

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 15-09-2017

Judgment delivered on 10-10-2017

Criminal Appeal No. 861 of 2008

1. Peeladas S/o Zhumuk Satnami aged about 45 years.
2. Karanj S/o Raruha, aged about 80 years,
3. Dharam S/o Karanj, aged 40 years,
4. Brijlal S/o Karanj, aged about 50 years,
5. Parasram S/o Dharam Satnami, aged 19 years,
6. Teklal S/o Narayan, aged about 25 years,
7. Kamas Bai W/o Dharam Satnami, aged about 38 years,
8. Malikram S/o Karanj Satnami, aged about 40 years,
9. Dhaniram S/o Karanj Satnami, aged about 40 years,
10. Narayan @ Lakhan, aged about 55 years.

All the above named appellants are resident of village Risamali, Police Station Nawagarh, District Durg (CG)

---- Appellants

Versus

State of Chhattisgarh, Through The Station House Officer, Police Station Nawagarh, District Durg (CG)

---- Respondent

For Appellant	:	Shri M.D. Dhote, Advocate.
For Respondent/State	:	Shri Avinash Kumar Mishra, Panel Lawyer.
For Complainant/Objector:		Shri P.P. Sahu, Advocate

**Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 26.7.2008 passed by the Additional Sessions Judge, (FTC) Bemetara, District Durg(C.G.) in Sessions Trial No. 175/2002 convicting the accused/appellants under Sections 302/149 and 307/149 IPC and sentenced them to undergo imprisonment for life and fine of Rs.2000/-, in default of payment of fine to further undergo R.I. for 8 months and R.I. for 8 years and fine of Rs.1500/-, respectively, in default of payment of fine to further undergo R.I. for 6 months with a direction to run the sentences concurrently.

2. In this case, name of the deceased is Mitthu and charge under Section 307 of IPC is framed for attempt against one Ram Avatar. Case of the prosecution, in brief, is that the complainant party and the appellants were having land dispute at village Risamali. Crop of bengal gram was grown up by the complainant on the said land. When the crop was grown up, it was harvested and stolen by the appellants and thereafter it was kept in the barn of Narayan @ Lakhan, one of the appellants at village Risamali. The complainant party is the resident of village Turasemariya. On 9.3.2002 at about 11.00 am Complainant- Motiram along with Chandramohan, Mitthu, Ram Avatar and other 6-7 persons came to village Risamali from village Turasemariya on a Tractor and put the crop of bengal gram in the tractor, kept in the barn of appellant Narayan @ Lakhan, on which, the appellants stopped them from

doing so and started assaulting, in which, persons of complainant party, Mitthu, Chandramohan, Ram Avatar and Doman received injuries and Mitthu died. The matter was reported to Police Station Nawagr. Autopsy of Mitthu was conducted and certain articles were seized from the appellants. Statements of the witnesses were recorded under Section 161 Cr.P.C. and after investigation, charge sheet was filed. The appellants were tried for offence under Section 302 r/w Section 149 and 307 r/w Section 149 of IPC to which they did not plead guilty, therefore, trial was conducted and after examination of the prosecution witnesses, statements of the accused/appellants were recorded and after hearing both the parties, the trial Court has convicted and sentenced the appellants as above.

3. The main contention raised by learned counsel appearing for the accused/appellants is summarized as under:

- (i) In the assault, 4 persons of the appellants side had also received injuries. All the 4 injured were examined by Dr. S.K. Sharma (PW13) and found that Parasram received head injury, Karanj received 3 injuries and Dharam received 1 injury. The appellants have never formed any unlawful assembly and they have acted only in right of private defence of property and right of private defence of body and as such they are not under any criminal liability for the death of Mitthu or causing injury to Ramavatar and the trial Court has mis appreciated the evidence and arrived at erroneous

conclusion that the appellants have committed offence punishable under Sections 302/149 IPC and 307/149 IPC.

- (ii) That the crop of bengal gram was kept in the barn of Narayan @ Lakhan after harvesting and Brijlal, Ramavatar and their other group members have no right to forcefully take the crop from the barn of appellant Narayan @ Lakhan and in stopping them, the appellants have not committed any criminal act.
- (iii) That Brijlal and their group members have come in a Tractor from village Turasemariya with deadly weapons like Tabbal, Tangia and club and assaulted Parasram, Teklal, Dharam, Karanj and Kamas Bai, therefore, they have acted in right of private defence of property and right of private defence of body and the same is not an offence.
- (iv) That the learned trial court has not appreciated the injuries received by the persons of appellants side and therefore, the conclusion is erroneous and bad in law.

Learned counsel for the appellants submitted that the finding arrived at by the trial Court is not in the fitness of procedure on fact and legal aspect of the matter, therefore, the same be reversed and the appellants be acquitted of the charges. He placed reliance on **(1969) 2 SCC 207, State of Bihar Vs. Nathu Pandey and Ors.** and **2014 CRI.L.J. 2420, State of Rajasthan Vs. Manoj Kumar.**

4. *Per contra*, learned State counsel supporting the impugned judgment has submitted that conviction and order of sentence is well founded and the same is strictly in accordance with law and there is no infirmity in it warranting any interference by this Court.

5. We have heard counsel for the parties and perused the material on record

6. To sustain the charge, prosecution has examined as many as 18 witnesses. PW1, Motiram deposed that they were returning after loading the crop of bengal gram from the barn of appellant Narayan @ Lakhan and at the same time, all the appellants surrounded them with Tabbal, Tangia and club and thereafter, appellant Brijlal assaulted Mitthu with Tabbal. He deposed that thereafter, all the appellants have assaulted him but the version regarding other appellants is not clear and the same is a general statement. He admitted in para 11 of his evidence that appellant Dharam, Parasram, Kamas Bai, Karanj were medically examined and upon report of appellant Piladas case was registered against him and the persons in his company. Ram Avtar, PW2 deposed in para 3 of his evidence that Brijlal assaulted him by Tabbal on his head. Kushal Singh, PW3 deposed in para 4 of his evidence that Brijlal and Dharam assaulted Mitthu by Tabbal. He again deposed in para 6 that Brijlal, Dharam and Karanj have assaulted Ram Avtar. Doman, PW7 has deposed in para 2 of his evidence that all the appellants have assaulted Mitthu and Ram Avatar. Dharam assaulted Mitthu by Tabbal and Brijlal assaulted Mitthu by Tangia. Bhatpariha @ Situ, PW8 has deposed in para 2 of his evidence that Brijlal assaulted Mitthu by Tabbal and other appellants have assaulted Mitthu. Madho, PW9 deposed that Brijlal assaulted Mitthu by Tabbal and thereafter all the persons have assaulted him. Dr.

SK Sharma, PW13 conducted autopsy on the dead body of the deceased Mitthu on 10.3.2002 at about 9.00 am and noticed following anti mortem injuries:

Lacerated wound over head (back) occipital region having look like incised wounds :

- (i) Top of head posterity longitudinal 1 ½" x ½" skin deep
- (ii) Right occipital region 2 ½" x ½" x skin deep oblique
- (iii) Right occipital region below No.(2) oblique 2 ½" x ½" skin deep
- (iv) Triangular lacerated wound ½" x ½" margin inverted

Heavy bleeding dried up from head down words. Bridging of the tissues at terminal ends, on dissection subcutaneous blood. Blood clot present, tissue adjacent to wound found lacerated. Fissured fracture occipital bone 1" hair line underneath injury No.4 oblique. On deep dissection of back of skull. Extra dural haematoma underneath skin of occipital region brain tissue found lacerated with heavy intracerebral haemorrhage, meningo lacerated underneath occipital bone of skull.

After autopsy he opined that all the injuries were ante mortem and caused by hard and blunt object and death was caused due to injuries on head and behind the chest. He opined that the death was homicidal in nature and duration was 18-20 hours since conduction of postmortem.

7. Dr. SK Sharma, PW13, also examined Ram Avatar on 9.3.2002 and noticed following injuries:

- (i) Lacerated wound – left mid parietal region oblique 3" x ½" x skin deep. Clotted blood was present.
 - (ii) Lacerated wound- 5" x ½" x skin deep dry clotted blood and fresh bleeding present on top of head anterior posterity directed.
 - (iii) Lacerated wound – Two in number ½" x ½" x skin deep, one above other, back of right upper forearm, dry clotted blood present.
 - (iv) Pain, swelling, tenderness on left hand with moving left middle finger
 - (v) Other mark – 5" x 1/3 rd" reddish in the forearm of thigh.
 - (vi) Bruise – chest reddish 2" x 2" middle of the lower back.
8. He examined appellant Dharam on 9.3.2002 and noticed following injuries:
- (i) Single black mole on middle of right neck
 - (ii) Lacerated wound- 1" x ½" x skin deep oblique, dry clotted blood present over back and upper forearm.
9. He also examined appellant Parasram on 9.3.2002 and noticed following injuries:
- (I) Lacerated wound- 1" x ½" skin deep reddish dry clotted blood present over middle and occipital region.
10. On examination of appellant Kamas Bai on 9.3.2002 he noticed following injuries:
- (i) Abrasion- linear, oblique, top of left shoulder reddish 1" x 1/8".

