

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 556 of 2002**

1. Ram Khilawan S/o Manrakhan aged about 31 Years Cultivator, R/o Village Khandsara, O. P. Khandsara, P. S. Bemetara, Distt. Durg Chhattisgarh, District : Durg, Chhattisgarh
2. Ram Prasad S/o Manrakhan aged about 34 Years Cultivator, R/o Village Khandsara, O. P. Khandsara, P. S. Bemetara, Distt. Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Appellants.**Versus**

- State of Chhattisgarh Through P. S. Bemetara, Distt. Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Respondent

For Appellants	:	Mr. Sudhir Verma, Advocate
For respondent/State	:	Ms. Tripti Rao, Panel Lawyer

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

Oral Judgment**Per Ram Prasanna Sharma, J****(20-2-2018)**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 24-4-2002 passed by the Second Additional Sessions Judge (FTC), Bemetara, Sessions Division Durg (CG) in ST No. 63/1997 wherein the said court convicted the appellants under Section 302 read with Section 149 of IPC for committing murder of one Shatrughan and sentenced them to

undergo RI for life and fine of Rs.2,000/-; under Section 323 read with Section 149 of IPC for causing voluntary injury to Gokul, Teekaram, Ashok and Rohit and sentenced them to undergo RI for three months; and under Section 148 of IPC and sentenced them to undergo RI for three months with default stipulations.

2. In the present case, name of the deceased is Shatrughan and name of the injured persons are Gokul, Teekaram, Ashok and Rohit. As per prosecution case, appellants and complainant side are relatives and there is subsisting land dispute between them. Some news was published in daily newspaper regarding character of Vimla who is sister of the appellants. It is alleged that injured Gokul is correspondent of the said newspaper, therefore, the appellants and other co-accused persons entered into the house of Gokul Prasad and used abusive language against him in his absence and when Gokul Prasad returned to home, his wife informed him about the incident. Gokul Prasad informed his brother Shatrughan. When Gokul Prasad and his brother came out of the house, appellants/accused assaulted them by rods and clubs and when Teekaram, Ashok and Rohit intervened, they also assaulted them. The matter was reported to Police Station Bemetara and first information report vide Ex.P/1 was lodged. Injured person were medically examined. Injured Shatrughan later on succumbed to the injuries. The

mater was investigated and charge sheet was filed and after completion of trial the trial Court has convicted the appellants as mentioned above.

3. Charge-sheet was filed against the present two appellants and three other persons namely Rajendra, Mohan, and Manharan. During trial Manharan died and during pendency of appeal, Rajendra and Mohan died. Out of five persons charge sheeted, now this appeal is being heard for present two appellants.

4. Learned counsel appearing for the appellants submits as under:

- i) Members of the complainant party namely Ashok, Rohit, Mohanlal, Gokul Prasad, Teekaram and Bhupendra were also charge-sheeted for commission of offence under Sections 307 and 323 read with Section 149 of IPC for same incident and they were aggressors of the incident but the trial Court overlooked right of private defence of the present appellants and committed grave error of law.
- ii) Shatrughan fell down before the house of Motilal which shows that the other side had started quarrel but the trial Court completely failed to evaluate the evidence brought before it. Though it is stated by the witnesses that Mohan was having one rod and Ram Khilawan was having club, but there is no seizure of these articles which shows that the case of the prosecution is doubtful.

- iii) Only one club and one bat were seized from two accused persons, therefore, it is clear that rest of the three persons were not having any arms in their possession, therefore, it is not a case of showing common object. Section 148 of IPC is attracted when persons of unlawful assembly had dangerous weapons in their hands, but no deadly weapon is seized, therefore, the finding regarding Section 148 of IPC is not in the fitness of factual matrix and legal aspect of the matter. It is a case of free fight and there is no pre-meditation and the appellants have right of private defence, therefore, they cannot be convicted.
- iv) As per version of medical expert, who conducted autopsy of Shatrughan, death is caused due to head injury and as per statements of the witnesses, Appellant Ram Prasad struck lathi on the head of deceased and other appellants struck on other parts of the body, therefore, it is not a case of commission of murder.

5. On the other hand, learned State counsel submits that the finding arrived at by the trial Court is based on admissible evidence on record and same is not liable to be interfered while invoking appellate jurisdiction of the appeal.
6. We have heard learned counsel for the parties and perused the material on record.

7. To substantiate the charge prosecution has examined as many as sixteen witnesses. To nullify the charge, defence has examined one witness.

8. Dr. P.K. Bajpai (PW/10) examined Teekaram, Gokul, Ashok and Rohit on 11-11-1996 and found simple injuries on their bodies. He also examined Shatrughan on the same day and noticed the following injuries.

- 1) Lacerated wound in the size of 2 x 3/4" over lower deep on upper part of right side forehead, bleeding present, advised x-ray skull.
- ii) Contusion 3x1" placed obliquely at middle of post armpit of right fore arm.
- lii) Tender swelling of 1x1" on upper third of post aspect of left fore arm
- iv) Tender swelling of 1x1" on post aspect of left palm below left index finger.
- v) Contusion of 2x1" on post aspect of left shoulder region.

9. Dr. Praveen (PW/14) performed autopsy on the body of deceased Shatrughan on 11-11-1996 at about 11.35 am and noticed the following injuries.

- i) Fracture in right finger at metocarpo pharyngeal joint
- ii) Fracture in right patella
- iii) Abrasion in the size of 7.5 cm x 5 cm over

right thigh lower 1/3 rd anterior aspect.

- iv) Lacerated wound in the size of 5 cm x 2.5 cm skull bone deep over skull, right parietal region, vertically placed.
- v) On removing scalp layer there was diffuse blood clot (hematoma) found over vertex and right fronto parietal region of skull.
- vi) There was depressed transverse fracture of skull right side starting from in front of vertex and extending down words to middle of the basis of middle cranial fossa of skull right side.
- vii) On opening skull bone there was diffuse extra-dural and subdural hematoma found more on right fronto parietal region.
- viii) Right anterior -inferior region of brain matter lacerated in the size of 3 cm x 2 cm
- ix) Dark clotted blood found in cranial cavity.

He opined that cause of death is hemorrhage and shock resulting from head injury.

10. As per version of Gokul Prasad (PW/1), Mohan was having rod, Rajendra was having bat, Ram Khilawan and Ram Prasad were having clubs and they assaulted Shatrughan and Rohit Kumar who is son of Shatrughan. As per version of this witness, Ram Prasad assaulted his father Shatrughan on head by club and others assaulted by bat and clubs. Ashok Kumar (PW/4) deposed that Mohan was having a rod, Rajendra was having a bat and Ram Khilawan and Ram Prasad were having clubs. He

deposed that Mohan assaulted Shatrughan by rod on his head and others assaulted by clubs. PW/9 Sudama Bai made general statement that accused persons assaulted Shatrughan. PW/12 Teekaram deposed that Rajendra assaulted Shatrughan by bat on his head and others assaulted him by clubs. From the evidence of all witnesses though presence of the appellants is established but it is not established in one voice that any of them assaulted on head of the deceased.

11. From the oral evidence and the evidence of medical expert, it is established that one injury was caused on the head of Shatrughan and other injuries were caused on non-vital parts of his body. Now the point for consideration is whether the act of the appellants falls within the ambit of Section 302 of IPC for commission of murder of Shatrughan.
12. For establishing offence of murder, prosecution has to establish facts as mentioned in Section 300 of IPC which may be read as under.

“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder,

(i) if the act by which the death is caused is done with the intention of causing death, or—

(ii) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

—

(iii) If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(iv) If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid”

For commission of offence under Section 304 Part I or Part II of IPC and Section 307 of IPC, intention of the culprit has to be established as mentioned above.

13. It is clear from the evidence that the deceased was assaulted only once on the head either by bat or any other article by only one person and others have not assaulted on vital parts of the body of deceased which shows that they have no intention to cause death of the deceased. In any case, death of injured is different and intention to cause death is different. Merely because one has died in consequence of injury, it cannot be said that there was intention to cause death.

14. From the facts and circumstances of the case, we are of the view that intention of the present appellants, who are the remaining two accused persons out of five, caused grievous hurt by means of club but at any rate they have no intention to kill the deceased. When intention to cause death is not proved, voluntarily causing grievous hurt by club is punishable under Section 326 of IPC and their conviction under Section 302 of IPC is not sustainable. For making unlawful assembly and for causing simple injuries to persons as mentioned above, we are in agreement with the view expressed by the trial Court and conviction of the appellants under Sections 148 and 323/149 of IPC is hereby affirmed. Conviction of the appellants under Section 302 of IPC is set aside and instead they are convicted under Section 326 of IPC..

15. Heard on the point of sentence:

Appellant Ram Prasad was in custody from 13-11-1996 to 2-4-1997 and again from 24-4-2002 to 8-7-2004 which comes out nearly 2 years and 8 months. Appellant Ram Khilawan was in custody from 13-11-1996 to 2-4-1997 and again from 24-4-2002 to 23-9-2005 which comes to nearly 3 years and 10 months. They have already suffered full term for other offences. The appellants are, therefore, convicted under Section 326 of IPC and are sentenced for the period already undergone by them. Fine amount imposed by the trial Court shall remain intact. Now

the appellants are reported to be on bail and their bail bonds shall continue for a period of six months in view of Section 437-A of Cr.P.C.

16. Accordingly, the appeal is partly allowed to the extent indicated above.

Sd/-

Judge
(Prashant Kumar Mishra)

Sd/-

Judge
(Ram Prasanna Sharma)

Raju