

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 106 of 2010

1. Dundlu Ram @ Sahdeo Ram, S/o Dhundhasram, aged about 54 years, Occupation : Agriculturist.
2. Bigan Ram S/o Dundlu Ram, aged about 27 years, Occupation : Agriculturist.

Both are caste of Uraon resident of Village Lalati, Police Station – Batouli, District – Sarguja (CG)

---- Appellants

Versus

- State Of Chhattisgarh, Through Station House Officer, Police Station – Batouli, District Sarguja (CG)

---- Respondent

And

CRA No. 346 Of 2010

1. Dundlu Ram @ Sahdeo Ram, S/o Dhundhasram, aged about 54 years, Occupation : Agriculturist.
2. Biganram S/o Dundlu Ram, aged about 27 years, Occupation : Agriculturist.

Both are by caste of Uraon, R/o Village Lalati, Police Station – Batouli, District – Sarguja (CG)

---- Appellants

• Versus

- State Of Chhattisgarh, Through District Magistrate, Sarguja District Sarguja (CG)

---- Respondent

For Appellants	:	Smt. Indira Tripathi, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Pritinker Diwaker,
Hon'ble Shri Ram Prasanna Sharma, JJ

Per P. Diwaker, J

14/07/2017

Criminal Appeal No.106/2010 was filed on behalf of the appellants through High Court Legal Aid Committee. Thereafter, the appellants engaged their separate counsel and filed Criminal Appeal No.346/2010 assailing the common judgment and order dated 17.12.2009 passed by Sessions Judge, Surguja in ST No.424/07 convicting appellant No.1 under Sections 302 & 323/34 and appellant No.2 under Sections 302/34 & 323 of IPC and sentencing each of them to undergo imprisonment for life, pay a fine of Rs.2000/- and RI for six months and fine of Rs.500/- with default stipulations respectively. Hence they are being disposed of by this common judgment.

02. As per prosecution case there exists old land dispute between the appellants and the deceased party. On 28.6.2007 at about 11.30 am when deceased Nakulram was working in his field, the appellants reached there carrying axe and club (like thick wooden log) in their hands and with intention to commit murder of the deceased, appellant No.1 Dundlu caused injury on his shoulder and thereafter on his head also. Appellant No.2 Biganram also caused injury to the deceased by club as a result of which the deceased fell unconscious and when his son Ram Uraon (PW-3) tried to intervene, he was also assaulted by appellant No.2 on his head. Injured PW-3 Ram Uraon immediately lodged FIR at 2.20 pm vide Ex.P/5 based on which offence under Section 307/34 of IPC was registered against the accused/appellants. Injured Nakul was taken to hospital where he succumbed to his injuries. Based on the information sent from the hospital, unexhibited merg was recorded on 28.6.2007. PW-3 Ram Uraon was medially examined vide Ex.P/3 by PW-2 Dr. Manorama Minj who noticed pain

over middle of parietal region and opined that the said injury was caused by blunt object and was simple in nature. Inquest on the dead body was conducted vide Ex.P/8 on 29.6.2007 and thereafter the body was sent for postmortem which was conducted on the same day by PW-2 Dr. Manorama Minj vide Ex.P/2 who noticed lacerated wounds over left parietal region and scapular region and opined that the cause of death was coma due to head injury and shock due to injury to vital organ (left lung) and that the death was homicidal in nature.

On 29.6.2007 memorandum of appellant No.1 Dundlu was recorded vide Ex.P/11 based on which seizure of axe was made vide Ex.P/12. As per FSL report (Ex.P/19), blood was found on the seized axe. While framing charge, the trial Judge framed charge against appellant No.1 Dundlu under Section 302 and 323/34 of IPC and against appellant No.2 Biganram under Section 302/34 and 323 of IPC.

03. So as to hold the accused/appellants guilty, the prosecution examined 09 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above.

05. Counsel for the appellants submits as under:

(i) that conviction of appellant No.2 Biganram under Section 302/34 of IPC is bad in the eye of law because it is appellant No.1 Dundlu who is

alleged to have caused main injury to the deceased.

(ii) that appellant No.1 Dundlu could not have been convicted under Section 302 of IPC because admittedly there is an old land dispute between the parties as is clear from the evidence of PW-3 to PW-5, the incident took place in the field itself when the complainant was making bund on the land of the accused persons.

(iii) that even if the entire prosecution case is taken as it is, case of the appellants would fall under Exception 2 of Section 300 of IPC and consequently, they are liable to be convicted under Section 304 Part-II of IPC.

06. On the other hand, State counsel supporting the impugned judgment has submitted as under:

(i) that the incident has been witnessed by PW-3 Ram Uraon and PW-4 Shyam Uraon. Both of them have duly supported the prosecution case.

(ii) that the incident had taken place in the field of the deceased where he was working along with his other family members and the appellants reached there armed with axe and club and assaulted him brutally and also caused injury to PW-3.

(iii) had it been a case where the deceased was the assailant, the appellants could have taken the defence that their case would fall under Exception 2 of Section 300 of IPC. But present is not a case of exercise of right of private defence of property but it is a case where the appellants themselves had gone to the field of the deceased and assaulted him to death. Even in their statements under Section 313 of Cr.P.C., no such defence has been taken by the appellants and rather

they have stated that they were not present on the spot at the time of incident.

(iv) that there is absolutely no evidence on record to show that just prior to the incident there was any quarrel between the two groups.

(v) that after causing one injury on the head of the deceased, appellant No.1 repeated the assault and further when PW-3 tried to intervene he too was beaten by both the appellants, which shows that their intention was to commit murder of the deceased. In these circumstances, their conviction with the aid of Section 34 of IPC is in accordance with law.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-3 Ram Uraon, son of the deceased, who lodged the First Information Report, is eyewitness to the incident. He has stated that appellant No.1 Dundlu had land dispute with his father Nakul (deceased). Few weeks prior to the incident, appellant No.1 had damaged the bund of his field for which measurement by the revenue officer was done. On the date of incident he, his brother Shyam Uraon (PW-4), his father Nakul and his cousin Motilal were working in their field, at about 11.15 am when they were going to take bath, the accused persons reached there, appellant No.1 was carrying axe in his hand whereas appellant No.2 was holding a thick club. After seeing the accused persons, his father Nakul tried to escape from the spot, however, appellant No.1 gave axe blow on his shoulder as a result of which his father started bleeding and fell in the water of the field. While he was trying to get up, appellant No.1 gave another axe blow from

sharp side on his head. When he (this witness) tried to save his father and asked the accused persons not to beat him, he was caused injury by appellant No.2 Biganram by means of club on his head as a result of which he too fell in the water of the field and became semi-conscious. After about 2-3 minutes when he regained consciousness he saw both the accused/appellants beating his father and that his brother Shyam Uraon (PW-4) was shouting "don't beat, don't beat" He has further stated that the incident was also witnessed by Motilal. He has further stated that his father was taken to hospital but by that time he had expired. In cross-examination he states that fields of the appellants are on the north side of his land. He states that he does not remember the khasra number of the land measured by the Patwari, however, it is his father's land which was measured. He has further clarified that there exists very old land dispute between the two families.

09. PW-4 Shyam Uraon, son of the deceased and eyewitness to the incident, has stated that on the date of incident he was there in the field along with his father Nakul, brother Ram Uraon (PW-3) and cousin and when they were going to take bath after finishing the work, the accused/appellants reached there, appellant No.1 Dundlu was carrying axe and appellant No.2 was having a thick club; appellant No.1 gave axe blow on the shoulder of his father Nakul as a result of which he fell in the water and while he was trying to get up, appellant No.1 inflicted another axe injury on his head and he again fell in the water. He states that the accused/appellants also assaulted the deceased on his leg and knee and at that time he was requesting them not to assault his

father. When his brother PW-3 Ram Uraon tried to intervene, appellant No.2 Biganram gave a blow by club on his head as a result of which he too fell down in the water. He has stated that his father was taken to hospital where he was declared dead. In cross-examination he states that the dispute between the parties was on account of bund of the fields, however, on the date of incident no altercation took place between the two groups over the land in question.

10. PW-1 Dr. Vijay Singh Pradhan medically examined the deceased vide Ex.P/1 and noticed two lacerated wounds, one on the left parietal region and another on scapular region. According to him, these injuries were caused by hard and blunt object. In cross-examination he has stated that on the basis of external examination of the injuries it cannot be said whether such injuries were sufficient to cause death and that seriousness of the injury can be ascertained only after CT scan.

11. PW-2 Dr. Manorama Minj conducted postmortem on the body of the deceased on 29.6.2007 vide Ex.P/2 and noticed lacerated wound on the left parietal region of size 9 cm x 0.5 cm x 0.5 cm and another lacerated wound on left scapular region of size 6 cm x 0.5 cm x 4 cm. On opening of left parietal region of the skull, blood clots and congestion was noticed there, left parietal bone was broken. On opening the left scapular region, left scapula and 2nd, 3rd & 4th rib were found to be broken, there was subdural clot, left lung was punctured, right lung was congested. In the opinion of the autopsy surgeon, the cause of death was coma due to head injury and shock due to injury to vital organ (left lung) and that the death was homicidal in nature. This witness also medically examined PW-3 Ram Uraon vide Ex.P/3 and

noticed pain over middle of parietal region and opined that the said injury was caused by blunt object and was simple in nature. He also examined the seized axe and opined that the injuries suffered by the deceased could be caused by the said weapon.

12. PW-5 Mangalram has stated that there was old land dispute between the deceased and appellant No.1 and on the date of incident he saw the accused persons in the field of the deceased and in the evening he came to know that the appellants have killed the deceased. PW-6 Basant Ram is a witness of memorandum of appellant No.1 and seizure of axe made in pursuance thereof. PW-7 Sugantibai is a hearsay witness. PW-8 Ramcharan Ram, investigating officer, has duly supported the prosecution case. PW-9 Gajpati Mirre, Head Constable, helped in the investigation.

13. In his statement under Section 313 of Cr.P.C., the accused persons have not taken any specific defence except making bald denial of all the incriminating circumstances and furthermore, have taken a false plea of alibi.

14. Close scrutiny of the evidence makes it clear that on 28.6.2007 at about 11.30 am the appellants reached the field of deceased Nakulram carrying axe and club in their hands where he along with his sons PW-3 Ram Uraon and PW-4 Shyam Uraon was working. After reaching the field, appellant No.1 Dundlu first gave axe blow on the shoulder of the deceased as a result of which he fell down in the water and while he was trying to get up, he was again assaulted by appellant No.1 by axe on his head. When PW-3 Ram Uraon tried to intervene in

the matter he was assaulted by appellant No.2 Biganram and then by appellant No.1 also. PW-3 and PW-4 are eyewitnesses to the incident and they have duly supported the prosecution case. Medical report of the deceased also corroborates the eyewitnesses account. There is absolutely no evidence on record to suggest that the incident took place on a sudden quarrel or was the result of sudden and grave provocation on the part of the deceased party, rather from the evidence it reflects that the appellants reached the place of occurrence with the intention to commit murder of the deceased. The evidence also shows that the incident took place in the field of the deceased and as such, the question of right of private defence of property by the appellants does not arise and by no stretch of imagination, the case of the appellants would be covered either by Exception 2 or 4 of Section 300 of IPC. It is a clear cut case of murder as defined in Section 300 of IPC.

True it is that the fatal injury was caused by appellant No.1 to the deceased but at the same time, as discussed above, while PW-3 Ram Uraon was trying to intervene in the matter to save his father, it is appellant No.2 who prevented him from doing so by causing him injury on his head. Thus, taking the overall evidence of PW-3 & PW-4 into account coupled with the medical evidence, we are of the view that the trial Court was fully justified in convicting the appellants under Sections 302 and 323 of IPC with the aid of Section 34 of IPC.

15. For the reasons stated above, we are of the opinion that the prosecution has been successful in proving the guilt of the appellants on the basis of evidence adduced by it and the trial Court was fully

justified in convicting and sentencing the appellants under Section 302 and 323 with the aid of Section 34 of IPC. Accordingly, both the appeals being devoid of any substance are hereby dismissed.

Sd/
(Pritinker Diwaker)
Judge

Sd/-
(R.P. Sharma)
Judge

Khan