

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 755 of 2003

1. Roop Singh, S/o Balaram aged 53 years, resident of Bandhapar, Police Station – Baghbehra, Tehsil and District Mahasamund, CG
2. Tikam Das S/o Kamtaprasad, aged 27 years, resident of Bandhapar, Police Station Baghbehra, Tehsil and District Mahasamund, CG
3. Kailash Tandan S/o Balaram Tandan, aged 31 years, resident of Bandhapar, Police Station Baghbehra, Tehsil and District Mahasamund, CG

---- Appellants

Versus

1. State of Chhattisgarh through District Magistrate, Mahasamund, Police Station Baghbehra, Distt. Mahasamund, CG

---- Respondent

For Appellants	:	Smt. Fouzia Mirja, Advocate
For Respondent/State	:	Shri Avinash K. Mishra, PL

**Hon'ble Shri Justice Pritinker Diwaker &
Hon'ble Shri Justice RCS Samant**

Judgment on Board by Pritinker Diwaker, J

25/04/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 29.5.2003 passed by Additional Sessions Judge, Mahasamund, in Sessions Trial No. 320/1995 convicting the accused/appellants under Sections 302 and 323 IPC and sentencing each of them to undergo imprisonment for life with fine of Rs. 200/- u/s 302 and RI for one month u/s 323 IPC, plus default stipulations. In addition to this, accused/appellant Roop Singh has also been convicted u/s 294 IPC and sentenced to undergo RI for one month.

2. Brief factual background leading to disposal of this appeal is that on 4.5.1995 at about 6.30 AM Benuram (PW-2) received an information to the effect that there was fire in his heystack and while he was going to the said place, on the way near Jaistambh he met his uncle Jethuram, Krishna Kumar and Anand Ram. At that time accused/appellant Roop Singh who was already there, abused him which was objected to by Jethuram, and at that point of time the accused/appellants herein and the deceased/accused Balaram caused injuries to Jethuram with club as a result of which he fell down and became unconscious. Thereafter, accused persons caused injuries to him (Benu Ram), Krishna Kumar and Anand Ram also. On the basis of report lodged by Benu Ram (PW-2), offences under Sections 307, 323, 294, 34 IPC were registered against the accused/appellants herein and deceased/accused Balaram. Injured Jethuram was medically examined by Dr. Chandra Shekhar Mishra (PW-3) vide report Ex. P-5. Likewise, injured Benu Ram (PW-2), Krishna Kumar (PW-10) and Anand Ram (PW-6) were also medically examined by the same doctor (PW-3) vide reports P-7, P-9 and P-11 respectively. In the incident, accused Roop Singh is also said to have suffered injuries which is apparent from the document of Ex. D-1 duly proved by Dr. Chandrika Sahu (DW-1). During treatment, injured Jethuram expired on 9.5.1995 in the hospital, and on the basis of intimation sent therefrom *merg* Ex. P-2 was registered. Postmortem examination on the body of the deceased was conducted by Dr. D.C. Jain and after his death the postmortem report has been proved by Dr. Ullhas Gannade (PW-19). After completion of investigation, *challan* was laid against the present appellants and deceased/accused Balaram under Sections 302, 307, 294, 323, 34 IPC followed by framing of charge accordingly

against the accused/appellants only as accused Balaram expired before such exercise.

3. In order to prove the complicity of the accused/appellants in commission of crime in question, the prosecution has examined 21 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 their innocence and false implication in the case.

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

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

(i) That during pendency of this appeal accused/appellant Roop Singh S/o Balaram expired and death certificate to this effect has also been filed, which is hereby taken on record. Even the State counsel has also verified this fact.

(ii) That there is no direct evidence to show the involvement of the accused/appellants in the crime in question.

(iii) That deceased Jethuram has suffered only a single injury on head and died 5 days after the incident during treatment in the hospital. The fact that the deceased suffered single injury is evident from the statement of Dr. Chandra Shekhar Mishra (PW-3) who first medically examined him when he was brought to him in injured condition vide medical report Ex. P-5, as also from the postmortem report given by Dr. D.C. Jain and proved by Dr. Ullhas Gannade (PW-19).

(iv) That whatever evidence has been adduced by the prosecution goes to show that the injury was caused by deceased/accused Roop Singh whereas the present appellants were simply standing there.

(v) That the accused/appellants had no common intention to cause injury to Jethuram and as per the case of the prosecution itself it is clear that there was fight between deceased/accused Balaram and Benuram, and when Jethuram tried to intervene in that fight, he suffered the single injury which unfortunately resulted in his death 5 days thereafter.

(vi) That the accused/appellants have not been tried with the aid of Section 34 and that even if the said charge had been added, looking to the evidence on record no common intention can be attributed to all the accused persons.

(vii) That there is no evidence to show that the accused/appellants have actively participated in the incident or was there any preconcert or premeditation on their part either prior to the incident or even on the spur of moment.

(viii) That there is no evidence to show that any act has been done by the accused/appellants in furtherance of their common intention.

(x) In relation to the conviction of the accused/appellants under Sections 323 and 294 IPC, it has been submitted by the counsel for the appellants that the accused/appellants have already remained in jail for 6 months 22 days which comes to more than the sentence imposed on them under these sections.

(xi) That in the incident the deceased/accused Roop Singh and

Kailash also suffered injuries and on the report lodged by deceased/accused Balaram, Benuram (PW-2), Anand Ram (PW-6), Hinchu Ram (PW-7), Krishna Kumar (PW-10) and Dhanesh Ram (PW-15) were tried for the offence punishable under Section 307/34 and have been convicted under Section 323 IPC in Sessions Trial No. 92/1996.

(xii) That the fact that the accused persons also suffered injuries has been suppressed by the witnesses and this is also one of the grounds which entitles the accused/appellants to be acquitted in the present case. In support of her submissions, reliance is placed on the decisions of the Apex Court in the matter of **Dr. Mohammad Khalil Chisti v. State of Rajasthan and others** reported in **(2013) 2 SCC 541**, in the matter of **Laxmi Singh v. State of Bihar** reported in **AIR 1976 SC 2263**, in the matter of **State of M.P. v. Mishrilal (dead) and others** reported in **(2003) 9 SCC 426**, in the matter of **Arun v. State** reported in **(2008) 15 SCC 501** and in the matter of **Gurpreet Singh v. State of Bihar** reported in **(2015) 12 SCC 615**.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the Court below has been fully justified in recording the conviction of the accused/appellants on the basis of material available on record and there is no infirmity in the same. He submits that though Section 34 has not been added along-with the charge under Section 302 IPC, the accused/appellants have rightly been convicted by the Court below considering the fact that they were also present at the time of incident and not made any effort to intervene in the matter or pacify the dispute. According to the State counsel, present is a case where common intention on the part of the accused persons

appears to have been developed at the time of incident itself and that even if no evidence in this regard has been adduced by the prosecution, the same can be gathered from the other evidence on record as well as the circumstances appearing on surface, and being so the conclusion drawn by the Court below convicting the accused/appellants under Sections 302, 323 and 294 IPC is just and proper.

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

8. Benuram (PW-2) – the injured eyewitness to the incident and lodger of the report has stated that on 4.5.1995 he received the information through one Ganesh that his heystack caught fire, and then along with his father Hincharam went to the thrashing field to extinguish fire and asked his brother Krishna Kumar (PW-10) to call Sarpanch of the village. He has stated that as soon as he reached the thrashing field, deceased/accused Roop Singh met him and started hurling filthy abuses at him. At that time, according to this witness, accused/appellants Tikam, Kailash and deceased/accused Balaram were also standing there. At that time, his uncle Jethuram also came there and when he asked Roop Singh and Kailash not to abuse, all the four accused persons, started assaulting him with club saying as to who he was to stop them from abusing. On account of assault, Jethuram is stated to have sustained injuries on his head, hand and back and fallen down on the ground. When this witness tried to save his uncle from the assault, all four assaulted him also with club causing injuries on head, hand and back, as a result of which he became unconscious. He has further stated that in the same incident Anand Ram (PW-6) and Krishna Kumar (PW-10) were also thrashed by the accused persons. Anand Ram (PW-6) –

another eyewitness to the incident has stated that he saw deceased/accused Roop Singh causing club injuries to Jethuram as a result of which he fell down on the ground and thereafter accused/appellants Tikam and Kailash also came there and caused injuries to him (Jethuram) and Benuram. This witness is also stated to have been assaulted by the accused/appellants. According to this witness, deceased/accused Roop Singh had also abused Jethuram and Benuram. Hincharam (PW-7) - yet another eyewitness to the incident has stated that Jethuram was assaulted by deceased/accused Roop Singh with club as a result of which he received injuries on various parts of body and fell down on the ground. Thereafter, according to this witness, deceased/accused Roop Singh assaulted Benuram, accused Kailash caused injuries to Krishna Kumar and accused Tikam caused injuries to Anandram. Krishna Kumar (PW-10) has stated that on the date of incident at about 7 AM he received an information about fire in his heystack and then he went to call the village Sarpanch. Thereafter, when he reached the spot, he saw injured Jethuram and Benuram lying unconscious whereas Anandram and Hinchharam were being beaten by the accused persons. This witness too is said to have been beaten by the accused persons. In paragraph No. 17 he has stated that he saw Jethuram while being assaulted - first by Roop Singh and then by Kailash, Tikam and Balaram - all using club.

