

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1655 OF 2019

MANOJ SEVANI

Appellant

VERSUS

STATE OF CHHATTISGARH

Respondent

WITH

CRIMINAL APPEAL NOS.1656-1657 OF 2019

MANOJ YADAV ETC.

Appellants

VERSUS

STATE OF CHHATTISGARH

Respondent

WITH

CRIMINAL APPEAL NO.1658 OF 2019

MANOHAR BALMIKI

Appellant

VERSUS

STATE OF CHHATTISGARH

Respondent

AND

CRIMINAL APPEAL NOS.726-728 OF 2021

MANI YADAV & ANOTHER ETC.

Appellants

VERSUS

STATE OF CHHATTISGARH

Respondent

J U D G M E N T

Uday Umesh Lalit, J.

1. These criminal appeals by eight convicted accused/appellants are directed against the common judgment and order dated 10.01.2018 passed by the High Court of Chhatisgarh at Bilaspur in Criminal Appeal Nos.830, 832, 833, 835, 836, 837, 843, 844 and 914 of 2012.

2. Twelve persons were tried in Sessions Trial No.32 of 2010 in the Court of Additional Sessions Judge, North Bastar, District Kanker, Chhattisgarh, for having committed offences punishable under Sections 147, 148, 302/149, 307/149 of the Indian Penal Code, 1860 ("IPC" for short) and Section 25(1B) read with Section 4 of the Arms Act, 1959.

3. By its judgment and order dated 04.09.2012, the trial Court convicted and sentenced all the twelve accused persons under Sections 302/149 IPC to suffer imprisonment for life; under Sections 307/149 IPC to suffer rigorous imprisonment for seven years; and, under Sections 324/149 IPC to suffer rigorous imprisonment for one year, with imposition of fine and sentences in default.

Apart from the above convictions, accused No.1 Dinesh Rawani was also sentenced to suffer rigorous imprisonment for

one year under Section 25(1B) read with Section 4 of the Arms Act, 1959.

4. The genesis of the prosecution was in the reporting made by one Shailendra Kumar Dhruv (who was later examined as PW2 in the trial), on the basis of which FIR No.247 of 2009 dated 19.08.2009 was registered with Police Station City Kanker, District Kanker, Chhattisgarh in respect of the offences punishable under Sections 302/307/34 of the IPC and Sections 25/27 of the Arms Act, 1959.

5. The First Information Report named four persons, namely, Dinesh Rawani, Brijesh Sonkar, Mani Yadav and Parmesh alias Pammi Thakur while others were not named. The basic allegations in the First Information Report were as under:-

"I reside at Bhati Para Kanker, and working as a booking Agent in Mahandera Travels. On 17.08.2009 about 8 pm there is fight between the younger brother of Brijesh Shonkar and Lokesh, Dinesh Mahant on certain issues at Latra Para, due to same on 18.08 2009 around 11 pm the Dinesh Ravani along with some companion Brijesh Sonkar, Mani Yadav, Parmesh Alias Pammi Thakur and others having Gupti and Wooden stick (Patra) came at Tikara Para Near Hina Hotel where I with my Friends Ramesh Samarai, Durgesh Mahant, Natvar Soni, Ravi Chandavani, Guddu Alias Parmveer and Paras Bhai stand near to the Pan Shop of Suresh Sahu, After watching us they came on 3 to 4 motorcycle and stop there and Dinesh Ravani take out Gupti and attacked on Durgesh Mahant in result two injuries caused one on stomach and another on chest, Natwar Soni try to save

him during this he was also injured with Gupti, Mani Yadav with wooden stick (Patra) and rest of the companion with fist and hand started beating him and abusing him like mother and sister and said yesterday you act like Done "Dadagiri", Durgesh Mahant and Natwar Soni were bleeding and fall down, after incident Dinesh Ravani with his companions escape from the place of incident by motorcycle, Dinesh Mahant and Natwar Soni were took to hospital on motorcycle by Ramesh Semarai, Parash Bhai and Ashu Shukla, where Durgesh was died and Natwar Soni was referred to Raipur for treatment, After that I came to Police Station for making complain Dinesh Ravani, Brijesh Sanker, Mani Yadav, Parmesh and others having Gupti and wooden stick were came with the intention to kill due to of old rage and did fight caused grave iniury in result Durgesh Mahant was died, I will identify the friends of Durgesh Ravani after watching them. I lodge this complaint. Do the inquiry. The first information report was read over and it was written as I narrated."

6. Durgesh Mahant having succumbed to his injuries, post-mortem on his body was conducted by Dr. A.K. Verma (later examined as PW9 in the trial), who found injuries in the head and piercing injury of 3 x ½ c.m. on the left side of the chest.

The injured Natwar Soni was given medical attention by Dr. Shirish Yadu (later examined as PW14 in the trial) who found a cut injury of 2.5 x 3 c.m. in his stomach, which injury according to the medical opinion was dangerous to life.

7. After conducting due investigation, twelve persons as stated above, were sent up for trial. The prosecution mainly relied upon the following evidence:-

"A. The injured person Natwar Soni was examined as PW1 who in his testimony asserted as under:-

"I identify the accused persons who are present in the Court. On 18.08.2009 at about 10.45 of the clock in front of the house of Durgesh there is Pan Box. I, along with Pappu, Ramesh, Durgesh, Paras, Ravi Chandwani and Dudda near the house of Durgesh, was standing in Pan Box. At the same time in four motor cycles Dinesh, Brijesh, Javed, Sheroo, Manoj Sewani, Manoj Yadav, Parmesh Thakur, Yogesh, Rajendra Yadav, Arjun Yadav and Vicky Sarthi near me where I was standing. Subsequently, caught the collar of Durgesh Mahant, accused Dinesh Rawani beat him by his hands and fat, Dinesh was carrying Gupti. Dinesh Rawani. assaulted by his Gupti on Durgesh Mahant. At that time I was saving in between both persons. At the same time Brijesh caught me from my back side and Javed caught me from my front side. At the same time accused Dinesh beat me by his Gupti on the upper side of my waist i.e. in my stomach at two places and below the left chest at one place beat me by his Gupti.

2) Prior to beating (Marpeet) with me when he assaulted Durgesh Mahant by the Gupti, Durgesh Mahant fell down below. Thereafter I was caught by accused Brijesh and Javed and accused Dinesh Rawani assaulted me by his Gupti. Due to that attach I fell down below nevertheless I was not unconscious. After my falling accused Maniram Yadav gave beating on my back by Batta. All other accused persons beat me by their hand and legs."

In his cross-examination, the witness accepted as under:

"At the time of giving my statement to Shri Packra Saheb in Raipur I did not tell that other accused persons beat me by their hands and legs."

B. PW2, the original informant Shailendra Kumar Dhruv in his examination-in-chief asserted:-

"I know and identify all 12 accused persons who are present in the court. I am also known as Pappu. My main name is Shailendra. Pappu is my home name. My friends called me by name of Pappu. I along with Durgesh, Ravi, Chandwani, Ramesh, Natwar Soni Paramveer @ Gudda and Paras on 18.08.2009 at about 11.00 p.m. in the night, the Heena Hotel which is situated in Tikra Para of Kanker and near that Hotel there is Sahool Pan Thela. Where they were standing and were talking to each other. Between the Heena Hotel and Sahool Pan Thela, there is house of Durgesh Mahant. From the Hotel to Sahool Pan Thela the distance is about 20 ft. And Heerta Hotel is adjacent to the house of Durgesh Mahant. At the same time the accused persons in four motor cycles where we were standing came and stopped there. The persons who came in four motor cycles are Dinesh Rawani, Mani Yadav, Parmesh Thakur, Brijesh Sonkar, Manohar Valmiki, Manoj Sewani, Manoj Yadav, Vicky Sarthi, Javed Ali, Yogesh Thakur, Arjun Yadav and Rajendra Yadav were there. The accused persons on just their coming and just on looking Durgesh they all accused persons started abusing Durgesh Mahant. They all told Durgesh that you do some more Dadagiri, today we will teach a lesson to you. Saying so they all started beating (Marpeet) with Durgesh Mahant. Thereafter suddenly Dinesh Rawani who was having Gupti in his hand assaulted by his

Gupti to Durgesh Mahant. Mani Ram Yadav was having Batta of wood. By which Mani Ram Yadav beat Durgesh Mahant on his head and back. During this time Natwar Soni started saving the people. Then Dinesh Rawani by his Gupti three times assaulted Natwar Soni in his stomach.

(2) Even after the assault through the Gupti by Dinesh Rawani to Durgesh Mahant the other accused persons were also beating Durgesh Mahant by their hands and legs in which the accused persons who were beating Durgesh Mahant by their hands and legs are namely Dinesh Rawani, Brijesh, Mani Yadav, Parmesh Thakur, Manohar Valmiki, Manoj Sewani, Manoj Yadav, Vicky Sarthi, Saiyad Javed Ali, Arjun Yadav, Rajendra Yadav, Yogesh Thakur. And keeping in view to murder Durgesh Mahant, accused Maniram Yadav was beating Durgesh Mahant by his Batta of wood and other persons were beating Durgesh Mahant by their legs and hands. When Dinesh Rawani assaulted Natwar Soni by his Gupti consequently Natwar Soni fell down on the earth and he mixed with his blood on the earth.

C. Another injured person, namely, Ramesh Kumar

Semare (who was later examined as PW3) stated:-

“(3) On 18.08.2009 all accused persons came in four motor cycles and near us where we were standing and talking to each other and started abusing Durgesh Mahant and told Durgesh Mahant that you do Dadagiri now where you will go by saving yourself. At the same time Dinesh Rawani who was having Gupti in his hand assaulted by Gupti in the chest of Durgesh Mahant one time. Then the Gupti entered into the chest. Due to this reason he fell down on the earth. On this Natwar Soni and I did make peace in between them. At the time of making peace in between them Dinesh Rawani did three assaults on the stomach of Natwar Soni. Due to three assault

by the Gupti by Dinesh Rawani, Natwar Soni also fell down on the earth. The blood was coming out from his body. Following the injuries Durgesh Mahant fell down on the earth. Natwar Soni fell down on the earth. Despite the same he was in conscious mood. I did make peace in between the dispute with Durgesh Mahant. On this Dinesh Rawani assaulted me one time by his Gupti on my right hand arm of my body. The injury sign of the same is still existing inside my arms. Witness opened his shirt and showed the same before the Hon'ble Court of his injury on the right hand arm towards inside. Then it was found that there was injury sign on the right hand arm towards inside.

(4) When Durgesh Mahant fell down on the earth following the assault given by Dinesh Rawani by his Gupti. Thereafter also the accused persons namely Brijesh Sonkar, Mani Yadav, Parmesh Thakur beat Durgesh Mahant by their Batta of wood on the head of Durgesh Mahant. Due to that beating Durgesh Mahant received injuries on his head. The blood was coming out. The remaining accused persons namely Manoj Yadav, Manoj Sewani, Arjun Yadav, Manohar Valmiki, Yogesh Thakur, Javed Ali did beating (Marpeet) with Durgesh Mahant with their hands, fats and legs. Shailendra Dhruv who is known as Pappu was slapped by Manoj Sewani one time.

(5) When the accused persons heard sound of coming of the persons of the colony then all accused persons ran away from the incident place. The persons who reached at the incident place in which Shri Anil Patel, Deepak Chandwani and other 2-3 persons were there whose name I do not remember."

D. Ravi Chandwani, who was examined as PW7,
deposed: -

“(2) On 18.08.2009 in the night at about 10.45 p.m. after taking food from house I went outside from my house to walk something. My house is situated in Tikrapara near the Heena Hotel. I went there for walking. There my friend Durgadas Mahant his full name and short name is Durgesh there Shailendra, Ramesh, Paras Boi and Natwar Soni met me and I was standing there talking to them. At the same time on four different motor cycles Dinesh Rawani, Brijesh Sonkar, Mani Ram Yadav, Parmesh Thakur, Yogesh Thakur, Arjun Yadav, Manoj Yadav, Manoj Sewani, Vicky Sarthi, Manohar Valmiki, Saiyad Ali, Rajendra Yadav these all 10-12 people were there where we were standing there they came. Out of the motor cycles Brijesh Sonkar came at which motor cycle and getting down from the said motor cycle told that you become more Dada. Abused telling motherchod thereafter Brijesh Sonkar did beating (Marpeet) to Durgesh Mahant by his Patta as Brijesh Sonkar was having in his custody. At the same time Natwar Soni was making peace among them. Thereafter Dinesh Rawani by his Gupti which was at about 1 and half feet long as the witness stated it by his hand showing a sign assaulted on the head of Durgesh Mahant first time. But Durgesh turned his head and due to that reason the Gupti assault of Dinesh Rawani did not hit Durgesh Mahant. Thereafter Dinesh Rawani assaulted by his Gupti to Durgesh Mahant on his chest and this time Gupti of Dinesh Rawani entered into the chest of Durgesh Mahant and blood started coming outside from his chest. Consequently Durgesh Mahant mixed with his blood and fell down on the earth. Brijesh Sonkar, Parmesh Thakur and Maniram Yadav were having Patta. These all people did beating (Marpeet) on the head of Durgesh Mahant and also did beating (Marpeet) on the legs of Durgesh Mahant. Remaining accused persons did beating (Marpeet) to Durgesh Mahant by their hands and legs.”

8. Considering the evidence on record, the trial Court by its judgment and order dated 04.09.2012 convicted and sentenced all the twelve accused persons as stated hereinabove.

9. The convicted accused persons being aggrieved preferred appeals before the High Court. By its common judgment and order dated 10.01.2018, the High Court affirmed the view taken by the trial Court in respect of accused nos.1 to 9 but granted benefit of doubt to accused nos.10, 11 and 12, namely, Yogesh Singh Thakur, Arjun Yadav and Rajendra Yadav.

10. Out of said nine convicted accused, eight have preferred appeals by special leave before this court while no appeal has been preferred by accused No.7 Vicky Sarthi.

11. We heard Mr. Suryanarayana Singh, learned Senior Advocate for the appellants Mani Yadav, Parmesh Thakur, Brijesh Sonkar, Dinesh Rawani.

We also heard Mr. Raj Kishor Choudhary, Mr. M.C. Dhingra, Yogesh Tiwari, and Mr. Sameer Srivastava, learned Advocates for rest of the appellants; and, Mr. Sumeer Sodhi, learned Advocate for the State.

12. It was submitted on behalf of the appellants that the First Information Report was lodged against four named accused while the identity of the rest of the accused was not disclosed in the First Information Report. It was further submitted that the basic allegations were against accused No.1 Dinesh Rawani while nothing substantial was attributed to rest of the accused. In the submission of the learned counsel, the other accused could not be connected with the aid of Section 149 of the IPC.

13. Mr. Sumeer Sodhi, learned Advocate appearing on behalf of the State relied upon the decision of this Court in *State of Maharashtra v. Ramlal Devappa Rathod*, (2015) 15 SCC 77, to submit that all the appellants were rightly convicted and sentenced by the High Court and no interference on any count was called for.

14. The reporting which led to the registration of the First Information Report was against four named persons only. PW1, an injured eye-witness, did not attribute anything substantial to accused Parmesh in his examination-in-chief but attributed overt acts to accused Javed. PW2 Shailendra Kumar Dhruv, the informant, again attributed clear and overt acts to two of the named persons from the First Information Report. PW7 Ravi Chandwani on the other hand deposed about

the acts committed by Brijesh Sonkar, Mani Yadav and Parmesh with clarity. According to this witness, these three accused had given patta blows on the head of the deceased.

15. Considering the totality of evidence on record what emerges is:-

- a. Accused No.1 Dinesh Rawani who was armed with gupti, gave fatal blow on the chest of the deceased as well as dealt blows on the injured witnesses.
- b. Apart from accused No.1 Dinesh Rawani whose gupti blow landed in the chest of the deceased, three accused, accused No.2 Brajesh, accused No.3 Mani Yadav and accused No.4 Parmesh gave patta blows on the head of the deceased. The deceased died as a result of injuries suffered on the head and in the chest.
- c. Except the aforestated four accused, none of the other accused was stated to have given any blow to the deceased but as alleged by PW1 Natwar Soni, accused No.5 Javed had facilitated the blow by accused No.1 Dinesh Rawani by holding the witness.

However, none of the other witnesses had named Javed with sufficient attribution in their testimonies.

- d. Accused Nos.1 to 4 were thus attributed clear and overt acts. Their names appeared in the First Information Report and the case of the prosecution as against these four accused was quite clear and consistent.
- e. On the other hand, insofar as rest of the accused are concerned, none of them was named in the First Information Report.
- f. Apart from accused No.5 Javed, nothing substantial was attributed to anyone. Even the attribution insofar as accused No.5 Javed was concerned, was of holding the witness.
- g. Accused Nos.10, 11 and 12 have already been granted benefit of doubt by the High Court.

16. Considering the totality of the circumstances on record, in our view, except accused No.1 Dinesh Rawani, accused No.2 Brijesh Sonkar, accused No.3 Mani Yadav and accused No.4 Parmesh Thakur, rest of the accused persons, namely, Sayyed Javed, Manoj Sevani, Manoj Yadav and Manohar Balmiki are also

entitled to the benefit of doubt and are thus acquitted of all the charges levelled against them.

Since participation and acts committed by accused No.1 to accused No.4 are clearly spelt out and stand proved from the record, we convert conviction of said accused Nos.1 to 4 from Sections 302/149 IPC to Sections 302/34 IPC. Similarly, their conviction under Sections 307/149 IPC is also converted to one under Sections 307/34 IPC.

17. We, thus, dismiss the appeals preferred by accused No.1 Dinesh Rawani, accused No.2 Brijesh Sonkar, accused No.3 Mani Yadav and accused No.4 Parmesh Thakur, but allow the appeals preferred by the accused/appellants, namely, Manoj Sevani, Manoj Yadav, Sayyed Javed, and Manohar Balmiki.

18. The acquitted appellants be set at liberty forthwith unless their custody is required in connection with any other crime.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi,
February 15, 2022.