

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक Cr-A No. 215/2006 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<p align="center">HIGH COURT OF CHHATTISGARH AT BILASPUR <u>Criminal Appeal No. 215/2006</u></p> <p><u>APPELLANTS</u> 1. Ravishankar, S/o. Bhagirathi Yadav, aged about 46 years 2. Dayanidhi Yadav, S/o. Ravishankar Yadav, aged 28 years</p> <p>Both are residents of village - Putukachhar, Thana - Dharamjaigarh, Distt. Raigarh (C.G.)</p> <p align="center"><u>Versus</u></p> <p><u>RESPONDENT</u> State of Chhattisgarh, through Police Station Raigarh (CG).</p> <hr/> <p>SB: HON'BLE SHRI DHIRENDRA MISHRA, J.</p> <hr/> <p>Shri Awadh Tripathi, Advocate for the appellants. Shri Vinay Harit, Dy. Advocate General, for the respondent /State.</p> <hr/> <p><u>Dhirendra Mishra, J.</u></p>	
	<p align="center"><u>JUDGMENT</u> (31-5-2007)</p> <p>The appellants have preferred this appeal against the judgment of conviction and order of sentence dated 21-3-2006 passed by learned 3rd Addl. Sessions Judge, F.T.C., Raigarh, in Sessions Trial No. 152/2003 whereby learned Additional Sessions Judge has convicted them under Section 307 of I.P.C. and sentenced each of them to undergo R.I. for 10 years and to pay a fine of Rs. 1000/- and in default of payment of fine, to further undergo R.I. for 3 months.</p> <p>2. During pendency of this appeal, appellant No. 1 Ravishankar has died on 23-2-2007 while undergoing the sentence during treatment at CIMS, Bilaspur. A written communication to this effect was given on 16-5-2007 by Additional</p>	

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	<p>Public Prosecutor. Since legal heirs of the deceased have not filed any application to prosecute the appeal of deceased Ravishankar, therefore, the appeal preferred by appellant Ravishankar stands abated.</p> <p>3. Case of the prosecution, in brief, is that deceased appellant Ravishankar and P.W. 3 Venudhar are real brothers whereas appellant No. 2 Dayanidhi is nephew of P.W. 3 Venudhar. Raghumani (P.W. 6) and Bholashankar (P.W. 7) are sons of Venudhar. As per case of the prosecution, on 29.05.2003 at about 3.00 a.m. Venudhar went to the place of incident along with his two sons Raghumani and Bholashankar and found that Ravishankar and his son Dayanidhi were ploughing his share of field. They objected this, whereupon Dayanidhi assaulted Venudhar with an axe and Ravishankar assaulted Raghumani with an axe. Bholashankar, Gangaram (P.W.-8) and Santosh tried to separate them. Thereafter injured Venudhar and Raghumani were taken to Civil Hospital by son Bholashankar, wife Sumauti, Vidhyadhar and Bhagirathi of the village. Dehati Nalishi of Ex.P-12 was recorded in the hospital. After completing investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Dharamjaigarh for offence under Section 307 read with Section 34 of IPC who in turn committed the case to the Court of Sessions Judge, Raigarh and the same was received on transfer by learned Additional Sessions Judge for trial.</p> <p>4. The prosecution in order to establish the charge against the accused/appellants examined nine witnesses, thereafter the statement of accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case and stated that on the date of incident they were sowing paddy (sanna) in their field, when</p>	

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	<p>Venudhar, Bholashankar and Raghumani came there and abused them by using filthy language and also threatened to kill them and released the bullocks from the yoke and beat. They also reported the matter and on their report a case is pending. They also examined D.W.-1 Shobha Ram. However learned trial Court after hearing counsel for the respective parties, convicted and sentenced the accused/appellants as mentioned above.</p> <p>5. Learned counsel for the appellant submits that from the injury report of Venudhar (P.W.-3) it is evident that he had sustained three injuries over his head however all the three injuries have been described as contusions by the doctor. Though the doctor has stated that the injuries have been caused by hard and sharp edged weapon however no incised wound has been found on the person of Venudhar. Therefore the injuries were in fact caused by hard and blunt object. It is alleged that the accused persons had used axe in the offence. Even P.W.-3 Venudhar had stated in para 16 of his deposition that accused Dayanidhi had assaulted him with backside of the axe. P.W.-6 Raghumani who has also stated in para 10 of his deposition that he was assaulted by backside of the axe and they were not assaulted by sharp side of the axe. This clearly demonstrates that the appellants had no intention to cause death of Venudhar and Dayanidhi. He further submits that the complainant party was aggressor as they had gone to the field belonging to the accused persons and had tried to interfere in their peaceful possession and they had stopped them from ploughing their own field by abusing and beating them as a result of which the appellants exercising their right of private defence of property had used the minimum force to dissuade the complainant party who were three in number and in these circumstances the</p>	

