

A DASHRATH @ JOLO & ANR. ETC.

v.

STATE OF CHHATTISGARH

(Criminal Appeal Nos. 197-198 of 2018)

B JANUARY 23, 2018

**[R. K. AGRAWAL AND R. BANUMATHI, JJ.]**

*Penal Code, 1860 – s.302 r/w s.149 – Murder – Unlawful assembly – On facts, death of three persons and injuries to two by the appellants – Appellants found guilty of forming unlawful assembly armed with deadly weapons, with the common object to commit murder of three and attempt to commit murder of PW 19 – Conviction u/s. 302 read with s. 149 and sentenced to life imprisonment as also convicted for other offences – High Court upheld the order of the trial court – On appeal, held: Both the trial court as well as the High Court accepted the evidence of PW-19, injured eye-witness, whose evidence stands on a higher footing – Weapons were also recovered from the appellants – Considering the circumstances and the entire incident, it cannot be said that the complainant party were the aggressors and that the appellants acted in self defence – The submission that failure of the prosecution to explain the injuries on the person of the appellants fatal to the prosecution case, cannot be accepted – It cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so, the prosecution case should be disbelieved – Further, the injuries sustained by the appellants were simple in nature and answers elicited from the doctors that those injuries found on the accused could be self inflicted – Thus, upon appreciation of evidence and on well considered reasonings, the courts below rightly convicted the appellants – Evidence.*

*Takhaji Hiraji v. Thakore Kubersing Chamansing*  
(2001) 6 SCC 145 – referred to.

**Case Law Reference**

H	(2001) 6 SCC 145	referred to	Para 9
		368	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal A  
Nos. 197-198 of 2018.

From the Judgment and Order dated 13.05.2014 of the High Court  
of Chhattisgarh at Bilaspur in Criminal Appeal No. 598 and 599 of 2009.

Ms. Sangeeta Kumar, Adv. for the Appellants.

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Ms. Bansuri Swaraj, Atul Jha, Sandeep Jha, Dharmendra Kumar  
Sinha, Advs. for the Respondent.

The Order of the Court was delivered by

**R. BANUMATHI, J.** 1. Leave granted.

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2. These appeals arise out of the judgment dated 13.05.2014 passed  
by the High Court of Chhattisgarh dismissing the criminal appeal Nos.598-  
99/2009 thereby confirming the conviction and sentence passed by the  
trial court.

3. Briefly stated case of the prosecution is that, on 03.08.2008 at  
about 1.30 p.m., PW-19-Birichram went to the house of one Bhojram  
for inviting him for the sixth day birth of his child (*chhati*). The appellants  
who are neighbours of Bhojram and were standing in front of their houses,  
threatened PW-19 that they will kill him. When PW-19 asked the  
appellants not to abuse, appellant Dashrath @ Jolo who was having  
battleaxe alongwith one Phodol @ Duryodhan (since dead) who was  
also having battleaxe and one Jagru (since dead) who was holding *kudari*  
and some others who were holding sticks, assaulted PW-19. PW-14-  
Chumbai and PW-17-Gayatri Bai who were coming towards the spot  
tried to intervene in the incident. At the same time, deceased Chhedilal  
who was also coming towards his field requested the appellants not to  
beat PW-19; but the appellants leaving PW-19, started assaulting  
Chhedilal. Phodol @ Duryodhan (since dead) crushed the head of  
Chhedilal by blunt part of battleaxe. At the same time, deceased Bhuru  
@ Parmanand, deceased Bablu, PW-20-Dilip Kumar Yadav and PW-  
21-Rajesh Yadav also came to the spot one by one and tried to intervene,  
but the appellants assaulted all of them and caused the death of Chhedilal,  
Bablu and Bhuru @ Parmanand on the spot. PW-19-Birichram and  
PW-20-Dilip Kumar Yadav sustained injuries.

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4. All accused were arrested and based on their disclosure  
statement, battleaxe was recovered from appellant Dashrath @ Jolo

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- A and; *Kudari* recovered from Jagru @ Mohanlal; sticks recovered from appellants Anand and Laxmi. Blood stained clothes were also recovered from the accused. Thereafter, all the seized articles were sent to Forensic Science Laboratory (FSL) for chemical examination and presence of blood upon clothes and weapons has been confirmed *vide* FSL Report (Ex.P-71). After completion of investigation, chargesheet was filed against the appellants and other accused.

5. To prove the guilt of the accused, prosecution has examined 22 witnesses. The trial court also examined one defence witness DW-1- Dr. Ashutosh Mishra. The trial court found the appellants guilty of forming unlawful assembly armed with deadly weapons, with the common object to commit murder of Chedilal, Bablu and Bhuru and attempt to commit murder of Birichram convicted all the eight accused under Section 302 IPC read with Section 149 IPC and sentenced them to undergo imprisonment for life. They were also convicted for other offences and sentenced to imprisonment.

6. Being aggrieved, all the accused filed appeals before the High Court. During pendency of the appeal before the High Court, accused Phodol @ Duryodhan and Mohal Lal died. High Court dismissed the appeal preferred by appellants herein (Dashrath @ Jolo, Anand and Laxmi) and confirmed the conviction and sentence of imprisonment imposed upon them by the trial court. The lady accused viz. Dujmati and Triveni Bai were acquitted by the High Court.

7. PW-19 has clearly spoken about the incident that the first appellant Dashrath @ Jolo was holding battleaxe, the deceased accused Jagru was holding *kudari* and the other accused persons were also armed with sticks inflicted injuries on the deceased persons. Both the trial court as well as the High Court has accepted the evidence of PW-19, being an injured eye witness, whose evidence stands on a higher footing. The weapons were also recovered from the appellants herein. Upon appreciation of the injured eye witness PW-19, which was corroborated by PW-14 (Chumbai) and considering the fact that the weapons were recovered from the appellants herein, the trial court as well as the High Court recorded the findings that the appellants and the other accused including the deceased Jagru and others have formed an unlawful assembly with the common object to commit murder of Chhedilal, Bablu and Bhuru @ Parmanand.

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8. The contention raised by learned counsel for the appellants is that the occurrence took place in front of the house of the appellants whereby the complainant and the deceased wanted to show off the celebration of the birth of the child and any act of the accused could only be in their self-defence. Merely because the occurrence happened in front of the house of the appellants, it cannot be said that the complainant party were the aggressors. To find out as to who were the aggressors, the entire incident must be examined with due care in its proper setting. The injured Birichram (PW-19) went to the house of Bhojram for inviting him and others for sixth day birth of child (*chhati*); the appellants who were neighbours of Bhojram were present in front of their houses and they challenged Birichram (PW-19). When Birichram (PW-19) went to the house of Bhojram to invite him for the function, he was not armed; only the appellants were stated to be armed with battleaxe and sticks. Considering the circumstances and the entire incident, the courts below rightly negated the contention that the complainant party were the aggressors and that the appellants acted in self defence.

9. The next contention urged by learned counsel is that the prosecution has not chosen to explain the injuries on the person of the appellants and this is fatal to case of prosecution. It cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so, the prosecution case should be disbelieved. Before holding that non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question...[*vide Takhaji Hiraji v. Thakore Kubersing Chamansing*, (2001) 6 SCC 1454]

10. By going through the judgment of the trial Court as well as the High Court, it is seen that the injuries sustained by the appellants were simple in nature and while so it was not incumbent upon the prosecution to explain those injuries. It is also relevant to note the answers elicited from the doctors that those injuries found on the accused could be self inflicted.

11. Upon appreciation of evidence and on well considered reasonings, the trial court as well as the High Court rightly convicted the

- A appellants/accused under Section 302 IPC read with Section 149 IPC and other offences. We find no ground to interfere with the verdict of conviction and the sentence of imprisonment imposed upon the appellants/accused. The appeals are dismissed.

Nidhi Jain

Appeals dismissed.