

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 884 of 2001**

1. Rameshar Ram son of Harilal Satnami aged about 55 years resident of village Gatapar P.S. Pandariya District Bilaspur Chhattisgarh
2. Dwarika Prasad son of Bharosa Satnami aged about 45 years resident of village Gatapar P.S. Pandariya District Bilaspur Chhattisgarh
3. Gopelal son of Bharosa Satnami aged about 50 years resident of village Gatapar P.S. Pandariya District Bilaspur Chhattisgarh
4. Jalesh Satnami son of Matang Satnami aged about 22 years resident of village Gatapar P.S. Pandariya District Bilaspur Chhattisgarh
5. Thakur Singh @ Nan Singh son of Rameshar Satnami aged about 28 years resident of village Gatapar P.S. Pandariya District Bilaspur Chhattisgarh
6. Gajpal Singh @ Pallu son of Matang Satnami aged about 20 years resident of village Gatapar P.S. Pandariya District Bilaspur Chhattisgarh
7. Matangram Satnami son of Gohira Satnami aged about 70 years resident of village Gatapar P.S. Pandariya District Bilaspur Chhattisgarh
8. Lomas Kumar Son of Bitai Satnami aged about 20 years resident of village Gatapar P.S. Pandariya District Bilaspur Chhattisgarh

---- Appellants**Versus**

The State of Chhattisgarh through P.S. Pandariya District Bilaspur Chhattisgarh

---- Respondent

For Appellants	: Dr. Shailesh Ahuja and Ms. Sofia Khan, Advocates.
For Respondent/State	: Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board

Per Deepak Gupta, Chief Justice

07/02/2017

1. This appeal is directed against the judgment dated 12.7.2001 passed by the Additional Sessions Judge, Mungeli in Sessions Trial No.500 of 1997 whereby all the accused persons have been convicted and sentenced as follows:-

<u>Conviction</u>		<u>Sentence</u>
U/s 148 IPC	:	R.I. for two years and fine of Rs.500/-, in default, further R.I. for six months.
U/s 302, 149 IPC	:	Imprisonment for life and fine of Rs.1000/-, in default, further R.I. for one year
U/s 324, 149 IPC	:	R.I. for three years and fine of Rs.500/-, in default, further R.I. for six months.
U/s 324, 149 IPC	:	R.I. for two years and fine of Rs.500/-, in default, further R.I. for six months.
U/s 323, 149 IPC		R.I. for one year and fine of Rs.300/-, in default, further R.I. for two months.

2. The trial was held against 15 persons but one died during the course of the trial. Eight persons were convicted and the remaining six persons were acquitted. The eight convicted persons have filed the present appeal. During pendency of this appeal, two of the Appellants namely, Appellant No.2-Dwarika Prasad and Appellant No.7-Matangram Satnami have expired. Appeal qua them has already been disposed of as having abated. We are therefore considering the appeal of six accused persons, namely, Rameshar Ram, Gopelal, Jalesh Satnami, Thakur

Singh @ Nan Singh, Gajpal Singh @ Pallu and Lomas Kumar.

3. It is not disputed that the occurrence took place on 9.9.1997 at about 12.00 noon. It is not disputed that during the course of this fight between the two groups, Chaitram (deceased) received injuries, as a result of which he died. It is also not disputed that three eyewitnesses, namely, Janak Ram (PW-2), Gulaba Bai (PW-7) and Kanti Bai (PW-8) also received injuries. The stand of the Appellants is that the case of the prosecution is false. It is also alleged that three of the Appellants themselves sustained injuries as is admitted by S.R. Dhritlahare (PW-18), the Investigating Officer. However, the main contention raised on behalf of the Appellants is that the Learned Court below has grossly erred in invoking Sections 148 and 149 IPC in the present case.

