

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Appeal No. 434 of 2014**

1. Lakhidhar, S/o. Sunder Rawat, Aged About 45 Years.
2. Dhanadhar, S/o. Subaro Rawat, Aged About 30 Years.
3. Smt.Pune Bai, W/o. Subaro Rawat, Aged About 50 Years.

No.1 to 3 are residence of Village Dabriguda, Thana- Deobhaog, Revenue District Gariyaband, Civil District Raipur, Chhattisgarh.

4. Sunder Yadav, S/o. Padum Yadav, Aged About 65 Years.
5. Duluram Yadav, S/o. Sunder Yadav, Aged About 30 Years.
6. Supet Yadav, S/o. Subro Yadav, Aged About 22 Years.

No.4 to 6 are residence of Village Bhatapani, Thana- Raydhar, Civil & Revenue District Navrangpur, Orissa

---- Appellants

Versus

State Of Chhattisgarh, Through the District Magistrate, Gariyaband, Distt. Gariyaband, Chhattisgarh.

---- Respondent

 For Appellants : Mr. Sunil Sahu, Advocate
 For State/Respondent : Mr. S.K.Mishra, Panel Lawyer

**Hon'ble Shri Justice Goutam Bhaduri &
 Hon'ble Shri Justice R.C.S.Samant**

Order on Board**24.02.2018****As per Shri Goutam Bhaduri, J :**

1. This appeal is against the judgment of conviction and order of sentence dated 13.03.2014 passed by the learned Additional Sessions Judge Gariyaband in Sessions Trial No.15/2012 whereby the appellants have been convicted under Sections 147, 148, 302/149 & 325/149 of Indian Penal Code and sentenced to undergo R.I. for 2 years under Section 147, R.I. for 2 years under Section 148, Life Imprisonment with fine of Rs.1000/- under Section 302/149 and R.I. for 7 years with fine of Rs.500/- under Section 325/149 and in default of payment of fine, additional R.I. for 2 months & 1 month respectively was ordered for.

2. As per the prosecution case, on 22.10.2011 the complainant Dhanmati Bai alongwith her husband Arjun, brother-in-law and sister-in-law had gone into field to harvest the crop. At about 4 p.m., the accused/ appellants namely Lakhidhar, Dhanadhar, Pune Bai, Sunder Yadav, Duluram Yadav & Supet Yadav came armed with Club & Axe and objected to such harvesting of the crop and asked them to stop which resulted into altercation and quarrel. Arjun Rawat was assaulted by Axe & Club, he fell down on the ground thereafter he was assaulted by kick on his abdomen and chest whereby he died on the spot. One Hemant @ Limoram by such assault sustained fracture on his leg and Dhanmati & Champa Bai were also sustained injury. On 23.10.2011 the Kotwar of the village Rupeshwar Jagat made a report to Police Station Deobhog that the incident had occurred at village Padampur whereby one person has died and the merg intimation was registered. On the basis of merg intimation, the FIR was prepared and was subjected to post mortem. Dhanmati Bai, Champa Bai & Hemant Rawat was subjected to medical examination and different articles were seized and after arrest of the accused on the memorandum of Lakhidar & Dhanadhar, Club & Axe were seized. From the accused different cloths were seized and were sent to FSL. Thereafter, initially few of the accused were absconding and they were arrested subsequently and the charge sheet was filed against the accused under Section 147, 148, 149, 307 & 302 of I.P.C.
3. During the course of trial, the appellant/accused abjured the guilt and claimed to be tried. The prosecution on their behalf had examined as many as 16 witnesses and in the statement under Section 313 of Cr.P.C. the accused/ appellants contended that they have been falsely implicated. The trial Court after evaluating the evidence on record convicted the accused/appellants as aforesaid. Hence this appeal.

4. Learned counsel for the appellant would submit that the evidence of the witnesses namely PW-7, PW-8, PW-9 & PW-10 would show the parties *inter se* had entered into quarrel and scuffle which aggravated to take over possession of an agricultural field and quarrel was over harvesting of crop. It is further submitted that since the deceased and family members tried to forcefully harvest the crop, which was sowed by the appellants the incident happened. It is further submitted that when the appellants reached to the field and objected to restrain the deceased and family members to take away the crop, the quarrel started. It is further contended that the injury which was caused to the deceased as also the injured would show that the nature of injury was not caused by sharp cutting weapon whereby the intention can be gathered. He further submits that had there been any intention to cause death, the injury could have been inflicted by the sharp side of the weapon i.e. Axe and would submit that the cause of death of Arjun would show that it was due to shock and not because of the injury inflicted by the weapon. Further it is contended that the memorandum witnesses and seizure witnesses have not supported the case of the prosecution. It is stated the facts would lead to point out that taking possession of crop of the field, the incident happened as both the parties were in dispute earlier to it and the appellants were also severally injured for which a counter case was registered. Therefore, the counsel submits that considering the nature of injury, the conviction so passed by the Court below may be set aside.
5. Per contra, learned State counsel opposes the argument advanced by the learned counsel for the appellants and would submit that the conviction is based on the statements and in this case apart from the deceased four other witnesses were examined and their statement would show that the appellants accused had inflicted severe injury over the deceased as also

