

Madhya Pradesh High Court

Umrao Singh vs The State Of Madhya Pradesh on 15 June, 2022

Author: Vivek Rusia

--1--

CRA.Nos.865/2011 & 4342/2021

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE ANIL VERMA

CRIMINAL APPEAL No. 865 of 2011

Between:-

VIJAYSINGH AND 3 ORS. S/O UMRAOSINGH SONDHIA
RAJPUT, AGED ABOUT 38 YEARS, R/O. VILL.BORKHEDI

1.

JAGIR, PS. SITAMAU, DISTT. MANDSAUR (MADHYA
PRADESH)

BHAGATSINGH S/O UMRAON SINGH, AGED ABOUT 28
YEARS, R/O. VILLAGE BORKHEDI JAGIR POLICE

2.

STATION SITAMOU DISTRICT MANDSAUR (MADHYA
PRADESH)
BALWANTSINGH S/O UMRAOSINGH SONDHIA RAJPUT,
AGED ABOUT 35 YEARS, R/O. VILLAGE BORKHEDI JAGIR

3.

POLICE STATION SITAMOUR DISTRICT MANDSAUR
(MADHYA PRADESH)

TUFANSINGH S/O UMRAOSINGH SONDHIA RAJPUT,
AGED ABOUT 24 YEARS, R/O. VILLAGE BORKHEDI JAGIR

4.

POLICE STATION SITAMOU DISTRICT MANDSAUR
(MADHYA PRADESH)

.....APPELLANTS

(BY SHRI GAURAV SHRIVASTAVA, ADVOCATE)

AND

--2--

CRA.Nos.865/2011 & 4342/2021

THE STATE OF MADHYA PRADESH GOVT. THROUGH
POLICE STATION SITAMAU, DISTT. MANDSAUR (MADHYA
PRADESH)

.....RESPONDENT

(BY SHRI BHASKAR AGRAWAL, PUBLIC PROSECUTOR FOR

STATE)

CRIMINAL APPEAL No. 4342 of 2021

Between:-

- UMRAO SINGH S/O KISHORE SINGH, AGED ABOUT 80
1. YEARS, VILLAGE BORKHEDI JAGIR, PS SITAMAU, DISTT.
MANDSAUR (MADHYA PRADESH)
VIKRAM SINGH S/O UMRAO SINGH SONDHIIYA, AGED
ABOUT 45 YEARS, OCCUPATION: AGRICULTURE, R/O.
2.
VILLAGE BORKHEDI JAGIR PS SITAMAU, DISTT.
MANDSAUR (MADHYA PRADESH)
.....APPELLANTS
(BY SHRI GAURAV SHRIVASTAVA, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH PS SITAMAU (MADHYA PRADESH)
.....RESPONDENT
(BY SHRI BHASKAR AGRAWAL, PUBLIC PROSECUTOR FOR
STATE)

This appeal coming on for this day, JUSTICE VIVEK RUSIA passed the following:

JUDGMENT

(Delivered on 15/6/2022) Appellants No.1 to 4 have filed Cri. Appeal No.865/2011 against

--3-- CRA.Nos.865/2011 & 4342/2021 the judgment dated 30.4.2011, passed by the Addl. Sessions Judge (Fast Track Court) Mandsaur in Sessions Case No.144/2009 whereby the appellants No.1 to 4 have been convicted as under:-

Sr.No.	Conviction Name of appellants	Provision of Law U/s.	Sentence		In lieu of fine imprisonment
			Imprisonment	Fine	
1	Vijay Singh	148 of IPC	6 months RI	Rs.250	15 days RI
		302 of IPC	Life Imprisonment	Rs.1000	3 months RI
		323/149 of IPC	6 months RI	Rs.500	1 month RI
		325/149 (2 counts)	1 year RI	Rs.750	2 months RI
2	Bhagat Singh	148 of IPC	6 months RI	Rs.250	15 days RI
		302 of IPC	Life Imprisonment	Rs.1000	3 months RI
		323/149 of IPC	6 months RI	Rs.500	1 month RI
		325/149 (2 counts)	1 year RI	Rs.750	2 months RI
3	Balwant Singh	148 of IPC	6 months RI	Rs.250	15 days RI

		302 of IPC	Life Imprisonment	Rs.1000	3 months RI
		323/149 of IPC	6 months RI	Rs.500	1 month RI
4	Tufan Singh	325/149	1 year RI	Rs.750	2 months RI
		148 of IPC	6 months RI	Rs.250	15 days RI
		302 of IPC	Life Imprisonment	Rs.1000	3 months RI
		323/149 of IPC	6 months RI	Rs.500	1 month RI
		325/149 (2 counts)	1 year RI	Rs.750	2 months RI

2. Appellants No.1 to 2 have filed Cri. Appeal No.4342/2021 against the judgment dated 20.7.2021, passed by the Addl. Sessions Judge, Agar,

--4-- CRA.Nos.865/2011 & 4342/2021 District Mandasaur in Sessions Trial No.144/2009 (Fast Track Court) Mandasaur in Sessions Case No.144/2009, whereby the appellants No.1 and 2 have been convicted as under :-

Sr.No.	Conviction Name of appellants	Provision of Law U/s.	Sentence Imprisonment	Fine	In lieu of fin imprisonment
1	Umrao Singh S/o. Shri Kishore Singh @ Shankar Singh Age 80 years.	148 of IPC 302/149 of IPC	1 year RI Life Imprisonment	Rs.500 Rs.5000	1 month RI 3 months RI
		307/149 of IPC	5 years RI	Rs.2000	2 months RI
		325 of IPC (2 counts)	2 years RI	Rs.500	1 month RI
		323/149 of IPC	6 months RI	Rs.500	1 month RI
2	Vikram Singh	148 of IPC	1 year RI	Rs.500	1 month RI
		302/149 of IPC	Life Imprisonment	Rs.5000	3 months RI
		307 of IPC	5 years RI	2000/-	2 months RI
		323/149 of IPC	6 months RI	Rs.500	1 month RI
		325/149 of IPC (2-counts)	2 years RI	Rs.500	1 month RI

3. These appeals are arising out of Crime No.76/2009, registered at police station Sitamau, hence they are being decided by a common order.

4. Facts of the case in short are as under: -

5. Complainant - Sadu Singh lodged an FIR on 10.03.2009 at 11.45 PM at police station Sitamau that he is resident of Borkhedi Jagir. He is having old dispute with Umrao Singh in respect of a common way. One month ago, Umrao Singh has levelled a false charge of theft of cable wire on him, but later on the wire was found in his agriculture field. Today

--5-- CRA.Nos.865/2011 & 4342/2021 near about 8.00 PM on the festival of holi, he along with his brothers Bhagwan Singh, Madan Singh, Danu Singh, Gopal Singh, Shankar Singh, Fateh Singh, Bharat Singh and Vikram Singh were sitting outside the house after taking dinner. At that time Umrao Singh along with his son Vijay Singh, Balwant Singh, Tufan Singh, Bhagat Singh and Vikram Singh came there and started assaulting by means of stick and sword. Vikram Singh gave a blow by means of sword to Bhagwan Singh and Gopal Singh with an intention to kill. Bhagwan Singh sustained injury on his head. He also sustained injury near the left ear and started bleeding. Vijay Singh gave a blow to Gopal Singh on his head by means of stick due to which Gopal Singh became unconscious. Madan Singh, Danu Singh, Shankar Singh, Fateh Singh, Bharat Singh and Vikram Singh also sustained the injuries. Entire incident was witnessed by Sodan Singh, Goverdhan Singh and Prahlad Singh. They went to the police station. On a complaint by Sadu Singh an FIR under Sections 147, 148, 149 and 307 of IPC was registered. The injured persons were referred to the Government hospital for medical examination. In a X-ray Bhagwan Singh, Fateh Singh and Madan Singh found fractured. Injured Gopal Singh was referred to Maharana Bhopal Government Hospital, Udaipur where he died on 12.3.2009 at 5.15 AM. Accordingly, offence under Sections 325 and 302 of IPC were added in the FIR.

