

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 904 of 2009**

1. Mohan son of Malriha Satnami, aged 55 years
2. Satyanarayan alias Satya, son of Mohit Satnami, aged 30 years
3. Mohitram son of Malriha Satnami, aged 50 years
4. Kush Kumar son of Mohit Satnami, aged 22 years
5. Naresh Kumar son of Malriha Satnami, aged 40 years

All resident of village Birgahni, PS Baloda, District Janjgir
Champa CG

---- Appellants

Versus

1. State of Chhattisgarh through Police Station Baloda, District
Janjgir Champa, CG

---- Respondent

AND

CRA No. 906 of 2009

1. Lav son of Mohitram Satnami, aged 21 years
2. Suryakant alias Surya son of Mohan Satnami, aged 22 years
3. Dilraj son of Mohitram Satnami aged 20 years

All resident of village Birghani, PS Baloda, District Janjgir
Champa, CG

---- Appellants

Versus

1. State of Chhattisgarh through Police Station Baloda, District
Janjgir Champa, CG

---- Respondent

For Appellants : Shri Sumit Singh, Advocate
For Respdt/State : Shri Ravindra Agrawal, PL

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri A.S. Chandel

Judgment on Board by Pritinker Diwaker, J

01/11/2017

As the aforesaid two Criminal Appeals arise out of the same judgment dated 30.11.2009 passed by Additional Sessions Judge Janjgir Champa, in Sessions Trial No. 50/2009 convicting and sentencing the accused/appellants as described below, they are disposed of by this common judgment.

Conviction U/s	Sentence
147 IPC	RI for one year
148 IPC	RI for one year
302/149 IPC	Imprisonment for life with fine of Rs. 500/-
325/149 IPC for assaulting Sanjay	RI for five years with fine of Rs. 200/-
323/149 IPC for assaulting Lakheshwar	RI for one year
323/149 IPC for assaulting Sudharam	RI for one year
323/149 IPC for assaulting Rakesh	RI for one year

All the sentences to run concurrently

2. Name of the deceased in the present case is Ajay. As per the case of prosecution, on 20.11.2008 at 8 PM when injured Lakheswar (PW-1) resident of village Birghani was returning from the house of his brother Sudharam (PW-3) after taking dinner, on the way he heard accused Mohitram filthily abusing the village people. When PW-1 asked Mohitram as to why he was unnecessarily hurling abuses, he got annoyed, went inside the house, brought club and caused injury on his head resulting in bleeding. In the meanwhile, accused Mohit, Satya, Naresh and Kush also came there carrying club in their hands, started abusing and hurling threats of killing the members of complainant party. Thereupon, Ajay (deceased), Sanjay (PW-5) and Sudharam (PW-4)

came out of the house and asked the accused persons not to abuse. Thereafter, accused Satya threw a stone at Laksheshwar (PW-1) whereas Sudharam was assaulted with club. As is apparent from the further prosecution story, it was a case of free fight between the two groups where members of both the groups suffered injuries. Ajay was medically examined on 20.11.2008 by Dr. U.K. Markam (PW-12) and as per his report contusion was present on his 6th and 7th ribs with swelling on mandible region. Injured Laksheshwar (PW-1) was also examined by the same doctor and as per report there was lacerated wound on his scalp in the right temporal region whereas Sudharam (PW-4) suffered lacerated wound on scalp in the parietal region. Sanjay (PW-5) suffered lacerated wound on scalp in occipital – parietal region and Rakesh (PW-6) suffered abrasion in the left temporal region. After being medically examined, injured Ajay went back home and on the next day when he was again brought to the hospital, he was declared dead. First of all, the report Ex. D-9 was lodged by accused/appellant Satyanarayan alias Satya Sande against four injured persons namely Laksheshwar Satnami, Sanjay Satnami, Sudharam Satnami, Rakesh Satnami and deceased Ajay Satnami for the offences under Sections 147, 148, 149, 294, 506 and 323 IPC. Thereafter, FIR Ex. P-1 was registered at the instance of Laksheshwar (PW-1) against accused Satya Satnami, Mohitram Satnami, Mohan Satnami, Naresh Satnami and Kush Satnami for the offences punishable under the Sections of the Indian Penal Code. After the death of Ajay on 21.11.2008, information to that effect was sent by the hospital vide Ex. P-20, on the basis of which *merg* Ex. P-39 came to be recorded on the same day. On inquest being done vide Ex. P-5, body of the deceased was sent for

postmortem examination which was conducted by Dr. U.K. Tiwari (PW-13) who gave his report Ex. P-21. On the memorandums of accused persons vide Ex. P-22 to P-26, seizure of club was made under Ex. P-27 to P-30. However, there is no FSL report on record. Trial Court then framed the charge against the accused/appellants under Sections 147, 148, 149, 302/149, 325/149, and 323/149 IPC thrice.

3. In order to prove its case the prosecution has examined 14 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case. This apart, one witness (DW-1) has also been examined by the defence.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellants as described above and it is the that judgment which is assailed in the aforesaid two appeals.

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

(i) That present is a case of free fight where members of both the groups suffered injuries.

(ii) That the report Ex. D-9 was first lodged by Satya Satnami, one of the accused in the present case on the same day i.e. 20.11.2008 at 8.40 PM based on which offence under sections 147, 148, 149, 294, 506 and 323 IPC was registered against PW-1, PW-4, PW-5 and PW-6 and the deceased and eventually they stood convicted too.

(iii) That the postmortem report Ex. P-21 does not suggest any injury on the vital part of the deceased, and even the mode of death is also not mentioned therein.

(iv) That present is a case of free fight where almost everyone was having club and therefore, it cannot be said with certainty as to who caused injury to the deceased.

