

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 846 of 2013

1. Lala Ram Satnami S/o Bhagat Ram Aged About 50 Years
2. Budharu Satnami S/o Bishambhar Aged About 40 Years

All R/o. Vill.Balodi, P.S. And Tah. Palari (Post Palari), Civil Distt. Raipur And Rev. Distt. Baloda Bazar/Bhatapara, Chhattisgarh

---- Appellants

Versus

- State Of Chhattisgarh Through Station House Officer,, P.S.Palari, Civil Distt. Raipur And Rev. Distt. Baloda Bazar/Bhatapara, Chhattisgarh

---- Respondent

CRA No. 839 of 2013

1. Surendra Satnami. S/o Jailal Aged About 40 Years
2. Bullu Satnami S/o Panchuram Aged About 38 Years
3. Chandrika Satnami S/o Hawaldar Aged About 35 Years

All above R/o Village Balodi, Ps And Tah. Palari Post Palari, Civil Distt. Raipur And Rev. Distt. Baloda Bazar/Bhatapara C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Palari, Civil Distt. Raipur And Rev. Distt. Baloda Bazar/Bhatapara C.G.

---- Respondent

CRA No. 854 of 2013

1. Bhajan Satnami S/o Budh Ram Aged About 60 Years
2. Hira Lal Satnami S/o . Bilwa, aged 28 years,

All above R/o. Vill.Balodi, P.S. And Tah. Palari, (Post Palari), Civil Distt. Raipur And Rev. Distt. Baloda Bazar/Bhatapara, C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through SHO, PS. Palari, Civil Distt. Raipur And Rev. Distt. Baloda Bazar/Bhatapara, Chhattisgarh

---- Respondent

CRA No. 864 of 2013

1. Manohar S/o Balbhaddar Satnami Aged About 28 Years
2. Girdhari S/o Bisambhar Satnami Aged About 25 Years

All above R/o Village Balodi, Ps And Tah. Palari Plst Palari, Civil Distt. Raipur And Rev. Distt. Baloda Bazar/bhatapara C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through The SHO Palari, Civil Distt. Raipur And Rev. Distt. Baloda Bazar/bhatapara C.G.

---- Respondent

CRA No. 871 of 2013

- Balbhaddar S/o Bisambhar Satnami Aged About 53 Years R/o Village Balodi, Ps And Tah. Palari Plst Palari, Civil Distt. Raipur And Rev. Distt. Baloda Bazar/bhatapara C.G., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through The SHO Palari, Civil And Distt. Raipur And Rev. Distt. Baloda Bazar/bhatapara C.G.

---- Respondent

CRA No. 931 of 2013

- Bilwa S/o Fulchand Satnami Aged About 62 Years R/o Village Baloudi, Ps Palari, Rev. Distt. Baloda Bazar - Bhatapara C.G. Civil Distt. Raipur C.G. , Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through SHO PS Palari, Distt. Baloda Bazar Bhatapara C.G.

---- Respondent

CRA No. 954 of 2013

- Hemraj S/o Bhurva Satnami Aged About 32 Years R/o Village Baloudi, Ps Palari, Rev. Distt. Baloda Bazar - Bhatapara C.G. Civil Distt. Raipur C.G.,

---- Appellant

Versus

- State Of C.G. Through PS Palari, Civil Distt. Raipur And Rev. Distt. Baloda Bazar C.G.

---- Respondent

CRA No. 990 of 2013

- Naindas S/o Samaydas Satnami Aged About 70 Years R/o Village Balaudi, PS Pallari, Rev. Distt. Baloda Bazar-Bhatapara And Civil Distt. Raipur C.G.

---- Appellant

Versus

- State Of Chhattisgarh Thorugh The SHO, PS Pallari, Rev. Distt. Baloda Bazar-Bhatapara, Civil Distt. Raipur C.G.

---- Respondent

CRA No. 1071 of 2013

1. Mangal Das S/o . Bhojram Satnami Aged About 65 Years
2. Mule @ Prashant S/o Mangal Das Aged About 25 Years
3. Bhondal S/o Balli Satnami Aged About 53 Years
4. Moti Lal S/o Ganga Ram Satnami Aged About 40 Years
5. Tula Ram S/o Vishal Satnami Aged About 55 Years

All are R/o.Vill.Balodi, P.S. Palari, Distt. Balodabazar-Bhathapara, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through P.S.Palari, Distt. Baloda Bazar C.G.

---- Respondent

CRA No. 1102 of 2013

1. Jivan S/o Rupchand Satnami Aged About 64 Years
2. Chotelal S/o Rupchand Satnami Aged About 66 Years
3. Aendu S/o Vushnu Satnami Aged About 41 Years
4. Kheduram S/o Dayaram Satnami Aged About 61 Years
5. Tularam S/o Dayaram Satnami Aged About 54 Years
6. Gyandas S/o Kheduram Satnami Aged About 39 Years
7. Umendi S/o Jageshar Satnami Aged About 61 Years

All appellants are R/o Village - Sakin-Balodi, Thana - Palari, Distt. Baloda Bazar, Bhatapara C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through PS Palari, Distt. Baloda Bazar, Bhatapara C.G.

---- Respondent

For Appellant(s) : Shri V.C. Ottalwar with Shri Akhtar Hussain, Smt. Fouzia Mirza, Shri Bharat Rajput and Shri N.K. Malviya, Advocates.

For Respondent/State : Shri Avinash K. Mishra, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgment On Board By Justice Pritinker Diwaker

01/02/2018

As all the above three appeals arise out of a common judgment of conviction and order of sentence dated 31.8.2013 passed by the II Additional Sessions Judge, Balodabazar in S.T. No.99/2012, they are being disposed of by this common judgment.

By the said judgment, each of the accused/appellants has been convicted and sentenced as under:

Conviction under Section	Sentence
302/149 of Indian Penal Code on two counts.	Imprisonment for life and fine of Rs.1000/- with default stipulation on each count.
307/149 of IPC on six counts.	RI for five years and fine of Rs.500/- with default stipulation on each count.
323/149 of IPC on four counts.	RI for two months and fine of Rs.100/- with default stipulation on each count.
325/149 of IPC.	RI for one year and fine of Rs.100/- with default stipulation.
148 of IPC.	RI for six months and fine of Rs.100/- with default stipulation.

All the substantive jail sentences were directed to run concurrently.

02. In the present case, there are two deceased namely Maniram and Panchram whereas PW-1 Upendra, PW-2 Mayaram, PW-4 Puneetram, PW-5 Kalicharan, PW-8 Janakram, PW-11 Bheemlal, PW-15 Ganeshram, PW-16 Bhagatram, PW-17 Devnath, PW-18 Shatruhan and PW-20 Chovaram are injured persons.

03. As per prosecution case, there are two groups in the village, one headed by the accused party and the another by the complainant party. On 17.8.2010 at around 1 pm FIR (Ex.P/4) was lodged by injured Kalicharan (PW-5) alleging in it that he is an agriculturist of Village-Balodi, on that day at about 12 noon he along with 40-50 persons had

gone to graze their cattle in the barren land near Khapri road and during that period, appellant Mangaldas and certain other accused persons along with 30-40 persons reached there, asked them as to why they are letting their cattle graze the crop and in turn when it was told by the complainant party that it is the barren land which is being grazed by cattle, the accused persons along with 30-40 other persons after abusing them started assaulting them by means of club, axe, *Chatwar* (a weapon like spear). It is said that they caused injury to Maniram and Panchram and other witnesses. Based on this report, offence under Sections 147, 148, 149, 294, 323, 506-II and 307 of IPC was registered against 12 named accused and 30-40 other persons. Maniram succumbed to his injuries on way to hospital whereas Panchram died on 18.8.2010 in hospital at Raipur. Merg intimation in respect of Maniram is Ex.P/10 whereas intimation in respect of death of Panchram is Ex.P/6. On 18.8.2010 inquests on the dead bodies of Maniram and Panchram were conducted vide Ex.P/2 and P/7. On the same day postmortem on the body of deceased Maniram was conducted vide Ex.P/105 by PW-23 Dr. FR Nirala who noticed that V shaped lacerated wound on upper part of the head, swelling around left eye region. In his opinion the cause of death was shock due to head injury and death was homicidal in nature. Likewise, postmortem on the body of deceased Pancharam was also conducted on 18.8.2010 vide Ex.P/8 by PW-19 Dr. SK Bagh who noticed surgical stitched wound around left fronto-parieto occipital region, fracture of left parietal temporal bone and right parietal temporal bone, excessive blood in clotted form present in lateral ventricle, excessive extra dural hemorrhage and sub-dural hemorrhage present in both temporal and

occipital region but base of brain (occipital) was prominent and injury on the back side. In his opinion, the cause of his death was cardio-respiratory failure as a result of head injuries and their complications and death was homicidal in nature. According to both the doctors, the injuries were caused by hard and blunt object. Both the deceased persons were initially medically examined by PW-23 Dr. FR Nirala and on examination of injured Maniram he noticed injuries as above (Ex.P/63) and on examination of Pancharam he noticed lacerated wound on the left side of head of size 2.5 x 1.3 x 1.3 cm and he was also complaining of pain in waist region (Ex.P/64).

Other injured persons, as named above, were also examined by PW-23. According to him, PW-17 Devnath has suffered lacerated wound on the middle of forehead, ankle of left leg and on right hand vide Ex.P/65; PW-20 Chovaram had suffered lacerated wound on right side of head, occipital region, vertex of skull, right side of forehead vide Ex.P/66; PW-8 Janakram had suffered swelling with pain over forearm of left hand and wrist as also near right eye and in the middle of left thigh vide Ex.P/67; PW-18 Shatruhan had suffered lacerated wound over right side of forehead and swelling with pain over right heel vide Ex.P/68; one Toran had suffered contusion and swelling over left side of neck vide Ex.P/69; PW-4 Puneetram had also suffered swelling with pain on right shoulder vide Ex.P/70; PW-15 Ganesh had suffered contusion over right elbow vide Ex.P/71; PW-16 Bhagatram had suffered lacerated wound over inner aspect of lips vide Ex.P/71; PW-2 Mayaram had suffered lacerated wound on occipital region, contusion over upper part of waist, swelling with pain on right elbow and left shoulder vide Ex.P/73; PW-11 Bheemlal had suffered lacerated

wounds on right side of skull, front of skull and contusion over right clevicular region vide Ex.P/74, one Lekhram had suffered swelling with pain on the middle of left hand and lacerated wound on calf of right leg vide Ex.P/75; PW-1 Upendra had suffered lacerated wound on the middle of forehead and swelling with pain on forehead vide Ex.P/76; PW-14 Itwari had suffered swelling with pain on left cheek, lacerated wound on occipital region and contusion on the middle of thigh vide Ex.P/77; and PW-5 Kalicharan had suffered swelling with pain on upper part of palm of right hand; right wrist and on forearm of left hand vide Ex.P/78. From the accused persons, axes, clubs and *Chatwar* were seized vide seizure Memos Ex.P/13 to P/37. As per FSL report (Ex.P/149), blood was found on the club and axe so seized. While framing charges, the trial Judge framed charges against the accused persons under Sections 294, 506 Part-II, 148, 302/149 (on two counts), 323/149 (on twelve counts), 325/149 (on two counts), 307/149 (on fourteen counts) of Indian Penal Code.

04. So as to hold the accused/appellants guilty, the prosecution examined 24 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 five witnesses.

05. 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. Hence these appeals.

It has been informed by learned counsel for the parties that during pendency of these appeals, accused No.9 Gopi and accused No.25 Bilva have expired.

06. Counsel for the appellants submits as under:

(i) that it is the appellants and their family members who were in possession of the land in question though it was a government land but it is the appellants who had sowed crop on the said land. Even revenue proceedings (Ex.D/1 to D/28) were initiated against the accused persons for removal of encroachment.

(ii) that complainant party along with 40-50 persons reached the field of the accused persons along with their cattle to damage their crop and tethered their cattle there. The appellants in exercise of right of private defence of their property if caused some injuries to the complainant party, they cannot be held guilty for any offence in view of provisions of Sections 97 to 103 of IPC.

(iii) while referring to the statements of number of prosecution witnesses, in particular of Patwari and investigating officer, it has been argued that it is the complainant party who first came to the field of the accused persons and while they were grazing their cattle there, a free fight ensued between the groups and during that process, the members of both the parties suffered injuries. A counter case was also registered against the complainant party, they were prosecuted vide ST No.100/2012, however, after trial they were acquitted by giving them benefit of exercise of right of self defence.

(iv) that in normal circumstances, in no village 40-50 persons together go for grazing the cattle and from the evidence it is clear that

the complainant party had gone to the field in question along with their cattle just to destroy the standing crop of the accused persons.

(v) even if the entire prosecution case is taken as it is, at best the appellants are liable to be convicted under Section 304 Part-I or II of IPC. As all the accused persons are in jail since August, 2010, after conversion of their conviction from 302/149 into 304 Part-I or II of IPC, they may be set free forthwith.

In support of their contention, learned counsel for the appellants have placed reliance on the judgments of the Supreme Court in the matters of ***Deomuni Sharma Vs. State of Jharkhand, (2009) 16 SCC 80; Munshiram and others Vs. Delhi Administration, AIR 1968 SC 702; Ballu and others Vs. State of Maharashtra, (2015) 3 SCC 409;*** and ***Ram Autar and others Vs. State of UP, (2017) 2 SCC 449.***

07. On the other hand, State counsel opposing the submission of the appellants and supporting the impugned judgment submits that conviction of the appellants is strictly in accordance with law and there is no infirmity in the impugned judgment for interference. He submits that it is the appellants who were aggressor, had gone to the place of occurrence carrying weapons like club, axe and *Chatwar*, where the complainant party was grazing their cattle and started assaulting them. Thus, considering the brutality of the offence where two persons expired and as many as 12 persons sustained injuries, the trial Court was justified in convicting and sentencing them as mentioned in the impugned judgment.

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

09. PW-1 Upendra is the injured eyewitness to the incident. He has stated that he knew all the accused persons and also the injured persons and both the deceased who are resident of Village-Balodi. On the date of incident he had gone to the field for keeping guard on crop and when he went towards the barren land, all the accused persons met him, started abusing him and they caused him and 19 other persons accompanying him injuries by means of club and axe. He states that he also sustained injury on his head whereas in the incident Maniram and Panchram died. He further states that he was medically examined in the hospital. Deceased Maniram, Panchram, Devram, Chovaram, Janakram, Shatruhan, Toran, Puneetram, Ganesh, Bhagatram, Mayaram, Bheemlal, Lekhram, Itwari and Kalicharan are not shepherd and they reached the place of occurrence after hearing commotion. He admits that the injured were not having any animosity with the accused persons and that there was no crop on the barren land. He has denied the suggestion that there was any dispute between Satnami community and Yadav community. He admits that for grazing cattle, there are 4-5 herdsmen. In cross-examine but for minor contradictions this witness remained firm and reiterated that he knew the accused persons who participated in the crime.

