

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 273 of 2003

Order reserved on 06.11.2019

Order pronounced on 12.03.2020

1. Jailal Patel, son of Jeedhan Patel, aged about 30 years, occupation agriculturist,
2. Tularam, son of Jeedhan Patel, aged about 35 years, Occupation-Agriculturist.

Both are resident of Sararmol, P.S. Tamnar Raigarh, District Raigarh (Chhattisgarh) **--- Appellants**

Versus

State of Chhattisgarh, through Police Station Tamnar, District Raigarh (CG) **--- Respondent**

For Appellants : Mr. A.N. Bhakta & Mr. Vivek Bhakta, Advocates.

For State : Mr. Ishan Verma, PL.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

Facts of the case in short are that on 16.06.2001 at about 7 AM when the complainant party comprising Rooplal (PW-4), Shambhulal (PW-6) and Padman (PW-12) along with others were tilling their land, the accused persons came there and saying the said land to be their own asked complainant party not to cultivate that land and get away from there. The accused persons are also alleged to have abused the complainant party. It is alleged that when the complainant party did not pay any heed to the words of the accused persons, they all started assaulting them with the help of bamboo sticks. On account of the head injury, Bhoglal became unconscious and fell down. He was taken to police station by PW-4, PW-6, PW-12 and others where the report was lodged by Rooplal (PW-4). Bhoglal was thereafter sent to District Hospital, Raigarh from where looking to the seriousness of the injuries suffered by him he was referred to District Hospital, Raipur but on the way thereto he succumbed to the injuries suffered by him at 10 AM. Next day i.e. on 17.06.2001 Merg intimation (Ex.P-24) was recorded by Police Inspector

(PW-13). FIR (Ex.P-12) was then reduced to writing at the instance of Rooplal (PW-4) on the basis of which offences under Sections 147, 148, 149, 294, 323 and 506-B IPC were registered and after the deceased breathed his last, Section 302 IPC was also added. During Merg enquiry, inquest on the dead body was done, body was sent to Primary Health Center, Tamnar for postmortem examination which was conducted by Dr. Budhiyar Singh (PW-5) who gave his report under Ex.P-15. Thereafter, memorandum of accused Jailal, Ratan, Khem Sagar and Anandram were recorded vide Ex.P-5, Ex.P-6, Ex.P-7 and Ex.P-8 respectively on the basis which seizure of bamboo stick was made from Jaillal, Kanaksai, Khem Sagar and Anandram under Ex.P-1 to Ex.P-4. After completion of investigation *challan* was filed by the police against as many as 5 accused persons under Sections 147, 148, 149, 323, 506-B and 302 IPC followed by framing of charge under Sections 148, 149, 302/149 and 323/149 IPC.

2. Learned Court below vide judgment impugned dated 09.01.2003 passed in Sessions Trial No.155/2001 acquitted the accused namely Kanak Sagar, Khemsai and Anandram of all the charges levelled against them but at the same time held the accused/appellants herein guilty under Sections 304-II and 323 IPC with imposition of sentence of RI for 5 years and RI for 6 months respectively under each section. Hence this appeal.

3. Counsel for the accused/appellants submit that since the co-accused, three in number, involved in the same incident have been acquitted, the accused/appellants herein whose case is also based on the same testimony are entitled to receive the same benefit. They submit that the Court below has fallen in error in ignoring the defence version to the effect that the disputed land was in possession of the accused/appellants and it is the complainant party which tried to take over the possession and cultivate the said piece of land leading to eruption of the quarrelsome activities. They further submit that even the evidence of PW-6 has not been considered in its proper perspective where he categorically stated

that accused persons had first cultivated the land in question. They further submit that the prosecution has also not established as to which of the accused persons had caused injuries to the Bhoglal which ultimately became fatal to his life. According to the counsel for the appellant, since the act of the accused/appellants was in exercise of right of private defence of their property, their conviction under any of the aforesaid sections is not sustainable in the eye of law.

4. On the other hand State counsel supports the judgment impugned and submits that while passing the judgment impugned learned Court below has considered all aspects of the matter including the evidence adduced by the prosecution and no illegality or irregularity is noticeable in the judgment impugned warranting any interference with the well reasoned findings recorded by the Court below. He submits that even if the accused/appellants, as argued by the counsel for the appellants, had opened an assault in exercise of their right of private defence over their property, is not maintainable at all because while exercising the said right they were not supposed to exceed the same to the ultimate stage where the life of the deceased was at stake.

5. Heard counsel for the parties and perused the evidence of the witnesses.

6. Dhaniram (PW-2) has stated in his Court statement that on the date of incident when the members of the complainant party were sowing paddy in their field, accused persons came there and asked them not to cultivate the land. There was some scuffle between the members of both the parties. Injured Bhoglal was unconscious and there was injury on his head and above his right eye and that blood was oozing from his head injury. Thereafter, he called his driver and accompanied by Rooplal (PW-4) as also the Village Kotwar, took the injured to Police Station, Tamnar on his tractor from where he was taken to District Hospital, Raigarh from

