnesses that some of the appellants were armed with axe & spear, thus, the allegation that appellants No.3 to 6 had assaulted the deceased and injured persons by axe & spear does not find support from the medical evidence.
- all the family members of the accused side have been falsely involved in the crime in question to settle the old land dispute.
- name of appellant No.6 does not find place in the promptly lodged FIR and therefore he is entitled to an acquittal.
- PW2 & PW-9 have not attributed any role to appellants No.2 & 6 in their evidence which makes the testimonies of PW-11 & PW-13 doubtful who have attributed specific role to them.
- there is no serology report on record. Consequently, there is nothing on record to show that the blood stains found on the clothes as well as the weapons seized at the instance of appellants were of the blood group of the deceased. Thus, the prosecution has failed to establish a close link between discovery of material object and its use in the commission of offence by accused/appellant
- the appellants never intended to commit murder of deceased and/or never intended of causing such bodily injury and never knew that it be likely to cause death of deceased. The incident occurred without any

premeditation in sudden fight in the heat of passion upon sudden quarrel in which co-accused Ramchandra also sustained injuries.

Therefore, the case of the appellants would come within the purview of Exception -4 to Section 300 IPC and they can be at best convicted under Section 304 Part-1 or II of IPC.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that in a case where large number of accused are reported to have carried out the assault, it would be difficult for anyone to give the name of each of the accused individually and in such situation, the evidence of all the witnesses, who might have seen some part of the assault, is required to be coordinated. Therefore, if name of any accused has not come in the FIR or in the evidence of some witnesses, it is of no help for them particularly when their presence on the spot is established. He further submits that though PW-2 & PW-9 have not attributed any role to accused/appellants No.2 & 6 but from the statements of PW-11 & PW-13 it is apparent that both these accused persons have also taken active part in the incident and caused death of the deceased and injuries to PW-11 & PW-13. He further submits that it is not necessary that all the persons forming an unlawful assembly must do some overt act. When the accused persons assembled together, armed with several weapons and were parties to the assault, the prosecution is not obliged to prove which specific overt act was done by which of the accused. In the present case, the prosecution has duly proved that at the time of occurrence, the appellants were the members of unlawful assembly and they have assaulted deceased and injured persons by axe, spear, club in pursuance

of the common object of that assembly.

8. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.
9. Sushil Yadav (PW-1) is the witness of seizure memo Ex.P-1 by which clothing of the deceased were seized.
10. Rambilas (PW-2) is an eyewitness to the incident. He has stated that on the date of incident at about 9.00 a.m. he was sowing groundnut in his field. On hearing sound coming from the field of Lalta (PW-13), when he went in that direction he saw that accused Ramvihar, Awdhesh, Ramchandar, Sanwaru & Naresh were assaulting deceased Shobhnath by club, axe & spear. He has further stated that after assaulting the deceased, the aforesaid accused persons have chased Ramprakash and assaulted him also by club, spear & axe. He has further stated that on account of the assaults, Shobhnath & Ramprakash became unconscious on the spot itself. He & Dharmu took the injured persons to Rajpur Hospital from where they have been referred to Ambikapur, however, on the way to Ambikapur, deceased Shobhnath succumbed to his injuries. He has also stated that while they were going to the hospital, the police had accompanied them on the way. This witness has stated that he had sent his brother Basant to the police station to lodge the report of incident. In the lengthy cross-examination but for minor contradictions, this witness remained very firm and nothing could be elicited in his cross-examination which makes his testimony unreliable or untrustworthy.
11. Shankar Prasad Kashyap (PW-4) is the witness of seizure memo Ex.P-1. Mahesh Kumar Singore (PW-5) is the witness of Inquest (Ex.P-15). Anand Kumar Pandey (PW-6) is the Patwari who prepared the spot map of Ex.P-3.
12. Dr. Rajesh Bhajagwali (PW-7) is the person who conducted post-mortem

examination on the body of deceased and gave his report of Ex.P-19 in which he had mentioned the injuries, as described above, noticed by him during examination. This witness had also examined injured Ramprakash (PW-11) & Lalta (PW-13) vide Ex.P-16 & P-17 respectively and noticed the injuries as described above.