10. PW-2 Mayaram, another injured eyewitness to the incident, too while supporting the prosecution case has stated as to the manner in which the accused persons came at the place of occurrence and caused injuries to injured persons and both the deceased (Maniram and Panchram). He states that at the place of occurrence he saw the cattle of the entire village. He has denied the fact that he and other

villagers had gone to the field to destroy the standing crop.

11. PW-3 Churamani is a witness to inquest. PW-4 Puneetram is also an injured eyewitness to the incident. He too has duly supported the prosecution case. He has denied the fact that the accused persons were in possession of the government land and they had sowed the said field. He states that the accused persons had gone to the place of occurrence to ensure removal of cattle and that he and other villagers were beaten by them. He has denied the fact that the barren land is being cultivated by the accused persons. He has stated that there was no ill-will amongst the accused persons, Dhobi Samaj, Devangan Samaj and Sahu Samaj. PW-5 Kalicharan is the informant who lodged FIR (Ex.P/4). In his lengthy statement he has duly supported the prosecution case. He states that the incident occurred on account of cattle grazing the field in question. He has further stated that in the incident he also sustained injuries. He has denied the fact that on account of panchayat election there was any dispute between the two groups. He admits that a report was lodged against him by the accused party. He admits that before the incident he had no animosity with the accused persons. He states that no crop was standing on the field in question. PW-6 Heeralal Sahu is a witness to inquest of deceased Panchram and his postmortem report. PW-7 Amarsingh is a witness to inquest of Panchram. PW-8 Janakram is an injured eyewitness to the incident and has duly supported the prosecution case and described as to the manner in which the accused persons caused injuries to him and other persons. PW-9 Tilakram is a hearsay witness. PW-10 Satish Kumar Kaushik, son of deceased Maniram, is also a hearsay witness.

12. PW-11 Bheemlal injured eyewitness has duly supported the prosecution case. He admits that there was no previous animosity between the two groups. PW-12 Ganguram, Village Kotwar, is a witness to spot map Ex.P/12 prepared by the police and spot map Ex.P/5 prepared by the Patwari. PW-13 Chheduram is a witness to seizure memos Ex.P/14 to P/37. PW-14 Itwari has turned hostile. PW-15 Ganeshram, PW-16 Bhagatram, PW-17 Devnath, PW-18 Shatruhan and PW-20 Chovaram, injured eyewitnesses have also supported the prosecution case.

13. PW-19 Dr. SK Bagh conducted postmortem on the body of deceased Panchram on 18.8.2010 vide Ex.P/8 and noticed surgical stitched wound around left fronto-parieto occipital region, fracture of left parietal temporal bone and right parietal temporal bone, excessive blood in clotted form present in lateral ventricle, excessive extra dural hemorrhage and sub-dural hemorrhage present in both temporal and occipital region but base of brain (occipital) was prominent and injury on the back side. In his opinion, the cause of his death was cardio-respiratory failure as a result of head injuries and their complications and death was homicidal in nature. According to him, the injuries were caused by hard and blunt object. PW-21 Jaiprakash is a witness to seizure of various articles vide Ex.P/14 to P/37. PW-22 Bhujendra Kumar Dhruv, Patwari, prepared the spot map Ex.P/5. He states that on both the sides of Khapri road, there exists barren land. He is also a witness to spot map prepared on 9.11.2010 i.e. after three months of the incident. He states that when he visited the spot, crop was growing.

14. PW-23 Dr. FR Nirala conducted postmortem on 18.8.2010 on the body of deceased Maniram vide Ex.P/105 and noticed V shaped lacerated wound on upper part of the head and swelling around left eye region. In his opinion the cause of death was shock due to head injury and death was homicidal in nature. According to him, the injuries were caused by hard and blunt object. He had also medically examined both the deceased persons and on examination of injured Maniram noticed injuries as above (Ex.P/63) and on examination of Pancharam he noticed lacerated wound on the left side of head of size 2.5 x 1.3 x 1.3 cm and he was also complaining of pain in waist region (Ex.P/64).

He also examined the injured persons. According to him, PW-17 Devnath has suffered lacerated wound on the middle of forehead, ankle of left leg and on right hand vide Ex.P/65; PW-20 Chovaram had suffered lacerated wound on right side of head, occipital region, vertex of skull, right side of forehead vide Ex.P/66; PW-8 Janakram had suffered swelling with pain over forearm of left hand and wrist as also near right eye and in the middle of left thigh vide Ex.P/67; PW-18 Shatruhan had suffered lacerated wound over right side of forehead and swelling with pain over right heel vide Ex.P/68; one Toran had suffered contusion and swelling over left side of neck vide Ex.P/69; PW-4 Puneetram had also suffered swelling with pain on right shoulder vide Ex.P/70; PW-15 Ganesh had suffered contusion over right elbow vide Ex.P/71; PW-16 Bhagatram had suffered lacerated wound over inner aspect of lips vide Ex.P/71; PW-2 Mayaram had suffered lacerated wound on occipital region, contusion over upper part of waist, swelling with pain on right elbow and left shoulder vide Ex.P/73; PW-11 Bheemlal had suffered lacerated wounds on right side of skull, front of

skull and contusion over right clevicular region vide Ex.P/74, one Lekhram had suffered swelling with pain on the middle of left hand and lacerated wound on calf of right leg vide Ex.P/75; PW-1 Upendra had suffered lacerated wound on the middle of forehead and swelling with pain on forehead vide Ex.P/76; PW-14 Itwari had suffered swelling with pain on left cheek, lacerated wound on occipital region and contusion on the middle of thigh vide Ex.P/77; and PW-5 Kalicharan had suffered swelling with pain on upper part of palm of right hand; right wrist and on forearm of left hand vide Ex.P/78. According to him all the injuries were caused by hard and blunt object.

15. PW-24 Anup Nag, investigating officer, while supporting the prosecution case has stated that dispute between the two groups cropped up when the complainant party was grazing their cattle on the barren land and at the time, the accused party reached there and asked them as to why they are grazing the cattle on their land. He further submits that the villagers had approached Tehsildar and other officers for making complaint against the accused persons for encroaching upon the government land and for removal of the encroachment. He states that he called both the parties in police station and made them understand not to take law in their hands. He admits that a counter case was also registered against the complainant party and 20-22 persons were made accused in the same.

16. DW-1 Dr. Pramod Tiwari has been examined for proving the plea of alibi of deceased accused Bilva. DW-2 Janakram and DW-3 Ramsagar have been examined to establish that the land in question was in possession of the accused persons and they had sowed crop

on the said land. DW-4 Dheluram has stated that the accused persons were in possession of the land in question and has also proved the documents related to revenue proceedings and Khasra Panchshala. DW-5 Dulare has been examined to prove plea of alibi in respect of accused Chhotelal.

17. Close scrutiny of the evidence makes it clear that there are two groups in the village, one headed by the accused party and the other by the complainant party. Evidence goes to show that on 17.8.2010 when the complainant party, 40-50 in number, was grazing their cattle on the land in question, allegedly possessed by the accused party where crop was said to have been sowed by them, it is the accused persons who reached there and asked the complainant party to move away from there, which led to fight between them where both the parties suffered injuries and two persons from the complainant side namely Maniram and Panchram succumbed to the injuries sustained by them. A counter case was also registered against the complainant party at the instance of the accused persons, however, after trial bearing ST No.100/2012 they were acquitted of the charges by giving them benefit of exercise of right of self defence.

18. The injured eyewitnesses (PW-1 Upendra, PW-2 Mayaram, PW-4 Puneetram, PW-5 Kalicharan, PW-8 Janakram, PW-11 Bheemlal, PW-15 Ganeshram, PW-16 Bhagatram, PW-17 Devnath, PW-18 Shatruhan and PW-20 Chovaram) have duly supported the prosecution case and stated as to the manner in which the incident took place and they were subjected to assault by the accused persons. Their evidence finds due corroboration from the medical evidence of PW-23 Dr. FR

Nirala who had medically treated them and noticed injuries on their persons, as described in the preceding paragraph, which were caused by hard and blunt object. This apart, from the accused persons, axes, clubs and *Chatwar* were seized vide seizure Memos Ex.P/13 to P/37 and as per FSL report (Ex.P/149), blood was found on the club and axe so seized, though there is no serological report confirming origin and group of the blood, but present being a case of eyewitness account where they have consistently about the act of the appellant, non-production of serological report is not of much consequence. Thus, considering the overall evidence, ocular and medical, on record, we are of the opinion that the findings recorded by the trial Court holding the appellants guilty under Sections 307/149 (on six counts), 323/149 (on four counts), 325/149 and 148 of IPC are based on proper appreciation of evidence and need to be affirmed. Ordered accordingly.

19. As regards conviction under Section 302/149 (on two counts) of IPC is concerned, the appellants have taken a plea that they assaulted the complainant party in exercise of right of private defence of their property as the crop sown by them was being damaged by the cattle of the complainant party. However, this defence is not substantiated by any documentary or oral evidence. There is nothing on record to show that on the date of incident any crop was standing on the field in question, rather the witnesses have denied such suggestions. Even from the documents Ex.D/6 to D/27 produced by the defence, it does not reflect that on the date of incident there was any crop standing on the said field. Right of private defence of property accrues to the accused when there is an imminent danger to his property which cannot be avoided except by use of criminal force. However, in the

present case, such right was not available to the accused party. Therefore, the argument advanced by learned counsel for the appellants that the appellants assaulted the complainant party in exercise of right of private defence of their property holds no water and as such, is rejected. The judgments relied upon by them in this regard being distinguishable on facts from the present case are of no help to them.

20. However, from the evidence it appears that there was no premeditation on the part of the appellants to commit the crime and it has come in the evidence of number of prosecution witnesses that there was no previous animosity between the complainant party and the accused party. As per prosecution case itself, on the date of incident, the complainant party, comprising 40-50 persons, went to the field in question for grazing their cattle, which was allegedly in possession of the accused party. The appellants having come to know about the cattle of the complainant party grazing their field went there to drive them away and it is in this process that a free fight took place between both the groups in which members of both the parties suffered injuries, and Maniram and Panchram succumbed to their injuries. Thus, keeping in view the overall evidence in the factual background, the conduct of the complainant party, the manner in which the incident occurred, the nature and extent of injuries suffered by both the deceased persons as also the weapon used for assault, in the considered opinion of this Court, it would not be justifiable to hold the appellants guilty of offence under Section 302 of IPC. However, at the same time, there is no denying the fact that while inflicting injuries on the deceased persons, the appellants had the intention of causing such

injuries as would result in their death but had no knowledge that such injuries were likely to cause their death. Being so, they can safely be held guilty under Section 304 Part-I read with 149 of IPC on two counts and further, sentence of RI for ten years on each count and payment of Rs.2000/- by each of the appellants as compensation under Section 357 of CrPC to family of the deceased persons, would serve the ends of justice.

21. In the result, the appeals are allowed in part. While maintaining conviction and sentence of the appellants under Sections 307/149 (on six counts), 323/149 (on four counts), 325/149 and 148 of IPC, their conviction under Section 302/149 (on two counts) is altered to Section 304 Part-I/149 (on two counts) of IPC and they are sentenced to undergo RI for ten years on each count and directed to deposit a sum of Rs.2000/- each with the trial Court, failing which they shall have to suffer additional SI for six months. On such deposit being made, 50% of the same shall be given to the family of deceased Maniram and remaining 50% to the family of deceased Panchram as compensation under Section 357 of CrPC after due verification by the trial Court.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(Sanjay Agrawal)
Judge