where looking to his serious condition, he was referred to District Hospital Raipur but on the way thereto he succumbed to the injuries suffered by him. Though he is stated not to have seen the actual occurrence yet was informed by PW-4 and PW-6 that deceased was beaten by the accused/appellants herein with the help of club. Rooplal (PW-4) has stated that on the date of incident at about 7:30 AM when he along with PW-6, PW-12, the deceased and others was sowing paddy in their field, accused Kanak Sai, Tularam, Jailal, Khemsagar and Anandram came there carrying clubs and axe in their hands, started using filthy abuses and saying the said land to be their own, they threatened him and all the members of the complainant party of their life. He has stated that accused Jailal and Kank Sai dealt club blows on the right side of his back. After he fell down, they caused club injuries to Khilleshwar. On hearing commotion PW-12 and the deceased also came there and when they were on the bund, accused/appellant Tularam dealt an axe blow on his head and neck. He also caused axe injury on the head and leg of Padman (PW-12). Accused/appellant Jailal is also stated to have caused club injury on the nose of the deceased. As a result of the injuries suffered by the deceased and PW-12, they both fell down on the ground and even thereafter the assault at the hands of accused/appellant Jailal continued and while doing so he was exhorting to break his legs. This witness has stated that at the time of incident, Rohit Kumar (PW-7) and Dasairam (PW-8) who were ploughing their adjacent land are also stated to have witnessed the assault. He has stated that Dhaniram (PW-2) was called and on his tractor injured Bhoglal and PW-12 were taken to Tamnar Police station where the report (Ex.P-12) was lodged by him. He has further stated that Padman (PW-12) was hospitalized in Tamnar itself whereas Bhoglal was sent to District Hospital, Raigrah from where looking to his condition he was referred to District Hospital, Raipur but unfortunately he breathed his last on the way itself. This witness (PW-4) is also stated to have undergone

the medical examination. According to this witness, previously on the report of Tularam and Jailal – the accused/appellants herein, a criminal case was registered against him. This witness is stated to have informed to the police that accused/appellant Tularam had caused injury to Bhoglal from the edge side of the axe but if it is not mentioned in his police statement, he cannot tell the reason for that. Shambhulal (PW-6) has also made almost the same statement like PW-4. Adding to his version, he has stated that he too was assaulted by accused Khemsagar and the accused/appellant Jailal. Rohit Kumar (PW-7) who at the time of incident was also present in the field but he is stated not to have seen the actual assault. He however has stated that blood was oozing from the head injury of the deceased and that of PW-12. Another injured witness Padman (PW-12) has stated that accused/appellants Jailal and Tularam along with others were at the time of incident armed with *lathi* and stopped the complainant party from cultivating the land in question. According to him, accused/appellant Jailal had caused club injury to Rooplal (PW-4) and Khileshwar (not examined) whereas accused/appellant Tularam is stated to have assaulted the deceased and caused axe injury on his head and in the periphery of his right eye. Accused/appellant Jailal is also stated to have caused club injury on his head as a result of which he fell down. He went on stating that while trying save the deceased, accused/appellant Tularam caused axe injury on his head and leg. Ramratan Choudhary (PW-1) and Kuldeep (PW-10) – the witnesses to memorandums Ex.P-5 to Ex.P-8 and seizure made under Ex.P-1 to Ex.P-4 have also supported the case of the prosecution. Dr. Budhiyar Singh (PW-5) who conducted postmortem examination on the body of the deceased has stated that he noticed lacerated wound on his occipital region in the size of 6x2x2 cm caused by hard and blunt object and he also advised for x-ray vide Ex. P-13. According to the opinion given by this witness, the cause of death was shock due to head injury leading to cardio-respiratory failure and that

the death was homicidal in nature. This witness has also medically examined Rooplal (PW-4) and Padman (PW-12) and found some simple injuries on their body vide Ex.P-15 and Ex.P-16. Investigating Officer (PW-13) has also supported the case of the prosecution. Dasairam (PW-8) – the witness to inquest (Ex.P-20) has also supported the case of the prosecution.

7. Thus the discussion made above indicates the complicity of the accused/appellants herein who caused injuries on the head of the deceased as also to PW-4 and PW-12 with the help of club. Even the witnesses to memorandum and seizure have also supported the case of the prosecution. Of course, the incident had occurred on the spur of moment when the complainant party did not stop tilling the land as asked by the accused persons but at the same time while causing injuries to the deceased they were having the knowledge that their act may ultimately prove fatal and cause death of Bhoglal. Had the condition of Bhoglal not been dangerous to life, he would not have been referred to Raigarh and then to Raipur and could have received treatment at Tamnar Hospital itself as had happened in the case of PW-4 and PW-12. The postmortem report also suggests that the cause of death was the head injury, as number of witnesses have also consistently stated that head injury of Bhoglal made him unconscious and fall down on the ground. The main allegation of assault involving death of the deceased and injuries to PW-4 and PW-12 revolve around the present accused/appellants only and therefore, the findings recorded by the Court below that while opening the continuous assault the accused/appellants had the knowledge about the injuries sufficient for causing death of the deceased, are fully justified and do not warrant any interference at least with the conviction part of the judgment impugned. It is hereby maintained accordingly.

8. As regards sentence, keeping in mind the facts and circumstances of the case in particular the fact that at the time of incident which took

place in the year 2001 the accused/appellants were above 30 years of age and by now they must have grown up quite old, that by now they have suffered enough for their felony by facing the long drawn prosecution and that they have already remained behind the bars for about 1 year and 10 months, this Court thinks it just and proper and also in the interest of justice to reduce the substantive sentence imposed on them to the period already undergone. Order accordingly.

9. Appeal thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge