

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 741 of 2014

- Birbal Ram Yadav S/o Mohit Ram Yadav Aged About 26 Years
R/o Village Thor, Present R/o Keshavpur, PS Gandhinagar Distt.
Surguja C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through PS Gandhinagar, Distt. Surguja
C.G.

---- Respondent

For Appellants	:	Shri PK Verma, Sr. Advocate with Shri Sumit Verma, Advocate.
For Respondent/State	:	Shri Vivek Sharma, G.A.

And

CRA No. 849 Of 2014

1. Amar Sai S/o . Bhuneshwar Ram Bargah Aged About 22 Years
2. Shankar @ Ravishankar S/o . Late Ramsai Aged About 33 Years
3. Jagatram S/o Late Gambhira Ram Bargah Aged About 50 Years
4. Ishwar Prasad Yadav S/o Late Ramsai Ram Aged About 31
Years
5. Muneshwar Ram S/o Budhanram Bargah Aged About 45 Years
6. Ramlal S/o Late Gambhira Ram Bargah Aged About 40 Years
7. Prem Kumar S/o Late Ramsai Ram Aged About 26 Years

Appellants No. 1 to 7 all resident of Village Keshavpur, PS
Gandhinagar, Tehsil Ambikapur, Civil and Revenue District
Surguja, CG.

8. Dhaneshwar Prasad S/o Padum Ram Bargah Aged About 40
Years R/o. Bhitthikala, Mahuapara, PS Ambikapur, Civil & Rev.
Ditt. Surguja (C.G.)
9. Subhash Yadav S/o Ramlal Yadav Aged About 18 Years R/o.Vill.

Keshavpur, P.S. Gandhinagar, Teh. Ambikapur, Civil & Rev. Ditt. Surguja (C.G.)

---- Appellants

Vs

- State Of Chhattisgarh Through: SHO, P.S.Gandhinagar, Teh. Ambikapur, Civil & Rev. Distt.Surguja (C.G.)

---- Respondent

For Appellants	:	Shri RS Marhas, Advocate.
For Respondent/State	:	Shri Vivek Sharma, G.A.

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

Judgment On Board By Justice Pritinker Diwaker

12/05/2017

As these two appeals arise out of the judgment of conviction and order of sentence dated 25.6.2014 passed by the First Additional Sessions Judge, Surguja (Ambikapur) in ST No.464/2009 convicting them under Sections 148, 324/149, 302/149 of IPC and sentencing them to undergo RI for three years, RI for three years and imprisonment for life and to pay a fine of Rs.5000/- with default stipulation respectively. Though the appellants have been convicted under Section 147 of IPC also, but no separate sentence has been awarded thereunder.

02. Brief facts of the case are that on the day of Rakshabandha i.e. 5.8.2009 deceased Amit Kumar Vaishnav, Sanjay Kumar and Ramesh Kumar had gone to the house of accused No.3 Jagatram and there all the accused persons except Accused No.5 Muneshwar and Accused No.9 Dhaneshwar Prasad, consumed liquor and ganja together. It is

said that in the house of Jagatram there was some hot talk between accused No.1 Amar Sai and the deceased, the said dispute was pacified by PW-2 Sanjay Kumar and accused No.7 Premkumar. From the house of Jagatram, all these persons went to the house of accused No.5 Muneshwar and there also they consumed liquor and it is said that all the accused persons including accused No.9 Dhaneshwar assaulted deceased Amit Kumar Vaishnav by sword, club and axe. Accused Amar Sai, Muneshwar and Dhaneshwar assaulted by sword, accused Jagatram & Shankar by axe whereas accused Premkumar assaulted by club. When Sanjay Kumar and Ramesh intervened, they too were assaulted by them. On the report of Muneshwar Das (PW-3), Dehati Nalishi Ex.P/5 was registered on 5.8.2009 at 11.30 pm naming 9 accused persons except A-9 Dhaneshwar. Immediately thereafter Dehati Merg Intimation Ex.P/4 was registered and FIR (Ex.P/34) was also registered on 6.8.2009 against 9 accused persons except A-9 Dhaneshwar under Sections 147, 148, 149, 302 of IPC and Section 25 of the Arms Act. Numbered merg intimation Ex.P/35 was recorded on 6.8.2009. Inquest over the dead body was conducted on 6.8.2009 vide Ex.P/2 and thereafter the dead body was sent for postmortem which was conducted on the same day by PW-14 Dr. KR Tekam vide Ex.P/55. He noticed incised wound on his back, cutting of left scapula clavicle and 1st, 2nd, 3rd & 4th rib and left hand's humerus head was also cut, there was cut injury on the left side of abdomen from which intestine had come out, incised wound on the left elbow, forehead, right shoulder, right side of head and on left hand and further he noticed cutting of radio ulna bone of left hand. In his opinion, the cause of death was shock due to excessive hemorrhage caused by multiple

injury leading to cardio-pulmonary arrest and that the nature of death was homicidal.