(v) That looking to the evidence against the accused/appellants, they can at best be convicted under Section 323 IPC.

(vi) Reliance is placed on the decisions of the Apex Court in the matter of **Varun Chaudhary v. State of Rajasthan (2011) 12 SCC 545** and that of **State of M.P. v. Mishrilal (dead) and others 2003 AIR SCW 2066**.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the Court below has taken all the aspects of the case into consideration while holding the accused/appellants guilty and therefore the judgment impugned being just and proper does not call for any interference.

7. Heard counsel for the parties and perused the evidence available on record.

8. Lakheswar (PW-1) - an injured eyewitness to the incident supporting the case of the prosecution has stated that on 20.11.2008 at about 8 PM when he was returning from the house of Sudharam (PW-4) after taking dinner, on the way some altercation was going on between the accused persons and Madan (PW-9). Accused Mohit, Satya, Mohan, Dilraj, Lav, Kush and Surya are stated to have hurled abuses at the villagers and when this witness asked them not use abusive words, they started beating him with clubs carried by them and caused injuries on his head, waist and back. According to this witness, when he ran for safety to the house of Sudharam, accused persons chased and abused him. On hearing the abuses Sudharam, Rakesh and Ajay came outside where

accused persons beat them also on account of which Ajay had lost consciousness. From the cross-examination of this witness, it appears that there was a free fight between the members of both the groups as the injuries were suffered by all. Sudharam (PW-4), Sanjay (PW-5) and Rakesh (PW-6) have also stated almost the same thing as by PW-1. In addition to this, independent witnesses Santanu (PW-3), Madanlal (PW-9) and Rampyare (PW-10) have also supported the case of the prosecution describing the manner in which the incident had taken place. Witnesses to memorandum and seizure have also supported the case of the prosecution. Dr. U.K. Tiwari (PW-13) who conducted postmortem examination on the body of the deceased has noticed injuries on chest and mandible region vide report Ex. P-21. Cause of death as mentioned in the said report was respiratory failure due to injury on chest. No opinion however has been given as to the mode of death - whether it was homicidal in nature or not.

9. From the evidence of the witnesses it is thus clear that on 20.11.2008 in the night hours, accused/appellants herein caused club injury to deceased Ajay, Lakheswar (PW-1), Sudharam (PW-4), Sanjay (PW-5) and Rakesh (PW-6). The injuries, unfortunately, proved fatal to Ajay leading to his death on 21.11.2008. Injuries received by other persons, however, got healed up in due course. Though there is no FSL report on record, seizure of club on the basis of memorandums of accused/appellants is not in dispute. Involvement of the accused/appellants in the crime in question is thus established beyond doubt.

Next question to be decided now is whether the act of the accused/appellants would make them liable for conviction under Section 302 or under some other section. Here a counter case was

also registered against injured persons being PW-1, PW-4, PW-5, PW-6 as also the deceased and ultimately they stood convicted under Sections 147, 148, 149, 294, 506 and 323 IPC. Record also goes to show that apart from the injured and the deceased, members belonging to the accused party also sustained injury in the free fight. Further, none of the witnesses has been specific in stating as to which of the accused dealt the club blow on Ajay which resulted in his death. No previous enmity between the two groups which could have helped in establishing the motive is visible from the record, rather it appears that PW-1 himself was, to some extent, responsible for the incident who had asked the accused persons not to hurl abuses at the villagers and it is where the genesis assumed the alarming proportion. Furthermore, the weapon used in the incident was club and not any deadly one, and that the entire development had taken place all of a sudden without there being any prior intention or premeditation on the part of the accused/appellants to kill the deceased. As regards injuries sustained by the deceased, PW-12 who first medically examined him has stated that the injuries so suffered appeared to be simple in nature at the first blush but the final opinion could be given only after receipt of x-ray report. However, the deceased died on the next day i.e. 21.11.2008. The doctor (PW-13) who conducted postmortem examination on the dead body has neither stated that the injuries suffered by the deceased were sufficient to cause death in the ordinary course of nature nor has he given any opinion whether the death was homicidal in nature. On the contrary, he has stated that the injuries could be caused accidentally like fall from the height. Furthermore, in cross examination this witness has reiterated that looking to the nature of injuries noticed by him on

the body of the deceased there was every possibility of the same being accidental ones. Thus looking to the unrebutted medical evidence on record it is apparent that apart from contusions over the chest and mandible region, the deceased suffered fracture on 7th rib also which was grievous in nature and the direct result of assault made by the accused/appellants with the help of club.

10. Having thus undertaken the arduous exercise of going through the entire material available on record, this Court is of the considered opinion that conviction of the accused/appellants u/s 302/149 IPC is not based on due appreciation of the evidence of the witnesses. It is accordingly set aside. However, their act in assaulting the deceased definitely entails their conviction under Section 325 with the help of 149 IPC. It is held accordingly. Having thus convicted the accused/appellants under section 325/149 IPC for causing injuries to the deceased, we impose the sentence of rigorous imprisonment for the period they have already undergone by remaining inside for about 17 months. However, each of the accused/appellants is hereby directed to pay Rs. 5000/- as compensation provided under Section 357 of the Code of Criminal Procedure to be paid to the widow of the deceased. If the widow is not available to receive compensation, the same shall be paid to the other surviving legal heirs of the deceased. Such amount be deposited in the Court below within a period of five months. In case of failure to do so, the accused/appellants shall remain inside for a further period of six months.

11. Conviction of the accused/appellants under other sections is however maintained with reduction of sentence imposed thereunder to the period already undergone. As the appellants are

already on bail, no order for their release etc. is necessary.

12. In the result, the appeals are hereby partly allowed to the extent sketched above.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(A.S. Chandel)

Judge

Jyotishi