4. The undisputed facts are that both the complainant party and the accused persons belong to the same village. They have lands adjoining each other. It is also not disputed that there was a dispute between deceased-Chaitram and Matangram Satnami with regard to water. It is also not disputed that on the ill fated date i.e. 9.9.1997, at about 12.00 noon, both the parties were in their adjoining fields removing the weeds and grass from the paddy crops. They were preparing their fields for fresh plantation. The case of the prosecution is that when both the groups were working in the adjoining fields, due to previous enmity between them, there was an exchange of words between them. It is also alleged that the persons belonging to the accused party threw the weeds and grass from the paddy crops into the field of the complainant party, for which, the complainant took an objection. Chaitram, who was head of the family and senior most member of the complainant party, objected the accused and the other persons throwing weeds and grass (*ninda*) from the paddy crops into the field of the complainant side. It is alleged that he was immediately attacked by members of the accused

party who gave him such serious blows that he died on account of the injuries received. When the other members of the complainant party tried to intervene in the matter, they were prevented from doing so by the remaining accused, therefore, it is alleged that remaining accused persons facilitated the murder of the deceased Chaitram.

5. The Learned Trial Court held that the accused were guilty of forming an unlawful assembly and therefore, held all the accused guilty of the offence. The other six accused were acquitted mainly on the ground that their presence on the spot has not been proved.

6. The first issue which arises before us is that whether Sections 148 and 149 IPC are at all applicable. Section 141 IPC defines an assembly of five or more persons as an “unlawful assembly” if the common object of the persons composing that assembly is unlawful. We are mainly concerned with the third object, which is to commit any mischief or criminal trespass or other offence. We may also add an explanation to Section 141 IPC which clearly shows that an assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

7. Section 148 IPC reads as follows:-

“148. Rioting, armed with deadly weapon.- Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment or either description for a term which may extend to three years, or with fine, or with both.

8. Section 148 IPC is applicable in the case of rioting where the members of

the assembly are armed with a deadly weapon or the offence is likely to cause death. The most important provision in this case is Section 149 IPC, which reads as follows:-

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.- If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

9. A close analysis of Section 149 IPC shows that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the member of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence. Therefore, if a person is a member of an unlawful assembly having a common object of killing some person then even if that person does not take any action and does not commit any overt criminal act, he can be guilty of murder by applying Section 149 IPC.

10. However before applying Section 149 IPC, first of all, it must be shown that there was an unlawful assembly. It also must be shown that there was a common object of that assembly and that other members of the assembly knew what was the common object and that common object would in all likelihood lead to a particular offence. Unless these facts are proved, Section 149 IPC cannot be made applicable.

11. The underlying principle of Section 141 IPC is that the law discourages illegal assemblage of men to preserve the public peace. The basic test is that all the persons of this assembly which must comprise of five or more persons should have a common object of committing a particular offence. The law is clear that the number of persons who are simple onlookers or who do not share the common object cannot be treated as the part of the unlawful assembly. In *Lalji v. State of U.P.*, AIR 1973 SC 2505, the Apex Court held that where a sudden quarrel between the parties as a result of remonstrance and an unpremeditated free fight takes place on the spur of moment, then it cannot be said that the accused who were present there, formed an unlawful assembly. Similar view has been taken in *Kambi Nanji v. State of Gujarat*, AIR 1970 SC 219. By now the law is well settled that the suddenness of the quarrel militates against development of common object being entertained by the members of the assembly. A sudden quarrel does not answer the tests laid down in Section 141 IPC or Sections 147 or 148 IPC. In this behalf, reference may also be made to the judgment of the Apex Court in *State of U.P. v. Jodha Singh*, AIR 1989 SC 1822.

12. It is also settled law that the question whether the assembly which was initially a lawful assembly subsequently converted into an unlawful assembly, is a matter of inference to be deduced on the facts of the each case. It is however laid down in various judgments that to draw such an inference, the conduct should be of clear and unequivocal nature and the inference must be irresistible that the unlawful common object had suddenly developed and that assembly which was a lawful assembly had become an unlawful assembly.

13. The Madhya Pradesh High Court in *Girijaprasad v. State of M.P.*, 1992 CrLJ 754 (MP) held that when there was absence of evidence to show that the concerned accused participated in the incident or did any kind of exhortation by

uttering words “Maro” or “Mardalo”, they could not be convicted by using the provisions of Section 149 IPC.

14. It has been urged on behalf of the State that though, the assembly may have been lawful assembly initially, it turned unlawful as soon as four persons started attacking the deceased Chaitram. It is also urged that all the other members of the accused party who were present, by preventing the members of the complainant party from saving the deceased Chaitram, committed an act which would show that they were part of an unlawful assembly having common object of killing Chaitram.

15. On the other hand, Learned Counsel for the Appellants submits that this is a case of unpremeditated fight. Both the parties were doing work in their fields. A fight suddenly took place and during that fight, some people of one group beat the persons of the other group. All the member of one group cannot be said to have the common object of killing Chaitram. It is true that if there is unlawful assembly, even one of the accused does not commit any overt act, he can be held liable but that can only be done if it is proved that he was part of the unlawful assembly and also had the a common object of the assembly to commit a particular offence.

16. Keeping in view the evidence led in this case, we are not inclined to hold that this is a case of unlawful assembly. Even from the evidence on record, it is apparent that both the groups were working side by side in their separate fields. They had previous animosity. There was a verbal altercation between them but they had only come to work in their fields. The members of the accused party were not armed with sharp edged weapons like sword or other instruments but were armed with *tabbals* and *lathis* which are commonly used by the agriculturists. *Tabbal* is used by agriculturist to cut branches of the trees, etc.

Therefore, it cannot be said that this assembly was carrying these tools as weapon of offence. Both sides may be carrying *tabbals*, especially when they are going to cut the unwanted weeds and grass in their fields. They would obviously be carrying some sharp edged tools. Therefore, there was no unlawful assembly at the beginning.

17. The question is whether unlawful assembly was formed on the spur of moment. The genesis of the occurrence is that the complainant party objected to the accused persons from throwing the weeds and unwanted grass from the paddy crops, which they had extricated from their fields into the fields of the complainant. This may not amount to grave and sudden provocation but this was the cause why the occurrence took place.

18. As soon as the complainant side objected, four of the accused persons got up and gave blows to Chaitram who died and thereafter when the other persons of the complainant party tried to intervene, they were also assaulted by the other accused persons. We are of the view that the other accused persons cannot be said to be the part of an unlawful assembly having the common object of killing Chaitram. We are not saying so because they have not done any overt act. They have in fact committed an overt act of beating the other members of the complainant party. As far as this case is concerned, evidence is totally lacking that all the accused developed a which was formed on the spur of the moment. There is no evidence that there was any common intention of killing Chaitram. There is no evidence that any of the accused extorted the other accused persons to kill Chaitram or other members of the complainant party. In this regard we may make reference to the first report lodged by PW-2 Janak Ram, son of the deceased Chaitram. The first intimation is the merg intimation (Exhibit P/2). This is a very short information in which it is stated that there was old enmity between

the two sides. It is stated that this witness alongwith his father Chaitram, brothers Sanatram and Ranjit Kumar, wife Gulaba Bai and sister-in-law Kanti Bai were doing the work of *nindai* whereas the accused party was also doing similar work in the field of Matangram Satnami and when the complainant side objected to the accused persons throwing the unwanted weeds and grass from the paddy crops in their field, then his father Chaitram was given blows with *tabbal* and *lathi*. Thereafter, other persons were also beaten. This was recorded at 3.50 pm, immediately followed by the FIR (Exhibit P/3) at about 4.00 pm which is much more detailed. In the FIR it is written that when PW-2 Janak Ram alongwith his father Chaitram, brothers Sanatram and Ranjit Kumar, wife Gulaba Bai and sister-in-law Kanti Bai were working in the fields, all the accused persons, 15 in number were working in the adjoining field. At that time Bhag Singh, Matangram Satnami and Rohit threw the unwanted weeds and grass which they had extricated from their fields on to the field of the complaint side. His father Chaitram objected and went to the field of Matangram Satnami and told him not to throw these unwanted weeds and grass. At that time, the accused persons allegedly stated that Chaitram was indulging in *dadagiri* and that they would kill him and they ran towards Chaitram. At that time, Rameshar Ram, Dwarika Prasad, Gopelal and Bhag Singh gave blows of *tabbal* to his father, as a result of which he fell down. PW-2 Janak Ram was beaten by Thakur Singh, Jalesh, Gajpal Singh and Rohit. When PW-7 Gulaba Bai and PW-8 Kanti Bai intervened, then Gulaba Bai was beaten by Bitai Ram and some of the other accused gave her blows to the *lathi* and Kanti Bai was beaten by Gajpal Singh, Mangatram Satnami, Sahodara Bai and Bitai Ram.

19. It would be pertinent to mention that the Court has not believed the statement of two brothers, namely, PW-12 Sanatram and PW-14 Ranjit Kumar.