MLC report of Jethuram is Ex. P-5, which shows local injury - 3.5 cm x .5 cm x bone deep over parietal region and scalp.

Dr. Chandra Shekhar Mishra (PW-3) is the witness who medically examined Jethuram, has in paragraph No. 1 (7) has confirmed that he noticed single injury on the head of Jethuram. In paragraph No. 10, he has specifically stated that he noticed only

one injury on the head of Jethuram. He has further made it clear that no other injury was noticed by him on the body of Jethuram. That apart, postmortem report Ex. P-24 which has been proved by Dr. Ullhas Gannade (PW-19) also corroborates the fact that Jethuram suffered single injury. It shows 'sutured lacerated wound - 2" x 1/4" x bone deep at frontal region of scalp'.

9. Injuries suffered by Benuram (PW-2), Anandram (PW-6) and Krishna Kumar (PW-10) have also been proved by the same doctor (PW-3) vide reports Ex. P-7, P-9 and P-11. Abdul Kadir Khan (PW-16) is the investigating officer who has duly supported the case of prosecution. As per defence witness (Dr. Chandrika Sahu - DW-1) deceased/accused Roop Singh also suffered injury on his head and linear fracture on frontal bone was noticed by him vide report Ex. D-7.

10. Evidence of the witnesses, other material on record and the judgments of the Apex Court taken support of by the counsel for the appellants perused minutely. It goes to show that on 4.5.1995 Benuram (PW-2) received an information to the effect that there was a fire in his heystack and while going to the said place, deceased/accused Roop Singh met him on the way and started hurling filthy abuses. Meanwhile, Jethuram happened to be on the scene and objected to this hurling of abuses by the accused persons. On this, deceased/accused Roop Singh caused injuries on the head of Jethuram which resulted in fracture of the frontal bone. Though according to eyewitnesses Benuram (PW-2), Anand Ram (PW-6), Hincharam (PW-7) and Krishna Kumar (PW-10), all the accused persons caused injuries to Jethuram but the medical report does not say so. As per the medical report of Jethuram Ex. P-5 and postmortem report Ex. P-24 only one injury was there on the head

of Jethuram. Medical report of Jethuram further says specifically that there was no other injury on any part of his body. There is, thus variance in medical evidence and evidence of the witnesses attributing the assault to all the accused persons. Further, the case of the prosecution itself is that there was quarrel between the accused persons and Benuram but as all of a sudden Jethuram came and tried to intervene in the matter, he came to suffer injuries that too at the hands of deceased/accused Roop Singh. Thus in these circumstances when the prosecution has not collected any evidence to show that the accused persons shared common intention to commit murder of Jethuram it is difficult to hold them guilty under Section 302 IPC. Furthermore, the trial Court has not tried the accused persons with the aid of Section 34 and even assuming that the said charge is there, there is no evidence to show that act done by the the accused persons was in furtherance of their common intention. If individual act of the accused persons is seen, though the witnesses have stated that the appellants also caused injuries to the deceased but the medical report does not say so. This apart, since the sole injury was there on the head of Jethuram, in the absence of any specific evidence as to which of these accused/appellants has caused that injury, no individual role can be attributed to the accused/appellants.

11. So far as the injury of Benuram, Krishna Kumar and Anandram is concerned, this has been duly proved by the prosecution witnesses and involvement of accused/appellants in abusing and causing injuries to these persons is apparent. Thus the conviction of the accused/appellants under Sections 323 and 294 IPC is just and proper.

12. Yet another important aspect of the case is that in the

incident deceased/accused Roop Singh and accused/appellant Kailash also suffered injuries and on the report of deceased/accused Balaram, five persons namely Venu Singh (PW-2), Anandram (PW-6), Hincharam (PW-7), Krishna Kumar (PW-10) and Dhanesh Kumar (PW-15) were tried and convicted in Sessions Trial No. 92/1996. The factum of accused Roop Singh and Kailash suffering injuries has not been explained by the prosecution and therefore an inference can be drawn that it has suppressed the genesis of the occurrence which renders the evidence of its witnesses wholly unreliable.

13. Thus taking into consideration the totality of the facts and circumstances of the case, accused/appellants are entitled for benefit of doubt and resultant acquittal of the charge under Section 302 IPC. We hereby hold so.

14. However, conviction under Sections 323 and 294 IPC is hereby maintained. The sentence imposed on the accused/appellants by the Court below under these Sections is rigorous imprisonment for one month each but by remaining in jail for 6 months 22 days, they have already undergone the more sentence than awarded and therefore no order in this regard is necessary.

15. Appeal thus partly allowed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(RCS Samant)
Judge