

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 633 of 2011

1. Babu Ram Sahu, aged about 48 years, S/o Pyari Ram,
2. Dilip S/o Babu Ram Sahu, aged about 27 years,
3. Bhikam S/o Babu Ram Sahu, aged about 25 years,
All Are R/o Village Kodhapar, P.S. Bidhechar, Distt.-Dhamtari,
C.G.

---- Appellants

Versus

- State Of Chhattisgarh through Police Station – Kurud, Distt.
Dhamtari (CG)

---- Respondent

For Appellants	:	Smt. Renu Kochar, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

26/07/2017

This appeal arises out of the judgment of conviction and order of sentence dated 4.8.2011 passed by Additional Sessions Judge, Dhamtari in ST No.13/2011 convicting the appellants under Sections 302/34 and 323 of IPC and sentencing them to undergo imprisonment for life, pay a fine of Rs.500/- and RI for one year with default stipulation respectively.

02. As per prosecution case, the land in question was being sown by the accused/appellants for the last three years. On the date of incident the complainant party asked appellant No.1 Baburam to vacate the said field but instead of vacating the field, the accused/appellants first abused PW-5 Bhuneshwar and other family members and asked them to go away from the field and thereafter, appellant No.1 Baburam gave

axe blow on the head of Gokul (PW-8). When Santosh (deceased) and Dhansingh (PW-6) intervened they were also assaulted by the accused persons by handle of spade and handle of pickaxe. Unnumbered FIR (Ex.P/8) was registered on 9.1.2011 at the instance of PW-5 Bhuneshwar at Police Outpost – Birejhar under Sections 294, 506, 323, 34 of IPC against the accused/appellants and thereafter, numbered FIR (Ex.P/14) was recorded on the same day at Police Station – Kurud. During treatment, injured Santosh succumbed to his injuries in the hospital and then numbered merg Ex.P/13 and numbered merg Ex.P/12 were recorded. Inquest on the dead body was conducted vide Ex.P/11 on 10.1.2011 and thereafter the body was sent for postmortem which was conducted on the same day by PW-18 Dr. CL Sahu vide Ex.P/20 who noticed multiple abrasions on fingers, dorsal, abdomen and fracture of frontal and parietal bone and that there was excessive extra dural subdural and intraparenchymal hemorrhage. In his opinion, the cause of death was head injury, extra dural subdural and intraparenchymal hemorrhage leading to shock and death. While framing charge, the trial Judge framed charge against the accused persons under Sections 294, 506B on three counts, 323/34 on four counts and 302/34 of IPC.

03. So as to hold the accused persons guilty, the prosecution examined 19 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. In their defence, they examined three witnesses.

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 that present is a case of private defence of property as when the appellants were working in their field, the complainant party reached there, asked appellant No.1 to vacate the field and then some altercation took place between them and during that if some injuries were caused to the deceased which unfortunately resulted in his death, the appellants cannot be held liable for conviction under Section 302 of IPC. Alternatively, it has been argued that even if the entire prosecution case is taken as it is, the act of the appellants would be covered by Exception 4 to Section 300 of IPC i.e. culpable homicide not amounting to murder and they can, at best, be convicted under Section 304 Part-I or II of IPC. She further submits that as the appellants are in jail since 9.1.2011, after conversion of their conviction into one under Section 304 Part-I or II, they may be sentenced to the period already undergone by them.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the trial Court after due appreciation of the entire evidence has rightly convicted and sentenced the appellants and there is no illegality or infirmity in it for interference by this Court.

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

08. PW-5 Bhuneshwar, lodger of FIR, has stated that he knew the accused persons and the deceased was his elder brother. He has stated that the land in question was sowed by his family for one year

and thereafter they stopped sowing the said land and then it was being sowed by appellant No.1 Baburam. On 9.1.2011 when the appellants were leveling the field, he along with Gokul, Jageshwar, Heera, Mamta, Bunehwari went there, asked Baburam to vacate the field, on which Baburam refused and told that he has got lease of the said field. When they demanded the documents pertaining to lease, the accused persons instead of showing such documents hurled abuses at them, threatened them of life and thereafter accused/appellant Baburam assaulted by axe on the head of his father Gokul, appellant Bhikham inflicted injury by the handle of pickaxe on his (this witness) head and appellant Dilip caused injury to Jageshwar by handle of pickaxe. When Santosh (deceased) intervened he was first assaulted by appellant Baburam by handle of spade on his head, appellant Bhikham by handle of pickaxe on his head and appellant Dilip by handle of pickaxe on his abdomen and chest. Thereafter when Dhansingh reached there, all the three accused/appellants assaulted him on his hands, legs and waist and then fled from the spot. The incident was witnessed by Heera, Bhuneshwari, Mamta, Jageshwar and Gokul also. Injured Santosh was admitted in District Hospital, Dhamtari where he expired during treatment. In cross-examination he has denied all the adverse suggestion and the defence has failed to elicit anything from him to make his evidence untrustworthy or doubtful. Similar is the statements of other eyewitnesses PW-6 Dhansingh, PW-8 Gokul, PW-9 Jageshwar and PW-13 Heerabai.