13. Vishwanath (PW-8) is the witness of memorandum (Ex.P-16 to P-21) and seizure memos (Ex.P-22 to P-29).
14. Dharmu Vishwakarma (PW-9) is another eyewitness to the incident. His statement is almost similar to that of Rambilas (PW-2) and this witness has attributed role to all the accused persons, except accused/appellant No.2.
15. Hikchha Ram (PW-11) is the witness of inquest (Ex.P-15), however, this witness did not support the prosecution case and turned hostile.
16. Ramprakash (PW-11), injured witness, has stated that he along with his brothers Shobhnath & Lalta was working in his field. The accused persons armed with axe, spear & club came there and while hurling abuses, surrounded the deceased and injured Lalta. When accused Ramchandra gave a lathi blow to Lalta, he run away from there. Thereafter all the eight accused persons knocked Shobhnath down by causing injuries to him by axe, spear & club. He has further stated that accused Awdhesh assaulted in his leg by axe as a result of which he could not run, however, when somehow he managed to reach near a tree, all the accused persons came there and knocked him down by causing injuries to him with axe, spear and club. He has further stated that while the incident was in progress, Dharmu reached on the spot and he tried to intervene by saying accused persons not to assault. Ramvilas & Purushottam also reached there. They took him and deceased Shobhnath to the hospital. In the cross examination of this witness,

nothing incriminating could be elicited from him so as to impeach his deposition.

17. Bandhan Ram (PW-12) is the witness of map prepared by the investigating officer vide Ex.P-2. Purushottam (PW-13) is the another son of deceased Shobhram and hear say witness who reached on the spot after it had happened.
18. Lalta (PW-13) is another injured witness. He is also lodger of FIR and merg intimation. He has stated in categorical terms that all the accused persons including the juvenile accused caused injuries to him, Ramprakash and deceased Shobhnath. He has further stated that all the accused persons were armed with spear, axe & club. In Para-12 he has stated that at the time of lodging FIR and in the diary statement (Ex.D-6), he had disclosed names of all the accused persons including accused No.6 and if the same are not mentioned in the aforesaid documents then he cannot tell reasons.
19. Johan Lal Thakur (PW-14) is the Tahsildar who has proved the revenue documents. Sukhendra Singh (PW-15) & Udham Singh (PW-17) are the police persons who helped in the investigation. Dr. M.K. Jain (PW-16) is the doctor who conducted x-ray examination of injured Ramprakash and noticed fracture in fibula bone of left leg and right radius bone of right hand. His report is Ex.P-36B & 36C. Shiv Prasad Yadav (PW-18) is the witness of spot map (Ex.P-3) but he has not supported the prosecution case and as such declared hostile. Rungtu Ram Toppo (PW-20) is the person who recorded the merg intimation (Ex.P-35) and also carried out the proceedings of inquest vide Ex.P-15. Nicholas Tirkey (PW-21) is the Head Constable who helped in the initial investigation. Jagdish Prasad Gupta (PW-22) is the investigating officer who did the investigation and has duly supported the prosecution case.

20. The witnesses examined in defence by the accused/appellants i.e. DW-1, DW-2 & DW-3, are of no help to them.
21. Close scrutiny of the evidence on record makes it clear that a land dispute in the Court was pending between the accused/appellants and complainant party and on 30.6.2001 the same was concluded in favour of the complainant party. Enraged by this, on the date of incident the accused/appellants formed an unlawful assembly armed with deadly weapons like axe & spear, and came to the spot i.e. field where the deceased and injured were working, and while saying “kill them (मार डालो)” assaulted the deceased mercilessly thereby causing grievous injuries to him which resulted in his death. They have also caused grievous injuries to Ramprakash (PW-11) & Lalta (PW-13) which is evident from their medical reports of Ex.P-26 & P-27. These injured witnesses have categorically stated that it is the accused persons who assaulted them and their father Shobhnath, who succumbed to his injuries while undergoing treatment, with club, axe & spear. Statements of these eyewitness get corroboration from the independent eyewitnesses Rambilas (PW-2) & Dharmu Vishwakarma (PW-9) who have taken the deceased and injured Ramprakash to the hospital. According to Rambilas (PW-2), on hearing commotion, when he reached on the spot he saw that accused/appellants No.1, 3, 4, 5 & 6 were assaulting the deceased by club, axe & spear and after assaulting the deceased, they chased Ramprakash and caused injuries to him also. According to Dharmu (PW-9), who was working with the complainant party in the field, accused/appellants No.1, 3, 4, 5 & 6 were armed with club, axe & spear and they encircled the deceased, Ramprakash & Lalta and thereafter they started beating them with club, spear and axe. He has further stated that on account of assaults, deceased Shobhnath fell down and thereafter the

accused persons chased and assaulted Ramprakash and on account of blows given by accused, he also fell down. According to this witness, when the accused persons had noticed that deceased was breathing, accused Ramvihar, Ramchandra, Sanwaru, Awdhesh & Naresh had again assaulted him. Nothing incriminating could be elicited by the defence in the cross-examination of the aforesaid witnesses so as to make their testimonies unreliable or untrustworthy.