6. After registration of FIR, the spot map was drawn. Statements of injured and other eye-witnesses were recorded. Blood contains soil and plain soil were seized. After the death Lash Panchayatnama of Gopal Singh was prepared and the dead body was sent for postmortem. Appellants Vijay Singh, Tufan Singh and Bhagat Singh were arrested and at their disclosure stick was recovered. Blood stained clothes of Shankar, Sadu and deceased were recovered. All the seized articles were sent to

--6-- CRA.Nos.865/2011 & 4342/2021 FSL Sagar. Upon completion of investigation charge sheet was filed against Vijay Singh, Balwant Singh, Bhagat Singh and Tufan Singh. Umrao Singh and Vikram Singh were absconding and after their arrest they were tried separately.

7. The trial was committed to the Sessions Court where the charges under Section 147, 148, 149, 307, 302 of IPC were registered. Appellants denied the charges and pleaded for false implication, as they have election dispute with Sadu Singh. It is important to mention here that at the instance of accused persons FIR was registered against Gopal Singh and six others under Sections 147, 148, 149 and 323 of IPC at Crime No.75/2009 dated 10.3.2009 and they were tried vide Sessions Trial No.147 of 2009.

8. The prosecution examined 22 witnesses and exhibited 48 documents. In defence, the appellants did not examine any witness, but exhibited 14 documents as Exhibit D/1 to D/14 during the examination of the prosecution witnesses. After evaluating the evidence came on record, the learned learned Addl. Sessions Court has held that Gopal Singh died because of head injury caused by Vijay Singh, hence he has been held guilty for commission of offence punishable under Section 302 of

IPC. Vide judgment dated 30.4.2011 Vijay has been convicted under Section 302 of IPC and Balwant, Tufan and Bhagat have been convicted under Section 302 / 149 of IPC. Balwant has been convicted under Section 325 of IPC causing injury to Madan and other remaining 3 accused have been convicted under Section 325 / 149 of IPC. Bhagat Singh has been convicted under Section 323 and 325 of IPC for assaulting Fateh and other 3 accused have been convicted under Sections 323, 325/149 of IPC. Apart from that all the four accused have been convicted under Section 148 of IPC. However they have been discharged

--7-- CRA.Nos.865/2011 & 4342/2021 under Section 307 and 324 of IPC for causing injury to Shankar Singh and Vikram Singh.

9. Vide judgment dated 20th July, 2021, Umrao Singh and Vikram Singh have been convicted 148, 302/149, 307/149, 325, 325/149, 323/149 of IPC and sentenced accordingly, hence these two criminal appeals before this Court.

10. At the very outset, learned counsel for the appellants submits that appellants are not assailing the findings recorded by the trial Court on merit in respect of cause of dispute, place of incident, cause of death of Gopal Singh and injuries to other injured persons. They are assailing the conviction and sentence only on the ground that it was a case of free fight therefore, individual act of each and every appellant ought to have been examined by the trial Court. They have been wrongly convicted under Sections 302, 325 and 323 with the aid of Section 149 of IPC. Gopal Singh died because of the single blow by stick caused by accused Vijay Singh therefore, the other accused have wrongly been convicted with the aid of Section 149 of IPC. It is further submitted that Umrao Singh is aged about 80 years.

11. Application for suspension of jail sentence of appellant No.3 Balwant Singh (CRA.No.865/2011) has been suspended by this court vide order dated 5.11.2012. Application for suspension of jail sentence of appellant No.4 Tufan Singh has been suspended by this court vide order dated 9.9.2016.

