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CRA-13221-2024

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&amp;

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 18<sup>th</sup> OF MARCH, 2025CRIMINAL APPEAL No. 13221 of 2024*LAXMI PRASAD VAISHYA AND OTHERS**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

*Mr. Surendra Singh - Senior Advocate with Mr. Pushendra Kumar*

*Vaishya - Advocate for appellants.*

*Mr. Ajay Tamrkar - Government Advocate for State.*

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JUDGMENT

*Per. Justice Devnarayan Mishra*

This appeal has been preferred being aggrieved with the judgment dated 21.11.2024 passed by Fifth Additional Sessions Judge, Headquarter-Waidhan, District-Singrauli in S.T. No.138 of 2015 by which the appellants have been convicted for the offence punishable under Section 148 of the Indian Penal Code and sentenced to suffer R.I. for 03 years with fine of Rs.2,000/-, under Section 323/149 (on two counts) of the Indian Penal Code and sentenced to suffer R.I. for 01 year with fine of Rs.1,000/- (on each count) and under Section 302/149 of the Indian Penal Code and sentenced to suffer Life Imprisonment with fine of Rs.6,000/- each with default stipulations respectively.

2. In nutshell the prosecution case before the trial Court was that on 05.05.2015 at about 09:00 am, the appellants were cutting the Palas tree standing



on the field of victim party. The injured Rambahore (PW-1) and deceased Devpratap objected, on that the appellants Gorelal, Motilal, Ramdayal who were having axe and Bhagwan Das, Prabhakar and Laxmi were having lathi with the common object of unlawful assembly started beating the victim party. Motilal assaulted Rambahore with blow of an axe and after that Ramdayal, Gorelal assaulted him by the handle of axe and when deceased Dev Pratap tried to rescue his father, appellants Bhagwan Das, Prabhakar and Laxmi Prasad started assaulting his son with lathis and Laxmi Prasad Vaishya assaulted the victim and deceased Dev Pratap by tangi. The deceased became unconscious and fell down on the ground and Rajkumari (P.W-5) reached on the spot, appellant Motilal assaulted her by stone. The victim by dialing 108 called ambulance. The injured and the deceased were brought to District Hospital, Waidhan during treatment, deceased Dev Pratap died. F.I.R was lodged at Police Station-Mada, District-Singrauli for the offence punishable under Sections 147, 148, 149, 302 & 323 of the Indian Penal Code. Dead body was sent for autopsy. Appellants were arrested and from their possession weapon of assault were recovered. After usual investigation, charge-sheet was submitted and sent to the trial Court.

3. Trial Court framed the charges under Sections 148, 323/149 (on two counts), 302 and in alternate 302/149 of the Indian Penal Code read over to the appellants. The appellants abjured the guilt and prayed for trial. The trial Court recorded the prosecution evidence and examined the appellants under Section 313 of the Code of Criminal Procedure.

4. The appellants had taken defence that they have falsely been implicated in the case. The deceased and his parents were themselves assailants and they had caused the injuries. They had assaulted the appellants and the counter case was registered. They were medically examined. The point of the dispute was Palas tree



that was standing in the field of appellants but the deceased and his father wanted to forcibly cut the Palas tree and wanted to take the wood of the tree for their use. Appellants were already present and cutting the tree. Appellants themselves had suffered the injuries when to save themselves they assaulted the victim. The injury suffered by Rambahore (PW-1) is simple in nature and the quarrel suddenly took place. There was no intention on the part of the appellants. The trial Court after hearing the parties passed the impugned judgment.