In the meanwhile, a counter case was lodged by Lalkunwar, wife of accused No.9 Dhaneshwar against Sanjay Kumar and Ramesh under Sections 294, 506, 324/325, 34 of IPC, however, in that case they have been acquitted.

After filing of charge sheet, the trial Court framed charges under Sections 147, 148, 302/149, 324/149 of IPC against the accused/appellants.

03. So as to hold the accused/appellants guilty, the prosecution examined 17 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 9 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 as under:

(i) that it is the other party headed by deceased Amit Kumar who was aggressor and they first came to the house of Jagatram (A-3) and then they also went to the house of Muneshwar (A-5) where they first caused injury to Lalkunwar (DW-1) and when the accused/appellants tried to save DW-1 from the clutches of Sanjay and Ramesh, there was some scuffle between both the parties in which Amit Kumar suffered

some injuries which unfortunately resulted in his death.

(ii) even if the entire prosecution case is taken as it is, the accused/appellants cannot be convicted under Section 302 of IPC because as per the prosecution case itself, first in the house of Jagatram there was some hot talk between accused Amar Sai and the deceased and then in the house of accused Muneshwar, the scuffle took place between the accused party and the complainant party. As such, the incident occurred without any premeditation on the spur of moment in the heat of passion and therefore, the appellants can at best be held guilty under Section 304 Part-I of II of IPC and not under Section 302 of IPC.

(iii) they submit that the appellants are in jail for the last about 8 years and therefore, after conversion of their conviction into one under Section 304 Part-I or II, they may be sentenced to the period already suffered by them.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.

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

08. PW-1 Ramesh Kumar, eyewitness to the incident, while supporting the prosecution case has stated that on the day of Rakshabandhan i.e. 5.8.2009 he along with Sanjay had gone to the house of Narendra where they met deceased Amit, brother of Narendra and then all of

them went to the house of Jagat (A-3). There they consumed liquor along with all the accused persons except A-5 Muneshwar and A-9 Dhaneshwar. He has further stated that in the house of Jagat, there was some quarrel between accused/appellant No.1 Amar Sai and deceased Amit, however, the same was pacified by him and other persons. From the house of Jagat, all of them went to the house of Muneshwar (A-5) where Dhaneshwar (A-9), brother-in-law of Muneshwar, was also there. There also they all consumed liquor, however, the quarrel between Amar Sai (A-1), Muneshwar with the deceased again occurred and then the accused persons Amar, Muneshwar and Bhunehswar took out their swords and caused injuries to the deceased. The accused persons Jagat and Shankar assaulted by tangi and others assaulted the deceased by hands and fists. He states that somehow he and Sanjay escaped from the spot and when they again went to the place of occurrence, they saw the accused persons throwing the deceased beneath a mango tree.

In cross-examination, he remained very firm and rather clarified the manner in which the incident took place and the deceased was done to death by the accused persons.

09. PW-2 Sanjay Ram, injured eyewitness, has made almost similar statement as has been made by PW-1. He states that in the incident he also suffered injuries. PW-3 Muneshwar Das Vaishnav, PW-4 Puneshwar Das and PW-5 Narendra Kumar Vaishnav are the witnesses who accompanied the deceased while he was being taken to hospital and before whom oral dying declaration was made by the deceased to the effect that it is the accused/appellants who caused him injuries by sword, tangi and hands & fists. PW-6 Sukhram and PW-7

Kundanram, witnesses to memorandum and seizure, have turned hostile. PW-8 Dr. Anupam Minj had medically examined injured Sanjay (PW-2) vide Ex.P/30 and noticed simple injuries on his person caused by some sharp edged weapon. He also examined DW-1 Lalkunwar vide Ex.D/4 & D/5 and noticed a cut wound on her head caused by some sharp edged weapon, which was simple in nature. PW-13 Tej Nath Singh, Sub Inspector, did initial part of investigation.