- (ii) Linear abrasion – Two in number each 1½” x 1/8” middle of lateral aspect of right neck, horizontal reddish.
- (iii) Linear abrasion – 1” x 1/8” reddish front of right wrist.

11. On examination of appellant Karanj on 9.3.2002 he noticed following injuries:

- (i) Abrasion mark – 2” x ½” in the form of two parallel lines, oblique middle of left thigh
- (ii) Abrasion – ¼” x ¼” lateral end of leg. Eyebrows reddish.

12. Dr. AK Sahu, PW14 examined x-ray of Ram Avatar and found fracture of middle finger and metacarpal bone.

13. T.R. Nagwanshi, PW17 is an Investigating Officer who recorded memorandum of the appellants and seized Tabbal, Tangia and club respectively. The seized articles were sent for chemical examination and blood was found on Tabbal, Tangia and club seized from appellants- Brijalal, Dharam, Parasram and Kamas Bai.

14. On careful scrutiny of the evidence adduced by the prosecution, it is established that there was dispute regarding land situated in village Risamali and on that land crop of bengal gram was grown up and after harvesting, the same was kept in the barn of appellant Narayan @ Lakhan. From the evidence it is clear that the deceased, Mitthu Ram, Avatar and other members of their company reached there by Tractor armed with deadly weapons like, Tabbal, tangia and club and when they were putting the crop from the barn of appellant

Narayan @ Lakhan in tractor, there was a scuffle/free fight between the members of two sides and in that process Mitthu received fatal injuries and he succumbed to those injuries. Ram Avatar also received injuries from one side and Dharam, Parasram, Kamas Bai and Karanj received injuries from the appellants side.

15. From the evidence, it is clear that deceased Mitthu and other persons of their side have not taken course of law and they acted illegally in bringing the crop kept in the barn of appellant Narayan @ Lakhan and therefore, appellants' side have right to private defence of property and private defence of body as well. In this case as per Section 101 and Section 104 of IPC the right of private defence of body/property is extended to cause harm other than death to the person acting against the property of appellants side and acting against right of their private defence of body.

16. Another point for consideration is that whether the appellants or any of them has exceeded his right of private defence of property or right of private defence of body? Law does not permit causing death of a person unless the case falls under Section 100 and 103 of IPC. Looking to the evidence, we are of the view that the case does not fall in purview of Section mentioned as above and in that way the right is exceeded in causing death of Mitthu.

17. A careful scrutiny of the evidence makes it clear that only against two appellants namely Brijlal and Dharam, there is clinching evidence for assaulting the deceased Mitthu. When a number of persons have been charged for commission of any criminal act, it is the duty of the Court to scrutinize the

evidence with great care and caution because there is every likelihood of convicting an innocent person. We are of the view that general statement should not be taken into account to fasten the liability on the other appellants. We are satisfied that appellants Brijlal and Dharam are the persons who have assaulted deceased Mitthu in excess of their right of private defence of property/body and for that their case falls under Exception 2 of Section 300 IPC and other appellants are not liable for any criminal act.

18. Exception 2 of Section 300 IPC reads as under :

300. Murder

xxxx

xxxx

xxxx

Exception 2- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

19. On overall assessment of the evidence, the offence committed by appellants Brijlal (appellant No.4) and Dharam (appellant No.3) falls under Section 304 Part II IPC and they are liable to be convicted for the same. In view of the matter, their conviction under Sections 302/149 and 307/149 IPC is set aside and in lieu thereof they stand convicted under Section 304 Part II IPC and sentenced to undergo R.I. for 7 years while affirming the fine amount of Rs. 2000/- imposed by the trial Court. Accordingly, their appeal is partly allowed.

20. Appellant No.4- Brijlal and appellant No. 3-Dharam are reported to be on bail. Their bail bonds are cancelled. The trial Court shall issue non

bailable warrant against appellants- Brijlal s/o Karanj and Dharam s/o Karanj for their arrest and sending them to jail for serving the remaining part of the sentence.

21. So far as other appellant Nos. 1, 2, 5 and 7 namely, Peeladas, Karanj, Parasram and Kamas Bai are concerned, the appeal in their respect has already been abated as they have died which is evident from order sheet dated 15.9.2017. However, looking to the material available on record, conviction of appellant No.6- Teklal under Sections 302/149 and 307/149 IPC is not sustainable in the eye of law, therefore, he is acquitted of the charges framed against him. The conviction and sentence awarded by the trial Court against him are set aside. Fine amount, if paid, be refunded to him. Appellant No.6 - Teklal is reported to be on bail. His bail bonds stand discharged.

Sd/

(Pritinker Diwaker)
JUDGE

Sd/

(Ram Prasanna Sharma)
JUDGE