

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1031 of 2014****Judgment Reserved on 17.12.2019****Judgment Delivered on 03.03.2020**

1. Daya Ram, S/o Kishun Yadav, aged about 39 years,
2. Maya Ram Yadav, Son of Kishun Yadav, aged about 37 years,
3. Darwa alias Kunjmani, Son of Sukhram Yadav, aged about 34 years
4. Kastu alias Shravan, son of Budhi Ram Yadav, aged about 22 years
5. Sukhraman, Son of Gopal Yadav, aged about 60 years,

All are residents of village Kedma, police outpost Kedma, police station Udaipur, District Surguja, C.G.

----Appellants**Versus**

- State of Chhattisgarh, through the Police Station House Officer, police station Udaipur, District Surguja, C.G.

---- Respondent

For Appellants	Shri V.K. Pandey & Shri T.R. Chandrakar, Advocates.
For Respondent	Shri Rajendra Tripathi, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****C A V Judgment****Per Gautam Chourdiya, J**

1. This appeal arises out of the judgment of conviction and order of sentence dated 02.08.2014 passed by the 3rd Additional Sessions Judge, Ambikapur, District Surguja, C.G. in Sessions Trial No. 217/2012, whereby, the appellants stand convicted and sentenced as under:-

Conviction	Sentence
Under Section 148 of the Indian Penal Code	Rigorous imprisonment for one year
Under Section 323 of Indian Penal Code	Fine of Rs.500/-, in default of payment of fine amount simple imprisonment for two months
Under Section 325 of Indian Penal Code	Rigorous imprisonment for three years
Under Section 302 of Indian Penal Code	Life imprisonment

(All sentences were directed to run concurrently)

2. Prosecution case in brief is that on the date of incident i.e. 08.02.2012, at about 10:00-11:00 am, when the complainant party namely Manraj, Dilraj, Marhu, Dujram and others were ploughing the field near Kedama Nala, it is alleged that the present accused/appellants and other persons reached there with Lathi-Danda and deadly weapon, in furtherance of common object started beating the complainant party abusing and threatening them to kill, as a result of which Sukul, Kartik, Marhu, Manraj and Dilraj have suffered simple injuries, Basant and Dujram suffered grievous injuries and during treatment Dujram died because of injuries on his head. On the same date i.e. 08.02.2012 at about 17:00 hours injured Sukul Majwar lodged FIR against Dayaram, Mayaram, Sukhraman Yadav, Darwa Yadav, Shrawan Yadav and others under Sections 294, 506, 323, 147 and 148 of IPC which was registered at zero number. Thereafter numbered FIR was registered on 09.02.2012 at 16:35

hours against the aforesaid accused persons. The incident was witnessed by PW-1 Basant, PW-4 Kartikram, PW-6 Sukul, PW-7 Dilraj, PW-10 Manraj, PW-11 Marhuraam and PW-13 Panmeshwar. Inquest over the dead body was conducted on 09.02.2012 vide Ex.P/1 and thereafter the dead body was sent for postmortem. Autopsy of deceased Dhujram was conducted by PW-2 Dr. Anupam Minj, who found the following injuries as per Ex.P-3:-

On external examination, the Doctor noticed defused swelling over scalp, bleeding from nose, lacerated wound over left leg, lower 1/3rd, size 2cmx1cmx1cm.

On dissection, the Doctor noticed sub periosteal blood & blood all over skull, there was linear fracture over both side of frontal and parietal head and on left temporal region. There was depressed fracture on left side. There was linear fracture in the middle of the skull of size 8cm and there was perpendicular 8 cm fracture on the right side and 6 cm perpendicular on the left side. There was linear fracture of 10cm/from front to back.

According to the Doctor, the injuries were caused by hard and blunt object. The Doctor opined that the cause of death was comma due to head injury and the time of death was 24 hours prior to the postmortem examination.

3. During investigation, as per Ex.P-7 memorandum of Dayaram was recorded and as per Ex.P-8 seizure memo, one club was seized from Dayaram. As per Ex.P-9 memorandum of Mayaram was recorded and as per Ex.P-10 seizure memo, one club was seized from Mayaram. As per Ex.P-11 memorandum of

Sukhraman was recorded and as per Ex.P-12 seizure memo, one club was seized from Sukhraman. As per Ex.P-13 memorandum of Darwa was recorded and as per Ex.P-14 seizure memo, one club was seized from Darwa. As per Ex.P-15 memorandum of Kistu was recorded and as per Ex.P-16 seizure memo, one club was also seized from Kistu. Spot Map was prepared. On the same day, merg intimation Ex.P-29 was registered.

4. Injured Baiga was medically examined vide Ex.P-19A by PW-9 Dr. B.M. Tamre and he found the injured had pain in left shoulder with back tenderness and there was swelling with tenderness in right forearm. These injuries were caused by hard and blunt object and were simple in nature. The doctor advised for X-ray of the injured with respect to injury over forearm.

PW-9 Dr. B.M. Tamre medically examined injured Dilraj vide Ex.P-20A and noticed one lacerated wound over left index finger of size 2cmx1cm, swelling with tenderness over left elbow and pain in over back side below left scapula. The Doctor advised for X-ray of the injured in respect of injury over left elbow. This Doctor medically examined injured Marhuraam vide Ex.P-21A and noticed lacerated wound over left index finger of size 3cmx1cm, swelling with tenderness in left cheek, swelling with tenderness in right shoulder and swelling with tenderness over right calf region. The Doctor advised for X-ray of the injured in respect of injury over right shoulder.

The Doctor medically examined injured Manraj vide Ex.P-22A and noticed swelling with tenderness over left palm, swelling with tenderness over right calf region and pain over right wrist and forearm. The Doctor advised for X-ray of the injured in respect of injury over left palm. The Doctor also medically examined injured Sukul vide Ex.P-23A and noticed tenderness in left thumb with pain which was caused by hard and blunt object and simple in nature. The Doctor medically examined injured Kartik Ram vide Ex.P-24A and noticed pain with swelling in left thumb, abrasion in head left occipital region of size 3cmx2cm and opined that the said injuries were caused by hard and blunt object and were simple in nature. The Doctor medically examined injured Dhujram vide Ex.P-25A and noticed lacerated wound over left leg tibular region of size 2cmx1/2cm, swelling with abrasion in head left occipital region of size 1cmx1cm, left temporal region of size 1cmx1cm, tenderness was present and patient was unconscious. The Doctor also noticed swelling with tenderness over left arm. The Doctor advised for X-ray of injured in respect of injury over left arm as also for CT scan. The Doctor also medically examined injured Basant vide Ex.P-26A and noticed swelling with tenderness over left forearm and swelling with tenderness over right palm and dorsum region. The Doctor advised for X-ray of left forearm. As per Ex.P-27 i.e. X-ray report of injured Basant, fracture was found in left radius and Ulna bone.

5. After completion of investigation, charge sheet was filed against the accused appellants under Sections 294, 506, 323, 325, 147,

148 & 302 of IPC. The trial Court framed the charges under Sections 148, 506 Part II, 323, 325, 302/149 against the appellants which were denied by them and they prayed for trial.

6. So as to hold the accused persons guilty, the prosecution examined as many as 18 witnesses i.e. PW-1 Basant, PW-2 Dr. Anupam Minj, PW-3 Satish Ekka, PW-4 Kartikram, PW-5 Chankhari, PW-6 Sukul, PW-7 Dilraj, PW-8 Baigaram, PW-9 Dr. B.M. Tamre, PW-10 Manraj, PW-11 Marhurar, PW-12 B.S. Kerketta, PW-13 Panmeshwar, PW-14 Nagendra Tiwari, PW-15 Ashok Kumar Yadav, PW-16 Rajaram Rathiya, PW-17 Lavkumar Pandey and PW-18 Krishna Singh. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In defence, appellant Dayaram examined himself as DW-2 and Budhram examined as DW-1.
7. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned in para 1 of this judgment.
8. Learned counsel for the appellants has submitted that as per the statements of PW-1 Basant and PW-7 Dilraj, it is clear that the land in question belongs to the accused persons and they had prepared the same for cultivation. It is admitted by PW-1 Basant that the complainant party wanted to dispossess accused Dayaram

from the land in question which was given to him by his forefathers and take possession of the same and on account of this dispute quarrel took place between both the parties. DW-2 Dayaram also stated in paras 1 & 2 that the disputed land belongs to him which was given to him by his forefathers and that on the date of occurrence the complainant party along with 13-14 other persons came at the field armed with *Nagar, Bel, Tangi & Kudali* and threatened Dayaram and other persons who were sowing the field. In his statement under Section 313 CrPC, he has stated that he assaulted the complainant party in exercise of right of self-defence.