5. Learned senior counsel for the appellants has submitted that the trial Court without due appreciation of the evidence convicted all the appellants. From the site map (Exhibit-P/23) that was prepared by the Halka Patwari and the revenue papers submitted by Pawan Kumar Shah (PW-7), the incident happened in the agricultural land, survey numbers 582 and 1336 and as per the exhibit-P/23, the Palas tree was in survey no.582 was of the ownership of Ajay Kumar and Kamlesh Kumar and on that basis, it is submitted that as per paragraph no.8 of cross-examination of Rambahore, who has submitted that his brother Shankar had sold the part of survey number 582 to the sons of Ram Kaya Vaishya and their names are Ajay Kumar and Kamlesh Kumar Vaishya and Ajay Kumar and Kamlesh Kumar are having possession over that part and on that basis, he submitted that the appellants were cutting the tree that was in their possession and the deceased and complainant (PW-1) were having no right.

6. The complainant (PW-1) and his son went on the spot and made quarrel and the deceased was assaulting with an axe to the appellants party, they also suffered the injuries. The complainant (PW-1) by his omnibus statement has alleged that all the accused persons had assaulted him and his son whereas Rambahore has suffered a single injury over his forehead measuring 4cm x 2cm and one injury of the abrasion in the right hand, another abrasion in the right knee



and all the injuries were simple in nature. No visible injury was found on the body of Rajkumari (PW-5) and also submitted that as per the postmortem report, proved by Dr. Ritu Patel (PW-2) only two injuries were found on the person of the deceased Dev Pratap, one stitch measuring 2 cm above the right eye-brow and another in the occipital region measuring 7 cm x 0.7 cm x 0.7 cm and deceased died due to fracture on the head. No injury was repeated, hence no case of murder is made out.

7. Learned counsel for the appellants has also submitted that in the cross-case, appellant Motilal suffered grievous injury and cross-case was registered against the victim party. Thus, by the separate trial, the victim party has been acquitted and submitted that they have proved the injuries suffered by Motilal and others by submitting the document of MLC and statement of Investigating Officer A.K. Agnihotri (PW-17), maximum there was a free fight, no common object or intention is proved. Thus, no offence is proved against the appellants and submitted that the appellants be acquitted from all the charges.

8. Learned counsel for the appellant has relied on the judgment of *Kalabai Vs. State of M.P., AIR 2019 SC 2135* in which, it is held by the Supreme Court that when in sudden quarrel death occurred, there being no intention to murder the accused could not be convicted for murder punishable under Section 302 of Indian Penal Code but accused will be liable to be convicted for the offence punishable under Section 304 (Part-II) of the Indian Penal Code.

9. On relying the judgment of Apex Court in the case of *Uggarsain Vs. State of Haryana and Ors. (2023) 8 SCC 109*, learned counsel for the appellant has submitted that in case when the appellants are convicted for offence punishable under Sections 304 Part-II/149, 323/149 and 148 of the Indian Penal Code when



the role of each accused is indistinguishable and distinguishable feature is not found, sentence of five years R.I. will be appropriate.

10. Mr. Ajay Tamrakar, learned counsel appearing on behalf of the State has submitted that the trial Court has well considered the evidence available on the record and formed the MLC as submitted by the defence before the trial Court, it is proved beyond reasonable doubt that the appellants Motilal, Bhagwandas and Laxmi Prasad were present on the spot and were assailant. The victim and his son suffered the injuries and Dev Pratap died just after the incident. The appellants were forcibly cutting the tree that was in the possession of the victim party. The trial Court has properly considered the fact. Hence, no case for interference is made out.

11. Heard the parties and perused the record.

12. Firstly, as per the post-mortem report proved by Dr. Ritu Patel (PW-2), who conducted the autopsy over the dead body on 05.05.2015 on the day of the incident has submitted that, she examined the dead body, she found that the blood was coming out from mouth and nose of the deceased. There was a stitched wound of 2 cm in length above the left eye-brow (though in the statement stated that in right eye-brow) and lacerated wound measuring 7 x .7 x .7 cm on occipital region, bleeding, fracture was found and deceased died due to shock and hematoma due to head injury.

13. Thus, it is clear that the victim suffered two injuries, one over the left eye-brow and another on the occipital region of the head.

14. On the same day, the victim Rambahore Yadav (PW-1) as per Rahul Pathak (PW-8) suffered a lacerated wound in the forehead that was of 4 x 2 cm, the abrasion in the right hand and left knee. No external injury was found on the body of Rajkumari Yadav (PW-5). Thus, Rambahore Yadav suffered one open



injury and the deceased suffered two injuries and Rajkumari (PW-5) suffered no external injury.

15. On the point who caused the injuries, Rambahore Yadav stated that on 05.05.2015, the appellants were cutting the Palas tree that was standing in his field and when he objected, all the accused persons assaulted him, they were assaulting with the axe/tangi by that he suffered grievous head injuries and fell down when they saw Devpratap was also present there, all the accused persons also assaulted him by tangi/axe, by that he suffered grievous injury and on spot, he became unconscious, accused persons also assaulted his wife Rajkumari and dragged her by holding her hairs. Babua Singh reached there, he called the ambulance and reached at the Waidhan Hospital. Deceased died at 01:00 pm. Autopsy was conducted over the dead body of the deceased, he lodged an F.I.R.

16. In the cross-examination, this witness has stated that Laxmi Prasad Vaishya assaulted him with tangi. Motilal also assaulted with tangi and denied the suggestion that deceased Dev Pratap was himself assaulting the accused persons by tangi and by that, part of tangi, fell on his head and he suffered the injuries and also stated that he became unconscious so he could not tell who had assaulted Dev Pratap by his weapon. In paragraph no.16 of his cross-examination, he stated that he could not tell that Motilal Vaishya had assaulted his wife by a single stone. In paragraph no.20 of the cross-examination, he had not denied the suggestion that deceased Dev Pratap had assaulted Motilal by an axe and Motilal had suffered grievous injury, he could not explain to that and also denied the suggestion that as a right to private defence, Motilal after snatching the tangi from Dev Pratap assaulted the deceased and Dev Pratap suffered the injury.

17. Thus, this witness is making omnibus statement regarding the act of all the accused persons but from the cross-examination, it is clear that Motilal had



assaulted this witness Rambahore as well as his son Dev Pratap and Motilal had assaulted witness by stone. Rajkumari Yadav (PW-5) in her chief examination has stated that Laxmi Prasad, Bhagwan Das and Motilal started assaulting his husband and Dev Pratap and these persons had assaulted them to make them fell down. In paragraph no.11 of her cross-examination, she has suggested that Laxmi Prasad by tangi, assaulted his son two times. The witness Basant Singh Marawi (PW-6) has stated that on 05.05.2015 at 09:10 am, the accused persons had assaulted the injured Rambahore and deceased with the tangi and lathi.

18. By the cross-examination of A.K. Agnihotri (PW-17), in paragraph no.21, it has been brought on record that the deceased suffered only two or three injuries. In paragraph no.32, this witness has admitted that when he arrested Motilal, he found injuries on the body of Motilal and in the left shoulder, there were injuries and Bhagwandas also suffered the injuries and stated that the main cause of the dispute was the Palas tree.

19. In the light of the above evidence, the statements of the deceased and if the documents of treatment are taken into consideration, it is clear that Motilal, Bhagwan Das and Laxmi Prasad were present on the spot as they themselves suffered the injuries and lodged the F.I.R.

20. From the spot map prepared by the Investigating Officer (Exhibit-P/2) and recovery made from the spot as per (Exhibit-P/3) proved by A.K. Agnihotri (PW-17), a broken part of the bat of axe was recovered from the spot and as per Exhibit-P/16 an axe whose bat was broken, has been recovered from the possession of appellant Laxmi Prasad Vaishya. As per (Exhibit-P/17) and as per F.S.L. report (Exhibit-P/31), blood stains were found. A piece of bat that was recovered from the spot, blood stains were also found from the tangi, recovered



from the possession of Laxmi Prasad and lathi recovered from Prabhakar.

21. In the light of the above, it is clear that Laxmi Prasad was actively involved in the offence. The act of Laxmi Prasad is clear. In the same way, the active participation of Motilal is also proved and as per prosecution evidence as he had suffered the grievous injuries in the same incident, that may be attributed due to act of the deceased and the lathi was recovered from the possession of Prabhakar and from the injury suffered by Bhagwan Das, his active involvement is proved whereas, the active participation of Ramdayal and Gorelal is not proved. Thus, it is clear that active participation of these four persons i.e. Laxmi Prasad, Motilal, Prabhakar and Bhagwan Das is proved.

22. The defence of the appellants are that they were cutting the Palas tree that was in their field and from the paragraph no.8 of the statement of Rambahore and Pawan Kumar Shah (PW-7), it is also clear that the Palas Tree was standing on the land that was purchased by the appellants from the brother of Rambahore i.e. Shankar and they were cutting that tree but it cannot be said that they have not exceeded the right to private defence, it may also be that actually, they had purchased the land but the victim party was having possession over the tree as it is not unusual in the rural areas that the person who maintained the tree claims the ownership.

23. Motilal who had suffered the grievous injuries as per the medical record submitted in the defence and prosecution has not explained in what circumstances, the appellants suffered the injury.

24. Learned senior counsel for the appellants has also submitted that a single injury was caused to Rambahore (PW-1) and to Rajkumari (PW-5) only one injury was caused in the back that became fatal and the four persons were involved but the assault was not repeated. Thus, it is clear that whereby no





intention of the appellants to murder the deceased Dev Pratap, in sudden quarrel when the appellants were cutting the tree and were present on the spot. Quarrel had taken place and on that the injury was caused to the deceased to prevent him from assaulting the appellants party, no case of murder is made.

25. We also considered on this point.

26. It is clear that no external injury was found on the body of Rajkumari (PW-5) and single blow was used on Rambahore (PW-1) and deceased Dev Pratap suffered injuries above the eye-brow and occipital region and that were also not caused by the sharp side of the axe/tangi and assault was not repeated. It is clear that the appellants were not having intention to kill the deceased, hence, the act of the appellants does not come under the purview of definition clause of murder as defined under Section 300 of the Indian Penal Code. Injuries suffered by rest of the victim are simple in nature and active participation of the four person is proved.

27. The trial Court has framed the charges for the offence punishable under Sections 148 and 149 of the Indian Penal Code but as the offence is proved only against the four persons. For Section 148 of the Indian Penal Code as to constitute unlawful assembly, so that minimum five persons are required, hence the appellants cannot be convicted with the help of Section 149 of Indian Penal Code but in the charge under Section 149 of the Indian Penal Code has been framed, no separate charge to convicting the appellants with the help of 34 of the Indian Penal Code is not necessary.

28. Thus, after the above discussions, all the appellants are acquitted from the offence punishable under Sections 148 and 302/149 of the Indian Penal Code and the appellants namely Gorelal and Ramdayal are acquitted from all the charges.



29. Rest of the appellants i.e. Laxmi Prasad Vaishya, Bhagwandas Vaishya, Motilal Vaishya and Prabhakar Vaishya are convicted for the offence punishable under Sections 323 read with 34 for assaulting Rambahore (PW-1) and Rajkumari (PW-5) (on two counts) and each of them is punished for R.I. of one year with fine amount of Rs.1,000/- for each count as imposed by the trial Court and the above appellants are also convicted for the offence punishable under Section 304 (Part-II) read with Section 34 of the Indian Penal Code and sentenced to suffer R.I. of 08 years with fine amount of Rs.6,000/-.

30. The appellants Ramdayal and Gorelal be released forthwith, if not required, in any other case.

31. With the above modification, the appeal regarding Laxmiprasad, Bhagwan Das, Motilal and Prabhar is partly allowed and for the two appellants i.e. Ramdayal and Gorelal, it is fully allowed.

32. Let the supersession warrant be prepared and sent to the concerned jail authorities.

33. The order of the trial Court regarding case property is affirmed.

34. With the copy of judgment, the record of the trial Court be returned back.

(VIVEK AGARWAL)  
JUDGE

(DEVNARAYAN MISHRA)  
JUDGE

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