

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 10.02.2020

Delivered on 05.3.2020

Criminal Appeal No.912 of 2001

1. Madaiya, aged about 76 years, S/o. Chaitu Kalar, Cultivator
R/o. Village & Police Station Khamaria (Dead & deleted)
2. Sheokumar, aged about 35 years,
3. Ramsahay, aged about 41 years,
4. Rajkumar, aged about 38 years,
5. Pawan, aged about 28 years,

All sons of Madaiya Kalar, Cultivator, R/o. Khamaria, Tahsil
Saja, Sub Division Bemetara, Distt. Durg (CG)

---- Appellants

Versus

State of Chhattisgarh, through Police Station Khamaria

---Respondent

For the appellants	: Shri Barun Kumar Chakraborty, Advocate
For the respondent/State	: Smt. Shubha Shrivastava, Panel Lawyer

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

1. This appeal has been preferred against judgment dated 12.9.2001 passed by Second Additional Sessions Judge (FTC), Bemetara, Distt. Durg (CG) in Session Trial No.273/1992 wherein the said Court convicted all the appellants for commission of offence under Section 304 part I read with 34 of the Indian Penal Code, 1860 and 304 Part I read with 34 IPC and sentenced to

undergo rigorous imprisonment for 07 years (two counts) and to pay fine of Rs.1000/- on each count with default stipulation with a direction to run the sentences concurrently.

2. During the pendency of appeal, appellant No.1- Madaiya died and his appeal is finally abated. This appeal is being heard and decided for remaining appellants only.

3. As per the version of the prosecution, in the village Khamaria, appellant Madaiya (since deceased) hold 11 acres of agricultural land. Over this piece of land, the complainant side claimed joint ownership of one Ramayan on the basis of a will and said Ramayan appointed one Anjor Das as his Power of Attorney. On the date of incident, i.e. 30.01.1992, Anjor Das called labours of his village numbering about 20 and in addition to that he called his nearest relatives and his grand son namely Kishan Kumar and went on the field. It is alleged that crop was sown by Madaiya in the said field. When Anjor Das and his companions tried to reap the gram in the said field the same was objected by Madaiya, but said Anjor Das did not hear the version of Madaiya. Thereafter the appellants attacked said Anjor Das and his assistant namely Kishan Kumar by club and crow-bar. Anjor Das died on the spot and Kishan Kumar was admitted in the District Hospital, Durg and later on died. Madaiya also received injuries along with his sons.

Both parties lodged report at police station. The appellants were charge sheeted and after completion of trial, they have been convicted and sentenced as mentioned above.

4. Learned counsel for the appellants submits as under:

(i) The trial Court observed that self defence of both side is recognised but recorded that it is a case of exceeded right of self defence, which is not correct.

(ii) Version of the prosecution witnesses is not corroborating to each other, therefore, finding of the trial Court is not sustainable.

(iii) Right of private defence of person and property is available to each of the appellants because they have been injured by the trespassers.

(iv) The appellants have not been identified in the present case and the investigation in the present case is partial investigation, therefore, case of the prosecution is not established.

(v) The trial Court has not evaluated the evidence properly, therefore, finding of the trial Court is liable to be set aside.

5. 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 marshaling of the evidence and the

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

6. I have heard learned counsel for the parties and perused the judgment impugned and the record.

7. Now the question for consideration before this Court is whether the appellants have participated in assaulting deceased Anjor As and Kishan Kumar. FIR (Ex-P/1) is lodged by Ku. Arti on the date of incident itself. In the said FIR, all the five appellants have been named as culprits and their act of assault is also mentioned. Arti was examined before the trial Court as PW-1 and she deposed against the appellants regarding assault on Anjor Das and Kishan Kumar. Version of this witness is unrebutted during cross-examination which is supported by the version of Kelhar Satnami (PW-5), Jagmohan (PW-2) and Jeeran Bai (PW-32). All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence. Dr. RP Sharma (PW-11) conducted autopsy of deceased Anjor Das on 30.01.1992 at Primary Health Centre, Khamaria and noticed following injuries:

- (i) Incised wound of 9cm x 2cm x 5 cm placed obliquely on right occipital region piercing into the occipital bone and deep into the brain substance.
- (ii) Incised wound of 6 cm x 2 cm x 4 cm placed vertically in the mid line over the occipit piercing into the bone.

- (iii) Incised wound of 5 cm x 2 cm x 4cm placed obliquely on left side of occipital region piercing into bone.
- (iv) Lacerated wound of 4cm x 1 cm x 1cm placed obliquely in mid line over the parieto occipital region
- (v) Lacerated wound of 5cm x 2cm x 1cm placed obliquely on right parietal region
- (vi) Lacerated wound of 4cm x 1cm x 1cm oblique placed on left parietal region.
- (vii) Contusion of 4cm x 3cm placed on right parieto temporal region on section
- (viii) Contusion of 4cm x 3cm placed on left parieto frontal region on section

As per the version of this witness, the deceased died due to compound fracture of skull bones with laceration of brain with hemorrhage.

8. Dr. RN Pandey (PW-12) conducted autopsy of Kishan on 31.01.1992 at District Hospital Durg and noticed following injuries:-

- (i) Stitched wound having one cotton stitch on left eye outer side on angle of orbit
- (ii) Stitched wound having 3 cotton stitches over left eye brow
- (iii) 'V' shaped stitched wound over left fronto-parietal area having 10 cotton stitches.
- (iv) Stitched wound having 5 cotton stitches over right parieto occipital area horizontal
- (v) Fracture on occipital & Parietal bone right side and brain matter protruded out of the wound

As per the version of this witness, death was caused due to shock and hemorrhage and duration of death is within 24 hours of the examination and nature of death is homicidal in nature. Both the medical experts recorded finding that death is homicidal in nature and thier version is unrebutted and there is no other expert opinion contrary to the opinion of these witnesses. Therefore, it is proved that death of both the victims were homicidal in nature and all the appellants have been participated in assaulting the said two deceased.

9. Both parties are villagers of the same locality, therefore, it is not a case where identification is required. Both sides known to each other and dispute arose due to land dispute and for cutting of crops. True it is that the victims entered into the land of Madaiya and therefore, they had right of self defence and defence of property but the fact remains that they assaulted Anjor Das mercilessly in a cruel manner. Both the deceased sustained number of injuries on their vital part which shows that act of the appellants is cruel, therefore, their case do not fall in any of the exception of right of self defence or right of defence of property. The appellants have acted contrary to the exception 4 of Section 300 of IPC, therefore, the trial Court is right in holding that it is a case of culpable homicide not amounting to murder which falls under Section 304 Part-I IPC. Taking into totality of the facts,

arguments advanced on behalf of the appellants is not sustainable. Finding recorded by the trial Court is one of the plausible view and this Court has no reason to record a contrary view. Accordingly, conviction of the appellants under Section 304 Part-I is hereby affirmed.

10. Heard on the sentence part.

The trial Court awarded sentence of 07 years which cannot be termed as harsh, disproportionate and unreasonable looking to the gravity of the offence, therefore, sentence awarded to the appellants is not liable to be interfered with.

11. Accordingly, the appeal is liable to be and is hereby dismissed. As per the report of the jail authorities, all the appellants have been set free from jail after full term getting the benefit of remission, therefore, no further order for their arrest etc. is required.

Sd/-

(Ram Prasanna Sharma)

JUDGE