12. Application for suspension of jail sentence of appellant No.1 Umrao Singh (CRA.No.4342/2021) Singh has been suspended by this court vide order dated 20.9.2021.

13. In support of his contention, learned counsel for the appellants placed reliance on the judgment passed by the Apex court in the case of

--8-- CRA.Nos.865/2011 & 4342/2021 Puran vs. State of Rajasthan, reported as (1976) 1 SCC 28, Balaur Singh & Ors. vs. State of Punjab & Ors. reported as 1997 SCC (Cri) 408, Hanumanram & Ors. vs. State of Rajasthan, reported as 2001 SCC Online Raj 984 : (2002) 1 RLW 94, Kanwarlal & Ors. vs. State of M.P. reported as (2002) 7 SCC 152 and Pathubha Govindji Rathod & Ors. vs. State of Gujarat reported as (2015) 4 SCC 363.

14. Learned Government Advocate for the State opposes the aforesaid prayer by submitting that since it is a case of cross FIR therefore, presence of these appellants on the spot and their overt act is not in dispute. All the prosecution witnesses have thoroughly supported the case of the prosecution.

Injuries have been proved by Dr. S.G. Suryavanshi (PW.20). The appellants were aggressor and they came to the house of the deceased armed with a stick and sword with an intention to kill therefore, they formed the unlawful assembly and therefore they have been rightly convicted with the aid Section 149 of IPC. Hence, no interference is called for and appeal is liable to be dismissed.

15. Since the appellants are not assailing the findings recorded by the learned trial judge in respect of the incident, complexity of these appellants, injuries sustained by the deceased and other injured persons, cause of death. Thus, we are not required to reexamine the same therefore, we hereby confirmed the findings. The only ground on which the appellants have assailed the conviction is that it is a case of free fight between the two groups in which all the members have sustained the injuries and the same has resulted into registration of cross FIR. The learned Sessions Judge has held that there is no dispute in respect of identification of these appellants persons as they belonged to the same village and there is previous enmity between them. Gopal Singh died because of the single blow given by appellant Vijay Singh on his head

--9-- CRA.Nos.865/2011 & 4342/2021 therefore, he has been convicted under Section 302 of IPC. In para 46 the trial Court has held that the injury caused by sharp edged weapon has not been established by the prosecution therefore, Vikram Singh and others have been acquitted from Section 307 of IPC for assaulting Bhagwan Singh with an intention to kill. As per the evidence of Dr. S.G. Suryavanshi (PW.20) Fateh Singh, Bharat Singh and Madan Singh have sustained simple injury. Bharat Singh did not enter into a witness box therefore, the grievous injury to Bharat Singh has not been established. Vide another judgment dated 20 th July, 2021 (State of M.P. vs. Umrao Singh & Anr.) the learned 5th Addl. Sessions Judge has convicted these two appellants not only under Section 302/149 of IPC and 325, 323 with aid of section 149 of IPC, but also convicted them under Section 307 of IPC with the aid of Section 149 of IPC. It has been held that accused Vikram Singh has assaulted Bhagwan Singh by means of sword with an intention to kill hence, he has been convicted under Section 307 of IPC and being a member of unlawful assembly both have been convicted for commission of other offences along with remaining co-accused persons. The aforesaid finding has been recorded contrary to the finding recorded by 6th Addl. Sessions Judge in which it has been held that Vikram Singh and other did not cause any injury to Bhagwan Singh with an intention to kill him. Against the said judgment passed in 2011 State did not prefer any appeal challenging the acquittal under Section 307 of IPC therefore, the 5th Addl. Sessions Judge while trying other two accused Umrao and Vikram has wrongly recorded the finding against them under Section 307 of IPC.

