

# HIGH COURT OF M.P. BENCH AT INDORE.

Criminal Appeal No.87/2004

Bhagirath & Ors.

Vs.

The State of Madhya Pradesh

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## HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Division Bench: Hon'ble Shri Justice P.K. Jaiswal and

Hon'ble Shri Justice Virender Singh

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No one is representing the appellant Mansingh, therefore, we appoint Ms. Sharmila Sharma, Advocate from Legal Aid to argue the matter on behalf of the appellant Mansingh.

Shri B. Gautam, learned Government Advocate for the respondent/State.

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Whether approved for reporting: Yes/No

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

**(Delivered on 28/03/2018)**

**Per : Virender Singh, J. :**

Four appellants namely Bhagirath, Mahesh, Mansingh and Hari Patel @ Hari Prasad have preferred this appeal out of them **Hari Patel @ Hari Prasad** is expired and no one requested the Court to continue the appeal on his behalf. **Appellant Mahesh** has withdrawn his appeal. Therefore, we are not considering the appeal preferred by Hari Patel @ Hari Prasad and Mahesh and this appeal is being decided only against the appellants **Bhagirath and Mansingh**.

2. The appellants have preferred this appeal against their conviction under Section 302 read with Section 34 of IPC for

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committing murder of one Narayan recorded by Session Judge, Shajapur in S.T. No.121/2003 vide judgement and order dated 23.12.2003.

3. In brief, the prosecution case is that on 15.06.2003, at about 12:00 in the noon, Mahesh Bheel was pruning branches of *babool* tree sanding at the *Med* of farm land of the complainant Ramcharan. His father Narayan objected for the same stating that the tree belongs to them. Refuting his claim, all the appellants namely Bhagirath, Mansingh, Hari Patel and Mahesh surrounded his father and starting abusing him claiming that the tree belongs to them, they will cut it and if he intervene them then they will kill him. Finding him alone, the deceased left the place and proceeded to seek the police help. Frightened by the incident, the complainant took shelter in his hut situated at his field itself. The appellants pelted stones on his hutment. After some time, he came out from the hut and followed his father who was going to file report. On the way, he saw that the appellants Bhagirath having sword, Mahesh and Mansingh having axes and Hari having *lathi* in their hands following his father. They were shouting that surround him and kill him as to why he is daring to file report against them. All the assailants assaulted his father. Bhagirath inflicted sword on the neck and head of his father, who fell down on the floor. Mahesh inflicted axe on the hand and Mansingh inflicted axe on the head of his father. When his father was thrilling, Bhagirath again inflicted sword on the

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mouth of his father, Hari Patel shouted that kill him and he should not be left alive, kill him. His father succumbed to the injury.

4. The appellants also chased the complainant who fled towards his home. He narrated the incident to his brother Ramesh and elder brother of his father Ghisalal and thereafter went to Police out post Padana with Ghisalal and filed report at 14:20 hours on the same day i.e. 15.06.2003.

5. Crime No.26/2003 was registered at police out post Padana (Ex.P/1) and the police visited the spot and prepared spot map Ex.P/2, issued notices to the witnesses Ex.P/3, prepared memo of corpse Ex.P/4, seized blood stained and plain soil from the spot Ex.P/5, sent a requisition for post-mortem Ex.P/7, obtained post-mortem report Ex.P/8, arrested the accused persons vide Ex.P/10 to 13, interrogated them and recovered the sword from Bhagirath, axe each from Mahesh and Mansingh and bamboo stick from Hari Patel vide memo and seizure Ex.P/14 to 21. The police received and seized blood stained clothes of the deceased and sent them for forensic examination Ex.P/22 & 24. After receiving copy of FIR from Police out post Padana original crime no.332/03 was registered at police station Sarangpur (Ex.P/26) and on completion of the investigation, the appellants were charge-sheeted.

6. The appellants were charged, tried and convicted for the

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offence under Section 302 read with 34 of IPC as stated in para no.3 above.

7. The appellants have preferred this appeal on the grounds that the judgment and order of the learned trial Court is contrary to the law and the facts of the case. The learned trial Court has committed error in appreciating the evidence and not considering the material contradictions and omission appeared in the statements of the prosecution witnesses. The learned trial Court did not consider that the prosecution could not establish any intention of the crime. Findings of the learned trial Court are erroneous in the eyes of law. Learned counsel for the appellants prayed for acquittal or else conversion of the conviction u/s 304 (2) IPC from the offence found proved against the appellants.

8. Learned Public Prosecutor has supported the impugned judgment and submitted that there is ample evidence against the appellants. He further opposed the appeal stating that the eye-witness has narrated the incident before the police as well as before the Court. Nothing contrary could be brought on record by the defense, therefore, the learned trial Court has rightly convicted the appellants. It is also submitted by the learned Public Prosecutor that lenient view would not be apt in the facts and circumstance of the case. He prayed for dismissal of the appeal.

9. We have considered the rival contentions of both the

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parties and have gone through the record.

**10.** Learned counsel for the appellants has not challenged death of the deceased Narayan and that his death was homicidal in nature. Therefore, this aspect of the case needs no further discussion.

**11.** Learned counsel for the appellants drew our attention towards the statement of Dr. Mohan Soni and post-mortem report Ex.P/8 given by him and argued that Dr. Soni had performed the post-mortem at 4:30 P.M. on the date of incident. He found rigor mortise on the whole body and after observing all the factual status of the dead body, he opined that the duration of death was 12 to 18 hours which means, according to Dr. Soni, possibly time of death of Narayan was 22:30 hours of 14.06.2003 to 04:30 hours of 15.06.2003 while the complainant is claiming that his father was murdered at 13:00 hours of 15.06.2003. This creates serious doubt about credibility of the witnesses and about truthfulness of his statement.

**12.** In view of the arguments raised by learned counsel for the appellants, we have perused the statement of all the witnesses produced before the learned trial Court particularly the statement of complainant Ramcharan. Ramcharan has stated that prior to the incident of the assault on the Narayan, there was a scuffle took place between Mahesh and his father Narayan at about 12:00 in the noon when Mahesn was cutting

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branches of the *babool* tree, his father came and objected for the same and Mahesh refuted his claim stating that *babool* tree belongs to him. In his cross-examination, this incident has not been challenged rather it has been admitted by putting suggestion to the witness Ramcharan. This admitted factual position shows that at about 12:00 in the noon, a dispute took place between the appellant Mahesh and the deceased. This clearly shows that till 12:00 in the noon on 15.06.2003, the deceased was alive. Therefore, the doubt raised by the learned counsel for the appellants has no force in view of the admission of the appellant himself.

13. The same issue was raised before the trial Court also and several judgments of Hon'ble the Supreme Court have been cited by the counsel representing the accused persons. The learned trial Court has dealt with the arguments in paras.42 to 45 of the judgment and has rightly concluded this ground is not tenable in view of the direct evidence available on record and we are in agreement with the findings of learned trial Court. On merits, no other ground is raised by the learned counsel for the appellants and we are also satisfied with the findings arrived at by the learned trial Court. The statement of the complainant Ramcharan and Mangilal have remained intact even after cross-examination and their statements are very well supported by the statement of Dr. Soni and the I.O. who investigated the case and further corroborated by the documents prepared during investigation,

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nothing contrary is available on record and there is no reason to disbelieve all this evidence. Therefore, learned trial Court has rightly convicted the appellants.

14. Learned counsel for the appellants further requested that the act of the appellants falls under the purview of Section 304(2) of IPC and therefore, their conviction under Section 302 of IPC is not sustainable. She further submitted that the allegation against the appellants is that they have inflicted injury, but no allegation of repeated injury is there. According to the prosecution case, Mahesh , Mansingh and Hari Patel only inflicted single injury on the deceased and Dr. Soni has stated that only injury cause on the head of the deceased proved fatal to his life, if that injury would not have been caused then the deceased would not have died. No allegation that any of the appellant has repeated any blow. All the appellants belong to *Bheel* community and dispute between them was not very serious dispute. On a petty issue, incident took place, there was no intention to kill the deceased.

15. Learned counsel for the appellants has placed reliance on *Sukhbir Singh vs. State of Haryana reported in 2002 Law Suit (SC) 235 (2002 (3) SCC 327)*, but judgment of Hon'ble the Supreme Court is quite distinguishable on the facts, therefore, at this stage of hearing, no conclusion can be drawn on the basis of this judgment.

16. We have considered the submission of learned counsel

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for the appellants.

17. In the FIR itself and in his statement, the complainant has stated that after a scuffle took place near the the *babool* tree, when Mahesh was cutting branches of the tree, all the accused persons surrounded the deceased and when he find him helpless, he was going to file report, they followed and attacked on him and inflicted multiple injuris. It has also come on the record that at the time of incident the accused persons were shouting that “*kill him, he should not remain alive because he is daring to lodge report against them*” and all the accused persons in furtherance of their common intention hit with deadly and sharp weapons on vital parts of the deceased one after the other. Therefore, from the evidence produced by the prosecution it is very much clear that the intention of the appellants was to kill the deceased. They all were armed with deadly weapons and attacked on the vital parts of the body of deceased and inflicted sharp object with such an impact that he fell down and died on the spot within the minutes. All these facts shows intention as well as act of the accused persons was to ensure the death of the deceased. Therefore, it can not be said that their act falls under the purview of section 304(2) of IPC instead of Section 302 of IPC. The nature of the incident, the circumstances in which it is caused and the impact and gravity of the injuries resist us from taking any sympathetic view in favour of the appellants. We are not convinced with the arguments put-forth by the



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learned counsel and are not inclined to accede her prayer to consider the case of the appellant as one under section 304 of the IPC

**18.** The learned trial Court has considered all this evidence and has reached on a correct conclusion that there is no doubt that on the alleged date, time and place of the incident, the appellants murdered the father of the complainant Narayan.

**19.** We also considered the sentence awarded by the learned trial Court. Learned counsel for the appellants submitted that the evidence of the prosecution would show that there were usual conflict between the parties on account of petty issue. Perplexed by this behavior of the deceased, in a fit of rage, they committed the offence, therefore, a sympathetic view should be adopted while deciding their punishment.

**20.** In this case, the appellants had killed the deceased in the peculiar facts and circumstances, though we find that it is not a case which falls in the rarest of the rare category, but it also does not warrant any interference in the punishment at the level of this Court. It does not appeal our conscious or earns our sympathy. Here also we do not find any ground to interfere in the decision of the learned trial court, therefore, we reject the plea of the learned counsel set forth in this regard.

**21.** Hence, the conviction and sentence awarded by the learned trial Court are maintained. The appeal being bereft of

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any merit is hereby **dismissed qua both the appellants Mansingh and Bhagirath.**

**22.** The order of the trial Court regarding disposal of the articles seized during investigation is also hereby confirmed.

**(P.K. Jaiswal)**  
**Judge**

**(Virender Singh)**  
**Judge**

**amit**

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Amit Kumar  
Date: 2018.03.31  
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