

under Section 304, Part I assaulted Vijay Kumar son of Sahdev who survived the attack and who is examined as PW-10 with 'Tabbal' and Latel and Bhajan attacked Ashok with 'tabbal' as a result of which Ashok and Vijay both fell down on the ground and became unconscious. Vijay on regaining consciousness saw the appellant, Bhajan, Chandrabhan and Bundaru assaulting Ashok with 'tabbal' and lathi. His pleading with the accused not to cause further injuries to Ashok proved to be of no avail. Seeing this, it is stated that Vijay and his father Sahdev started fleeing from the said field. It is the further case of the prosecution that that accused persons chased the duo (Vijay and his father) and one of the accused persons threw a 'tabbal' at them which, according to the prosecution, hit the deceased Sahdev. This was also noticed by PW-2 Lalakram and other persons in the neighbouring fields, who pleaded with the accused persons not to beat Sahdev and Vijay any more. In the melee, it is stated that Vijay escaped from the said place and ran towards his house. Thereafter, he proceeded to the Police Station at Mungeli where the complaint Ex. P-27 was lodged with C.K. Tripathi, SHO, PW-21. As per the said complaint, Vijay is supposed to have told that he does not know whether his father is dead or alive. Accordingly, the Police registered a case being Crime No.138/87 under Sections 147, 148, 307 IPC and the investigating officer immediately rushed to the village and learnt from Kotwarin Ram Bai that Ashok and Sahdev had been done to death and accordingly a village unnatural death information Ex. P-35 was recorded. It is the further case of the prosecution that the appellant herein also lodged a report at the Police Station Mungeli on the very same day stating that he was in possession of an agricultural field since long and had sown his crop about 8 days prior to the incident but the deceased Sahdev and Ashok along with Vijay and servants had come to the field and had belaboured them. This report was recorded in the general diary at serial No.170 which is marked as Ex. P-36. Since there is no appeal against the acquittal for the purpose of disposal of this appeal, suffice it to say that the High Court on consideration of the material on record came to the specific conclusion that from the record available before it it is clear that at no point of time Sahdev was put in possession of the property pursuant to his purchase of the same. It also held that having come to the conclusion that Sahdev was not in possession of the property, the one and the only corollary was that the appellant Latel was in possession of the land. On this basis, it came to the conclusion that so far as the first part of the incident which took place in Survey No.435/1 is concerned, it is an admitted fact on sides that the incident in question did take place. The High Court came to the conclusion that the appellant and his party had the right of private defence available to them in defending their possession of the property but so far as the appellant and Bhajan are concerned, they exceeded their right of private defence to the extent of causing injuries which led to the death of Ashok. Hence, they are liable for the consequences of their acts and are liable to be punished under section 304, Part I, IPC, to serve a sentence of 10 years' RI.

In regard to the latter part of the incident, namely, causing the death of Sahdev, the High Court held the appellant alone guilty for which it relied on the testimony of Lalakram PW-2, Ramcharan PW-3, Prem Singh PW-4 and injured witness Vijay Kumar PW-10.

Ms. Santosh Singh, learned amicus curiae appearing for the appellant, contended before us that so far as the finding of the High Court in regard to the second part of the incident is concerned wherein the appellant has been held guilty for having

caused the death of Sahdev, there is absolutely no material and a perusal of the evidence of the witnesses on whom the High Court has relied upon to come to this conclusion itself, would show that none of these persons stated that they saw the present appellant beat Sahdev. Per contra, Ms. Geetanjali Mohan, learned counsel representing the respondents, contended that though there is no specific reference to the overt act of the appellant in regard to the attack on Sahdev, it is clear from the motive alleged in regard to the attack and sequence of events that took place that the death of Sahdev was caused either due to attack by the appellant or at the instance of the appellant. Therefore, the High Court was justified in coming to the conclusion that the appellant was guilty of having caused the death of Sahdev.

We will first consider the case of the prosecution in regard to the second incident which led to the death of Sahdev consequent to which the appellant is before us, having been sentenced to life imprisonment. The High Court relied on the evidence of evidence of Lalakram, PW-2 for basing its conviction on the appellant. A perusal of this evidence of PW-2 which is made available to us in the paper-book, shows that this witness has stated that he saw the accused persons including the appellant coming to his field chasing Sahdev Maharaj (deceased), Vijay Maharaj (PW-11) and the appellant and other accused persons asked him to go and do his work. Therefore, he went away from there due to fear and the accused persons ran after Sahdev Maharaj. We have perused the entire evidence of PW-2 and we are unable to find in statement of this witness anything about seeking the attack on Sahdev or that Latel was responsible for the death of Sahdev. Therefore, the evidence of PW-2, according to us, is of no avail to the prosecution. We now consider the evidence of Ramcharan, PW-3, who is a servant of deceased Sahdev. He in his examination-in-chief has stated that he accompanied Sahdev and his sons to the field and when the incident in question took place in the disputed field, due to fear he took to his heels in the direction of the rising sun in which direction the village is located. He further says that in the village he told a wise man named Bhagat that Ashok Tiwari is being beaten at Bindraban Khar. He also specifically stated that he did not tell this Bhagat the names of the persons beating him. In his evidence there is no reference to the second part of the incident at all, therefore, the question of relying on the evidence for the purpose of unearthing the names of the assailants of Sahdev does not arise. The next witness relied upon by the High Court is Prem Singh, PW-4, who also accompanied Sahdev to the field on the fateful day. In regard to the second incident he stated in his examination-in-chief : "In the meanwhile the younger Vijay Kumar Tiwari of Ashok Kumar Tiwari got up and ran away from the place of occurrence and his father Sahdev Tiwari also ran. They people ran in the southern direction from the place of occurrence and after them all the four accused persons and two lady accused ran and there were other people round about there but I am not able to identify them. After covering some distance, Ashok Tiwari's father and brother were caused blows by throwing the tabbal at them but I am not able to pin point as to what particular persons threw away the tabbal because I was at some distance. I went on seeing till the distance beyond 100 yards. After that the bushes of besharm came and beyond that I could not see." This is all that is stated in the examination-in-chief in regard to the second incident by PW-4 and we are unable to find any material whatsoever to implicate the appellant in the assault on Sahdev in this evidence of PW-4. The next witness relied upon by the High Court is Vijay Kumar, PW-10, who