16. So far the sole contention of the appellant that these appellants have wrongly been convicted under Section 302 with the aid of Section 149 of IPC, the Apex Court in the case of Puran vs. State of Rajasthan

--10-- CRA.Nos.865/2011 & 4342/2021 (supra) has held that in case of sudden mutual fight between parties, there could be no question of any unlawful assembly with the common objection and none of the accused persons could be held constructively liable by invoking with the aid of Section 148 of IPC. The accused could be convicted only for the injuries caused by individual act attributed to them.

17. In the case of Balaur Singh & Ors. vs. State of Punjab (supra) also in case of clash between rival groups resulting in a death of one person. The sole injury head caused by one of the appellants by Gadasa convicting under Section 302 of IPC has been converted into offence under Section 304 Part II of IPC. Likewise in the case of Kanwarlal & Ors vs. State of M.P. (supra) and Pathuba Govindji Rathod & Ors. vs. State of Gujarat (supra) in case of free fight between two groups and death of one person, the Apex court has held that no offence is made out convicting other accused person with the aid of Section 34 or 149 of IPC.

18. In the case of Pathuba Govindji Rathod & Ors. vs. State of Gujarat (supra) the benefit of right of defence as well as benefit of Section 300 Exception 2 has been given by setting aside under Section 302 of IPC read with Section 149 of IPC.

19. As per the findings recorded by both the trial judges, all the appellants were carrying sword and started assaulting 7 injured persons and out of the said commonly assaulted. Gopal Singh sustained the head injury caused by accused Vijay Singh and died. The other injured did not receive any grievous injury and accordingly they have not been convicted under Section 307 of IPC. Rest of the appellants Bhagat Singh, Balwant Singh and Tufan Singh have assaulted by means of stick to other injured persons Madan and Fateh. Balwant has been convicted under Section 325 of IPC for causing injury to Madan. Bhagat Singh has been

--11-- CRA.Nos.865/2011 & 4342/2021 convicted under Sections 323 and 325 of IPC for causing injury to Fateh. Hence, they are liable to be convicted under Section 325(2 counts) and 323 of IPC, respectively.

20. So far Umrao Singh is concerned, he has also been convicted under Section 302 of IPC and Section 307 of IPC with the aid of Section 149 of IPC. As held above, there is no question of unlawful assembly in case of free fight therefore, his conviction under Section 302/149 of IPC is liable to be set aside as well as under Section 307 of IPC.

21. Appellant Vikram Singh has been convicted under Section 302/149 of IPC and Section 307 of IPC. The conviction under Section 307 of IPC to Vikram Singh and Umrao Singh is liable to be set aside as discussed above.

22. So far the conviction of Vijay Singh under Section 302 of IPC is concerned, the trial court has held that there was no intention to kill and acquitted all the accused from the offence punishable under Section 307 of IPC. The Apex Court in the aforesaid cases has held that in case of free fight between two groups there cannot be any question of unlawful assembly and in case of free fight, if one of the injury caused by one person turns into fatal, it cannot be culpable homicide amounting to murder. Not only the deceased, but other injured also sustained the injury on head, but the deceased Gopal Singh died after 3 days. Hence, instead of Section 302 of IPC, he is liable to be convicted under Section 304 Part II of IPC by giving all the benefits of Exception 2 of Section 300 of IPC.

23. Now the conviction is modified as under :-

24. In CRA.No.865/2011 Appellant No.1 Vijay Singh is convicted under Section 304 Part II of IPC. He is acquitted from the offence punishable under Section 302 of IPC. Appellant No.1 was arrested on 14.3.2009 and sent to judicial custody w.e.f. 15.3.2009 and is in jail for

--12-- CRA.Nos.865/2011 & 4342/2021 more than 13 years and 7 months. Since his sentence has been modified and instead of Section 302 of IPC he has been sentenced under Section 304 Part II of IPC and the imprisonment in the aforesaid section for a term which may extend to two years therefore, appellant No.1 Vijay Singh is liable to be acquitted. His conviction under Section 304 Part II of IPC is maintained, but his sentence under Section 304 Part II of IPC is reduced to the period already undergone. He be set at liberty if not required in any other case.

25. Appellant No.2 Bhagat Singh's conviction under Sections 323/149 and 325/149 of IPC is upheld and he is acquitted for the offence punishable under Section 302 of IPC. He was arrested on 14.3.2009. He was in jail w.e.f. 15.3.2009 to 20.6.2009. He was granted bail vide M.Cr.C.No.3712/2009, but after pronouncement of the judgment by 6 th ASJ (F.T. Court) Mandsaur on 30.4.2011 he has been sent to jail. He is in jail for more than 10 years. His sentence under Section 325 of IPC is upheld. Therefore his conviction under Section 325 of IPC is maintained but sentence is reduced to the period already undergone. He is acquitted from other charges. He be set at liberty, if not required in any other case.

26. Appellant No.3 Balwant Singh's conviction under Sections 323/149 and 325/149 of IPC is upheld. He was arrested on 14.3.2009. He was in jail w.e.f. 15.3.2009 to 20.6.2009. He was granted bail vide M.Cr.C.No.3712/2009, but after pronouncement of the judgment by 6 th ASJ (F.T. Court) Mandsaur on 30.4.2011 he has been sent to jail on 30.4.2011 to 29.8.2018. He was in jail for more than 7 years and 7 months. His suspension of sentence was allowed by this court vide order dated 29.8.2018. His sentence under Section 325 of IPC is upheld. Therefore, his conviction under Section 325 of IPC is maintained, but the sentence is reduced to the period already undergone. He is acquitted from

--13-- CRA.Nos.865/2011 & 4342/2021 other charges. He be set at liberty if not required in any other case.

27. Appellant No.4 Tufan Singh's conviction under Sections 323/149 and 325/149 of IPC is upheld. He was arrested on 16.3.2009. He was in jail w.e.f. 16.3.2009 to 20.6.2009. He was granted bail vide M.Cr.C.No.3712/2009 on 17.6.2009. His suspension of sentence was allowed by this court vide order dated 9.9.2016. His sentence under Section 325 of IPC is upheld. Therefore, his conviction under Section 325 of IPC is maintained, but his sentence is reduced to the period already undergone. He is acquitted from other charges. He be set at liberty if not required in any other case.

28. As far as CRA.No.4342/2021 is concerned, appellant No.1 Umrao Singh, he was arrested on 2.3.2011 and remained in jail till 17.2.2014. During trial he was on bail w.e.f. 17.12.2014 to 20.7.2021. He was granted bail vide M.Cr.C.No.1966/2013 by order dated 17.2.2014. Thereafter, after pronouncement of judgment dated 20.7.2021 passed by the 5th ASJ, Mandsaur he was against taken in to custody. Thereafter this court allowed his suspension of jail sentence on 20.9.2021. He

remained in jail for more than 2 years and 10 month, as his sentence under Section 325 of IPC is upheld therefore, his conviction under Section 325 of IPC is maintained, but his sentence is reduced to the period already undergone. He is acquitted from other charges. He be set at liberty, if not required in any other case.

29. Appellant No.2 Vikram Singh is concerned, he was arrested on 10.11.2011. He is in custody from 21.12.2011 till date and has completed more than 10 years 5 months till date. His conviction under Section 325/149 of IPC is upheld. As his sentence is upheld under Section 325 of IPC and he has completed more than 10 years 5 months of jail sentence therefore, his conviction under Section 325 of IPC is maintained but his

--14-- CRA.Nos.865/2011 & 4342/2021 sentence is reduced the period already undergone. He is acquitted from other charges. He be set at liberty, if not required in any other case.

30. In view of the above, the appeals filed by the appellants are allowed in part to the extent as indicated herein above.

(VIVEK RUSIA)
JUDGE

(ANIL VERMA)
JUDGE

SHAILESH MAHADEV
SUKHDEVE

SS/-

2022.06.17 13:07:20 +05'30'