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	<p>appellants were entitled to be extended benefit under Section 97 read with Section 105 of IPC. It is further submitted that to establish the offence under Section 307 of IPC the prosecution has to establish the ingredients of Section 300 of IPC. However, at the most the prosecution has been able to establish that the appellants while exercising of right of private defence have exceeded that right which is covered by exception 2 of Section 300 of IPC, therefore offence if any, committed by the appellants falls under Section 308 of IPC i.e. attempt to commit culpable homicide and not under Section 307 of IPC.</p> <p>6. On the other hand learned counsel for the State supported the judgment of the trial Court and submitted that appellant Dayanidhi has assaulted Venudhar by using axe thrice over his vital part of the body and as per the X-ray examination report of Ex.P-2 of skull of Venudhar, Venudhar sustained bony dislocation over his head which was grievous in nature. The doctor (P.W.-1) has categorically opined that in the absence of treatment the injured could die. Therefore, from the evidence available on record offence under Section 307 of IPC is clearly established. He further submits that even assuming that the accused persons had right of private defence, but the right does not extend to inflicting of more harm than it is necessary to inflict for the purpose of defence.</p> <p>7. I have heard the learned counsel for the parties and perused the record of the trial Court as also the impugned judgment.</p> <p>8. Dr. B.S.Bhagat (P.W.-1) has examined Venudhar and has found that (i) he was unconscious and was vomiting at the time of examination; (ii) one incised wound in size of 5 x 7cm. on left side of posterior region, clotted blood was</p>	

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	<p>present and the bone beneath the injury was broken; (iii) contusion in size of 5 x 5 cm. on upper portion of right fronto-parietal region, bone beneath the above injury was also broken and (iv) contusion over occipital region in size of 2x1cm. and blood around the injury was clotted. All the injuries were caused by hard and sharp edged weapon and duration of injuries was three hours. Injuries were grievous in nature. He referred the patient for X-ray. From perusal of X-ray plate of the injury it is found that there was fracture of head bone. He has also examined Raghumani on the same day and had noticed following injuries:</p> <p>i) contusion in upper portion of left parietal region of scalp in size of 4x4 cm., bone was broken. Blood was clotted around the injury.</p> <p>ii) contusion in upper portion of fronto parietal region on scalp in size of 3x2cm. bone was broken, blood was clotted around the injury.</p> <p>iii) one abrasion over left shoulder joint was found.</p> <p>9. In the cross examination this witness has admitted that all the injuries present over the person of Venudhar have been described as contusions in Ex.P-1. He has admitted that he has not mentioned any incised wound in the report of Ex.P-1 and P-3. In para 8 of his deposition he has stated that on query by the police regarding nature of injury of Venudhar he had opined vide Ex.P-5 that if injured Venudhar was not given prompt treatment he could die. Thus, considering the evidence of Dr. B.S., Bhagat P.W.-1 and MLC report of injured Venudhar and</p>	

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	<p>Raghumani it is established that the injuries present over the person of Venudhar as also Raghumani were sufficient in the ordinary course to cause their death.</p> <p>10. P.W.-3 Venudhar has stated that on the date of incident in the morning he along with his sons Raghumani and Bholashankar had gone to his field. They saw that accused persons were ploughing their field. He stopped the accused persons from ploughing his field. However accused persons did not agree whereupon he went near their plough and stopped them. At that time accused Dayanidhi assaulted from behind with an axe on his head. He made second assault after he fell down and he made third assault on his forehead by an axe. Blood started oozing however he was conscious. Accused Ravishankar assaulted Raghumani over his head with axe thrice. His son also fell down and became unconscious. His son Bholashankar raised an alarm, upon which Gangaram, his wife Sumanti Bai and Santosh reached there and the accused persons left the place with axe. They were taken to the hospital. Police was intimated. He lodged report of Ex.P-12 in the hospital itself. He and his son were referred to District Hospital, Raipur where they were admitted and treated. After sometime they were again sent to MMH Hospital, Raipur for further treatment where they remained admitted. In cross examination, this witness has admitted that the quarrel started because of land related dispute as the accused persons were ploughing the land which fell in their share. He has admitted that disputed Khasra No. is 69 admeasuring 10 decimal. He has further admitted that partition had taken place between three brothers in the year 2002 and they were cultivating the field of their respective shares even prior to the partition in the year 2002. He has further admitted that as per the document of Ex.D/1, which is a memorandum of partition, the disputed</p>	

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	<p>land is recorded in the name of Ravishankar, but this was done inadvertently. He has also admitted that he has signed the document of Ex.D/I though he has stated that he complained about the same in the office of Tahsildar and proceedings under Section 107 were initiated by the Police. He has further admitted that the accused persons had also lodged a complaint case in relation to the same incident in Dharmjaigarh Court, which is pending. In para 19 of his deposition he has further admitted that at the time of lodging the report, he did not mention that after first assault he fell down and thereafter second and third assaults were given by Dayanidhi over his head.</p> <p>11. PW/6 Raghumani has also stated that he along with his brother Bholashankar and father had gone towards his field and saw the accused persons ploughing their field. When they stopped the accused persons from ploughing the field, they questioned their authority. Ravishankar assaulted him with an axe and Dayanidhi assaulted his father Venudhar with an axe over his head thrice. Both the accused persons gave three assaults, as a result of which they fell down on the ground. At that time, his brother raised an alarm, hearing which his mother Sumauti Bai, Gangaram and Santosh of the village reached there and separated them. Bholashankar (PW/7) has stated that they had gone to their field on the date of incident in the morning. They saw the appellants ploughing their field. When they stopped them from ploughing, the accused persons started abusing and stated that this is not your field, but it is their field. When the accused persons did not stop ploughing, his father and elder brother went to physically stop them from ploughing by releasing bullocks from the yoke. Thereafter, the accused persons picked up the axe which was lying nearby and assaulted his father and</p>	

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	<p>brother thrice. Both of them fell down. P.W.8 Gangaram who has been cited as eyewitness has not supported the prosecution case and he has been declared hostile. However, in the cross examination of this witness the prosecution has not been able to elicit anything.</p> <p>12. P.W.2 Dharmjeet Singh Paikra is Halka Patwari of the village who had prepared the spot map of Ex.P/1. In cross examination he has admitted that in spot map of Ex.P/11, the place where the incident has occurred is the field of accused Ravishankar. From perusal of the statement of the injured eyewitnesses, Venudhar and Raghumani and also Bholaram (P.W.7), the involvement of the appellants in assaulting Venudhar is established.</p> <p>13. Now coming to the question of right of private defence of the property as claimed by the appellant, from the statement of Venudhar as also Bholashankar and Halka Patwari Dharamjeet Singh Paikra, the field in which the accused persons were carrying on ploughing operation was of the ownership of accused Ravishankar. This fact is also established by document of Ex.D-1. Venudhar has admitted that they had partitioned their holdings and same was reduced to writing vide Ex.D-1 in the year 2002. He has also admitted that he has signed document of Ex.D-1, though he has stated that Khasra No.69 admeasuring 10 decimal has been wrongly entered in the share of accused Ravishankar. However no evidence has been adduced by the prosecution to show that there was any dispute regarding the possession of the accused persons over the disputed land or that the complainant party was in fact in settled possession of the disputed land. Thus on the basis of oral and documentary evidence available on record it can safely be inferred that the accused persons had obtained the disputed land in their share and</p>	

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	<p>they were cultivating the same on the basis of same and injured Venudhar and his two sons went there and stopped them from ploughing and tried to physically stop them from ploughing their field and this was in fact the cause of quarrel. From the statement of Bholashankar it also appears that when the appellants did not heed the request of father Venudhar and continued ploughing, Venudhar and Raghumani went near them and tried to physically stop them by releasing bullocks from the yoke and that infuriated the accused persons. They picked up the axe lying nearby and assaulted Venudhar and Raghumani thrice as a result of which they fell down on the ground. Version of P.W.-3 Venudhar that he fell down on the ground only after first assault and thereafter accused Dayanidhi assaulted thrice, is an improvement from his version in FIR. From the injuries present over the person of injured witnesses P.W.-3 Venudhar and P.W.-6 Raghumani it has already been recorded that they had suffered bony injuries at two places over the head. It is clearly indicative of the fact that the accused persons while exercising the right of private defence of their property have exceeded the power given to them by law and have caused injuries of such a nature which were sufficient to cause death in ordinary course of the injured persons, had they not received prompt treatment. Therefore the arguments of the learned counsel for the appellant that the case falls within Section 308 of IPC cannot be accepted.</p> <p>14. It is now well settled that the onus is on the accused to establish that his action was in exercise of the right of private defence. He should make out a circumstance that would have reasonably caused an apprehension in his mind that he would suffer death or grievous hurt if he does not exercise his right of private</p>	

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	<p>defence. The defence has to be reasonable and probable version satisfying the court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused and the burden of establishing the plea of self-defence is on the accused. In the instant case, from the evidence available on record, it has not been established that the injured persons were armed with weapon or that they attacked the appellants and caused them any injury. From the nature of injuries sustained by the two injured persons, it is clear that the appellants intentionally caused repeated blows over their vital parts which resulted in bony injuries over skull.</p> <p>15. On the basis of aforesaid analysis, conviction of appellant Dayanidhi under Section 307 of IPC cannot be faulted. However, considering the facts and circumstances of the case and further considering the fact that the accused persons were ploughing their own field and the complainant party were aggressor who tried to disturb their possession as a result of which the accused persons without any premeditation suddenly picked up the axe and assaulted Venudhar & Raghumani from backside, ends of justice would be served if the appellants are sentenced to undergo RI for five years instead of 10 years as imposed upon them by the learned trial Court.</p> <p>16. In the result, appeal is partly allowed. Conviction of appellant Dayanidhi for offence punishable under Section 307 of IPC is maintained, however, he is sentenced to undergo RI for five years and to pay a fine of Rs. 1000/-, in default of payment of fine to further undergo RI for three months.</p>	
		Sd/- Dhirendra Mishra Judge