

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 730 of 2007

1. Dina, S/o Mangla Satnami, aged about 72 years.
2. Moti S/o Rasaha Satnami, aged about 62 years
3. Gangaram S/o Ramdayal Satnami, aged about 45 years
4. Kallu @ Kalyandas S/o Mansaram, aged about 52 years
5. Jangaliha S/o Sukalaha Satnami, aged about 46 years.
6. Bholaram, S/o Dina Satnami, aged about 42 years.
7. Radhe, S/o Dina Satnami, aged about 42 years.
8. Lakhan S/o Motilal Satnami, aged about 47 years.
9. Awadhram S/o Motilal, aged about 42 years.
10. Lachchan S/o Jhhaman Satnami, aged about 43 years.

All Are R/o Village Malpuri Khurd, P.S. Nandini, Distt.-Durg, C.G.

**---- Appellants
(In Jail)**

Versus

- State Of Chhattisgarh, through Police Station Nandini, District Durg (CG)

---- Respondent

For Appellants	:	Shri Ashok Verma, Advocate
For Respondent	:	Shri V.A. Goverdhan & Shri R. Tamaskar, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement

Per P. Diwaker, J

27/04/2017

1. This appeal arises out of the judgment of conviction and order of sentence dated 6.8.2007 passed by the 12th Additional Sessions Judge (Fast Track Court), Durg in S.T. No.30/1985 convicting the accused/appellants under

Sections 147, 304 (1) read with Section 149 of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo R.I. for 1 year and R.I. for 7 years & fine of Rs.1,000/-, with usual default clauses, respectively. Accused/appellants No.1, 2, 5 & 8 have also been convicted under Section 323 of IPC and sentenced to undergo RI for 6 months.

2. As per case of the prosecution, there were two groups in the village, one belonging to accused/appellant i.e. Satnami Group, and the other by deceased Narisingh i.e. Hindu Group. On 7.10.1984 at about 3.30 p.m. Krishna Kumar, Samaylal, Ghanshyam, Sarju had been passing from in front of the house of accused/appellant No.1 while going to their field for cutting the grass, accused/appellant No.1 asked them as to why they laughed and abused on seeing them. They responded that they are not laughing on him. At the same time, Narsingh (deceased), who was going towards his field, asked accused/appellant No.1 as to why he is abusing the boys. On this accused/appellant asked Narsingh as to why he is interfering in the matter and gave a lathi blow on his head. When Sarju, son of Narsingh, came to rescue of his father, he too was assaulted by accuse/appellant No.1 by lathi. On hearing commotion, members of both the parties rushed to the spot armed with various weapons and thereafter a free fight between the members of the both the groups had taken place in which members of both the parties sustained injuries on various parts of the body. On accounts of assaults, Narsingh & Sarju fell down and thereafter the accused persons went inside the house of accused/appellant No.1. Injured persons were taken to the hospital for treatment. Injured Narsingh was medically examined by the doctor (PW-9) vide Ex.P-5 on 8.10.1984. Injured accused/appellants No.1, 2, 3, 4 have also been medically examined. Report of the incident was lodged by village Kotwar (PW-12) which was entered into the roznamcha sanha.

Krishna Kumar (PW-1) also lodged report of the incident on 7.10.1984 itself based on which Dehati Nalishi (Ex.P-1) was recorded at Police Station Nandini Nagar and later on, FIR (Ex.P-1A) was registered on 8.10.1984 at 1.30 p.m. for the offence punishable under Sections 147, 148 & 307 IPC against the appellants. On 16.10.1984 injured Narsingh succumbed to the injuries during the course of treatment. Merg Intimation (Ex.P-14) was recorded. Inquest was conducted vide Ex.P-33 on 16.10.1984. Body was sent for post-examination which was conducted by Dr. D.L. Tamrakar (PW-7) vide Ex.P-4 and he noticed following injuries;-

- Semi circular stitched wound (9 stitches) over right tempo parietal region, similar in size 7 1/2".
- Stitched wound over occipital region (10 stitches)
- temporal parietal region; 2 1/2" x 1 1/2" bone piece was missing.
- Membrane congested, brain congested.

As per post mortem report Ex.P-3, the cause of death was coma due to head injury and duration of death was about 24 hours prior to the post-mortem examination. Statements of the witnesses under Section 161 CrPC were recorded.

3. After filing of charge sheet, the Court below framed the charges under Sections 147, 148, 149, 323, 307 & 302 IPC against the accused/appellants. The prosecution in order to bring home the charges levelled against accused/appellants had examined 21 witnesses in all. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication. One defence witness namely Dr. D.K. Thakur had been examined.
4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, convicted and sentenced the accused/appellants in the manner as described above.