the injured, therefore the conviction is well merited, which do not call for any interference.

6. We have heard learned counsel appearing for the parties and perused the records.
7. The eye-witness PW-7, Dhanmati Bai, who is wife of the deceased Arjun Rawat has deposed that on the date of incident at village Padampur in the field she was present with her husband Arjun, brother-in-law Limoram and sister-in-law Champabai and they were harvesting the crop. At about 4 p.m. the accused came there with Axe & Club, entered into dispute and started beating them. She further deposed that by such beating Arjun sustained sever injuries and died on the spot. She also sustained injury on her hand & leg and brother-in-law Limoram also sustained injury on her hand & leg. She deposed that the cause of the dispute was in respect of the agricultural field. The cross-examination of this witness would show that previous dispute was existing in between the parties for taking over the possession of the field. The deposition would further show that earlier to the incident also, the deceased Arjun and her brother-in-law had assaulted one person namely Subro, which resulted into fracture of part of body of Subro who was the father of the accused Supet, appellant No.6 and the dispute was in respect to the same field for which the incident happened. The facts therefore would lead to infer that a previous dispute was existing over a field to take over the same and the complainants have earlier assaulted the member of family of accused.
8. Another eye-witness is PW-8, Kumari Malti. She has deposed that on the date of incident at about 4 O'clock her uncle Lakhidhar, Dhandhar, Supet, Sunder, Punebai & Luduram had come to the field and assaulted her father Arjun, mother, uncle & aunt. This statement would show that both the accused and deceased & injured belong to one family and primarily

the incident happened over taking away the crop from the field. The witness has deposed that her mother & father were harvesting the crop and were taking away the same. Further it is deposed that she was unable to see the objects clearly from a distance of 10-12 feet.

9. Likewise, the other injured PW-9 is Hemant @ Limoram. He stated that the deceased Arjun was his brother, on that date, the witness alongwith Arjun, sister-in-law Dhanmati and his wife namely Champa went to the field to take the crop. At that time, Sundar (A-4), Lakhidhar (A-1), Dhanadhar (A-2), Duluram (A-5), Supet (A-6) & Pune Bai (A-3) came there and they were holding the Club & Axe and all the six persons have assaulted him and killed his brother. He further stated that when he cried for help, at that time, his wife and sister-in-law came and they were also assaulted.
10. In the cross-examination of PW-9, it shows that a dispute about the land was pending in between the complainant and accused. He admits the fact the deceased Arjun had filed a case at Tahsil against Subro who is father of the accused Dhanadhar and Supet for correction of the number of the land in the settlement and all the lands of the brother were distributed to each other. The statement would further show that the said witness Hemant was convicted prior to 6-7 months for assaulting Lakhidhar (A-1) and also admitted the fact on the report of Lakhidhar for cutting the tamarind tree in the field, Arjun was fined and before two days prior to the incident Lakhidhar had also made a report to the police in respect of the same land that dispute may arise but he was advised by the police that the decision would be taken on 24th. So facts will show that the incident took prior to that date fixed for settlement of land and on 22nd Arjun was killed.

11. The witness though denied the suggestion that because of the report made, the dispute aggravated and the deceased has also assaulted Lakhidhar but on the second part of the statement, he has stated that the report was made against the deceased and the witness. He further stated at the time of incident Arjun was alone in the field and his wife and sister-in-law went to Kothar which is situated at half km distance and he was at the distance of 150 meters.
12. Likewise another injured witness is PW-10, Champa Bai, she stated that when they had gone to the field to bring the paddy, at that time, the accused came there and assaulted his Jeth Arjun by way of Club & Axe. She further stated that her husband was also assaulted and the witness was assaulted by Club & Axe whereby she suffered a fracture of her hand. It is further stated Dhanmati her sister-in-law had sustained injury on her hand and neck and because of the assault made to Arjun he died. Therefore, as per the statement of Dhanmati Bai, PW-7, Ku. Malti PW-8, Hemant @ Limoram PW-9 & Champa Bai PW-10 had stated that on the date of incident all of them had went to field and were harvesting the crop to take away. The appellants came there armed with Club & Axe and assaulted them whereby one of the family member Arjun died and other sustained injuries. The statement of the witness would certainly point out about dispute of the land between the parties and prior to the incident the counter report was made by the accused apprehending the dispute but before that the incident happened.
13. The PW-10, Champa Bai, had further stated that after the incident she went to the house of Sarpanch and thereafter Kotwar and the witness Rupeshwar Jagat, PW-6, stated that on 21.10.2011 at about 2 a.m. in the night Champa Bai came to their house and stated that Arjun Rawat was killed by Lakhidhar, Dhanadhar, Supet, Sundar, Punebai & Luduram by Axe & Club and injuries were inflicted to other members. PW-6 further

stated that he went to the spot and saw Arjun was lying in the field. According to PW-6, the deceased and accused are of the same family and the land dispute was existing and a year before the incident a tamarind tree was cut in the field whereby Arjun & Limoram, the injured herein, had assaulted Supet who suffered a fracture. The witness further stated that the land belonged to Sundar and Arjun, the deceased and injured were harvesting the crop. This witness has deposed that in respect of land an initial report was made by Lakhidhar, the appellant that Arun & Limoram, (the deceased & injured) wanted to take away the crop though it was sowed by them. The statement of the witness therefore would show that the land dispute was existing between the parties and primarily when the deceased and Limoram were harvesting the crop of the land which belonged to the appellant, the same was objected and incident happened.

14. PW-13 is Dr. H.K.Chouhan. According to his deposition on 23.10.2011 Dhanmati Bai (PW-7) was brought for treatment and he examined the patient and gave the report by Ex.P-19. According to the injury report Dhanmati Bai had the following injuries (i) abrasion on the left knee 1x1 cm with swelling of 8x8 cm on the entire knee. (ii) swelling on right forearm of 6x6 cm (iii) swelling of right arm in the elbow (iv) swelling on the right hand 2x2 cm in the dorsal. (v) swelling of left hand dorsal part 3x3 cm. Subsequently when the x-ray was conducted, it was found that fracture on left Patella and first & second metacarpal and right radius ulna was found to be fractured.
15. Champa Bai, PW-10, was examined and the report was given by Ex.P-20 and the following wounds were found : (i) lacerated wound in right hand lateral part 1x1 cm and swelling present 4x4 cm on the lateral part. (ii) contusion on the back 4x2 cm and after x-ray it was found that fifth metacarpal was fractured.

16. On the same day, Hemant Rawat, PW-9, was examined and the report was given by Ex.P-21. According to him the following injuries were found :
 (i) lacerated wound over right leg 1x1x1 cm with clotted blood was present. (ii) lacerated wound on the right shin of right leg 2x1x1 cm. (iii) abrasion on the right forearm of 1x1 cm. (iv) abrasion on the left elbow in the back side of 2x1 cm. (v) abrasion on the right thigh 4x1 cm in the horizontal in nature. (vi) abrasion on the left knee of 1x1 cm. After conducting x-ray, it was found that the right tibia bone was fractured alongwith the third & fourth metacarpal.

17. The Doctor also conducted post-mortem of Arjun Yadav and the post-mortem report was given by Ex.P-24. According to him : (i) lacerated wound on right leg on the upper part of 3x2x2 cm (ii) lacerated wound on right leg on the lower part of 3x2x1 cm and tibia & fibula bone were fractured. (iii) lacerated wound on the left upper shin of 2x2 cm. (iv) swelling over left elbow 6x6 cm with a fracture of radius ulna. (v) lacerated wound on left leg with fracture 3x3 cm. (vi) contusion on the right side 4x4 cm. According to the Doctor, the injuries were inflicted by hard and blunt object and the cause of death was shown as excessive bleeding both internal and external hammerge because of shock and the death was homicidal in nature.

18. The seizure and memorandum witness have not supported the case of the prosecution. Further the FSL report Ex.P-33 in this case would show that the Axe & Club which was seized were not containing any blood. The statement of the Doctor would show that all the injuries which were inflicted on the deceased and the injured were not inflicted from any sharp cutting weapon.

19. Exception 4 to Section 300 of I.P.C. would be relevant in the facts of this case, which reads as under :

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner”

20. On appreciation of evidence on record, it would show that it was a case of sudden fight as the witnesses have stated that both the complainant and accused were ascertaining their right over field and as per the statement of the witness PW-6 who is an independent witness and has deposed the land wherein the deceased was harvesting the crop belonged to the appellants. The circumstances therefore show that when the accused learnt that the crop is being harvested which was sowed by them they reached to the spot and quarrel started. The evidence would show that all of a sudden when the accused came to know the fact that crop sowed by them are taken away, the accused/ appellants rushed there which do not show that there was premeditation on the part of the appellants. Further, offenders who are the villagers primarily depends on their crop for livelihood for entire year and if objected to the act of complainant for taking away the crop cannot be said to be unused as such action on part of complainant can always be said to be a provocation.
21. In a case of ***Bivash Chandra Debnath & Others v. State of West Bengal*** reported in **(2015) 11 SCC 283** the Supreme Court has reiterated the law laid down in case of ***Pulicherla Nagaraju v. State of A.P.*** reported in **(2006) 11 SCC 444** and has discussed the issue when the conviction can be converted from an offence punishable under Section 302 of I.P.C. to Section 304-I or Section 304-II of I.P.C. which is reproduced herein below.

“29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters – plucking of a fruit, straying

of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.”

22. In the case in hand, if the circumstances are looked into, the statement of PW-7, PW-8, PW-9 & PW-10 would show that the accused/appellants are the members of the same family and over taking over the crop in the field the incident happened. PW-6, Rupeshwar, stated that the deceased and their family members were harvesting the crop. The Doctor, PW-13, in his statement has stated that the injury to the deceased was not caused by

the sharp cutting weapon. The prosecution in this case though alleged that the Axe was seized, the seizure and memorandum witnesses namely PW-4 Jaidhar Yadav & PW-5 Jailal Nagesh have not supported the memorandum and seizure. Even if, the statement of I.O. G.R. Diwan, PW-16, is admitted the FSL report Ex.P-33 shows that the Club & Axe do not contain any blood. According to Patwari- Khemchand Sahu, PW-14, the map was prepared by Ex.P-26 of Khasra No.198 where the incident happened belonged to Sundar (A-4) and Khasra 197 belonged to Subro and the deceased land was bearing Khasra No.199. Therefore, the incident which happened at Khasra No.198 was not that of complainants instead it was of the appellants. Consequently, it appears that when the deceased and family members were taking away the crop, the appellants reached there and when temper spiked up in the heat of passion upon a sudden quarrel without any premeditation the accused assaulted the deceased.

23. The intention can be gathered from the nature of injury also as the deceased had sustained injuries on his legs & back and it was not because of any cut injury inflicted to show the fact that the sharp part of the angle of the Axe was not used instead the hard & blunt part was used.
24. We may conveniently referred to the principles laid down in case of ***Sunil Khergade v. State of Maharashtra*** reported in ***(2016) 15 SCC 773*** wherein in the like situation, the Supreme Court held that during a quarrel the deceased and the accused were grappling and the attack was made by not a sharp-edged point, the conviction can be altered to Section 304 Part-II of I.P.C. instead of 302 of I.P.C.
25. In this case, inflicting of several injuries not by the sharp side would demonstrate the fact of knowledge that of the appellants that the injury by sharp side could have caused death, therefore, considering the intention

which originated at the spur of moment and taking over all view of this matter, we are of the opinion that the conviction made by the Court below is required to be altered from Section 302 to Section 304 Part-II of I.P.C. So far as conviction of the appellants made under Section 325 read with Section 149 of I.P.C. is concerned, the nature of injuries have been perused and the background in which it happened appears to be that when the crop sowed by the accused was forcibly taken by the complainant, the incident took place. We are of the opinion that the nature of injury inflicted on the part of the body and the weapon used i.e. hard & blunt side of the Axe & Club, the conviction under Section 325/149 of I.P.C. is liable to be reduced to 5 years.

26. In the result, while maintaining the conviction of the appellants under Sections 147, 148 and 325/149 of IPC, their conviction under Section 302/149 of IPC is altered to Section 304 Part-II of IPC and they are sentenced to the period already undergone by them. However, with respect to sentence under Section 325/149, as discussed above, it is reduced to 5 years. The appellant No.1, 2 & 3 are in jail since 25.10.2011 whereas appellants No.4, 5 & 6 are in jail since 05.02.2013. They be set at liberty forthwith, if not required in any other case.
27. The appeal is thus allowed in part.

Sd/-
(Goutam Bhaduri)
JUDGE

Sd/-
(R.C.S.Samant)
JUDGE