

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1 of 2015

1. Hetram Chandra, S/o Udal Chandra Aged About 40 Years R/o Village-Ulkhar, P.S. - Sarangarh, Civil And Revenue Distt. Raigarh C.G.
2. Takeshwar Singh @ Rodiha S/o Sewakram Chandra Aged About 60 Years R/o Village-Ulkhar, P.S. Sarangarh, Civil And Revenue, District : Raigarh,
3. Heeralal Chandra S/o Hetram Chandra Aged About 21 Years R/o Village-Ulkhar, P.S. Sarangarh, Civil And Revenue, District: Raigarh, Chhattisgarh

---- Appellants

Versus

- State Of Chhattisgarh S/o Through District Magistrate, Raigarh, Distt. Raigarh C.G.

---- Respondent

For Appellants	:	Smt. Indira Tripathi, Advocate
For Respondent	:	Shri Ravindra Agrawal, Government Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Choradiya

Judgement

Per P. Diwaker, J

23/07/2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 27.12.2014 passed by the learned Additional Sessions Judge, Sarangarh, District Raigarh in S.T. No.6/14 convicting the accused/appellants under Section 302/34, 307/34 & 323/34 of the Indian Penal Code (for short 'the IPC') and sentencing each of them to RI for life with fine of Rs.1,000/-; RI for 7 years with fine of Rs.500/- and fine of Rs.200/-, with usual default clauses, respectively.
2. In the present case name of the deceased is Sampatlal, whereas injured

is Laxman (PW-1).

3. The prosecution story, in brief, is that there was an old land related dispute between the appellants and the deceased. On 17.11.2013 at 10.35 a.m. FIR (Ex.P-1) was lodged by Laxman (PW-1) alleging in it that on that day when he along with his father Sampatlal and wife Leelawati was cutting the crop in his field, the accused persons came there carrying clubs in their hands, asked the deceased not to cut the crop and when his father said that as they have sown the crop, they will cut the same. On this, the accused persons started assaulting the deceased by club which they were carrying as a result of which he died on the spot. When Laxman (PW-1) tried to intervene, the accused persons had also caused injuries to said Laxman (PW-1) and his wife Leelawati (not examined). Based on this FIR, the offence punishable under Sections 302, 307, 34 of IPC was registered against the accused persons and one juvenile Dhaneshwar. Inquest (Ex.P-3) was prepared over the body of deceased on 17.11.2013. Body was sent for post-mortem examination which was conducted by Dr. J.R. Dhritlahare (PW-24) and he noticed following injuries on the body of deceased;-

- lacerated wound at left elbow lateral aspect of 4x2cm in size
- Deformity of left elbow & forearm, fracture of left ulna lower one-third.
- Contusion of 10x15cm in size at left forearm with swelling.
- lacerated wound over right leg below knee of 4x3 cm in size.
- lacerated wound at left ankle of 4x2cm in size with fracture of tibia & fibula bone at lower end.
- Contusion at left ankle of 7x5cm in size.
- Contusion at right flank below scapula of 12x4cm, 15x3cm in size, oblique.

- Contusion at right scapular region of 10x12cm in size.
- Contusion at left scapular region of 10x5cm in size.
- Contusion below left scapular region of 15x5cm in size.
- Contusion over left shoulder of 10x4 cm in size.
- Contusion at right chest of 15x5, 12x5 in size along with fracture of 3rd, 4th, 5th, 6th & 7th ribs.

He opined that cause of death was head injury followed by coma. Injured Laxman (PW-1) was medically examined by Dr. D.N. Pujari (PW-23) vide Ex.P-26 and he noticed one abrasion at the back side of left elbow and lacerated wound on the head. Injured Leelawati was also medically examined vide Ex.P-28, however, during the pendency of trial she expired and therefore her statement could not be recorded. On the basis of memorandum statement (Ex.P-11) of accused/appellant No.1, three sickles were seized vide seizure memo Ex.P-14. Based on the memorandum statement (Ex.P-13) of accused/appellant No.3, one club was seized vide seizure memo Ex.P-15. As per arrest memo (Ex.P-16) of accused No.1 Hetram, he also appears to have sustained various injuries in the said incident. Statements of witnesses were recorded in the course of investigation.

