

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1045 of 2016**

1. Ramnath Yadav S/o Pragas Yadav, Aged About 45
2. Seetaram Yadav, S/o Ramnath Yadav, Aged About 21 Years
3. Anil Kumar Yadav, S/o Ramnath Yadav, Aged About 19 Years
4. Shobhnath Yadav, S/o Pragas Yadav, Aged About 30 Years

All of the resident of Village - Lahsun Path, Police Station -
Shankargarh, District - Balrampur-Ramanujganj, Chhattisgarh.

---- Petitioner**Versus**

- State Of Chhattisgarh Through - Police Station - Shankargarh,
District - Balrampur- Ramanujganj, Chhattisgarh

---- Respondent

For Appellant
For State

Mr. Sunil Tripathi, Advocate
Mr. Aditya Sharma, Panel Lawyer

DB: Hon'ble Mr. Justice Prashant Kumar Mishra &

Hon'ble Mr. Justice Gautam Chourdiya

Judgment On Board by Prashant Kumar Mishra, J.

15/10/2019

1. Heard.
2. Four appellants before us namely Ramnath Yadav, Seetaram Yadav, Anil Kumar Yadav and Shobhnath Yadav have been convicted vide impugned judgment dated 12.8.2016 passed by

learned Additional Sessions Judge, Ramanujganj (CG) in ST No. 33/2007, under Section 302/34 of IPC for committing murder of deceased Shivbaran @ Mahabir as also under Section 323 and 323/34 of IPC for causing simple injuries to injured Prabhu Prasad Yadav (PW-2) and Murti Bai (PW-1).

3. Both the parties are descendants of common ancestor Prakash Yadav. There was a dispute between four sons of Prakash Yadav concerning partition of *Manwar* land which the family owned. After the partition, a dispute subsisted over a particular piece of land, which both the parties were claiming to have received in partition and every year a dispute used to arise at the time of sowing and thereafter, reaping of the harvest. In this backdrop, the incident happened at about 10:00 AM on 31.10.2006. It is alleged that the victim party were reaping the harvest when the members of the opposite party reached over there and started assaulting Murti Bai (PW-1), thereafter, her husband Prabhu Prasad (PW-2) and then, their son Shivbaran @ Mahabir. Shivbaran fell unconscious on account of the injuries and was taken to the hospital where he succumbed to death.
4. The FIR Ex.-P/1 was lodged by PW-1 Murti Bai at 17.20 hours on 31.10.2006 itself. It was informed to the Police that the appellants reached the place of occurrence armed with club, *Barchi* etc. and attacked the informant (Murti Bai) and her family members causing injuries over the head, hand etc. of Murti Bai, Prabhu Prasad and Shivbaran. The mere intimation

Ex.-P/2 was registered on the information submitted by Murti Bai (PW-2). The memorandum statement of Shobhnath (appellant No.4) was recorded vide Ex.P/6, pursuant to which, club was recovered. Memorandum statements of Anil Kumar Yadav (appellant No.3) was recorded vide Ex.-P/7 and that of Ramnath Yadav (appellant No.1) and Seetaram Yadav (appellant No.2) were recorded vide Ex.-P/8 & P/9 respectively. Pursuant to these memorandum statements, clubs have been recovered from all of them.

5. The dead body of Shivbaran was sent for postmortem, which was conducted by PW-12 Dr. J. Kujur, who submitted his report vide Ex.P/19 finding two injuries in the following manner :

- (i) Mild swelling present over left temporoparietal region of head, size 3" x 2". On dissection of the scalp, blood clot was present on the left temporoparietal region of the head and blood clot was also present on the parieto-occipital region of the left side of the head.

- (ii) Abrasion size 1" x ½ " over the outer aspect of the left forearm.

Both the injuries were caused by hard and blunt object.

The Autopsy Surgeon opined that cause of death is shock and internal haemorrhage due to the head injury and the death is homicidal in nature.

6. In the same incident, Murti Bai (PW-1) sustained as many as

eight injuries, out of which, two were incised wounds, one was lacerated wound, four were contusions and one was swelling. The MLC report of Murti Bai (PW-1) has been proved as Ex-P/21. In respect of injured Prabhu Prasad (PW-2), the injury report- Ex.-P/22 has been proved finding contusions and abrasion over his body.

7. The prosecution examined as many as 14 witnesses to bring home the charges and at the end of trial, the appellants have been convicted as mentioned in the preceding paragraph.
8. Learned counsel for the appellants would submit that the statements of witnesses including eye-witnesses are full of material contradictions and omissions, therefore, in the absence of clarity as to the accused/appellant who caused the vital injury, all the accused persons deserve to be acquitted. He would further submit that the accused persons had also sustained injuries, for which, an FIR was registered but the opposite party were not sent for trial. Injuries on the person of the accused/appellants having not been explained, they are entitled to right of self-defence and deserve to be acquitted on this count alone.
9. Per contra, learned State Counsel would submit that from the statements of eye-witnesses, it is clearly proved that each of the appellant shared common intention to cause injuries to deceased Shivbaran as well as to injured Murti Bai (PW-1) and Prabhu Prasad (PW-2), therefore, the conviction is well

founded.

10. Both the counsel have read the evidence in support of their respective submissions.

11. Out of 14 witnesses, three eye-witnesses namely PW-1 Murti Bai, PW-2 Prabhu Prasad and PW-5 Pratima @ Gudli are the star witnesses for the prosecution. Therefore, we shall first discuss the statements of these witnesses.

12. Murti Bai (PW-2) is the informant who lodged the report on the date of the incident itself. She would depose in her examination-in-chief that she was assaulted by Ramnath Yadav by means of *Barchi* and by Seetaram Yadav and others by means of club. The accused persons also assaulted her husband Prabhu Prasad (PW-2) and her son Shivbaran (deceased) by means of club. In cross-examination, she admits that the moment altercation and *marpeat* started, a melee was created and she fell down on the ground. She further admits that thereafter, she could not see as to who caused injuries to whom. In her case diary statement-Ex.-D/1, she has stated that all the accused persons had caused injuries to her as well as to Prabhu Prasad and Shivbaran, but no specific role was attributed to any of the accused in causing injuries to Shivbaran. To this extent, there is contradiction and omission in her statement.

13. PW-2 Prabhu Prasad would state in his examination-in-chief itself that after sustaining injuries, he fell unconscious;

therefore, he could not see as to who received injuries on which part of the body. In the earlier part of his statement, this witness has stated that all the accused persons came over the place of occurrence and caused injuries to him, PW-1 Murti Bai and deceased Shivbaran. Similar is the statement of the third eye-witness PW-5 Pratima @ Guldi.

14. From the evidence of the eye-witnesses, as discussed above, it is apparent that the deceased party were reaping the harvest over the field possessed by them. At that time, the accused persons reached there and started assaulting Murti Bai (PW-1). When Prabhu Prasad (PW-2) intervened, he too was assaulted and thereafter, their son Shivbaran reached the spot and he was beaten by club by the appellants. Although deceased Shivbaran had sustained only two injuries, but the appellants/accused persons having participated in causing injuries, armed with club, they have definitely shared common intention.

15. We are now required to examine and dwell upon the issue as to whether the appellants have been rightly held guilty for the offence under Section 302/ 34 of IPC or their act would fall for conviction under any lesser offence.

16. By now, it is fairly well settled that as to when an offence under Section 302 of IPC can be converted to an offence under Section 325/326 of IPC or an offence still lesser.

17. In the matter of **Parusuraman alias Velladurai and others Vs.**

State of Tamilnadu, AIR 1993 SC 141, the Supreme Court has held thus in paras 2 & 3.

“2. We have heard learned counsel for the parties. We agree with the High Court that the participation of the appellants in the occurrence which result in the death of Jawahar has been proved beyond doubt. We are, however, of the view that keeping in view the nature of injuries on the person of the deceased and the facts and circumstances of this case the offence committed by the appellants comes within the mischief of S. 325 read with S. 34, IPC. Thirteen external injuries were found on the dead body of Jawahar. Out of those 11 were on lower legs and arms.....

3. Agreeing with the above observations of the High Court we are of the opinion that the intention of the appellants was to cause grievous hurt and as such the offence committed by them comes within the parameters of S. 325, IPC. We, therefore, set aside the conviction and sentence of the appellants under S. 304, Part I, IPC read with S. 34, IPC and instead convict them under S. 325, IPC read with S. 34, IPC. We impose the sentence of imprisonment already undergone by the appellants.....”

18. In the matter of **Khuman Singh and others Vs. State of M.P., (2005) 9 SCC 714**, the Supreme Court has held thus in para 10 :

“10.It is, no doubt, true that they assaulted the deceased in such a manner that the deceased suffered several fractures, but the injury which caused the death of the deceased was the one suffered by him on account of the rib bone puncturing the liver. We are convinced that this injury was not intended by the appellants, and the injury suffered by the deceased on his liver was at best accidental.....”

19. In the light of what has been observed by the Supreme Court in the above referred matters of **Parusuraman alias Velladurai and others** (supra) and **Khuman Singh and others** (supra), if we consider the evidence available in the case at hand, it is seen that deceased Shivbaran had received only two injuries on his person, the first being a mild swelling and second being a bruise. The first injury had blood clot beneath the scalp over the left temporoparietal region. There was no visible serious external injury. He suffered extra dural blood clot on the left side of temporoparietal region and left side of occipital region due to injury No.1, however, the accused persons were not aware that internal bleeding beneath the mild swelling over the left temporoparietal region would occasion death of the deceased. The fact that the first injury was not accompanied with any fracture of any part of the skull would itself show that it was not a serious injury. Moreover, both the parties were fighting with each other and in that course, the deceased sustained injuries by means of club which cannot be said to have been caused with an intention to commit murder. The intention was only to cause grievous hurt.

20. Accordingly, we are of the considered view that the accused persons have wrongly been convicted for the offence under Section 302/34 of IPC. Their act would amount to an offence under Section 325/34 of IPC. They are accordingly convicted for committing offence under Section 325/34 of IPC.

21. It is informed that all the accused persons are in jail for about

5 ½ months during trial and thereafter, from 12/8/2016 onwards i.e. from the date of judgment by the trial Court to till date. They have thus suffered more than 3 ½ years of jail sentence. The jail sentence already suffered by them appears to be adequate for the offence under Section 325 of IPC, therefore, they are sentenced to the period already undergone by them.

22. The appellants be released forthwith, if they are not required in any other case, on each of them furnishing a personal bond for a sum of Rs.25,000/- with one surety each in the like sum to the satisfaction of the trial Court. It is directed that the bail bonds shall remain in operation for a period of 6 months in view of the provisions of Section 437-A of the Cr.PC. The appellants shall appear before the Higher Court as and when required.

23. At this juncture, for appellant No.3 Anil Kumar Yadav, it is prayed by learned counsel for the appellants that at the time of incident, he was serving as Police Constable. Because of the conviction, this appellant may lose his job, therefore, he may be granted benefit of probation.

24. Having considered the submissions and the genesis of offence, we are of the considered view that appellant No.3 being only 19 years of age and thus, was a young offender at the time of the incident, deserves benefit of probation.

25. Section 12 of the Probation of Offenders Act, 1958 (in short "the Act, 1958") empowers the Court to direct removal of

disqualification attaching the conviction. As has been stated by us infra about the genesis of offence and for the fact that judgment of conviction against appellant No.3 Anil Kumar Yadav, who is a Government Servant, may disqualify him to hold Government service, we hereby direct, in exercise of our power under Section 12 of the Act, 1958 that appellant No.3 shall not be affected by his conviction so as to suffer any disqualification in his employment.

26. Accordingly, instead of sentencing appellant No.3 Anil Kumar Yadav, he is directed to be released on his furnishing a bond for a sum of Rs.50,000/- for maintaining peace and tranquillity for a period of one year. Such bond shall be submitted before the trial Court within a period of 6 weeks from today.

27. This power has been exercised keeping in view the fact that the offence alleged against the appellant does not attract punishment of death sentence or life imprisonment.

28. In the result, the appeal is allowed in part to the above extent.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge