

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 28-11-2018

Delivered on 12-12-2018

CRA No. 617 of 2010

1. Chandra Lal Patal S/o Bajrang Patel, aged about 25 years R/o Gewra Basti, Distt.-Korba, CG.
2. Gudda Devcharan S/o Lalji Patel, aged about 40 years R/o Gewra Basti, Distt.-Korba CG.
3. Manoj Patel S/o Devcharan, agd about 21 years. R/o Gewra Basti, Distt.-Korba CG
4. Vyasnarayan Patel S/o Antram Patel, agd about 25 years, R/o Gewra Basti, Distt.-Korba CG
5. Shyam Lal Patel S/o Bajrang Patel, aged about 41 years R/o Gewra Basti, Distt.-Korba CG.
6. Tiharu (Santram) S/o Bajrang Patel, aged about 35 years R/o Gewra Basti, Distt.-Korba CG.
7. Ram Prasad Patel S/o Bajrang Patel, aged about 36 years, R/o Gewra Basti, Distt.-Korba CG.

---- Appellants.

Versus

- State of Chhattisgarh Through District Magistrate, Korba, Distt.-Korba CG

---Respondent

 For Appellant : Mrs. Indira Tripathi, Advocate.

For respondent/State : Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 13-8-2010 passed by the Additional Sessions Judge, Katghora, District Korba (CG) in Sessions Trial No. 87 of 2006 wherein the said Court has convicted the appellants for commission of offence under Sections 304 Part 1 read with Section 149 of IPC and sentenced them to undergo rigorous imprisonment for ten years and to pay fine of Rs.1000/- each with default stipulations.

2. As per version of the prosecution, on the day of Holy festival i.e., 13-3-2006 at about 8.30 pm all the appellants made unlawful assembly and accusing false charge of stealing Holy wood against Jagdev. During that time someone fired which caused injury to appellant Shyamlal Patel, on which all the accused appellants assaulted Jagdev, Laxmi Prasad and Ved Prasad by clubs which resulted into death of Jagdev. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced all the appellants as aforementioned.

3. Learned counsel for the appellants would submit as under:

- i) The trial Court failed to appreciate that the common object on the part of each of the appellant is not established and without there being any finding, all the appellants

have been convicted which is not sustainable.

- ii) There is no evidence on record that there was any pre-meditation on the part of the appellants.
- lii) The trial Court also failed to appreciate as to how the appellant Shyamlal received gun shot injury .
- iv) When appellant Shyamlal and other persons were entitled to exercise the right of private defence from material on record, finding of the trial court is not sustainable.
- v) Version of prosecution witnesses is improvements and embellishments and set up distorted version of occurrence, therefore, there is suspicion of concocting the case against the number of persons.
- vi) Finding of the trial Court that the appellants have extended their exercise of right of self defence is not in the fitness of the factual and legal aspect of the matter, therefore, finding of the trial Court is liable to be reversed..

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the

evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. In the present case, date of incident is 15-3-2006. FIR was lodged on the same day naming all the appellants as culprits. FIR was lodged by one Laxmi Prasad who is injured in the incident. PW/1 Smt. Tulsi Bai is wife of the deceased who has occasion to see the incident. Again, PW/2 Laxmi Prasad and PW/3 Ved Prasad are injured witnesses and they have also occasion to see the incident. All the three witnesses have deposed in one voice that all the appellants have formed unlawful assembly with clubs and assaulted Jagdev mercilessly. Again, they also assaulted Laxmi Prasad and Ved Prasad. Version of these witnesses is supported by version of PW/4 Naim Prasad and PW/5 Paltan Das. The incident took place at village Noonbirra where all the appellants were present.

7. Dr. Mahesh Rawatt Rai (PW/9) conducted autopsy of the deceased. Jagdev. As per version of this witness he noticed the following injuries on the body of the deceased Jagdev.

i) Lacerated wound in the size of

3x1cm on the middle pinna of right ear.

- ii) Abrasion in the size of 3x2cm at the top of the shoulder.
- iii) Abrasion in the size of 3x2 cm at right lumbar region.
- iv) Stitched lacerated wound at the middle of forehead in the size of 3cm.
- v) Stitched lacerated wound 2 stitches 3cm in length on left parietal region .
- vi) Stitched lacerated wound 3 stitches 3cm and 4 cm above the occipital protuberance.

Fracture on the skull and ribs.

- i) Fracture of 3, 4, 5 and 6 on the right mid-clavicular line.
- ii) Depressed fracture of the right temporal and occipital bone -
fracture of right temporal bone is present length x 0.5 deep.-
fracture of occipital bone is present 2cm lateral to the occipital protuberance 4 cm in length.

- iii) Depressed fracture of right parietal line 3 cm in length and 6 cm above the occipital protuberance.

As per version of this expert, cause of death is coma as a result of intracranial haemorrhage and duration of death is 24 hours since examination.

8. Looking to the entire evidence, it is established that Jagdev died homicidal death. All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. In the present case, one counter case was also registered against the witnesses of this case namely Laxmi Prasad, Ved Prasad and others and in that case it is established that when the appellant Shyam Lal was present near the house of the deceased Jagdev, deceased Jagdev threw a bomb on the spot and he also fired from country made pistol. Looking to this evidence, the trial Court opined that no injury was caused to anyone but all have mercilessly assaulted the deceased Jagdev which is infringement of right of self-defence, that is why act of the appellants is culpable homicide which is not amounting to murder.

9. After re-assessing the evidence, this court has no reason to record contrary finding. The act of the appellants

falls within mischief of Section 304 part I of IPC for which the trial Court has convicted all the appellants and same is not liable to be interfered with. Conviction of the appellant for offence under Section 304 Part 1 of IPC is hereby affirmed.

10. Heard on the point of sentence.

Appellants Shaymalal Patel and Vyas Narayan Patel have suffered jail sentence from 16-3-2006 to 13-8-2010 and from 20-8-2010 to 26-10-2010 i.e., four years and seven months. Rest of the appellants have not been granted bail by this court and they suffered full jail term. Considering the fact that the appellants Shyamlal Patel and Vyas Narayan Patel were convicted on the basis of being the members of unlawful assembly and as per record, they were in possession of clubs, this court is of the view that the ends of justice would be served if the jail sentence awarded to them by the trial Court is reduced to the period already undergone by them while maintaining the fine amount imposed by the trial Court. It is ordered accordingly.

11. With the aforesaid modification, the appeal is partly allowed. They suffered jail term, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)
Judge