4. After investigation, charge sheet against the accused/appellants was filed under Sections 323/34, 307/34 & 302/34 of IPC followed by framing of charges by the Court below under those sections. The prosecution in order to bring home the charges levelled against the accused persons examined 27 witnesses in all. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
5. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment convicted &

sentenced the accused/appellants in the manner as described above.

6. Learned counsel for the accused/appellants submit that;-

- there was old land related dispute between the parties.
- PW-3 has categorically stated that appellant Hetram was the owner and in possession of the land in dispute.
- the complainant party was cutting the crop in the field of accused Hetram, which was objected by accused Hetram and during the course of altercation, the incident had occurred.
- Appellant Hetram had also suffered injuries in the same incident which is evident from his arrest memo Ex.P-16.
- Appellant No.2 Takeshwar Singh, who is father of son-in-law of appellant No.1 Hetram, had incidentally come to the house of appellant No.1 but unfortunately he too has been implicated in the case falsely.
- even if the entire prosecution case is accepted against the appellants, then also, considering the nature of injuries and weapon of offence i.e. club, it is not a case in which appellants can be convicted under Section 302/34 of IPC and at best, they can be convicted under Section 304 Part I or II of IPC.
- appellants are in jail for the last more than four & half years, therefore, after convicting their conviction into lesser offence, they be set free forthwith.

7. On the other hand, learned counsel appearing for the State has supported the impugned judgment.

8. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.

9. Laxman Prasad Chandra (PW-1), son of deceased, is the person who lodged FIR (Ex.P-1). According to this witness, on the date of occurrence

when he along with his father (deceased) and wife was cutting the crop in the field, the accused/appellants came there carrying club in their hands and asked his father (deceased) as to why he is cutting the crop of his field. They replied that as they have sown the crop, therefore, they are cutting the crop. On hearing this, the accused persons started assaulting his father by stick. When he tried to intervene, he was caught hold by accused Dhaneshwar. On account of club blows given by accused Hiralal, Hetram & Takeshwar, his father died on the spot itself. When accused persons started assaulting them, they fled from the spot to save their lives. He has stated that he received injuries on his head, left arm, left thigh and back. His wife Leelawati was also assaulted by accused persons as a result of which she sustained injuries on her waist, hand, upper limb etc. In the cross-examination this witness has admitted that the land dispute between his father and accused Hetram had been going on for the last 15 years and that litigations between them are pending in the Court. He has further admitted that the disputed land is recorded in the land records in the name of accused No.1 Hetram. He has admitted that on being asked by accused Hetram from his father not to cut the crop, a quarrel took place.

10. Damru Chandra (PW-2) is a hear-say witness on the factum of the occurrence.
11. Bhagwan Das (PW-3) is a witness of inquest (Ex.P-3). This witness has stated that he had not seen the incident, however, he has admitted that accused Hetram is having title and possession over the disputed field and even his name is recorded in the land records. He has further stated that at the time of incident the field was sown by accused Hetram and deceased was forcibly cutting his crop. Twice the meeting was convened in the village to resolve the dispute between deceased and accused

Hetram and in the meeting a decision was taken in favour of accused Hetram.

12. Shivcharan (PW-4) & Chaindas Mahant (PW-5) have not supported the prosecution and turned hostile.
13. Kamlabai (PW-6) was also present on the spot at the time of occurrence. She has deposed that on the date of incident when they were cutting the crop in the field, accused persons reached there and assaulted Sampat. When she requested them not to assault him, she too was chased by accused persons and therefore due to fear she hid herself in the house of Triveni.
14. Jankibai (PW-7), wife of deceased, has not stated anything against the accused persons.
15. Tribhuvan (PW-8) is another eyewitness of the incident and he has stated about the manner in which the incident had occurred.
16. Nehrual (PW-9) is the witness of seizure memos Ex.P-8 to Ex.P-10 by which certain articles were seized from the spot.
17. Purushottam Chandra (PW-10) did not support the prosecution case and turned hostile. Laxmin Chandra (PW-8) is another eyewitness of the incident and she too has stated about the manner in which the incident had occurred. Sewandas Mahant (PW-12), Chakradhar Das (PW-13), Pardeshi Das (PW-14), Manglu (PW-16), Dujeram (PW-17) & Dijeram Mahant (PW-18) have not supported the prosecution case and therefore they have been declared hostile.
18. Pramod Tiwari (PW-19) & Jawahar Lal Chandra (PW-22) are the witnesses of memorandums (Ex.P-11 to P-13) and seizure memos Ex.P-14 & Ex.P-15.
19. Surendra Yadav (PW-20) is the police person who assisted in the investigation. Jawahar Singh Uraon (PW-21) is the Patwari who prepared

the spot map of Ex.P-5.

20. Dr. D.N. Pujari (PW-23) is the doctor who examined the injuries of injured Laxman (PW-1) vide Ex.P-26 and opined that injuries sustained by Laxman (PW-1) were simple in nature, the same could have been caused by hard & blunt object and if no complication arises, the same will take two weeks for healing. This witness had also medically examined injured Leelawati (not examined) and opined that the injuries sustained by Leelawati were simple in nature and could have been caused by hard & blunt object and if no complication arises, the same will take about two weeks for healing.
21. Dr. J.R. Dhritlahare (PW-24) is the doctor who conducted post-mortem examination over the body of deceased and noticed the injuries as described above. As per opinion of this witness, cause of death of deceased was haemorrhagic shock due to injuries on vital organs and the death was homicidal in nature. The clubs seized from the possession of accused persons were sent to this witness for examination and he opined that the injuries noticed on the body of the deceased could be caused by the clubs produced before him for examination.
22. Vijay Gopal (PW-25) is the police personnel who assisted in the investigation. Kirtan Lal Chandra (PW-26) is the witness of inquest (Ex.P-3) and he has duly supported the prosecution case.
23. Jai Mangal Patel (PW-27) is the investigating officer who has duly supported the prosecution case.
24. Tatsat Kumar Chandra (DW-1) has been examined on behalf accused Hiralal to prove the plea of alibi taken by him.
25. From the evidence available on record it is clear that there was old land related dispute between accused/appellant No.1 & deceased and on the date of incident also there was some quarrel between them and during the

course of said quarrel, accused/appellants committed murder of deceased by causing grievous injuries to him. They have also caused injuries to Laxman (PW-1) & Leelawati (not examined). According to injured witness Laxman (PW-1), on the date of occurrence when he along with his father (deceased) and wife (not examined) was cutting the crop in the field, the accused/appellants came there carrying club in their hands and asked his father (deceased) as to why he is cutting the crop of his field. They replied that as they have sown the crop, therefore, they are cutting it. On this, the accused persons started assaulting his father mercilessly by club. When he tried to intervene, he was caught hold by accused Dhaneshwar. On account of club blows given by accused Hiralal, Hetram & Takeshwar, his father died on the spot itself. He has further deposed that accused persons also assaulted his wife Leelawati as a result of which she sustained injuries on her waist, hand etc.. Version given by PW-1 gets corroboration from the evidence given by Kamlabai (PW-6) & Tribhuwan (PW-8), according to whom, all the accused persons gave club blows to the deceased. The version of injured witness further gets corroboration from medical evidence. The medical evidence on record shows that there were fracture of ribs, ulna bone and tibia caused by hard and blunt object. The doctor opined the cause of death as haemorrhagic shock due to ante mortem injuries on vital parts of the body of deceased and the death was homicidal in nature. The clubs seized from the possession of appellants were also examined by Dr. J.R. Dhritlahare (PW-24) and he opined that the injuries caused to the deceased could be caused by said clubs. Thus, on the basis of aforesaid evidence, the complicity of accused/appellants in commission of the offence stands proved beyond reasonable doubt.

26. As could be seen from the aforesaid discussion and the evidence on record that on the date of incident appellant No.1- Hetram was the

registered owner and in possession of the land where incident had occurred. On coming to know that the complainant party had gone to the said land with other persons to cut the crop standing thereon, the appellants, in order to stop them from wrongfully cutting the crop, went to the said land and asked the deceased & others not to cut the crop, but the complainant party did not stop themselves from wrongfully cutting the crop and therefore there was a scuffle between the complainant party and the accused/appellants and in that process the accused persons inflicted club injuries to the deceased which resulted in his instantaneous death. Thus, taking all the aforesaid factors into consideration, it cannot be ruled out that accused/appellants acted in self-defence in order to protect their possession over their landed property from the trespassers i.e. complainant party, who have encroached upon the ownership land of accused No.1 Hetram.

27. Now, there are two aspects of the right of private defence. First is that it gives a complete defence to the accused and thereby totally absolves him from the penal consequences of his act. In order to make out an absolute and effective plea of private defence, one of the essential requirements is that the harm caused by the accused must not be more than it is necessary to inflict for the purpose of defence. This aspect is covered by the provisions of Sections 96 to 102 of IPC. Second aspect is that if the right of private defence is there but harm, more than the necessary demanded by the given situation in a case, is caused then it does not constitute a plea of self defence but brings down criminality to a lesser offence i.e. from that of manslaughter under Section 300 of IPC to that of culpable homicide not amounting to murder under Section 304 of IPC.

28. In the instant case, the prosecution witnesses have stated that accused/appellant No.1 is the recorded owner of land in question which

the complainant party had encroached upon and sown crop on it with intent to grab it. On the date of incident, when the complainant party refused to leave ownership land of accused/appellant No.1, a scuffle took place between the deceased and accused group and during the course of scuffle both the parties sustained injuries. Deceased sustained serious injuries which proved fatal and he died on the spot. From the arrest memo Ex.P-16 it appears that accused/appellant No.1 Hetram also sustained injuries during the course of occurrence. As per post-mortem report (Ex.P-30), the accused/appellants had inflicted twelve injuries to the deceased including fracture of 3rd, 4th, 5th, 6th & 7th ribs, left ulna bone and tibia & fibula bone. Thus, despite the fact that the injuries were caused by accused/appellants after a scuffle in order to protect their possession over the land, we are of the opinion that the accused/appellants caused more harm than was necessary. In protecting their land, they exceeded the powers given to them by law. But this fact cannot be lost sight of the fact that the incident occurred in the spur of moment, in a heat of passion and the assaults were not intentional and premeditated. As such, their case is covered by Exception (2) of Section 300 of IPC i.e. culpable homicide not amounting to murder. Further considering the weapon (club) used in commission of crime and the manner in which they assaulted the deceased, it can safely be inferred that they had no intention to commit murder of the deceased, as observed above, but had the knowledge that infliction of such injuries on the deceased would result in his death. This being the position, they are liable to be convicted u/s 304 Part II of IPC and not under Section 302 IPC as has been done by the trial Court.

29. Further, considering the nature of injuries sustained by injured Laxman (PW-1) & Leelawati (not examined), conviction of the accused/appellants under Sections 307/34 & 323/34 of IPC is in accordance with law and

there is no infirmity in the same.

30. As regards the sentence, considering the fact that the incident took place on the spur of moment, the accused/appellants are undergoing sentence of imprisonment since November, 2013, as such, they have already completed imprisonment for a period of more than four years & eight months and there is no criminal antecedents to the credit of the accused/appellants, we feel that ends of justice would be met if the jail sentence of life imprisonment imposed on the accused/appellants is reduced to 7 years rigorous imprisonment and total fine amount is enhanced from Rs.1,000/- each to Rs.20,000/-.
31. In the result, the appeal is partly allowed. While maintaining conviction & sentence of accused/appellants under Sections 307/34 & 323/34 of IPC, their conviction & sentence under Section 302/34 IPC are hereby set aside and they are convicted under Section 304 Part-II read with Section 34 of IPC and sentenced to undergo RI for 7 years. Accused/appellants are directed to deposit fine amount of Rs.20,000/- before the concerned trial Court in equal proportion within a period of six months from today, failing which they shall have to suffer jail sentence of rigorous imprisonment of one year. The amount of fine, if any already deposited by each one of them, shall be adjusted accordingly. The amount so deposited shall be paid as compensation under Section 357 (3) of Cr.P.C. to the widow or legal heirs/representative of the deceased by the trial Court after due verification.
32. Since the accused/appellants are already in custody, any direction regarding their surrender etc. is not required.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge

roshan/-