apart from being an injured witness is also the son of deceased Sahdev. In regard to the second incident, this witness states that after the first incident and after he regained consciousness he stood up and suggested his father "Let us flee from here." Then both of them started running. While so running, he saw Govind throw a 'tabbal' at him and which struck on the elbow of his right hand. He continued to run towards Bhattgaon and his father too moved towards Bhattgaon. While still on the run, he has stated that the people who were chasing them, started hurling Farsa at them but no Farsa struck him. Then he states that perhaps it struck on the head of his father on the back side because he had seen blood oozing from the back side of his father's head. He further states that while running they passed from Kutu's field where Kutu was working and he and his father pleaded with him to save them and continued running till they reached the field of Lalka where the family members of Lalka were sitting and they were having water. He and his father drank one glass of water each. He further states that thereafter both of them started running from there. Then Lalka asked him why they were running as he was present there then Lalka called Latel and asked him not to do anything as whatever happened should be left. The appellant is then supposed to have told Lalka to keep quiet because today they will cut them. Then the accused persons went towards Bhattgaon following his father and the witness turned towards his village Khera. He further says that after this while running he thought he would go to the rescue of his father and turned then he saw the accused Gorasy throwing a 'Danda' at his father and the appellant was saying "Today I shall cut him into pieces". "therefore, I under fear fled away towards my village." His evidence given thereafter is of no consequence in regard to what happened to his father thereafter. Having carefully perused the evidence of these witnesses on whom the High Court relied for the purpose of passing a conviction under Section 302 on the appellant, we find that there is absolutely no material which could establish beyond doubt that the appellant could be held guilty for his individual act of having committed the murder of Sahdev, therefore, in our opinion, the High Court was not justified in convicting the appellant under Section 302 consequently the sentence of life imprisonment is also not justified.

We will now take up the incident that took place in the disputed field. The High Court in regard to this incident, having come to the conclusion that the possession of the disputed field was with the appellant, held that the appellant had a right to private defence to the extent of protecting the property of which he was in possession but after examining the evidence available on record it came to the conclusion that so far as the appellant and Bhajan son of Latel are concerned, they have exceeded this right and are liable to be punished under Section 304, Part I, IPC, for having committed the murder of Ashok Tiwari. Here we are in unison with the finding of the High Court. From the evidence of the witnesses which have been discussed by the High Court in regard to this incident, it is clear that the appellant and Bhajan had attacked on Ashok Tiwari even after he had fallen down on the ground with 'tabbal'. Dr. Chandel, PW-20, who gave evidence as a prosecution witness has stated that the death of Ashok Tiwari was the consequence of two head injuries which had also resulted in fracture of parietal and occipital bones and these injuries were sufficient in the ordinary course of nature to cause death and from the evidence of the prosecution, the High Court rightly came to the conclusion that these 2 injuries were caused by the appellant and Bhajan by

exceeding their right of private defence. At the same time, the High Court in our opinion was justified in coming to the conclusion that the act of these two persons, namely, the appellant and Bhajan came under Exception II to Section 300 and amounted to culpable homicide not amounting to murder because the same was done in exercise of the right of private defence of their property and taking into consideration nature of attack it held that their act does not come under Section 302 IPC but only under Section 304, Part I, IPC. We agree with this conclusion both in regard to the act of the appellant and Bhajan as also the nature of offence as held by the High Court. It is to be noted that Bhajan though convicted under Section 304, Part I, IPC for 10 years' RI has not preferred any appeal and the appellant has chosen to prefer this appeal from jail, and having considered the material on record and the evidence, we agree with the High Court in regard to its findings with reference to the death of Ashok Tiwari and find the appellant guilty of having been a party to the death of Ashok Tiwari. He is liable to be punished under Section 304, Part I, IPC, and we feel that the sentence of 10 years' RI imposed on him is justified.

For the reasons stated above, while allowing this appeal in part, we hereby set aside the conviction and sentence imposed on the appellant i.e. RI for life under Section 302 for having caused the death of Sahdev Tiwari. We confirm the finding of the High Court and the conviction and sentence imposed on the appellant of 10 years' RI under Section 304, Part I, IPC. Accordingly, the appeal is partly allowed to the extent indicated above.

.....J.
(U C Banerjee)

.....J.
(N Santosh Hegde)

September 11, 2001.

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