That apart, the axe, club & spear recovered at the instance of accused/appellants No.1, 3, 4, 5 & 6 were found to be stained with human blood but no explanation whatsoever has been offered by them in their statements recorded under Section 313 Cr.P.C. as to how the human bloodstains had appeared on the articles seized at their instance. Thus, the above fact of recovery of weapons of offence etc. on being pointed out by the accused is an additional link to prove their guilt. Furthermore, as per post-mortem report, cause of death of the deceased was syncope due to excessive bleeding as a result of injuries and the death was homicidal in nature.

True it is that the prosecution has failed to produce the serological report but, in our view, that would not provide a handle to the defence to attack the prosecution case. No doubt, it would have been better if the investigating officer would have sent the blood stained articles to the Serologist for chemical examination. However, the said omission on the part of the investigating officer is not a flaw of that type so as to invite the consequence of jettisoning the sworn testimonies of four eye witnesses.

As regards the submission of counsel for the accused/appellants that no specific overt acts was attributed to any of the appellants, it is settled position that once a membership of an unlawful assembly is established it is not incumbent on the prosecution to establish whether

any specific overt act has been assigned to any accused.

In view of above, we are of the considered opinion that the prosecution has been able to establish beyond shadows of doubt that accused/appellants No.1, 3, 4, 5 & 6 have formed an unlawful assembly common object of which was to make murderous attack on the deceased & injured and in prosecution of that common object had come on the spot with deadly weapons and inflicted injuries not only on the deceased which ultimately led to his death but also to others i.e. Ramprakash (PW-11) and Lalta (PW-13).

22. So far as the involvement of accused/appellant No.2 in crime in question is concerned, there is material contradiction with regard to his presence on the spot. Though it has come in the statement of PW-11 that this appellant was also one of the assailants, but PW-2 & PW-9, who are independent witnesses and have no reason to give false evidence, had not at all deposed against accused/appellant No.2. It may be possible that the injured eyewitnesses of incident, who have lost their father in this incident, have deposed falsely against this accused as it is the human tendency to implicate as many persons as possible of the opposite party falsely. Since the role assigned to this accused of causing injuries to the deceased and injured persons is not corroborated by independent witnesses, it cannot be held that the involvement of this appellant in crime in question has been established by the prosecution beyond reasonable doubt and being so, he is definitely entitled for benefit of doubt.

23. As far as the involvement of accused/appellant No.6 is concerned, from perusal of FIR (Ex.P-31) lodged by Lalta Prasad (PW-13), it is clear that he has specifically mentioned about the individual act of the accused persons. Who inflicted injury to whom and with what type of weapon has been clearly mentioned by him in the report. It means that Lalta Prasad

(PW-13) was in full senses when the report was lodged. We see no reason that the person who gave such a detailed FIR, in which he named five accused persons and also mentioned the individual act of these persons will fail to mention the name of this appellant. Even the name of this appellant does not find place in the diary statement or court evidence of Lalta Prasad (PW-11). This shows that he has been falsely implicated in this incident and therefore, he is also entitled for benefit of doubt.

24. The acts of accused/ appellants No.1, 3, 4, 5 & 7 of proceeding to a definite destination with lethal weapons and thereafter causing serious injuries including fatal injuries on the unarmed members of complainant party are indicative of the fact that those injuries were inflicted on the deceased with the intention that those injuries are likely to cause death. Therefore, it is difficult to hold that there was no intention to cause an injury of a kind that is sufficient to cause death or that the incident had taken place all of sudden in the heat of passion and without premeditation. Mere presence of injuries on one of the accused persons is not at all sufficient to hold that the accused/appellants concerned are liable to be convicted under Section 304 Part I or II of IPC.
25. For the foregoing reasons, the appeal is allowed in part. Conviction of accused/appellants No.1, 3, 4, 5 & 7 under Sections 302/149, 325/149, 323/149, 147/149 & 148/149 IPC and sentences imposed under those sections are hereby maintained. However, conviction and sentences of accused/ appellant Nos.2 & 6 under Sections 302/149, 325/149, 323/149, 147/149 & 148/149 IPC are hereby set aside by extending them benefit of doubt. They are acquitted of those charge.

26. Appellant Nos.2 & 6 are reported to be in jail. They are directed to be set free forthwith if not required to be detained in any other case.

Sd/-

(Pritinker Diwaker)
Judge

roshan

Sd/-

(R.P. Sharma)
Judge