10. PW-14 Dr. KR Tekam conducted postmortem on the body of the deceased on 6.8.2009 vide Ex.P/55. He noticed incised wound on his back, cutting of left scapula clavicle and 1st, 2nd, 3rd & 4th rib and left hand's humerus head was also cut, there was cut injury on the left side of abdomen from which intestine had come out, incised wound on the left elbow, forehead, right shoulder, right side of head and on left hand and further he noticed cutting of radio ulna bone of left hand. In his opinion, the cause of death was shock due to excessive hemorrhage caused by multiple injury leading to cardio-pulmonary arrest and that the nature of death was homicidal. PW-17 JS Saggu, investigating officer, has duly supported the prosecution case.

11. Defence witnesses have stated that it is the complainant party who was the aggressor and after entering the house of Muneshwar, they caused injury to DW-1 Lalkunwar, Dhaneshwar and Muneshwar.

12. Close scrutiny of the evidence makes it clear that on the day of Rakshabandha i.e. 5.8.2009 deceased Amit Kumar Vaishnav, Sanjay Kumar and Ramesh Kumar had gone to the house of accused No.3 Jagatram where all the accused except Accused No.5 Muneshwar and Accused No.9 Dhaneshwar Prasad, consumed liquor and ganja

together and thereafter, some hot talk took place between accused No.1 Amar Sai and the deceased, which was later on pacified with the intervention of PW-2 Sanjay Kumar and accused No.7 Premkumar. Thereafter, all of them went to the house of accused No.5 Muneshwar, consumed liquor there and then again some dispute cropped up between both the party and the accused persons started assaulting deceased Amit Kumar by sword, club, axe and hands & fists. When Sanjay Kumar and Ramesh intervened, they too were assaulted by them. PW-1 Ramesh Kumar and PW-2 Sanjay Ram have categorically stated as to the manner in which the incident occurred and the deceased was done to death by the accused persons. Their evidence finds due support from the evidence of PW-3 Muneshwar Das Vaishnav, PW-4 Puneshwar Das & PW-5 Narendra Kumar. As per their evidence, they were accompanying the deceased while he was being taken to hospital and before them oral dying declaration was made by the deceased that he was assaulted by the accused/appellants by means of sword, tangi and hands & fists. The evidence of the above witnesses further gets strengthened from the medical evidence of the autopsy surgeon PW-14 Dr. KR Tekam who noticed corresponding injuries on the person of the deceased and opined that the cause of death was shock due to excessive hemorrhage caused by multiple injury leading to cardio-pulmonary arrest and that the nature of death was homicidal. Thus, in view of above unrebutted ocular and medical evidence on record, complicity of the appellants in commission of the offence stands established beyond all reasonable doubt.

13. The next question which arises for consideration of this Court is whether the act of the accused/appellants makes them liable for

conviction under Section 302 of IPC or is covered by any of the exceptions of Section 300 of IPC.

14. From the overall evidence it is apparent there was no premeditation on the part of the accused/appellants and the incident occurred on the spur of moment while all of them were highly intoxicated. In the said incident, the accused party also suffered some injuries and a counter case was lodged by Lalkunwar (DW-1), wife of accused No.9 Dhaneshwar against Sanjay Kumar and Ramesh under Sections 294, 506, 324/325, 34 of IPC, however, in that case they have been acquitted. Thus, keeping in view all the facts and circumstances of the case giving rise to the unfortunate incident leading to death of the deceased, we are of the opinion that present is a case which occurred all of a sudden in the heat of passion without there being any premeditation on the part of the appellants. Being so, it is covered by Exception 4 of Section 300 of IPC i.e. culpable homicide not amounting to murder. However, considering the manner in which the appellants assaulted the deceased with deadly weapons also, there is no denying the fact that though they had no knowledge that the injuries being inflicted by them would result in his death, but were having intention to cause his death by causing such bodily injuries. In these circumstances, the act of the accused/appellants makes them liable for conviction under Section 304 Part-I/149 of IPC and the trial Court has gone wrong while holding them guilty under Section 302/149 of IPC. However, as regards conviction of the appellants under Sections 147, 148 and 324/149 of IPC, the same being based on proper appreciation of the evidence on record deserves to be and is hereby affirmed.

15. In the result, the appeals are allowed in part. While maintaining conviction and sentence of the appellants under Sections 147, 148, 324/149 of IPC, their conviction under Section 302/149 of IPC is altered to one under Section 304 Part-I/149 of IPC and they are sentenced to undergo RI for 10 years under this section. Needless to say, all the sentences shall run concurrently. They are reported to be in jail, therefore, no further order regarding their arrest etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge