

**HIGH COURT OF MADHYA PRADESH : PRINCIPAL SEAT AT JABALPUR**

1	Case Number	Criminal Appeal No. 3/2008
2	Parties Name	Prabhulal and 3 others Vs. State of M.P.
3	Date of Judgment	9 <sup>th</sup> of March, 2018
4	Bench Constituted of	Hon. Shri Justice J.K. Maheshwari & Hon. Shri Justice J.P. Gupta
5	<b>Judgment delivered by</b>	<b>Hon. Shri Justice J.P. Gupta</b>
6	Whether Approved For Reporting (AFR)	<b>YES</b>
7	Name of the counsel for the parties	Shri A.K. Jain, Advocate for the appellants-accused. Shri Sourabh Shrivastava, Dy. GA for the respondent-State.
8 & 9	Law Laid down & Significant paragraphs number	If the incident took place suddenly without any premeditation, the accused persons merely on the ground that they assaulted simultaneously cannot be held guilty for causing injury or death for sharing common intention with each other. In such circumstances, they are responsible for their individual act. Reliance is place in the case of Balu vs. State (UT of Pondicheery) {2016} 15 SCC 471.

**(J.K.MAHESHWARI)**  
**JUDGE**

**(J.P.GUPTA)**  
**JUDGE**

JP/-

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR**  
**(DIVISION BENCH : HON'BLE SHRI JUSTICE J.K.MAHESHWARI &**  
**HON'BLE SHRI JUSTICE J.P.GUPTA)**

**Criminal Appeal No. 03/2008**

**Prabhulal and 3 others**

**Vs.**

**State of Madhya Pradesh**

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Shri A.K. Jain, Advocate for the appellants-accused.

Shri Sourabh Shrivastava, Dy. GA for the respondent-State.

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Whether approved for reporting: (Yes ).

**J U D G M E N T**

**(Delivered on 9<sup>th</sup> day of March, 2018)**

**Per J.P. Gupta, J :**

The appellants have preferred the present appeal being aggrieved by the impugned judgment dated 28.11.2007 passed by the First Additional Sessions Judge, Raisen in S.T. No.188/06 whereby the each of the appellants has been convicted for committing murder of Jeevan under Section 302/34 of IPC and sentenced to imprisonment for life along with fine of Rs.1000/-; in default of payment of fine further RI for 1 month and they have been further convicted for causing injury to Chothmal and Roop Singh under Section 323/34 of IPC and sentenced to undergo RI for 3 months/-. Both the sentences are directed to run concurrently.

2. In this case, it is uncontroversial that appellants no. 2, 3 and 4 are the sons of appellant no.1. Deceased Jeevan is the son of injured Chothmal (PW-1) and brother of Roop Singh (PW-4) and the incident had taken place on account of the dispute with regard to possession over the land where the incident took place.

3. In brief, the relevant facts of the case are that on 6.10.2006 at about 8 am in village Tijalpur, the appellants were grazing their cattle in the agriculture field, about which, the complainant party was claiming right of the possession on the basis of the lease given by Shivcharan (PW-13) and deceased Jeevan, his father Chothmal (PW-1) and his brother Roop Singh (PW-4) went to the field and seeing that the appellants were grazing their cattle on the field tried to prevent the appellants from grazing their cattle, on which, crop of Soyabean was standing but the appellants instead of stopping themselves made assault on deceased Jeevan, Chothmal (PW-1) and Roop Singh (PW-4). At the time of incident, appellant Prabhu asked other accused persons to beat the complainant party saying “*Maro Salon Ko*” then appellant / accused Prem Singh assaulted deceased Jeevan with ballam on left side of his chest and appellant / accused Hukum Singh assaulted deceased Jeevan with farsi and caused injury on his head and appellants /accused Prabhu and Prem Singh also assaulted deceased Jeevan with lathis and the appellants also assaulted Chothmal (PW-1) and Roop Singh (PW-4) and also caused injury to them. Deceased Jeevan fell down on the field and the appellants / accused fled away from the spot. Thereafter, when deceased Jeevan was being taken to police station he died on the way and thereafter, he was shifted to the hospital.