The Learned Trial Court has held that they were not eyewitnesses and their evidence is in the nature of hearsay. The Learned Trial Court acquitted a number of accused but no appeal has been filed by the State and therefore, we cannot go into this finding and accept the same to be correct.

20. As far as evidence believed by the Learned Trial Court is concerned, i.e. the statement of PW-2 Janak Ram who in his submission repeated what is stated in the FIR. He has made certain embellishments and improvements but his statement is very clear that his father was beaten up by the accused Rameshar Ram, Gopelal, Dwarika Prasad and Bhag Singh. He stated that accused starting beating his father and other accused persons surrounded him. He further stated that Rameshar Ram and Dwarika Prasad were given blows by *tabbal* then he went to the spot and asked the accused to stop beating his father, then Jalesh gave him a blow of *tabbal* on his head and he received one incised wound on his head. He was also beaten by Thakur Singh and Gajpal Singh by *lathi*.

21. As far as statement of PW-7 Gulaba Bai is concerned, she states that her father-in-law was beaten by Rameshar Ram, Dwarika Prasad, Gopelal and Bhag Singh. Thereafter, her husband PW-2 Janak Ram tried to intervene and he was also beaten by Thakur Singh, Gajpal Singh and Jalesh. Jalesh gave a blow of *tabbal* on the head of her husband. When she tried to intervene and save her husband, then Lomas Kumar, Vishnu, Uttam and Bitar assaulted her. It would be pertinent to mention that Vishnu, Uttam and Bitar have been acquitted and only Lomas Kumar has been convicted. Her allegation is that Lomas Kumar gave a blow with wooden rod of the *tabbal* on her stomach. In Court, all the three witnesses have stated that Gulaba Bai was carrying pregnancy of eight months and she had miscarriage out of the injury received. However, there is no medical evidence in this regard. In fact, the MLC indicates that the foetus was in a healthy

condition.

22. PW-8 Kanti Bai gives a similar version. She states that her father-in-law was beaten by Rameshar Ram, Dwarika Prasad, Gopelal and Bhag Singh with *tabbal*. According to her, her brother-in-law Janak Ram was beaten by Thakur Singh, Gajpal Singh and Jalesh, out of which Jalesh was carrying *tabbal* and her sister-in-law Gulaba Bai was beaten by Lomas Kumar, Vishnu, Alen and Bitar. She further states that she was beaten by Rohit, Matangram, Sahodara Bai, Uttar and Gajpal Singh. Out of these four, three were acquitted and only Gajpal Singh has been convicted. We have no reason to disbelieve the statement of these witnesses. Though they have been cross-examined at length, they have stuck to their version with regard to the occurrence.

23. We may now refer to the postmortem report of the deceased which is Exhibit P/63 and stands proved by PW-11 Dr. V.P. Jaiswal. The injuries over the head are as follows:-

Injuries seen over Head :

- (1) Incised wound 5 cm x 1 x 1 cm over Head slightly to Rt. Side just above forehead.
- (2) Incised wound in occipital region 6 cm x 1 x 1 cm. 6 cm above left side directed obliquely from left to right side.
- (3) Incised wound occipital region 7 cm x 1 x 1 cm.
- (4) Incised wound 1 cm x ½ cm x ½ cm. 2 cm in front of injury No. 2.
- (5) Incised wound 6 cm behind injury No.1 in middle of Head 5 cm x 1 x 1 cm.

24. The doctor, PW-11 Dr. V.P. Jaiswal opined that the deceased died due to the injuries sustained on the head. His opinion is as follows:-

“In my opinion mode of death is Haemorrhage & shock due to injuries over Head (Injury to brain and skull). Nature is homicidal.”

25. It stands proved that these injuries were caused by Rameshar Ram, Dwarika Prasad, Gopelal and Bhag Singh. It is true that PW-2 Janak Ram has named Jalesh but it appears to us that it might have been a mistake either while deposing or while transcribing the statement. The fact is that Chaitram was attacked only by these four persons. Therefore, we have no hesitation in holding that as far as these four persons are concerned, they had formed a common object on the spur of moment to kill Chaitram. This may not fall within the Sections 148 or 149 IPC but would definitely fall within the Section 34 IPC. Therefore, we uphold the conviction under Section 302 read with 34 IPC against all the four accused persons, namely, Rameshar Ram, Dwarika Prasad, Gopelal and Bhag Singh. However, all the four accused persons are acquitted of all the other charges.

