

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 243 of 2012****Judgment reserved on 12.09.2018****Judgment delivered on 25.09.2018**

- Mahesh Dubey, S/o Shri Gajanand Dubey age- 45 years R/o- Village- Bhainmudi P.S.- Navagarh, District- Janjgir-Champa (Chhattisgarh).
- Yogesh Dubey, S/o Shri Mahesh Dubey Aged- 19 years R/o- Village- Bhainmudi P.S.- Navagarh, District- Janjgir-Champa (Chhattisgarh)..

---- Appellants

Versus

- The State Chhattisgarh, Through: P. S. - Navagarh, District- Janjgir- Champa (Chhattisgarh).

---- Respondent

For Appellant : Shri Ravindra Sharma, Advocate

For Respondent/State : Shri Anil Pillai, Dy. A. G.

Hon'ble Shri justice Pritinker Diwaker &**Hon'ble Shri Justice Gautam Chourdiya****C.A.V. Judgment****Per Hon'ble Shri Gautam Chourdiya J.**

1 This appeal arises out of the judgment of conviction and order of sentence dated 20.12.2011 passed by learned Additional Sessions Judge, Janjgir, District Janjgir-Champa, Chhattisgarh in Sessions Trial No.127/2011, whereby, the appellants stand convicted and sentenced as under:-

Conviction	Sentence
Under Section 302/34 of Indian Penal Code.	Rigorous Imprisonment for life with fine of Rs. 1000/- each in default of payment of fine Additional R. I. For 6 months
Under Section 307/34 of Indian Penal Code	Rigorous Imprisonment for 8 years with fine of Rs. 1,000/- each in default of payment of fine Additional R. I. For 6 months

2. Facts of the case in brief are that on 20.01.2010 at about 1. 30 p.m. Raju Thakur and Basant Singh were talking and joking, at that time accused Yogesh Dubey was coming and asked that you are joking about my father and abused them by using filthy language and also assaulted Basant Singh by hand and fist and another accused Mahesh Dubey with the help of sickle assaulted complainant Basant Singh on the back side of the head by which he sustained various injuries on his body. After this incident, father of Basant Singh namely Swaraj Singh (since deceased), Bhishma Narayan and Pranav Singh reached the place of occurrence and intervened in the matter. Both the accused/appellants with a common intention assaulted Swaraj Singh with club, iron rod and sickle due to which, Swaraj Singh sustained injuries on his head and became unconscious, thereafter both accused persons also assaulted Bhishma Narayan Singh and Pranav Singh.

3. After this incident, immediately Sawaraj Singh was taken to the Navagarh Hospital for treatment, where after examining him the treating doctor declared him dead. Thereafter, on the same day, FIR (Ex. P/11) was lodged by Basant Singh (PW-6) and at about 15.30 pm merg intimation Ex. P/12 was also lodged by the same person i.e. Basant Singh (PW-6). Inquest report (Ex.P/14) of deceased- Swaraj Singh was prepared. The body of deceased sent for postmortem Vide Ex.P/15, doctor opined that the death of the deceased due to hemorrhagic shock as a result of head injuries to the vital organ of the brain. The MLCs of

injured witnesses namely Bhishma Narayan and Basant Kumar Singh are Ex. P/16, Ex. P/17 & Ex. P-18 respectively which show injuries sustained by them are serious in nature and sufficient to cause death. On the basis of this, offence under Section 294, 506-B, 302, 323 and 34 of IPC was registered against the both the accused persons. After completion of investigation, charge sheet was filed against the appellants under Sections 294, 506, 323, 325, 302, 34 of Indian Penal Code. However, while framing charge the trial Court framed charge against the accused/appellants under Sections 294, 506-B, 324, 326, 307 & 302 read with 34 of IPC.

4. So as to hold the accused/appellants guilty, the prosecution examined 20 witnesses in all. Statements of both 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. No defence witness has been examined.

5. 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 in para-1 of this judgment.

6. Learned counsel for the appellants submits that trial Court erred in holding the appellants' guilty for offence under Section 302, 307 read with Section 34 of IPC as there is no clinching evidence against both the appellants. Trial Court has wrongly appreciated the evidence of the prosecution witnesses for convicting and sentencing the accused/appellants ignoring the defence taken by the appellants. Accused/appellant No. 2- Yogesh Dubey has not participated in the quarrel between accused Mahesh and deceased, hence no offence under Section 302 read with Section 34 is made out by the prosecution

against the appellant No. 2 and he deserves to be acquitted of the charges leveled against him. Prosecution story is not proved by the prosecution from the material available on record and the prosecution has failed to prove its case beyond all reasonable doubts and conviction and sentence of the appellants are liable to be set aside. Since the judgment of trial Court is bad in law in view of the facts and circumstances of the case and the evidence available on record, this Court may allow the appeal and set-aside the judgment passed by the trial Court.

7. Opposing the submission of counsel for the appellant, it has been vehemently argued by learned counsel for the State that prosecution case is based on the statements of injured witnesses namely- Basant Kumar Singh (PW6), Bhimsha Narayan Singh (PW07), and witness Pranav Singh (PW11). These eyewitnesses have duly supported the prosecution case. This apart postmortom report of deceased and medical report of the injured witnesses also corroborate the prosecution case and there is no reason to disbelieve prosecution witnesses. Therefore, the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in light of the legal provisions and as such there is no illegality or infirmity in it warranting interference by this Court.

8. We have heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.

9. On 21.01.2010 at about 1.30 pm Basant Kumar Singh (PW6) and another person Raju were talking and joking with each other, at that time both the accused/appellants reached the place of incident and assaulted Basant Singh, thereafter he went back his home and informed his father- Sawaraj Singh (since deceased) regarding his fight. His father approached the appellant at their hotel and asked why you were beating my son, at the time of this discussion, the appellants again using filthy language and abusing Sawaraj Singh (since deceased) said that we will also beat you and thereafter through iron rod and club they assaulted Sawaraj Singh. At that time Bhishma Narayan also reached the spot and intervened in the matter because of which they assaulted him by club and iron rod. Another brother namely Pranav Singh also reached the spot and they also beat him by the same weapon. During this fight, Sawaraj Singh became unconscious and fell down. Thereafter, he was taken to the Navagarh Hospital for treatment where he was declared dead. Immediately after the death of Sawaraj Singh, merg intimation and FIR were lodged by Basant Singh (PW6). He also proved spot map Ex P/2.

10. Bhishmanarayan Singh (PW7) also supported the prosecution case and stated that when accused/appellant- Yogesh Dubey with club and accused/appellant- Mahesh Dubey with iron rod were assaulting his father Sawaraj Singh he, and Pranav Singh intervened they assaulted them too. After this incident they had taken Sawaraj Singh to the Navagarh Hospital where he was declared dead by the examining doctor. He also identified article A/1-rod, which was used by accused.

11. Pratyut Singh (PW-8), who is also eyewitness to the incident, has fully supported the prosecution case in para 1, 2 and 4 of his statement and he stated that accused/appellants assaulted with iron rod and club to Sawaraj Singh, Bhishmanarayan and Basant Kumar Singh. In para 4 of statement of Pratyut Singh (PW8) it is admitted that his grand-father-Sawaraj Singh was asking the appellants why they had beaten his son and then he started beating the appellants but it is pertinent to mention here that Pratyut Singh(PW8) is a child witness aged about 10 years and his testimony cannot supported by any cogent evidence. Pratyut Singh (PW8) has also admitted this fact in his statement in para 5 that the house and the hotel of the appellants was destroyed by his family member but the defence has not been able to prove whether this incident happened after or before the murder of Swaraj Singh and no any specific evidence was adduced before the trial Court in this regard. If any house or hotel is destroyed by the family member of him, neither any complaint or FIR ought to have been registered against them nor such evidence is there on record.

12. Nankibabu Singh (PW9) stated in his statement that when he was going toward the tank of the village he saw both the accused and deceased- Sawaraj Singh quarreling and when he reached the spot he found the deceased- swaraj Singh lying on the ground in unconscious condition. He also stated in his evidence that on the place of incident the son of deceased namely Basant Kumar Singh (PW6), Bhishmanarayan Singh (PW7) and Pratyut Singh (PW8) were also present.

13. Pranav Singh (PW11) also supported the prosecution case and stated that near about 1.00pm Basant Kumar Singh and Raju were quarreling near the hotel of appellants, at that time accused- Yogesh Dubey assaulted Basant Singh, thereafter in injured condition Bansant Singh went to his home and informed his father about the incident. His father reached the place of incident i.e. hotel of the appellants and asked why they had beaten his son and during this conversation the accused/appellants attacked on Swaraj Singh by iron rod and club. When Pranav Singh and Bhishmanarayan reached the spot, both accused persons assaulted both of them by rod and club, as a result of which the deceased sustained various injuries on his vital part of the head and his parietal bone got fractured, which are mentioned in the postmortem report of the deceased.

14. Dr. R. S. Raj (PW12) did the postmortem of the deceased- Swaraj Singh vide Ex. P/15 and he opined that the death of Swaraj Singh was due to hemorrhagic shock as a result of head injuries to the vital organ of the brain and injuries caused to the deceased may be by Article A-1 and Article A-2. He also prepared the MLCs of injured witnesses namely Bhishma Narayan and Basant Kumar Singh which are Ex. P/16, Ex. P/17 & Ex. P-18 respectively which show that the injuries sustained by them are serious in nature and sufficient to cause death. As per evidence collected and adduced by the prosecution, it stands proved that the appellants were the perpetrator of the crime in question.

15. The main contention of the learned counsel for the appellants is

that they assaulted the deceased in exercise of their right of private defence but no any injuries was found on the body of the appellants. No any evidence adduced by the appellants in this regard as to how they exercised their right private defence against the deceased, Basant Kumar Singh and Pravan Singh. From the overall evidence and record, we find that there was no apprehension to the appellants of any danger to their lives to exercise the right of private defence against Swaraj Singh by beating him.

16. The relevant factors which are to be considered before arriving at any conclusion are that the deceased had himself gone to the spot and asked the accused/appellants why they had beaten his son. Evidence revealed that there was no imminent danger to the property or person of the accused/appellants from the acts of deceased. There was no evidence on record to show that any of the accused sustained injuries to deduce factum of imminent danger to their person or property. At the place and time of incident present eyewitness not examined as defence to establish right of self defence. Thus the accused/appellants are held not entitled to claim right of self defence. No any right of private defence is available to the accused in this case. Considering the entire evidence of prosecution witnesses namely- Bhishmanarayan(PW7), Pratyut Singh (PW-8) and Pranav Singh (PW11) who are the eyewitnesses to the incident and Bhishmanarayan(PW7) and Pranav Singh (PW11) have also sustained injuries and on the body of the deceased- Swaraj singh multiple injuries were found but no injury was found on the body of both the accused, the accused/ appellants are held not entitled to claim right

of self defence.

17. Considering the entire prosecution case, there is no reason to disbelieve the statements of eyewitnesses which are duly corroborated by the postmortem report of the deceased and medical reports of the injured witness. Being so, the findings recorded by the trial Court holding the appellants guilty under Sections 302/34 & 307/34 of Indian Penal Code cannot be faulted with and the same are hereby affirmed.

18. Resultantly, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

19. As it is reported that appellants/accused- Yogesh Dubey and appellant/accused- Mahesh Dubey are already in jail, no further order regarding their arrest, surrender etc. is required.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Gautam Chourdiya)
Judge