

**Criminal Appeal (D.B.) No. 205 of 2014**  
**With**  
**Criminal Appeal (S.J.) No. 952 of 2013**

*[Arising out of judgment of conviction dated 06.12.2013 and order of sentence dated 09.12.2013 passed by learned Principal Sessions Judge, Simdega in Sessions Trial No.18 of 2009]*

**Criminal Appeal (D.B.) No. 205 of 2014**

William Dungdung son of Joseph Dungdung, Resident of Diptitoli, P.O. & P.S.- Simdega, District- Simdega .... .... **Appellant**  
--Versus--

1. State of Jharkhand  
2. Sukhdeo Bhokta son of Late Bahura Bhokta  
3. Jaipal Bhokta son of Mathu Bhokta  
4. Fauli Bhoktain wife of Late Bahura Bhokta  
5. Chhote Bhokta son of Late Bahura Bhokta  
Respondent nos.2-5 residents of Bakhritoli, P.O. and P.S. Simdega, District Simdega, Jharkhand .... .... **Respondents**

**Criminal Appeal (S.J.) No. 952 of 2013**

1. Sukhdeo Bhokta @ Sukhdeo Bhogta son of Late Bahura Bhogta  
2. Jaipal Bhokta @ Jaipal Bhogta son of Mathu Bhogta  
3. Chote Bhokta @ Chote Bhogta son of Late Bahura Bhogta  
All are residents of Village Bakhritoli, P.O. and P.S. Simdega, District Simdega, Jharkhand .... .... **Appellants**  
--Versus--

The State of Jharkhand .... .... **Respondent**

For the Appellants : Mr. Subhashis Rasik Soren, Advocate  
Ms. Shobha Gloria Lakra, Advocate  
[Criminal Appeal (D.B.) No. 205 of 2014]  
Mr. Zaid Ahmed, Advocate  
[Criminal Appeal (S.J.) No. 952 of 2013]  
For the State : Mr. Saket Kumar, A.P.P. (In both cases)  
For the Informant : Mr. Zaid Ahmed, Advocate  
[Criminal Appeal (D.B.) No. 205 of 2014]

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**PRESENT: SRI ANANDA SEN, J.**

**SRI GAUTAM KUMAR CHOUDHARY, J.**

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**JUDGMENT**

**Reserved on: 14.08.2024**

**Pronounced On: 22.08.2024**

*Per Gautam Kumar Choudhary, J.* Both these appeals arise out of the common judgment of conviction and sentence passed in Sessions Trial No.18 of 2009 by which Appellants Sukhdeo Bhokta, Jaipal Bhokta and Chote Bhokta have

been convicted and sentenced under Section 325 of the IPC.

2. The convicts have preferred Criminal Appeal (S.J.) No. 952 of 2013 against the judgment of conviction and sentence.

3. Criminal Appeal (D.B.) No. 205 of 2014 has been preferred by the victim against the acquittal of Fauli Bhoktain and further for conviction of the other appellants for lower offence under Section 325 of the IPC, whereas the appellants were charged for offence under Section 307/149 of the IPC.

4. Land dispute is the genesis of the offence. As per the FIR, on 11.11.2007 when the informant- Joseph Dungdung was getting his crops harvested, the above named accused persons came armed with Tangi and Lathi and conjointly assaulted the informant. When his son William Dungdung came for his rescue, he was also assaulted with sharp cutting weapon with intention to cause death. There were altogether 20-25 aggressors who retreated after critically injuring the informant and his son.

5. On the written report, Simdega P.S. Case No.161 of 2007 was registered under Sections 147, 148, 149, 323, 324, 307 of the IPC against the appellants and others. Police on investigation, submitted charge sheet against the appellants and Smt. Fauli Bhoktain. Charge was framed under Section 307/149 and the appellants were put on trial.

6. Altogether eleven witnesses were examined on behalf of prosecution and relevant document including injury reports were adduced into evidence and marked as exhibit.

7. As far as the appeal against conviction is concerned, it is argued by the learned counsel on behalf of appellants that all the witnesses are close family relatives and no independent witness has been examined to support the prosecution case. It is also argued that there is material contradiction in the deposition of witnesses regarding the manner of assault. It is argued that **P.W. 1 – Sanichara Lohra** claims himself to be an eye witness to the occurrence and he says that Sukhdeo had assaulted Joseph with axe (Tangi) whereas Jaipal Bhogta and Fauli Bhoktain assaulted Joseph with stick and Chote Bhogta had assaulted informant's son William Dungdung with axe.

**P.W. 2 – Salistin Dungdung** happens to be son of the informant and claims that on 11.11.2007 at about 3 p.m., Sukhdeo Bhogta, Jaipal Bhogta, Chote Bhogta and Fauli Bhoktain armed with axe and sticks entered into a

scuffle with his father Joseph Dungdung and also assaulted him. He further claims that the aforesaid accused persons and 10 – 12 unknown persons had assaulted his father with stick and when his elder brother William Dungdung came for rescue, he was also assaulted.

**P.W. 3 – Nilima Dungdung** is the daughter-in-law of the informant and has deposed that on the alleged date of occurrence, Sukhdeo Bhogta, Chote Bhogta, Jaipal Bhogta, Fauli Bhoktain along with 15 – 20 unknown persons came to the place of occurrence and asked her father-in-law not to get the paddy harvested and later on, they assaulted him. She claims that Sukhdeo Bhokta assaulted him with Tangi on his head due to which he fell down and thereafter, Jaipal and Fauli Bhoktain had assaulted her father-in-law with stick and he sustained injury on the head.

**P.W. 6 – Joseph Dungdung** (informant) has reiterated his statement as stated in the FIR. In his cross-examination, he deposed that they were having land dispute with the appellants since 1977.

**P.W. 8 – Sunita Kusma** was the labour who was involved in harvesting the field of the informant. She has not supported the prosecution case and was declared hostile.

**P.W. 10 – Jama Kharia** is the Investigating Officer of the case but he has not recorded the statement of any witness neither he has recorded the explanation of any of the accused persons.

8. It is argued by learned counsel in the appeal against acquittal being Criminal Appeal (D.B.) No. 205 of 2014 that the nature of injury sustained by the deceased was on the vital part of the body, which disclosed an intention to cause death from which the injured persons had fortuitous escape. The sharp cutting weapon like ‘Tangi’ was used in the assault and the appellants had come fully prepared by forming an unlawful assembly to stop the harvesting of crop. In prosecution of the common object, the appellant inflicted critical injuries by dangerous weapons. Learned trial court without considering the evidences on record, returned the judgment of conviction under Section 325 of the IPC instead of 307/149 of IPC. Furthermore, as per the FIR as well as the direct eye witness account, Fauli Bhoktain had participated in the assault, but without assigning reason for the same, Fauli Bhoktain has been acquitted of the charges.

9. Learned APP has defended the judgment of conviction and sentence.

10. As far as appeal against conviction is concerned the plea that there were vital contradictions in the prosecution evidence lacks force and substance and therefore, is not sustainable. There is always a time gap between the actual incidence and when it is reconstructed before the Court on the basis of evidence, which results in peripheral discrepancies in the account of witnesses. Such discrepancies and inconsistencies are normal and depends on the individual human capacity of observation, retention and reproduction. An inconsistency may amount to contradiction when two or more different statements on a topic cannot both be true at the same time and in the same sense so as to render them irreconcilable. 'Contradict' according to the Oxford Dictionary, means, to affirm to the contrary. Two antithetical propositions cannot both be true at the same time and in the same sense. In classical logic, a contradiction consists of a logical incompatibility between two or more propositions. Section 145 of the Evidence Act indicates the manner in which contradiction is brought out. Therefore, every inconsistency is not sufficient to jettison the prosecution case, unless and until it goes to the root of the matter so as to erode the evidentiary worth of it. Refer to *Tahsildar Singh Versus State of U.P.*, AIR 1959 SC 1012

11. It is difficult to agree with the argument advanced on behalf of the convicts that independent witnesses have not supported the prosecution. Members of the family are natural witnesses to the incidence and they cannot be said to be interested only for the reason that they happen to be the close family relatives of the victim. It has been held in *Rameshwar Versus State of Rajasthan*, AIR 1952 SC 54 that a witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has caused such an enmity to the accused, to wish to implicate him false.

12. In the present case, defence has failed to elicit any vital contradiction in the account of witnesses to raise doubt over the veracity of their account. The injured have been examined as P.W.-6 (informant) and P.W.-5 who have given consistent account of the incidence, in which they were assaulted by the appellants (in appeal against conviction) who had come armed with traditional weapons like *tangi* and *lathi* to prevent the informant party from harvesting

their crop. Law is settled that testimony of injured witnesses deserve a higher degree of credence as their presence is assured at the place of occurrence, and ordinarily they will not implicate anyone else for the offence, except the real assailants. P.W.-6 is the informant who was aged about 83 years at the time of the deposition and has specifically deposed that he was given tangi blow by Sukhdeo Bhogta over his head. Thereafter, he was assaulted by Jaypal Bhogta and Fauli Bhogtain with lathi. On alarm being raised by his daughter-in-law Nilima Dungdung, his son William Dungdung (P.W.5) rushed to his rescue. He was also injured in the said assault. It has been deposed by P.W.-5 that his younger brother's wife came running and informed that Joseph Dungdung was being assaulted by the accused persons. When he arrived at the place of occurrence, he found his father lying in a pool of blood and Sukhdeo Bhokta, Jaypal Bhokta and Fauli Bhogtain along with 10-11 persons were assaulting his father. When he rushed to the rescue of his father, he was also given tangi blow over his head by Chota Bhokta. He was rescued by the people present there. Nilima Bhokta (P.W.-3) and other witnesses have corroborated the testimony of both the injured witnesses.

**13.** Oral account of the witnesses is corroborated by the injury sustained by the informant and his son which are as under:-

Injuries on Joseph Dungdung

- I. *Sharp cut injury over left parietal area 2½" long 1/2" wide and 1/2" deep.*
- II. *Cut injury over left parietal occipital area 2" long X 1/2" wide X 1/2" deep.*
- III. *Swelling over right cheek below eye 1" X 1".*

Injuries on William Dungdung

- I. *Sharp cut injury over left parietal area 2½" X 1/2" X 1/2"*
- II. *Sharp cut injury over parietal occipital area 2½" X 1/2" X 1/2"*

**14.** The oral evidence duly corroborated by documentary evidence leave not a shred of doubt regarding the factum of incidence in which informant and his son were assaulted by an unlawful assembly led by Sukhdeo Bhogta in which they were grievously injured.

**15.** Defence has failed to raise any plausible defence to the charge. It has come in prosecution evidence that land had been purchased in the name of the wife of the informant by registered sale deed and it had been mutated and correction slip had been issued. No contrary evidence has been led by the

Defence to show any colour of right to raise plea of private defence. There is no reason to disbelieve the prosecution case on the factum of incidence.

**16.** Now coming to the appeal against acquittal. There is merit in the plea of the appellant that despite direct evidence against the accused Kaouli Bhogta of having assaulted the informant with lathi, she has been exonerated of the charges by the trial Court without assigning any specific reasons for the same. This is not a case where the incidence took place on the spur of moment. Harvesting of the crop was in progress when the accused persons variously armed with dangerous weapon came there and commanded the informant from not harvesting the crop. Kaouli Bhogta was the member of the unlawful assembly and she also took part in the assault in prosecution of the common object of the assembly. It matters little, whether she wielded tangi, or lathi or she had no weapon in her hand. Just being member of the unlawful assembly was sufficient to fasten criminality by recourse to Section 149 of the IPC. The evidence of the injured and other witnesses regarding the role of Fauli Bhoktain shows that she was an active member of the unlawful assembly who assaulted the informant. Her acquittal for the offence charged was bad in law.

**17.** Now coming to the offence proved against the appellants/accused persons. In view of the evidence on record regarding assault causing grievous injury by dangerous weapon, conviction under Section 325 of the IPC is bad in law and it should have been under Section 326 of the IPC.

**18.** In order to bring home the charge under Section 307 of the IPC, an act will amount to an attempt to murder if the act is such that if it was not prevented or intercepted, it would be sufficient to cause the death of the victim. To constitute the offence, no injury need be caused to the victim. If in the course of the attempt, bodily injury is caused, the accused would be liable to enhanced punishment. To sustain conviction under Section 307 of the IPC, the intention to kill should be clearly proved by the circumstances like persistence and intensity of attack on vital part of the body. This Section clearly contemplates an act which is done with the intention of causing death, but, which fails to bring about the intended consequence on account of the intervention of a cause operating independently of the volition of the agent. Thus, the intention or knowledge of the accused must be such as is necessary to constitute murder.

It has been held in *Hari Mohan Mandal v. State of Jharkhand*, (2004) 12 SCC 220 where in it has been held that it is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.

19. In the present case as per the prosecution evidence about 15-20 persons variously armed with dangerous weapon and forming an unlawful assembly, descended on the place of occurrence and attacked the informant when he was getting crops harvested. Had they intention to cause death, nothing could have prevented the mob who were armed with traditional weapons and far outnumbered the informant party. Although the injuries were caused by sharp cutting weapon on the vital part of the body, but the intensity of the assault does not suggest that that the intention of the appellants was to cause death. No fracture had been caused as a result of the assault. Under the circumstance, we are of the view that no offence under Section 307 of the IPC is made out.

20. Under the aforesaid facts and circumstance of the case and for the reasons discussed above, **Criminal Appeal (D.B.) No. 952 of 2013 is dismissed and the judgment of conviction and Criminal Appeal (D.B.) No. 205 of 2014 is partly allowed** with the following modification in finding and sentence:

- a. Appellants- Sukhdeo Bhokta, Jaipal Bhokta, Chote Bhokta and Fauli Bhoktain are convicted for the offence under Sections 148 and 326/149 of the IPC.
- b. On point of sentence, considering the overall facts and circumstance of the case, age and antecedent all the appellants are sentenced to RI of four years with fine of Rs.5000/- each under Section 326 of the IPC. In default of payment of fine, the appellants to undergo SI of one month. They are also sentenced to undergo SI of one year under Section 148 of the IPC. All the substantive sentences to run concurrently and the period already undergone to be set off.
- c. At the time of Judgment in 2013 age of Fauli Bhoktain was 68 years, meaning thereby she must be around 79-80 years, is

sentenced to SI for a period of one year and a fine of Rs.1000/-. On default of payment of fine, she will undergo a SI of 15 days. She is also sentenced to undergo SI of one year under Section 148 of the IPC. Both substantive sentences to run concurrently.

- d. The bail of appellants are cancelled and they along with Fauli Bhoktain are directed to surrender before the learned trial Court within a month. In the event of their non-appearance trial Court to proceed against them as per law.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

**(Gautam Kumar Choudhary, J.)**

**Per Ananda Sen, J.** I agree.

**(Ananda Sen, J.)**

High Court of Jharkhand, Ranchi

Dated, 22<sup>nd</sup> August, 2024

AFR/Anit