4. On the same day at 9:30 am Chothmal (PW-1) lodged the report in the Police Station Salamatpur, District Raisen. After recording merg intimation Ex.P/2, FIR Ex.P/1 was recorded at crime no. 138/06 under Section 302/ 34 of the IPC against the appellants / accused. Dead body of the deceased was sent for postmortem examination and as per the medical report, nature of the death was homicidal and Chothmal (PW-1) and Roop Singh (PW-4) were also medically examined. During the investigation, the appellants were arrested and on their instance, the weapons used in the commission of offence were recovered and

were sent for FSL, on which, presence of blood stains was established. After investigation was over, the police filed a charge sheet against the appellants / accused before the Court of CJM, Raisen, who on its turn committed the case to the court of Sessions Judge, Raisen for trial and after getting the case on transfer, learned First Additional Sessions Judge tried the case.

5. The learned trial Court framed charges for the offences under Section 302/34 in alternative Section 302 of the IPC and under Section 323/34 (on 2 counts) of the IPC against the appellants. The appellants / accused abjured their guilt and claimed to be tried. Their defense was that the disputed land belongs to Halke who is brother of appellant no. 1 Prabhulal and he obtained that land on lease from his brother Halke and he was in possession of the land and on the land, at the time of incident, grass was standing and they were grazing their cattle. At that moment deceased Jeevan, his father Chothmal (PW-1) and brother Roop Singh (PW-4) came with lathis and prevented the appellants from grazing their cattle and started beating them and when they tried to run in order to save themselves, deceased Jeevan again assaulted them. In defence they dealt a lathi blow which landed on the head of the deceased and he fell down on the bakkar (an agricultural instrument) and a sharp part of bakkar inserted in the chest of the deceased. Earlier the land was taken by the deceased on lease, therefore, he had enmity with the appellants and in the incident they had also received injuries. Accordingly, they have not committed any offence. Deceased Jeevan died accidentally and they assaulted the deceased in their defence to save their lives. Learned trial court after completion of the trial convicted and sentenced the appellants as mentioned earlier.

6. The finding of the learned trial court is mainly based on the statements of Chothmal (PW-1) and Roop Singh (PW-4) who are the

injured eye witnesses and supported by the statement of Laxman (PW-3) and the medical evidence and circumstances of the recovery of the weapons from the appellants. The aforesaid finding has been assailed in this appeal on the ground that the statements of Chothmal (PW-1) and Roop Singh (PW-4) are full of material contradictions and omissions and also contradictory with the previous statements given by the appellants and the medical evidence. The appellants / accused have also received injuries during the incident but both the witnesses have denied the aforesaid fact. No explanation has been given about the injuries of the appellants / accused. The evidence with regard to recovery of the weapons is also not significant as the weapons have been recovered from an open place and they have not been sent for the opinion of the medical expert about the fact that the injuries may be caused by the weapons recovered. Further, the facts and circumstances of the case do not show that the injuries sustained by the deceased were sufficient to cause his death in ordinary course of nature. Apart from it, the prosecution has also failed to prove any right of the deceased over the disputed land and the appellants have assaulted the deceased and the witnesses in exercise of their right of self defense of person or property. Therefore, they cannot be held guilty for any offence.

7. On behalf of the appellants it has also been contended that all the appellants / accused cannot be held guilty for the death of deceased Jeevan as there is no fact and circumstance to prove that appellants / accused Prabhulal, Hukum and Ritesh had a common intention with appellant / accused Prem Singh who assaulted the deceased with ballam and caused deadly injuries to the deceased. The incident had taken place suddenly without any premeditation and as per the prosecution story, the deceased rushed to assault the appellants and then the appellants / accused assaulted the deceased and his father and brother and caused injury then all the appellants /

accused are personally responsible for their individual act. No vicarious liability can be fastened on all the appellants / accused persons with regard to each other act because there was no common intention to cause death of deceased Jeevan. Further, it has been contended that appellant / accused Prem Singh cannot be convicted under Section 302 of the IPC as the incident had taken place suddenly without any premeditation in the heat of passion without taking undue advantage and also in exercise of right of their private defence, about which, it can be said that it was an excessive act even then appellant / accused Prem Singh may be hardly convicted for commission of offence under Section 304 Part-II of the IPC. Hence, accordingly their conviction and sentence be modified.

8. Learned Govt. Advocate appearing for the respondent / State has argued in support of the impugned judgment and stated that the finding of conviction and sentence of the learned trial court is in accordance with law. Hence, the appeal be dismissed.

9. Having considered the rival contentions of both the parties and on perusal of the record, in the opinion of this court, it is not controversial in this case that the death of the deceased was caused because of penetration wound / stab wound on the left side of the chest and nature of the death was homicidal and this fact has been proved by the prosecution by medical evidence and in this regard, Dr. A. K. Diwan (PW-6) has found following injuries on the body of the deceased :-

(1) Lacerated wound 4X1 cm X 5 mm X 5 mm on the left side of head on the temporal parietal region.

(2) Lacerated wound 4 cm X 5 mm X 5 mm on the occipital region.

(3) Penetrating wound (stab wound) 1 cm X 5mm on the 4<sup>th</sup> I.C.S. on the left side adjacent to sternum deep into mediastinal cavity.

(4) Blood was coming from nose and mouth.

All the injuries were ante-mortem. Clotted blood was adhered to the surface.

Further, Dr. A. K. Diwan (PW-6) has found following injuries on internal examination on the body of the deceased:-

Brain and its membrane were pale. Blood was found in throat and wind pipe. No injury was found on right lung. One lacerated wound 2 cm x 5 mm x 5 mm in medial lobe of left lung near sternum. Left mediastinal cavity was full of blood. Pericardium was also full of blood. Both chamber of heart were empty. 1 cm stab wound was found in diameter inferiorly over the ascending aorta of heart which comes in the category of stab injury.

There was small amount of food matter in stomach. There was semi digested food matter in small intestine.

After examination, all seized shirt, baniyan, angochha, underwear and trouser were handed over in a sealed cover to the accompanying Police Constable.

According to opinion of Dr. A. K. Diwan (PW-6), mode of death was syncope. Cause of death was extensive hemorrhage due to the

injury to the ascending aorta and duration of the death was within 12 hours of the postmortem which was done at 11:55 am on 6.10.2006.

The statement of the aforesaid medical expert has remained unimpeachable. Therefore, there is no hesitation to hold that nature of the death of the deceased was homicidal.

10. As per the prosecution story, at the same time, Chothmal (PW-1) and Roop Singh (PW-4) have also received injuries in the incident and they were medically examined by Dr. S. K. Rai (PW-5) who found following injuries :-

**Injured Chouthmal :-**

(1) Contusion; abrasion; red tender swelled size 3X2cm x skin deep right forearm lower 1/3<sup>rd</sup> post aspect.

(2) Contusion; abrasion; red tender swelled size 3X1cm x skin deep left forearm lower 1/3<sup>rd</sup> adjacent to left wrist joint lateral aspect.

(3) Abrasion; contusion; red tender swelled size 2X2cm right leg aspect lower 1/3<sup>rd</sup>.

According to opinion of Dr. S. K. Rai (PW-5), all the injuries were simple in nature and caused by hard and blunt object. The duration of the injuries was within 24 hours of the examination which was done at 9:50 am on 6.10.2006.

**Injured Roop Singh:-**

(1) Lacerated wound red tender swelled size 6cmX1/2cmXskin deep horizontally vertex bone region.



- (2) Lacerated wound red tender swelled size 1/2cmX 1/2cm size left thigh anterior aspect lower 1/3<sup>rd</sup>.

According to opinion of Dr. S. K. Rai (PW-5), all the injuries were simple in nature and caused by hard and blunt object. The duration of the injuries was within 24 hours of the examination which was done at 9:40 am on 6.10.2006.

11. Dr. S. K. Rai (PW-5) has also examined the appellants / accused; Hukum Singh, Ritesh and Prem Singh and found following injuries on the person of the appellants / accused :-

**Appellant - Hukum Singh:-**

- (1) Abrasion bluish tender swelled size 1 cm X 1 cm vertex bone region.
- (2) Contusion abrasion size 2 cm X 2 cm left hand dorsal aspect.

According to opinion of Dr. S. K. Rai (PW-5), all the injuries were simple in nature and caused by hard and blunt object. The duration of the injuries was within 72 hours of the examination which was done at 2:50 pm on 7.10.2006.

**Appellant -Prabhulal:-**

- (1) Contusion blue tender swelled size 0.6 cm X 2 cm left shoulder tip.
- (2) Contusion blue tender swelled size 9 cm X 3 cm left arm later aspect.
- (3) Contusion left elbow blue tender swelled size 0.8 cm X 6 cm left elbow joint.

(4) Contusion bluish tender swelled vertex bone region.

According to opinion of Dr. S. K. Rai (PW-5), all the injuries were simple in nature and caused by hard and blunt object. The duration of the injuries was within 72 hours of the examination which was done at 2:45 pm on 7.10.2006.

**Appellant –Ritesh:-**

(1) Contusion bluish tender swelled size 2 cm X 2 cm vertex bone region

(2) Abrasion; contusion blue tender swelled size 4 cm X 2 cm right leg cut aspect middle 1/3 rd.

(3) Abrasion blue tender swelled size 7 cm X 2 cm left knee joint longitudinal.

According to opinion of Dr. S. K. Rai (PW-5), all the injuries were simple in nature and caused by hard and blunt object. The duration of the injuries was within 72 hours of the examination which was done at 2:20 pm on 7.10.2006.

12. The aforesaid statement of Dr. S. K. Rai (PW-5) establishes the fact that Chothmal (PW-1) and Roop Singh (PW-4) have also sustained the aforesaid injury.

13. The finding that the appellants / accused caused the aforesaid injuries to deceased Jeevan and Chothmal (PW-1) and Roop Singh (PW-4) is based on the statements of Chothmal (PW-1) and Roop Singh (PW-4). Having gone through their statements it is found that they have categorically stated that at the time of incident the appellants / accused were grazing their cattle on the disputed land which was

taken by deceased Jeevan on lease from Shivcharan and when the appellants/ accused were prevented from grazing their cattle, they assaulted the complainant party. Appellant/ accused Prem Singh assaulted with ballam and caused injury on the left side of chest of deceased Jeevan and appellant / accused Hukum assaulted with farsi and caused injury on the head of the deceased and appellants/accused Prabhulal and Ritesh also assaulted with lathis and when Chothmal (PW-1) and Roop Singh (PW-4) tried to rescue the deceased then appellants / accused also assaulted them and caused injuries and they also received injuries on their head, leg and back and when the deceased fell down, the appellants / accused fled away from the spot and Chothmal (PW-1) lodged report Ex.P/1 in Police station Slamampur, District Raisen. There are no material contradictions and omissions in their statements. Other witness Laxman Singh (PW-3) has also supported their version. However, this witness has been declared hostile but merely on this ground his testimony cannot be discarded. It can be used for the purpose of corroboration of testimony of Chothmal (PW-1) and Roop Singh (PW-4). So far as the medical evidence is concerned, there was no injury on the head of the deceased which may be caused by sharp object. While Chothmal (PW-1) and Roop Singh (PW-4) have stated that appellant / accused Hukum Singh was armed with farsi and assaulted on the head of the deceased. Therefore, on the basis of these inconsistencies, it has been contended that the testimony of the aforesaid witnesses is contradictory to the medical evidence. But, in view of this court, the aforesaid contradiction is immaterial as there is injury on the head of the deceased and it may be possible that at the time of incident the weapon which was used was not in sharp condition it might have been in blunt condition. The weapon was not sent to the doctor for opinion that by the weapon injuries were caused may not be caused then it can be said that the medical evidence is inconsistent with the ocular evidence. The medical evidence is an opinion of the expert

and if the same is otherwise explainable, the testimony of the eye witnesses cannot be discarded on the basis of medical evidence.

14. So far as the recovery of weapons are concerned, Investigating officer Umrao Singh (PW-14) has stated that during the investigation he recovered the weapon on the instance of the appellants / accused and sent to FSL and as per the FSL report Ex.P/30, there was presence of blood on the weapon but the alleged recovered weapon has not been produced before the court while recording of the statement with a view to identify the weapon as the actual recovered weapon from the possession of the appellants / accused. On account of the aforesaid infirmity, the evidence of recovery of the weapons has no use. But other wisely the testimony of Chothmal (PW-1) and Roop Singh (PW-4) are reliable and credible and also supported by the testimony of Laxman (PW-3) and Dr. A. K. Diwan (PW-6) and Dr. S. K. Rai (PW-5) and statement of Chothmal (PW-1) and also gets corroboration from the FIR Ex.P/1 which has been proved by I.O. Umrao Singh (PW-14) and this evidence establishes the fact that appellant / accused Prem Singh assaulted the deceased with ballam and caused injury deadly on the left side of his chest and at that time, appellant / accused Hukum Singh also assaulted the deceased with farsi and caused injury on his head and Chothmal (PW-1) and Roop Singh (PW-4) were also assaulted and received injuries which were simple in nature.

15. Now the question is that whether the appellants/ accused assaulted the deceased and the witnesses in exercise of right of their self defence. As per the statement of Dr. S. K. Rai (PW-5), appellants / accused Prabhulal, Hukum Singh and Ritesh have received injuries at the time of incident. But, there is no evidence or material to establish the fact that the injuries were received in the incident. Witnesses Chothmal (PW-1) and Roop Singh (PW-4) have denied the fact that they caused any injury to the appellants. They have also denied the fact that they

saw any injury on the person of the appellants. The nature of the injury shows that the injuries were not noticeable. Therefore, it cannot be said that the witnesses are lying or hiding genesis of the incident. In the circumstances, it cannot be said that the appellants / accused acted in exercise of right of their self defence as there is no material or circumstance to draw inference that the aforesaid incident had taken place or appellants / accused assaulted with a view to defend themselves.

16. So far as the exercise of right to self defence of person or property is concerned, the appellants have failed to prove their right over the property. As per the prosecution story, the disputed land belongs to Shivcharan (PW-13) but Shivcharan (PW-13) has stated that the disputed land was not belonging to him and the land belongs to his brother and he has never given the disputed land to any person. There is no other evidence on record to establish legal possession of the appellants on the land in question and in absence of it, the appellants / accused had no right to claim possession on the land. They assaulted the deceased, his father Chothmal (PW-1) and Roop Singh (PW-4) with a view to secure their possession over the land. Hence, the aforesaid contention has no substance.

17. Now, the question is that what offence has been committed by the appellants / accused. In this regard, medical expert Dr. A. K. Diwan (PW-6) has not stated in his testimony that the injury caused to deceased Jeevan was sufficient to cause his death in ordinary course of nature and according to him, the cause of death was the injury sustained on the left side of the chest which was caused by appellant / accused Prem Singh and rest of the injuries are simple and according to him, the same were caused by hard and blunt object. It is also clear that when the appellants / accused were grazing their cattle on the field, deceased Jeevan and his father Chothmal (PW-1) and his

brother Roop Singh (PW-4) reached there and when they prevented the appellants / accused from grazing their cattle, the incident took place. Hence, the incident had taken place suddenly without any premeditation and in the heat of passion. Appellant / accused Prem Singh has not caused any other injury to the deceased, therefore, it cannot be said that he took any undue advantage or acted in cruel manner. Hence, the appellants cannot be convicted for committing murder of the deceased Jeevan as there was no intention to cause death of the deceased or to cause any such injury which may be sufficient to cause death. They had simple knowledge of the fact that by causing the aforesaid injury it is likely to cause death of the deceased. Hence, it is not a case of murder but it is a case of culpable homicide not amounting to murder.