He submits that initially the FIR Ex.D-1 was lodged by accused Dayaram against Manraj, Udal Majwar, Fedagi and Bevra Majwar on the same day under Sections 294, 324, 147 & 148 of IPC at 13:00 hours. Thereafter, on the same day counter FIR was lodged by Sukul PW-6 at 17:00 hours against Dayaram, Mayaram, Sukhraman, Shrawan Yadav and other accused persons vide Ex.P-17. PW-1 Basant has also admitted in para 12 of his statement that on the report lodged by accused Dayaram, a criminal case is going on against Manraj, Udal, Fedagi and Bevra Majwar. As per documents of Ex.D-4 and Ex.D-5 (Revenue Records), it is clear that the disputed land belongs to the accused persons and this fact is also proved by DW-1 Budhram, PW-1 Basant and PW-7 Dilraj. He submits that in the same incident Dayaram also suffered injuries. There is no specific evidence as to who caused injuries to deceased Dhujram. Therefore, looking to the contradictions and omissions in the statements of eye-

witnesses and the admitted fact that the disputed land was in possession of the accused persons, no offence under Section 302 of IPC is made out against the accused appellants.

9. On the other hand, learned counsel for the State supports the impugned judgment.
10. Heard both the parties and perused the material available on record.
11. As per medical reports Exs. P-19A, P-20A, P-21A, P-22A, P-23A, P-24A & P-26A of Baiga, Dilraj, Marhura, Manraj, Sukul, Kartikram and Basant respectively, it is clear that the injuries suffered by these victims were simple in nature except the injury suffered by injured Basant which was grievous in nature.
12. PW-1 Basant stated in para 3 of his statement that accused/appellants assaulted upon Dhujram by means of Club, as a result of which Dhujram sustained grievous injury and during treatment he died at Ambikapur District Hospital.
13. PW-4 Kartikram also stated that accused appellants assaulted upon the deceased Dhujram and Basant. He also stated in para 9 of his statement that he also sustained injury in that dispute.
14. PW-6 Sukul also stated in para 4 of his statement that all the accused persons assaulted upon Dhujram and other persons and all of them suffered simple injuries except Dhujram. He also admitted that the land belongs to the accused and it is in possession of accused persons. He also admitted in para 11 that

both the parties quarrelled with each other but he has not identified as to who actually caused injury.

15. PW-7 Dilraj also stated in paras 1 & 3 of his statement that all the accused persons assaulted upon Dhujram on head and other parts of the body. He also stated that Basant, Manraj and other persons also sustained injuries in this dispute.

16. PW-10 Manraj and PW-11 Marhu have supported the prosecution case and stated that accused persons assaulted upon Dhujram, Basant and other persons.

17. Looking to the entire statements of the eyewitnesses, PM report and MLCs, this fact is proved by the prosecution that Dhujram deceased sustained injury in the incident and he died during treatment and other persons also sustained injuries. Therefore, conviction of the accused appellants under Sections 148 by the trial Court appears to be just and proper and needs no interference by this Court.

18. Now this Court has to see whether the act committed by the accused appellants resulting in death of injured Dhujram makes them liable for offence under Section 302 of IPC or any lesser offence and whether their conviction under Section 323 and 325 of IPC is also in accordance with law.

19. As per admission of PW-1 Basant in paras 9 & 10, the disputed land was in the possession of Dayaram and accused persons were in possession of the same since the time of their forefathers till the date of occurrence. The complainant party wanted to dispossess

them from the said land. He also admitted in para 12 that on the report of accused Dayaram counter case was also registered against the complainant party.

20. As per documents of Ex.D-4 and Ex.D-5 (Revenue Records), it is clear that the land in question was in the name of accused Sukhraman. As per Ex.D-6, in the same incident accused Dayaram also suffered simple injuries. PW-1 Basant, PW-6 Sukul and PW-7 Dilraj have admitted that the land in question belongs to the accused party and on the date of incident they were ploughing the field.

21. In the matter of ***Latel vs. State of Chhattisgarh*** reported in ***2001 (4) Crimes 302(SC)***, the Hon'ble Supreme Court observed in para 7 as under:-

“7. We will now take up the incident that took place in the disputed field. The High Court in regard to this incident, having come to the conclusion that the possession of the disputed field was with the appellant, held that the appellant had a right to private defence to the extent of protecting the property of which he was in possession but after examining the evidence available on record it came to the conclusion that so far as the appellant and Bhajan son of Latel are concerned, they have exceeded this right and are liable to be punished under Section 304, Part I, IPC, for having committed the murder of Ashok Tiwari. Here we are in unison with the finding of the High Court. From the evidence of the witnesses which have been discussed by the High Court in regard to this incident, it is clear that the appellant and Bhajan had attacked on Ashok Tiwari even after he had fallen down on the ground with 'tabbal'. Dr. Chandel, PW-20, who gave evidence as a prosecution witness has stated that the death

of Ashok Tiwari was the consequence of two head injuries which had also resulted in fracture of parietal and occipital bones and these injuries were sufficient in the ordinary course of nature to cause death and from the evidence of the prosecution, the High Court rightly came to the conclusion that these 2 injuries were caused by the appellant and Bhajan by exceeding their right of private defence. At the same time, the High Court in our opinion was justified in coming to the conclusion that the act of these two persons, namely, the appellant and Bhajan came under Exception II to Section 300 and amounted to culpable homicide not amounting to murder because the same was done in exercise of the right of private defence of their property and taking into consideration nature of attack it held that their act does not come under Section 302 IPC but only under Section 304, Part I, IPC. We agree with this conclusion both in regard to the act of the appellant and Bhajan as also the nature of offence as held by the High Court. It is to be noted that Bhajan though convicted under Section 304, Part I, IPC for 10 years' RI has not preferred any appeal and the appellant has chosen to prefer this appeal from jail, and having considered the material on record and the evidence, we agree with the High Court in regard to its findings with reference to the death of Ashok Tiwari and find the appellant guilty of having been a party to the death of Ashok Tiwari. He is liable to be punished under Section 304, Part I, IPC, and we feel that the sentence of 10 years' RI imposed on him is justified."

22. In the matter of ***Pathubha Govindji Rathod and another vs. State of Gujarat*** reported in ***(2015) 4 SCC 363***, the Hon'ble Supreme Court considering the fact there was a free fight between two groups of people and the plea of private defence taken by the appellant observed as under:-

"Police submitted charge-sheets against both set of accused - Trial Judge convicted accused from both sides – It

can be safely said that it is a case of free fight between two groups of people

Appellant 1 has taken plea of private defence right from beginning of trial – Appellant 1 who suffered knife injury in the incident has caused death of one of the deceased by firing several shots thereby exceeding right of private defence – Held, Appellant 1 entitled to benefit of S.300 Exception 2 – Thus, it is case of culpable homicide not amounting to murder – Appeal of Appellant 1 allowed partly – Conviction and sentence recorded against Appellant 1 under Section 302 IPC r/w S. 149 IPC is set aside – Appellant 1 convicted under S.304 Pt. I IPC and sentenced to imprisonment for a period of 10 years and directed to pay fine of Rs.5,000/-.”

23. In the matter of ***Suresh Singhal vs. State (Delhi Administration)*** reported in ***(2017) 2 SCC 737***, the Hon'ble Supreme Court observed as under:-

“Case of shooting resulting in death of deceased – *H* had arranged a meeting for settling a dispute that had arisen between appellant-accused and the deceased *S* – *S* and his two brothers *Ha* and *K* were already at the office of *H* – Appellant and his father *P* accompanied by another man *R* reached the office and as soon as appellant and his father entered the office, there was an altercation between appellant and *S* – Appellant took out his revolver and shot *S* – In the incident, *S* and *K* were killed – Appellant's conviction was upheld by High Court

– Held, evidence clearly shows that in fact a scuffle took place – In the scuffle, deceased *S* alone, or along with his two brothers tried to strangle appellant – The appellant reached for his revolver, upon which *S* released him and turned around to run away – At such point, appellant shot at him, either still lying down or having got up – It probabilities and explains the fact that it was not a close shot, as there was no blackening, tattooing or charring around the bullet

entry wound – It is well known that shooting from close quarters chars or blackens the body – In fact, the doctors specifically stated that the shot was fired from a distant range – That the bullet entered the body below right shoulder of deceased S at the back and travelled upwards – The statement of doctor that it was shot from a distant range has not been challenged in the cross-examination – Moreover, the bullet did not exit body – It happens when the bullet being fired from a distance loses its velocity – Aforesaid observations support the inference that there is no reliable evidence to show that appellant shot deceased at close quarters when he was being strangled – The shot was in all probability fired when deceased released the appellant during the scuffle, and on seeing him reach for his gun moved away to escape after turning around – Given the fact that deceased and others were attempting to strangle appellant, it would have been unrealistic to expect the appellant to “modulate his defence step by step with any arithmetical exactitude”

