

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 37 OF 2001****Reserved on 04.01.2017****Pronounced on 15.02.2017**

1. Mehettar son of Natthuram Chandra, aged about 46 years,
2. Fadaklal son of Natthuram Chandra, aged about 35 years,
3. Shyamlal son of Natthuram Chandra, aged about 30 years,
4. Mohanlal son of Mahettar Chandra, aged about 18 years,
5. Shiv Kumari wife of Mahettar Lal Chandra, aged about 42 years,
6. Jankibai wife of Fadaklal Chandra, aged about 32 years,

All cultivators and residents of village Bhothiya, Police Station Jaijaipur,
District Janjgir-Champa

---- Appellants**Versus**

State of Chhattisgarh through Police Station, Jaijaipur, District Janjgir-Champa.

---- Respondent

For Appellants	:	Shri B.M.K.Bajpai and Shri Hari Shankar Patel, Advocates
For Respondent/State	:	Mrs. Smita Ghai, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Sanjay Agrawal, J.****CAV Judgment****Per Sanjay Agrawal, J.**

1. The appellants have filed this appeal questioning the propriety of the judgment and order dated 30.11.2000 passed by the Additional Sessions Judge, Sakti, Dist. Bilaspur in Sessions Trial No.404/99 whereby all the appellants have been convicted for having committed

an offence of murder of Nandlal under Section 302 read with Section 34 of the I.P.C. and sentenced them to rigorous imprisonment for life and fine of Rs.5000/- each. In default, they have to suffer further rigorous imprisonment for one year.

2. The prosecution story, briefly stated, is that on 29.8.1999 at 9.30 AM, the deceased Nandlal was going for attending the ceremony of '*Chhatti*' in the house of one Rungu Rawat. While going for attending the said ceremony he met one Mattu Chandra in front of his house and when he was talking with him, the accused persons, namely, Mhettar Chandra, Mohan Chandra, Shyamlal Chandra and Fadaklal Chandra have come and assaulted him with *lathi* and *Tangi* with an intention to kill Nandlal. Mohan Chandra was holding a *Tangi*, at that point of time while others were holding *lathis*. Wives of Mehettar Chandra and Fadaklal have also reached and assaulted him with their fists. The deceased had received several injuries on his head and other parts of his body. He fell down and has become unconscious on account of the said injuries.
3. Further, the prosecution story is that the deceased Nandlal wanted to contact a second marriage at village Akola after the death of his first wife, but he was obstructed and intervened by the accused Mehettar Chandra, as a result of which, the alleged incident had taken place.
4. Based upon the aforesaid incident, the first information report (Ex.P.3) was lodged by the deceased Nandlal on the same day itself at 05.40 PM. Pursuant thereto, the matter was investigated by the Station House Officer, Jaijaipur, District Janjgir-Champa and the case has been registered against the appellants under Section 307/34 of the IPC and during investigation, the injured Nandlal has died on the

next day, i.e., on 30.08.1999, therefore, a charge-sheet was filed under Section 302/34 of the IPC after completing the investigation.

5. The appellants have denied the charges, so framed, and claimed to be tried. After considering the evidence led by both the parties, the trial Court vide its judgment and order dated 30.11.2000, has convicted all the appellants under Section 302/34 of the IPC and sentenced them as aforesaid.
6. Being aggrieved by the aforesaid conviction and sentence, the appellants have filed this appeal.
7. Shri B.M.K.Bajpai and Shri H.S.Patel, learned counsel appearing on behalf of the appellants, submitted that the judgment of conviction and order of sentence under appeal is perverse and illegal, inasmuch as it did not appreciate the evidence in its true perspective and thereby erred in convicting them as such.
8. Smt. Smita Ghai, learned Panel Lawyer for the State, supported the impugned judgment and order as passed by the trial Court.
9. We have heard learned counsel for the parties and perused the entire record carefully.
10. Premsai (P.W.1), the father of the deceased – Nandlal, has stated that his son was assaulted badly and brutally by the appellants in front of Mattulal's house and had reached the spot immediately upon knowing the said information from his grandson Ashok, who had informed him that the appellants were assaulting his son Nandlal after stopping him when he was going for attending the said ceremony. He stated further that he saw there one Mr. Johan when

he reached the spot. At that point of time, the appellants were returning after assaulting his son. According to this witness, Nandlal's hands and legs were broken down, and therefore, they took him to Jaijaipur Police Station.

11. The said Johan (P.W.3) was an eyewitness to the incident and he stated that when he was going for attending the '*Chatti*' ceremony at Rungu Rawat's house at 9.15 AM, he met one Vishram on the said route and he started talking with him while standing over there. At that time, deceased Nandlal and one Tarachand were coming towards the village side and as soon as they reached near the house of Mattulal, the deceased Nandlal was attacked by the appellants, namely, Mehettar Chandra, Fadaklal Chandra, Mohan Chandra and Shyam Chandra, who have assaulted him with *lathis*, as a result of which, he fell down, and that after waiting for 2 – 3 minutes, they again started assaulting him with an intention of killing him. He stated further that when he was going towards Nandlal's house for informing about the occurrence, then he saw his (Nandlal's) father coming there and as per his (Prem Sai's) direction, this witness went for calling the village Kotwar. He stated further that Rampyari and Vishram were also present apart from him, but they returned to their homes. This witness further stated that the appellants, namely, Mehettar Chandra, Fadaklal, Mohan Chandra and Shyamlal were giving several blows of *lathis* to the deceased Nandlal and upon queries being made by the Court, has deposed that only four persons, including Mehettar, were present at the time of the alleged assault. Upon further queries being put to him, it was stated at para – 16 of his evidence that the appellant Mehettar and then Fadak had

given the blow of *lathi* on the head of Nandlal while others, i.e., Mohan and Shyam had given the blow of *lathi* on his legs. He stated further that Mehettar and others were continuously assaulting him even when he fell down. This witness stated further in his evidence that the other appellants, namely, Shiv Kumari and Janki Bai were not present when the entire incident had taken place and had deposed also that they have not assaulted the deceased Nandlal.

12. As far as Vishram (P.W.19) and Rampyari (P.W.10), who were also present on the spot, as per the evidence of Johan (P.W.3), were turned hostile and had not supported the prosecution story.
13. Fekudas (P.W.2), the village Kotwar, who had reached the spot along with the said eyewitness Johan, has deposed that he saw the deceased Nandlal lying over there and his mother and father were staying over there besides him. He was in unconscious stage, but when he asked him regarding the incident, then he told this witness that he was assaulted by Mehettar, Shyamlal, Mohanlal and Fadaklal.
14. Similar is the statement of another eyewitness, namely, Parameshwar @ Tingu (P.W.9), who stated that the deceased Nandlala was assaulted by the appellants Mehettar, Shyamlal, Mohanlal and Fadaklal with *lathis* and stated further that they were assaulting him continuously even when he fell down. The other prosecution witnesses were not the eyewitnesses and they are formal in nature.
15. The statements of aforesaid eyewitnesses, namely, Johanlal (P.W.3) and Parameshwar (P.W.9), coupled with the statement of Village Kotwar Fekudas (P.W.2) are corroborated by the evidence of Dr. S.M.

Ghosalkar, who was examined as P.W.31. Dr. S.M. Ghosalkar (P.W.31), who had examined the injuries sustained by the deceased Nandlal on 29.08.1999 at 6.45 PM immediately after the occurrence of the said incident, had submitted his M.L.C. report (Ex.P.32), in which, he found the following injuries:-

1. Lacerated wound (margin contused) of 1" x 1/4" x skin deep over middle 1/3rd of left leg.
 2. Contusion & swelling in blue colour of 3" x 1/2" obliquely over middle part of left arm laterally.
 3. Lacerated wound (margin contused) of 1" x 1/4" x skin deep over left side of chin.
 4. Lacerated wound (margin contused) of 1" x 1/4" x skin deep over right leg distal.
 5. Lacerated wound (margin contused) of 1.5" x 1/4" x skin deep over middle part of right leg
 6. Lacerated wound (margin contused) of 1/2" x 1/4" x skin deep over right knee placed below proximal 1/3rd anterior.
 7. Lacerated wound (margin contused) of 2 1/2" x 1/4" x skin deep over middle part of skull.
 8. Lacerated wound (margin contused) of 1.5" x 1/4" x skin deep obliquely placed over left occipito parietal prominence..
16. After examining the injuries as found aforesaid, Dr. S.M.Ghosalkar (P.W.31) had opined for its X-ray, except injuries No.1 & 2, and directed further for its reference to the S.P. Hospital, Bilaspur, where the deceased Nandlal expired on the next day, i.e., 30.08.1999. Dr. S.S. Bhatia (P.W.17), who had conducted post-mortem on the deceased Nandlal, had opined that all the injuries have been caused by hard and blunt object and observed further that the deceased has died due to shock and haemorrhage.

17. Thus, from perusal of the aforesaid eyewitnesses coupled with the aforesaid report as well as the post-mortem report (Ex.P.18), it is clear that the deceased Nandlal has died only because of the alleged injuries inflicted upon him by the accused persons, namely, Mehettar Chandra, Fadaklal, Mohanlal and Shyamlal and not by the other appellants, i.e., Shiv Kumari and Janki Bai.
18. Shri Bajpai, learned counsel for the appellants has submitted herein that a mere perusal of the evidence of the said eyewitnesses would, however, show that only the appellants Mehettar and Fadaklal had given the blows of *lathi* on deceased's head and not by other appellants, i.e., Mohanlal and Shyamlal, therefore, under such circumstances all the appellants cannot be held liable to be punished under Section 302 of the IPC.
19. The question based upon the aforesaid submission would, therefore, arise that whether 34 IPC would be attracted under these circumstances or not? What we have gathered from the statement of eyewitnesses was that when the deceased Nandlal and one Tarachand were coming towards the village side, the deceased Nandlal was attacked by the appellants Mehettar, Fadaklal Chandra, Mohanal and Shyamlal badly, who were not only armed with *lathi* but had assaulted him even when he fell down. It also emerged from the record that after waiting for few minutes, they again started assaulting him with an intention of killing him. The occurrence, as we found, was not at the spur of moment, in fact, they all have made up their minds to kill him.
20. It is true, that only Mehettar and Fadarklal had given the blows of *lathi* on deceased's head and not by Mohanlal and Shyamlal, but the

manner in which, as we gathered from the evidence, it is evident that they all assaulted the deceased Nandlal with their clear and common intention of killing him only. Section 34 of the IPC is necessary to be examined at this stage in order to ascertain that whether all the accused persons and/or any of them like Mehettar and Fadaklal alone would be liable to be punished under Section 302 of the IPC? The said provision being relevant for the purpose is reproduced herein as under:

“34. Acts done by several persons in furtherance of common intention--- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

21. The aforesaid provision provides very specifically that if a crime is committed by several persons in furtherance of their common intention, then each of such person would be held liable for such an offence in the same manner as it was done by any of them.
22. Thus, in view of the aforesaid discussions based upon the eyewitnesses and in view of the aforesaid provision, it is clear that their intentions, except the appellants Shiv Kumari and Janki Bai, are only to kill the deceased Nandlal. Therefore, all these four appellants, in our considered opinion, are liable to be punished under Section 302/34 of the IPC.
23. We, therefore, allow this appeal in part by holding that the appellants, namely, Mehettar, Fadaklal, Shyamlal and Mohanlal are rightly held to be guilty for having committed an offence of murder punishable under Section 302/34 of the IPC and the other appellants, namely, Shiv Kumari and Janki Bai are entitled to be acquitted.

24. Resultantly, we dismiss the appeal filed by the appellants, namely, Mehettar, Fadaklal, Shyamlal and Mohanlal while maintaining their conviction and sentence under Section 302/34 of the IPC.
25. The appellants – Shiv Kumari and Janki Bai are hereby acquitted. They are on bail. Their bail bonds shall remain effective for a period of 6 months, in view of the provisions prescribed under Section 437-A of the Code of Criminal Procedure, 1973.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE