

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.856 of 1999**

1. Kaliram, S/o. Chandu Satnami, aged 73 years, (at the time of incident he was 60 years) **(Deleted)**
2. Bhajan alias Lachhiram, son of Kaliram, aged 50 years, (at the time of incident 37 years)
3. Teerthram, S/o. Kaliram, Aged 48 years, (at the time of incident 35 years)

All are residents of Barbatpur, Police Station Lormi, District Bilaspur (CG)

---- Appellants

**Versus**

- The State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

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For the appellants : Shri Ranbeer Singh Marhas, Advocate  
 For the respondent/State : Shri Bhaskar Payashi, Panel Lawyer

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**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****10.4.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 10.3.1999 passed by Additional Sessions Judge, Mungeli, Session Division Bilaspur (CG) in Sessions Trial No.296/1987 wherein the said Court convicted the appellants under Section 304 Part-II read with Section 34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for ten years, for committing culpable homicide not amounting to murder of one Sadwa on 26.5.1986 at 7.45 am at Village Chandli.

2. In the present case, name of the deceased is Sadwa. As per the prosecution story, Rekham had taken loan of Rs.1500/-

from Kaliram and returned the same except Rs.100/-. It is alleged that on 24.5.1986 Kaliram demanded refund of Rs.500/-and Rekhrum has stated that only Rs.100/- is left for refund and there was some scuffle between them in this regard. Thereafter on 26.5.1986 Kaliram along with his sons and other accused persons abused and assaulted Rekhrum, Sukhelal, Santhlal and Bhaguram by club. On hearing the scuffle, Sadwa, father of Rekhrum, came there, he was also beaten by Kaliram and others by club. The matter was reported to Police Station Lapur. All the injured were sent to Primary Health Centre, Mungeli. Injured Sadwa died in the hospital. Autopsy on Sadwa was conducted by Shri SS Sisodia (PW-22) on 26.5.1986 at 4.30 pm, and noticed following injuries.

- (1) On left eye both eyelids swollen, bluish black, subconjunctival hemorrhage present.
- (2) Lacerated wound on left parietal region of 8cm x 20.5 cm, blood clot present, injury bone deep

As per the opinion of the medical expert, cause of death is brain injury and duration of death is since 6 hours of the examination. He further opined that the injuries were antemortem and nature is homicidal.

**3.** Now the point for consideration is as to who caused head injury to deceased Sadwa. To substantiate the charges, the prosecution has examined as many as 23 witnesses. Hicharam (PW-1), Dr. NK Soni (PW-2), Bhagvat (PW-3), Ambika Prasad

Sharma (PW-4) and Jangi (PW-5) have assisted the prosecution during investigation after registration of FIR.

4. As per the version of Rekhram (PW-6), claiming to be the eyewitness of the incident, Kaliram caused head injury to Sadwa by club. Though he has stated that appellants Bhajan and Teerthram also assaulted but his version is vague and it is also not clear from his statement regarding the weapon of offence used by appellants Bhajan and Teerthram and on which part of the body of the deceased they assaulted.

5. Bhaguram (PW-8) is another eye witness. As per his statement recorded under Section 161 CrPC, Kaliram assaulted deceased Sadwa by club on his head. Though Sukhlal (PW-9) deposed in Court that appellants and Kaliram assaulted the deceased, but in his statement under Section 161 CrPC he deposed that he left the place after scuffle started and there was no occasion for him to see as to who really assaulted deceased Sadwa. Though Samaru (PW-10) deposed in the Court regarding assault by appellants and other accused persons, but in his previous statement under Section 161 CrPC, he has stated that he reached to the spot only after receiving information regarding scuffle between two parties.

6. Hicharam (PW-1) deposed in the Court that Kaliram, Bhajan and Teerthram assaulted Sadwa but in his earlier statement recorded under Section 161 CrPC, he has stated that Kaliram assaulted on the head of Sadwa. Anjora (PW-12) deposed

against Kaliram, Bhajan and Teerthram but in her cross-examination she did not identify any of them.

7. On overall assessment of all the witnesses, it is clear that it is Kaliram who assaulted on the head of Sadwa and evidence regarding present two appellants is shaky as to whether they had in possession of any weapon or assaulted the deceased. From the medical evidence, the expert find only one head injury on the body of the deceased, therefore, it cannot be held that the deceased Sadwa sustained injury apart from his head.

8. Ramgopal (PW-13) deposed that at the time of scuffle there was fight between two parties. One party led by Sundaru, Rekham, Santhram and Phagu sustained injuries while Ravel, and Kripa of appellant's side also sustained injuries during the incident. The prosecution case is based on the evidence of this witness and from the evidence of this witness it is established that it may be a case of right of self defence.

9. Ex-D/10 is the medical report examination of appellant Bhajan and Ex-D/11 is the medical examination report of appellant Teerthram which shows that they also sustained injury during scuffle. Ex-D/14 is medical report of Kriparam who was the member of appellant's side at the time of scuffle. Ex-D/17 is the document which is FIR lodged by appellants' side in which it is mentioned that they sustained injuries during scuffle.

10. From the evidence on record, it is not established that both the appellants had intention to cause death to Sadwa and even

assault by them is also doubtful. Again when two parties were engaged in free fight it is difficult to hold as to who were the aggressors and, therefore, finding of the trial Court against the present appellants is not sustainable.

11. Accordingly, the appeal is allowed. Conviction and sentence passed against the appellants are hereby set aside. They are acquitted of the charges framed against them. The appellants are reported to be on bail, no further order is required.

**Sd/-**  
**(Ram Prasanna Sharma)**  
**JUDGE**