5. Counsel for the appellants submits that;-

- manner of occurrence and the weapons used, as described by the alleged eyewitnesses, do not find support from the medical evidence.
- there had been a free fight because of faction rivalry between the parties and the factum of village faction rivalry has also been admitted by PW-3 & PW-4 in their statements.
- the appellants had been falsely implicated because of village factional rivalry which is apparent from the fact that the appellants were arrested on 8.10.1984 but there is no recovery of any weapon from their possession.
- the manner in which the incident took place and the members of both the parties sustained injuries was clearly indicative of a free fight between them and, therefore, none of the appellants could be convicted.
- only four injuries were noticed on the body of deceased, whereas assault is said to have been made by 13 persons. In a case of a free fight an accused can be made liable for his own act and not vicariously liable for the acts of others.
- the prosecution has failed to prove that the deceased died a homicidal death because the autopsy surgeon himself was not able to arrive at the decision for the cause of death.
- though the trial Judge has not held the appellants guilty under Section 147 IPC yet sentenced them under that section.
- there is no material to show that the appellants had shared the common object of committing the murder of deceased and as such their conviction with the aid of Section 149 is not maintainable.
- the incident occurred in the year 1984 and therefore if this Court

reaches to the conclusion that the appellants are guilty of the offence then the sentence imposed upon them may be reduced to the period already undergone by them.

6. On the other hand, counsel for the State has supported the impugned judgment. It has been argued by the State Counsel that in the case of conviction with the aid of Section 149 IPC, the prosecution is not required to prove overt act of each of the accused and forming of unlawful assembly itself is sufficient to prove the guilt of the accused. He further submits that present is the case where not only deceased Narsingh had been killed but grievous injuries have also been inflicted upon as many as six persons and all the injured witnesses have duly supported the prosecution case by deposing that it is the accused/ appellants who have caused injuries to them and the deceased. He further submits that even in a case of free fight license is not given to any of the parties to cause death of anyone and therefore the accused cannot escape from their liability only on the ground that it was the case of free fight.
7. We have heard counsel for the parties and perused the impugned judgment and record of the trial Court.
8. Krishna Kumar (PW-1) is the lodger of Dehati Nalishi (Ex.D-1). This witness has stated that on date of incident at about 3.30 p.m. when he along with Sanju & Ghanshyam was going to the field for cutting the grass, and as soon they reached near the school, accused Dina asked them as to why they used to laugh seeing him and when they tried to make him understand, he started abusing them. Meanwhile, deceased Narsingh came there and on being asked, they narrated the entire thing to him. Narsingh had asked accused Dina not to hurl abuses whereupon accused Dina asked Narsingh as to who are you to interfere. Thereafter accused Moti, Lakhan, Radhe, Bhola, Awadhram, Jungliha, Gangaram, Konda,

Kalyan & Laxman came out from the house of accused/appellant No.1. All of them were carrying stick except Bhola & Lakhan who were holding axe. All the accused persons went near Narsingh and started assaulting him by stick & axe and caused injuries on various parts of his body. He has further stated that when Sarju Singh, son of deceased Narsingh, tried to intervene, he too was assaulted by the accused persons. He has further stated that the accused persons have also assaulted Milan, Tikaram, Jhunau & Parmeshwar. He has further stated that when Narsingh & Sarju fell down and became unconscious after receiving injuries then the accused persons fled away and thereafter the persons present there took Narsingh & Sarju to their home. In the same evening at about 8.00 the police party arrived at the village and then he lodged the report of Ex.P-1. In the cross-examination this witness has admitted that a counter case was registered against him and 25 others for committing the offence of murder, however, he does not know whether Jhaman has been murdered or not. This witness has denied the factum of factional rivalry in the village. Despite lengthy cross-examination by the defence nothing incriminating, but for minor contradictions and omissions, could come on record and this witness has reiterated as to the manner in which the incident had taken place.

9. Almost similar statement has been made by Sarju (PW-2) who happens to be son of deceased and another injured eyewitness to the incident. He has stated in Para-4 that accused Lakhan had assaulted him by the sharp side of the axe.
10. Milan (PW-3) is also an injured eyewitness to the incident and he has also duly supported the prosecution case. This witness has specifically stated that he saw accused/appellant Dina, Radhe, Bhola, Moti, Lakhan, Awadhram, Konda, Kalyan, Gangaram, Jangliha, Mansa, Jagdish

assaulting Narsingh and others.

11. Niranjan (PW-4) is the person who upon hearing commotion reached on the spot and saw the incident. He has stated that accused Dina, Radhe, Konda & Moti assaulted him by stick, whereas accused Lakhan assaulted him by axe. He has further stated that on account of assaults by accused persons he became unconscious and therefore he does not know what had happened thereafter.
12. Tikaram (PW-5), Parmeshwar (PW-6) & Jhunau (PW-8) are the other witnesses who had received injuries in the said incident and they have duly supported the prosecution case.
13. Dr. D.L. Tamrakar (PW-7) is the person who conducted post-mortem examination over the body of deceased vide Ex.P-4. Dr. Gulab Chand Jain (PW-9) is the person who did the MLC of deceased vide Ex.P-5 on 8.10.1984. He also did the MLC of PW-2 to PW-6 & PW-8. This witness had also medically examined accused/appellant Nos.1, 2, 3, 4 & 6. Durga (PW-10) is the person who lodged the report Ex.P-12 immediately after the incident. Agrahij Ram Thakur (PW-14) is the Patwari who prepared the spot map of Ex.P-18. B.S. Thakur (PW-15), L.K. Diwan (PW-16), Chandra Prakash Shukla (PW-17), Someshwar Nath Yogi (PW-19), S.P. Tiwari (PW-20), Bhola Singh (PW-22) are the police persons who helped in the initial investigation. S.P. Singh (PW-18) is the investigating officer and he has duly supported the prosecution case.
14. Close scrutiny of the evidence makes it clear that admittedly there were two groups in the village and the relations between them were strained. On 7.10.1984 at about 3.30 p.m. due to misunderstanding of accused/appellant No.1 that members of rival group used to laugh and hurl abuses at him, some altercation and scuffle took place between accused/appellant No.1 & deceased and immediately thereafter the

accused/appellant No.1 along with other accused persons attacked and assaulted the deceased causing grievous injuries on various parts of his body which resulted in his death during the course of treatment. Incident was witnessed by injured eyewitness namely PW-2, 3, 4, 5, 6 & 8 and these witnesses have categorically stated it is the accused/appellants who had assaulted them and also the deceased by the axe and club. Evidence of the aforesaid witnesses finds corroboration from the medical evidence wherein it has been stated that cause of death was due to head injury caused by hard and blunt object. True it is that any injury by sharp side of the axe has not been noticed by the doctor conducting post mortem examination but at the same it is also come in the evidence of the autopsy surgeon that the injuries caused on the body of the deceased were sufficient in normal course to cause death of the deceased. Thus, mere absence of any injury by sharp edged weapon alone is not sufficient to discard the evidence of the injured eyewitnesses. Furthermore, on the basis of disclosure statement made by accused/appellants, certain bloodstained articles were recovered and there is no explanation from the accused/appellants as to how the blood stains are there in the articles seized from their possession. Since nothing has been brought on record by the defence to controvert the stand of the prosecution, this Court does not find any reason to disbelieve statements of injured eyewitnesses who have described the incident in a lucid manner. Thus, on the basis of evidence adduced by the prosecution, complicity of accused/appellants in commission of the offence stands proved beyond all reasonable doubt.

15. So far as the conviction of accused/appellants with the aid of Section 149 IPC is concerned, in the instant case there was long standing enmity between the two rival groups, one headed by accused/appellant No.1 and another by deceased Narsingh. On the day of incident a scuffle took

place between the accused/appellant No.1 & deceased Narsingh and immediately thereafter the accused persons (ten in number) armed with deadly weapons came to the scene of occurrence sharing the common object of causing grievous hurt to said Narsingh & others. Thus, it is apparent that the accused/appellants had formed an unlawful assembly with a common object to cause grievous hurt to the members of rival group specially to Narsingh, who just before the incident had asked accused/appellant No.1 not to hurl abuses. It is settled that once an unlawful assembly has come into existence, each member of the assembly becomes vicariously liable for the criminal act of any other member of the assembly committed in prosecution of the common object of the assembly. Thus, the conviction of accused/appellants with the aid of Section 149 IPC is proper and does not call for any interference.

Likewise, there is sufficient material on record to show that the accused/appellants formed an unlawful assembly armed with stick & axe and used the force to achieve the common object of that assembly and therefore finding recorded by the trial Court convicting the accused/appellants under Section 147 IPC is just and proper.

16. Now the question for consideration before this Court is whether the trial Court in the facts and circumstances of the case, was justified in holding the accused/appellants guilty under Section 304 Part-I IPC ?
17. Evidence available on record goes to show that on the date of incident when the deceased stopped accused/appellant No.1 from abusing his son Sarju (PW-2), some scuffle took place between them, accused/appellant No.1 went inside his house and came back with other accused persons and assaulted deceased Nar Singh and when said Nar Singh fell down and became unconscious after receiving injuries then the accused persons fled away. Thus, it is apparent that the occurrence has taken

place in the spur of moment, in the heat of passion upon a sudden quarrel and being so, the trial Court was justified in holding that present is a case of culpable homicide not amounting to murder. However, the Court below has fallen an error while holding them guilty under Section 304 Part I IPC. Considering the manner in which the incident took place and further considering the fact that there was no premeditation of mind and the accused/appellants have not taken undue advantage or acted in a cruel or unusual manner, it can be easily inferred that accused/ appellants did not have the intention to cause death of deceased, but they definitely had knowledge that such injuries were likely to cause death of deceased. Therefore, we are of the considered opinion that the offence committed by accused/appellants would come under Section 304 Part-II read with Section 149 IPC and not under Section 304 Part-I read with Section 149 IPC, as was done by the trial Court.

18. In the result, the appeal is allowed in part. Conviction and sentence of accused/appellants No.1, 2, 5 & 8 under Section 323 IPC are confirmed. Conviction and sentence imposed on the accused/appellants under Section 147 IPC are also confirmed. Conviction of the appellants under Section 302/149 of the IPC is altered to Section 304 Part-II read with Section 149 of the IPC and they are sentenced to undergo RI for 5 years.
19. Appellants are on bail, therefore, their bail bonds stand cancelled. They shall surrender forthwith to serve out the remaining period of sentence, failing which, the trial court is directed to take appropriate steps for sending them to prison to undergo the remaining period of sentence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

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