18. Now the question is that whether appellant / accused Prabhulal, Hukum and Ritesh had common intention with Prem Singh to cause death of the deceased. The incident had taken place suddenly without any premeditation. They have assaulted simultaneously but it does not mean that they started assaulting with common intention to cause death of the deceased. In such circumstances, all the accused persons are responsible for their individual act. Hon'ble the Apex court in the case of **Balu vs. state (UT of Pondicherry) (2016) 15 SCC 471** has held as under:-

Quarrel in respect of chit transaction between rival parties – During settlement talks, accused (five in number including both appellants-accused), on hearing that their friend was being badly injured by complainant party, allegedly attacked deceased and others, resulting in his death and injuries to rest-- However, facts and circumstances of case show that attack was not a premeditated one nor was there a prior concert-

Incident arose suddenly – No doubt, common intention could develop even on the spur of moment, but herein, the way occurrence took place, there could not have been common intention between accused- Totality of circumstances must be taken into consideration in order to arrive at a conclusion that appellants had a common intention to commit offence under which they were convicted-- Appellants were not armed and admittedly they are said to have removed sticks from bullock cart standing nearby, and on exhortation by one of accused, appellants had attacked deceased- There may be similar intention in minds of assailants to attack, but it cannot be said that appellants acted in furtherance of common intention to attract constructive liability under section 34- Facts and circumstances do not give rise to inference of preconcert.

Appellants had attacked deceased with sticks on his face, who sustained nasal bone fracture due it-- But it cannot be said to be an act in furtherance of common intention to commit murder of deceased along with other accused- They are random individual acts done without meeting of minds-- Appellants can be held liable only for their individual acts- Modification of conviction of appellants by High Court to Ss. 302/34, without recording any finding as to how appellants shared common intention, to establish their constructive liability to sustain conviction under Ss. 302/34, cannot be sustained.

19. In view of the aforesaid legal position, in our view also, all the appellants / accused cannot be held guilty for sharing common intention for committing murder of deceased Jeevan which has been

done by Prem Singh. Therefore, only appellant / accused Prem Singh can be held guilty for committing culpable homicide not amounting to murder of deceased Jeevan and rest of the appellants / accused can be held guilty for causing simple injuries to the deceased Jeevan under Section 323 of the IPC and appellant / accused Prabhulal, Hukum Singh and Ritesh can also be held guilty for causing simple injuries to Chothmal (PW-1) and Roop Singh (PW-4) under Section 323 IPC (on two counts).

20. In view of the aforesaid discussion, the appeal is partly allowed. By setting aside the conviction and sentence awarded by the trial court, we convict the appellant / accused Prem Singh under Section 304 Part-II of the IPC and sentenced him to undergo RI for 10 years and we hold Prabhulal, Hukum Singh and Ritesh guilty for committing offence under Section 323 of IPC with regard to causing injuries to the deceased Jeevan and sentenced to undergo RI for 1 year. The appellants / accused Prabhulal, Hukum Singh and Ritesh have also been held guilty under Section 323 of IPC (on two counts) for causing injuries to Chothmal (PW-1) and Roop Singh (PW-4) and their sentence to undergo RI for 3 months as directed by the trial Court is hereby confirmed with a direction that all the sentences shall run concurrently.

21. It is also brought to our notice that in this case appellants / accused No. 2 & 4 Hukum and Prem Singh are in custody since 7.10.2006 and appellants / accused No.1 & 3 Prabhulal and Ritesh are on bail. All the appellants / accused have already completed the aforesaid sentenced. Hence, appellants / accused No. 2 & 4 Hukum and Prem Singh are directed to be released forthwith if not required to be detained in any other case. Appellants / accused No.1 & 3 Prabhulal and Ritesh are on bail, their bail bonds stand discharged.



22. A copy of this order be sent to the trial court and the jail authorities concerned for information and necessary action.

**(J.K.MAHESHWARI)**  
**JUDGE**

**(J.P.GUPTA)**  
**JUDGE**

**JP/-**