26. As far as PW-2 Janak Ram is concerned, his injury report is Exhibit P/67A which reads as follows:-

- (1) Incised wound (cuts) fresh bleeding (+) size 8 cm x 1 cm x 1 cm over the middle of scalp region direction from Posterior to Anterior.
- (2) Contusion – Size 4 cm x 2 cm at the lateral aspect of Right elbow region.
- (3) Abrasion – Size 2 cm liner abrasion over the lateral aspect of Right forearm.

- (4) Contusion – Size 5 x 3 cm lower end of Right thigh laterally.
- (5) Contusion – Size 2 x 2 cm over the left shoulder region.
- (6) Contusion – Size 5 x 2 cm over the middle of left forearm lateral aspect.
- (7) Tenderness (+) over below left leg mellulus area.

27. Only injury no.1 which is incised wound is a serious injury. This has been caused by a sharp edged weapon and this injury has been ascribed definitely to Jalesh. This injury has not been certified to be a grievous injury by the Doctor. Therefore, we find accused-Jalesh guilty of having committed offence of causing hurt by dangerous weapon and as such, he is convicted under Section 324 IPC.

28. As far as other accused namely Thakur Singh, Gajpal Singh and Lomas Kumar are concerned, they are held guilty of having committed an offence punishable under Section 323 IPC only because they have caused injuries only with the *lathi* which cannot be said to be a dangerous weapon.

29. As far as PW7 Gulaba Bai is concerned, she received the following injuries:-

- (1) Lacerated wound fresh bleeding (+) size 1 cm x ½ cm x ½ cm over the Tip of left ring finger. Tenderness redness (+) swelling (+)
- (2) Swelling & Tenderness over 5 cm x 5 cm over middle of left forearm posterior lateral aspect. Left forearm deformity (+).
- (3) Swelling & Tenderness over the Right shoulder region anteriorly.

- (4) Contusion redness size 5 cm x 3 cm over lateral aspect of upper Right forearm.
- (5) C/o pain in abdomen at the epigastric region.
Tenderness (+) ANC 6th month's pregnancy.

30. The main injury is injury No.1 which is also a simple injury. It has not been proved that this injury has been caused by sharp edged weapon. It was caused by blunt side of the weapon by Lomas Kumar. Therefore, we find Lomas Kumar guilty of having committed offence punishable under Section 323 IPC.

31. As far as PW-8 Kanti Bai is concerned, she received the following injuries:-

- (1) Lacerated wound fresh bleeding (+) size 4 cm x 1 cm x 1 cm on the centre region of the scalp.
- (2) Tenderness & crepitation (+) on just below the left shoulder region anteriorly.
- (3) Contusion 4 cm x 2 cm on the base of Left Index finger anteriorly.
- (4) Contusion 4 cm x 4 cm on the Left side of forehead.

32. In addition to this, there is evidence to show that Kanti Bai suffered a fracture due to the injuries caused on her and therefore, Thakur Singh and Gajpal Singh are held guilty of having caused grievous injury which is punishable under Section 325 IPC.

33. In view of the above discussion, the appeal is allowed in part. The accused Rameshar Ram, Dwarika Prasad, Gopelal and Bhag Singh are held guilty of having committed an offence punishable under Section 302 read with 34 IPC. Accused-Dwarika Prasad and Bhag Singh have already expired and the appeal

on their behalf has been disposed of as having abated. As far as the accused- Rameshar Ram and Gopelal are concerned, they are sentenced to undergo imprisonment for life and to pay fine as imposed by the Learned Trial Court.

34. As far as accused Jalesh Satnami is concerned, he is held guilty of having committed an offence under Section 324 IPC. As far as accused Thakur Singh and Gajpal Singh are concerned, they are held guilty of having committed an offence under Sections 323 and 325 IPC. Accused-Lomas Kumar is held guilty of having committed an offence punishable under Section 323 IPC.

35. We are informed that Lomas Kumar, Jalesh Satnami, Thakur Singh and Gajpal Singh have already undergone about 18 months incarceration, therefore, the sentence imposed upon them is reduced to the period of sentence already undergone by them. They be released forthwith subject to the provisions contained in Section 437-A CrPC.

36. The appeal is disposed of in the aforesaid terms.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
Judge