09. PW-19 Dr. US Navratna medically examined Bhuneshwar (PW-5) vide Ex.P/15A, Jageshwar (PW-9) vide Ex.P/17A, Dhansingh (PW-6) vide Ex.P/18A and Gokul (PW-8) vide Ex.P/19A and noticed simple

injuries on their person except Dhansingh, which were caused by hard and blunt object. He had also examined Santosh (deceased) vide Ex.P/16A and considering his serious condition referred him to higher center. PW-18 Dr. CL Sahu conducted postmortem on the body of deceased Santosh on 10.1.2011 vide Ex.P/20A and noticed multiple abrasions on fingers, dorsal, abdomen and fracture of frontal and parietal bone and that there was excessive extra dural subdural and intraparenchymal hemorrhage. In his opinion, the cause of death was head injury, extra dural subdural and intraparenchymal hemorrhage leading to shock and death. He had also examined the weapons of offence seized and sent to him by the police and in his opinion, the injuries suffered by the deceased could be caused by the weapons so seized vide Ex.P/26A. PW-16 JS Thakur, investigating officer, has duly supported the prosecution case.

10. DW-1 Jairam Sahu, DW-2 Ghasiyaram Sahu and DW-3 Yamuna Sahu have been examined by the defence to prove that it is the complainant party who were aggressor and first opened the assault on the accused persons. However, DW-1 and DW-2 in their cross-examination have denied having witnessed the incident.

11. Close scrutiny of the evidence makes it clear that initially the land in question, which was a government land, was in possession of the complainant party and they were sowing the same, but for the last about three years, it was being sowed and cultivated by the accused/appellants. On the fateful day when the complainant party reached the said field where the appellants were working and asked them to vacate the field, appellant No.1 Baburam refused to do so on

the ground that they have got lease of the said field but when they asked for showing such documents, instead of showing any such document they hurled abuses at them, threatened them of life and thereafter started inflicting injuries on them by axe and handle of pickaxe and spade. In the meanwhile, when deceased Santosh came to their rescue, he too was assaulted by the accused persons by the said weapons on his head, abdomen and chest as a result of which he suffered grievous injuries and taken to hospital where he succumbed to the same during treatment. Eyewitnesses to the incident i.e. PW-5 Bhuneshwar, PW-6 Dhansingh, PW-8 Gokul, PW-9 Jageshwar and PW-13 Heerabai have duly supported the prosecution case and stated as to the manner in which the deceased was assaulted by the accused/appellants and members of the complainant party i.e. Gokul (PW-8), Bhuvneshwar (PW-5) and Jagdish were also caused injuries by them. A counter case was also registered against the complainant party under Crime No.12/2011 for the offence under Sections 147, 294, 506 and 323 of IPC. The evidence of the eyewitnesses also stands corroborated from the medical reports of the injured as also the postmortem report of the deceased, according to which corresponding injuries were noticed on the persons of the injured and the deceased. Thus, from the unrebutted evidence of the eyewitnesses duly supported by the medical evidence, complicity of the appellants in commission of the crime stands proved beyond all reasonable doubt.

12. The only question which remains to be considered is whether the case of the appellants is covered by any of the exceptions to Section 300 of IPC i.e. culpable homicide not amounting to murder.

13. The evidence goes to show that there was dispute between the parties with regard to possession of the land, which was a government land, earlier the same was being cultivated by the complainant party and for the last about three years, it was being sown and cultivated by the accused/appellants. On the date of incident when the appellants were working in the said field, the complainant party reached there and asked them to vacate the said field which resulted in fierce fight between them culminating into death of Santosh and simple injuries to members of the complainant party. Thus, keeping in mind the overall facts and circumstances of the case giving rise to the incident, it cannot be said that the appellants assaulted the complainant party in exercise of right of private defence of their property firstly because the land in question was the government land and secondly, as it has come in the evidence of the prosecution witnesses, the complainant party were not having any weapons so as to infer that there was such an imminent danger of their so-called property where the appellants were left with no other option but to open assault on them in such a manner resulting in death of the deceased. However, at the same time, regard being had to the evidence on record, it would be hazardous to hold that the appellants were having premeditation to commit murder of the deceased, rather it appears that the incident occurred all of a sudden in the heat of passion when the complainant party objected to the possession of the appellants over the land in question. Being so, the act of the appellants is covered by Exception 4 to Section 300 of IPC. Further, considering the manner in which the appellants assaulted the deceased resulting in fracture of frontal and parietal bone and excessive extra dural subdural and intraparenchymal hemorrhage,

which proved to be his cause of death, it can safely be held that while inflicting injuries on the deceased, though they had no intention to cause his death but had the knowledge that infliction of such injuries would surely result in his death. In this view of the matter, they are definitely liable to be convicted under Section 304 Part-II read with Section 34 of IPC.

As regards the quantum of sentence, considering the fact that the incident is of the year 2011 and the appellants have already remained in jail for the about 6 ½ years, we are of the opinion that ends of justice would meet if they are sentenced to the period already suffered by them and directed to pay total compensation of Rs.25,000/- to the widow and if she is not surviving, to father of the deceased Gokul (PW-8).

14. In the result, the appeal is allowed in part. While maintaining conviction and sentence of the appellants under Section 323 of IPC, their conviction under Section 302/34 of IPC is altered to Section 304 Part-II of IPC and they are sentenced to the period already undergone by them. They are further directed to deposit a total sum of Rs.25,000/- with the concerned trial Court which shall be payable as compensation under Section 357 of Cr.P.C. to the widow of the deceased and if she is not surviving, then to father of the deceased Gokul (PW-8) after due verification by the trial Court.

It is made clear that the appellants would be entitled to get benefit of this order only after deposit of the compensation amount.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(R.P. Sharma)
Judge