

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1125 of 2013**

1. Kartika Yadav, S/o. Chandro Yadav, age 40 years, Occupation Agriculture, R/o. Village Shivpur, Thana Pathalgaon, Civil and Revenue Distt. Jashpur, Chhattisgarh
2. Dhaneshwar Yadav, S/o. Chandro Yadav, aged about 32 years, Occupation Agriculture, R/o. Villag Shivpur, Thana Pathalgaon, Civil and Revenue Distt. Jashpur Chhattisgarh

---- Appellants**Versus**

- State of Chhattisgarh, Through Police Station Pathalgaon, Distt. Jashpur (CG)

---- Respondent

For the appellants : Shri Sanjay Agrawal, Advocate
 For the respondent/State : Shri Suryakant Mishra, Panel Lawyer

**DB: Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Shri Justice Ram Prasanna Sharma
Judgment On Board**

Per Manindra Mohan Shrivastava, J

21.02.2019.

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 06.9.2013 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Jashpur (CG) in Special Criminal Case No.39/12 wherein the said Court convicted the appellants under Sections 302 read with Section 34 of the IPC and sentenced them to undergo rigorous imprisonment for life and to pay fine of Rs.25000/- each with default stipulations.

2. The prosecution case, as unfolded from the impugned judgment and record of the case is that on 20.10.2012, deceased Sunaram was allegedly assaulted by four persons namely Katika Yadaw, Dhaneshwar Yadaw, Tulsi Bai (acquitted) and Naveena Bai (acquitted). According to the prosecution, the incident was witnessed by Tulsi (PW-3) who is said to have informed the said incident of assault on Sunaram to his brother Sadhram (PW-2), who went to lodge report in the police station. FIR (Ex-P/4) was registered upon taking mere intimation (Ex-P/3). Inquest over the dead body was prepared and the body was sent to postmortem which was conducted by Dr. Arjun Singh Thakur (PW-1). According to the postmortem report, 15 injuries were found, out of which injury No.1 was a cut injury on the forehead which was only skin deep. Except two injuries i.e. injury No.2 & 3, injury No. 4-15 were also minor injuries like scratches and ecchymosised spots. Injury No.2 was a cut injury which was skin deep on the right mid occipital region, injury No.3 was lacerated one on the right occipital part which was also bone deep. On the basis of the prosecution case, investigation against four persons was carried out which culminated into filing of charge sheet against four persons alleged to have committed commission of offence under Section 302/34 IPC. Learned trial Court framed charges against four accused persons alleging that sharing common intention, they assaulted Sunaram with intention to cause injury in which incident, Sunaram died.

3. The prosecution mainly relied upon the evidence of eye witness Tulsi (PW-3), who claimed to have seen the incident of assault on Sunaram. The trial Court found that as far as the involvement of the Naveena Bai and Tulsi Bai is concerned, it was doubtful and they were acquitted. However, Kartika Yadaw and Dhaneshwar Yadaw, the appellants, were held guilty of commission of offence and convicted as described above, giving rise to present appeal.

4. Learned counsel for the appellants submits that prosecution case rests on so called eyewitness testimony of Tulsi (PW-3), who is not reliable. Firstly, because in his cross examination, it has been elicited that he was in enemical relation with the appellants, on account of property dispute. Secondly, Tulsi (PW-3) has not involved all the appellants and has given contradictory version in his examination-in-chief, examination after he was declared hostile and cross-examination, not only with regard to the manner in which the incident happened but also with regard to role alleged to be played by the appellants. Learned counsel for the appellants further highlights that Tulsi (PW-3), in his examination-in-chief, did not involve appellant Dhaneshwar at all. It was only when he was declared hostile and put to examination by the prosecution that he involved Dhaneshwar only to the limited extent that after Sunaram was given assault and fell down, he pressed him against the ground. Even in this evidence, there is no allegation of Dhaneshwar given any assault either by any sharp edged weapon or by blunt object on the deceased. With this shaky evidence, it is argued, involvement of

appellant Dhaneshwar becomes extremely doubtful and in these circumstances, Dhaneshwar ought to be acquitted by giving the benefit of doubt.

5. So far as appellant Kartika is concerned, learned counsel for the appellant would argue that even if the prosecution evidence is accepted that Kartika came on the spot and gave assault, the only assault on the head, is explained by injury No.2 whereas, deceased had sustained deep incised wound and the doctor has not explained as to which of this injury caused hemorrhage resulting into his death. The dispute between the parties is alleged to have happened only when Sunaram claimed title over his property and Dhaneshwar is said to have claimed that he will be reaping the crop. As there is single injury on the head in so far as assault by blunt and hard object is concerned, and the accused who is alleged to have given assault by sharp edged weapon has already been acquitted, the criminal overt act of appellant Kartika, under any circumstance, would not travel beyond the scope of Section 304 part II IPC.

6. Learned counsel for the State would argue that even though, in the examination-in-chief, Tulsi has not involved Dhaneshwar, after having been declared hostile, further examination by the prosecution, he has admitted that after Sunaram fell down due to assault given by Kartika, appellant Dhaneshwar also pressed him against ground which clearly proves that all of them had shared common intention to kill Sunaram on account of property dispute. He would next argue that involvement of Kartika is, however, proved by other evidence and there is no contradiction in so far as

involvement of Kartika is concerned because, both in examination-in-chief and in further examination by the prosecution, Tulsi (PW-3) clearly stated that Kartika arrived at the spot with club and gave assault on the deceased, due to which, he fell down. He would further submit that there was only one head injury caused by hard blunt object, i.e. club and apart from that, according to his evidence, there were number of other injuries on other parts of the body which are said to be caused by hard and blunt object meaning thereby that Kartika had repeatedly assaulted on various parts of the body including vital part which clearly shows his intention to cause death. He would argue that immediately after disclosure of the incident by Tulsi to Sadhram (PW-2)FIR informer, and Jagat Ram (PW-4) regarding involvement of Kartick and Dhaneshwar, renders the prosecution evidence reliable with regard to involvement of Kartika and Dhaneshwar.

7. We have heard learned counsel for the parties and perused the records.

8. Case of the prosecution is based on the sole eyewitness account given by Tulsi (PW-3). According to him, at about 3.00 pm in the afternoon, while he was cutting crops in his field, Sunaram was also present in his field and at that time, appellant Dhaneshwar was cutting crops. He has further deposed that thereafter, Kartika came along with a club and assaulted Sunaram. Though, he involves Naveena Bai and Tulasi Bai, who are alleged to have been holding sickle, they have been acquitted. He further deposed that he was also caught and when he called Jagat Ram and Sadhram, they

came to the spot and, thereafter, he was set free. In his examination-in-chief, this witnesses has not involved Dhaneshwar as one of the assailants. He has involved only three persons Naveena Bai, Tulsi Bai and Kartika saying that they came running and assaulted Sunaram. Learned trial Court has acquitted Navina Bai and Tulsi Bai, giving them benefit of doubt. This witness has further stated that Tulsi came running along with club while Sunaram was standing near this witness. Dhaneshwer said that he will cut the crops on which, Sunaram said that he will lodge the report. Then he admits the suggestion that at this stage Kartika assaulted Sunaram on his head and he fell down. Involvement of Dhaneshwar is confined to the overt act that when Sunaram fell down, he was pressed against the ground. So far as Dhaneshwar is concerned, firstly he was not named in the examination-in-chief and even in the examination by the prosecution, after this witnesses having been declared hostile, all that could be elicited is that Dhaneshwar pressed the deceased against the ground only after assault was given by Kartika. This evidence taken on totality reveals that at the spot, when crop was being reaped by Sunaram where Dhaneshwer, Tulsi Bai and Naveena Bai were present, dispute arose as to who will cut the crop. But then, Dhaneshwar did not choose to give any assault and Kartika who was initially not present at the spot, came running and gave an assault on the head of the deceased due to which he fell down. Even after the deceased fell down, Dhaneshwar is not said to have given any assault. In these circumstances, it is difficult to hold that appellant Dhaneshwar shared any common intention with assailant Kartika who suddenly appeared at the spot

along with club and gave assault. Moreover, looking to the limited role played by Dhaneshwar, who was already at the spot, Dhaneshwar cannot be held responsible for the criminal act of Kartika in the absence of there being any evidence of they sharing common intention. Therefore, involvement of Dhaneshwar appears to be doubtful that he shared any intention with Kartika to give assault with intention to murder Sunaram.

9. We find that even according to Tulsi (PW-3), he reached at the spot while Dhaneshwar, Tulsi Bai and Naveena Bai were cutting crops and Sunaram was also cutting grass. There was a dispute between Dhaneshwar and Sunaram because, Dhaneshwar asserted that he will cut the cop, whereupon, Sunaram said he would lodge report. At this stage, Kartika arrived at the spot and gave an assault. Taking into consideration the oral evidence of the deceased having been pushed against the ground which was agricultural field, a number of scratches and ecchymosids injury stated at SI. No.4 to 15 can be explained. Injury No.1 is said to be a cut injury which could be caused by sharp edged weapon, whereas, Kartika is said to have assaulted with a club. Injury No.2 is also a cut injury which could be caused by sharp object. It is only injury No.3 which is said to be lacerated injury on the right occipital part of the head said to be bone deep.

According to the opinion of the doctor, death was due to head injury. However, as we find that out of two head injuries, one was caused by sharp object and other by hard and blunt object, without there being any clear medical opinion or report as to which of them

resulted into internal damage and brain hemorrhage etc, it is difficult to hold that injury caused by club alone was responsible for causing death. On this aspect, the medical evidence is not very clear.

In any case, considering that the allegation of giving assault on the head by Kartik is explained as only one single injury and the background of the dispute was that the parties had dispute with regard to cutting of crops, in our opinion, conviction of Kartik , even if the evidence of Tulsi (PW-3) is believed, would not travel beyond the scope of Section 304 Part-II IPC.

10. In the result, the conviction of appellant Dhaneshwar is held illegal and the impugned judgment to that extent is set aside. Appellant Dhaneshwar is reported to be in jail since 21.10.2012. He be set at liberty forthwith, if not required in any other case. Conviction of Kartika is altered to that under Section 304 Part-II IPC and his is sentenced for 7 years RI. The appeal of Kartika is accordingly partly allowed in the manner and to the extent stated above.

Sd/-

Judge

(Manindra Mohan Shrivastava)

Sd/-

Judge

(Ram Prasanna Sharma)