- A person who is in imminent and reasonable danger of losing his life or limb, may in exercise of self-defence, inflict any harm, even extending to death, on his assailant, either when the assault is attempted or upon being directly threatened – Herein, appellant had been put in such a position – Undoubtedly, appellant exceeded power given to him by law, in order to defend himself, but exercise of right was in good faith, in his own defence and without premeditation – Homicide in the present case, thus, does not amount to murder in view of Exception 2 to S. 300 IPC – Homicide was not the result of premeditation, but rather, as evidence suggests, the shooting took place in a sudden fight in the heat of passion – Given the murderous assault on appellant and possibility of being attacked again, may be with arms or may be with help of other persons, it is not possible to attribute undue advantage to have been taken by the appellant – In such a situation, it would be unrealistic to

expect the appellant to calmly assess who would have the upper hand before exercising his right of private defence – In the circumstances of the case and findings of courts below, instant homicide falls within Exception 4 to S.300 IPC and does not amount to murder – In these circumstances, held, appellant is undoubtedly guilty of causing death to S with the intention of causing death or of causing such bodily injury as is likely to cause death and therefore guilty of offence under S.304 IPC.”

24. Thus, considering the entire evidence of the eye-witnesses, the admitted fact that the land in question belongs to the accused party, the fact that the complainant party wanted to dispossess the accused from the disputed land on account of which quarrel took place between both the parties in which the complainant party as well as accused Dayaram suffered injuries, the fact that soon after the incident FIR Ex.D-1 was lodged by accused Dayaram against the complainant party, it appears that the accused persons assaulted the complainant party in exercise of right of their self-defence as well as property. DW-2 Dayaram has also stated in his statement under Section 313 of CrPC that he assaulted the complainant party in exercise of right of self-defence. However, keeping in view the principles of law laid down in the afore-cited judgments, considering the fact that while exercising such right of self-defence and property, the deceased was assaulted on vital part i.e. head which resulted in his death, the accused party exceeded their right of private defence. Considering the facts and circumstances of the case, the manner in which the incident occurred, we are of the opinion that the case of the accused

persons is covered by Exception 2 to Section 300 of IPC. As such the accused/appellants are held guilty under Section 304 Part I in place of under Section 302 of IPC. Likewise, their conviction under Sections 323 and 325 of IPC is also liable to be altered to Sections 334 and 335 of IPC respectively as injuries were caused by them to the complainant party on sudden and grave provocation on the part of the complainant party as discussed above. However, the sentence under Sections 334 and 335 of IPC shall be the same as imposed by the trial Court under Sections 323 & 325 of IPC respectively.

25. As regards the sentence for offence under Section 304 Part-I of IPC, considering the fact that the incident took place on 08.02.2012 i.e. about 8 years back, the nature of dispute giving rise to the incident and the fact the appellants are in jail since 12.02.2012 i.e. for the last about 8 years, this Court is of the opinion that ends of justice would be served, if the appellants are sentenced to the period already undergone by them.

26. In the result, the appeal is allowed in part. While maintaining conviction and sentence of the accused appellants under Sections 148 of IPC, their conviction under Sections 323, 325 and 302 of IPC is altered to 334, 335 and 304 Part-I of IPC respectively. While maintaining sentence imposed by the trial Court under Sections 323 & 325 of IPC for the offence under Sections 334 & 335 of IPC, the appellants are sentenced under Section 304 Part-I of IPC to the period already undergone by them.

The appellants are reported to be in jail, therefore, they are directed to be released forthwith, if not required to be detained in connection with any other offence, on their furnishing bail bonds for a sum of Rs.25,000/- each with one equivalent surety to the satisfaction of the trial Court for their appearance before the higher Court as and when required. The bail bonds so furnished shall remain in force for a period of six months from today in view of provisions of Section 437-A Cr.PC.

27. Before parting with the Case, we would like to appreciate the assistance made by Shri Paras Vyas (5th Year, MSU, Baroda), Shri Guneet Ghai (4th Year, GNLU, Gandhi Nagar) and Shri Shailendra Singh Yadav (3rd Year, HNLU, Raipur), Internee, who had attended the Court during the course of hearing of this case, prepared notes diligently and submitted certain rulings applicable to the facts of the case.

Sd/

(Prashant Kumar Mishra)
Judge

Sd/

(Gautam Chourdiya)
Judge