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CRA-2477-2017

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&amp;

HON'BLE SHRI JUSTICE RATNESH CHANDRA SINGH BISEN

ON THE 16<sup>th</sup> OF JANUARY, 2026CRIMINAL APPEAL No. 2477 of 2017*BANTU BASOR AND OTHERS**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

*Smt. Namrata K. Agrawal - Advocate for the appellants.*

*Shri Ajay Shukla - Government Advocate for the respondent/State.*

.....

ORDER

*Per. Justice Ratnesh Chandra Singh Bisen*

Learned counsel for the appellants prays for withdrawal of I.A. No.783/2026, which is third application filed on behalf of appellant No.2 Patiraj Basor and appellant No.3 Udal Basor for suspension of sentence and grant of bail.

2. Accordingly, I.A. No.783/2026 is dismissed as withdrawn.

3. With the consent of learned counsel for the parties, the case is heard finally.

4. This appeal is filed by the appellants being aggrieved of the judgment dated 12.04.2017 passed in S.T. No.501000/2016 by learned Additional Sessions Judge, Devsar, District Singrauli (M.P.) whereby appellants have been convicted and sentenced in the following terms:-



<u>Conviction</u>		<u>Sentence</u>		
<u>Section</u>	<u>Act</u>	<u>Imprisonment</u>	<u>Fine</u>	<u>Imprisonment in lieu of fine</u>
302/34	I.P.C.	Life Imprisonment	Rs.2,000/-	R.I. for 6 months
323/34	I.P.C.	R.I. for 3 months	Rs.1,000/-	Nil

5. Prosecution story in short is that on 02.05.2016, the complainant's father Motilal Basor had gone to the house of his cousin brother Hridaylal Basor to attend a 'Chauth' party on invitation where at around 03.00 p.m. over some issue, accused persons namely Bantu Basor, Patiraj Basor and Udal Basor started fighting with his father. After getting the information, complainant and his brother Ramnaresh Basor went to Hridaylal's house at village Godwali, then they saw that Bantu Basor, Patiraj Basor, and Udal Basor were fighting with their father Motilal. When they tried to stop them from fighting, Bantu Basor, Patiraj Basor, and Udal Basor started abusing them and threatened to kill them and started beating to his brother Ram Naresh and him with sticks in front of Hridaylal Basor's house, due to which, injuries caused to his brother Ram Naresh on his head and left eye. He also suffered injuries on his shoulder and arm due to the beating. Upon receiving the information, the police arrived in a 100 vehicle and brought him and his brother Ram Naresh to PHC Bargawa. Dehati nalishi of the above incident was lodged at PHC Bargawa by complainant Ramesh Kumar Basor on 02.05.2016 at 19:00 hours. On the basis of which, FIR (Ex.P-3) was registered at Police Station Bargawa, District Singrauli vide Crime No.177/2016 for commission of offence under Sections 294, 323, 506, 307



and 34 of the Indian Penal Code and the MLC was done of injured Ramesh and Ramnaresh at Bargawa Hospital and injured Ramnaresh was referred from Bargawa Hospital to Baidhan Hospital where he died on 02.05.16 at 8.00 pm. After the death of Ramnaresh, Dehati Marg No.0/16 (Ex.P-14) was registered on 02.05.16 and Investigating Officer had prepared the Panchanama of dead body. Spot map was prepared and the blood stained and plain soil was seized from the spot. After receiving the Postmortem report of the deceased and recording the statements of the witnesses, also seized a lathi which was used by the accused persons.

6. After completion of the investigation, charge-sheet had been filed under Section 302, 307, 504, 506 and 34 of IPC on 07.06.2016 and after committal of the case, Session Case No.501000/16 was registered before trial Court. Trial Court had framed the charges against the accused persons under Section 302/34, 323/34, 294 and 506 of IPC. After completion of trial, trial Court convicted the accused persons under Section 302/34 and 323/34 of IPC.

7. Learned counsel for the appellants submits that the prosecution has failed to prove his case beyond reasonable doubt, therefore, benefit of doubt ought to have been granted, even otherwise there are material contradiction, improvements, omissions in the statements of prosecution witnesses, therefore, they ought to have been disbelieved. There is no direct or indirect evidence against the appellants, therefore, trial Court on circumstantial evidence convicted the appellants. The trial Court has failed to considered



this factual aspect that Ramesh (PW-1) has admitted that there is counter case registered against him under Section 325 of IPC for committing grievous hurt to the Patiraj-appellant No.2. Looking to this fact alone, it is crystal clear that there is counter blast case registered against the present appellants. It is further submitted that the trial Court has not considered this factual as well as legal aspect of the case that the incident had taken place as a sudden provocation given by the complaint, therefore, the matter come to the exception of Section 300 Of I.P.C., therefore, the case is not made out against the present appellants. Learned trial Court has failed to consider this factual aspect of the case that both the parties were enjoying the family function and initially the complainant party have assaulted to the appellants. In fact the majority of members were assaulting to each other, therefore, it is not clear that the offence was caused by appellants, therefore, the judgment of conviction and sentence dated 12.04.2017 be set aside and appellants are entitled to acquit in the interest of justice.

8. Shri Ajay Shukla, learned Public Prosecutor for the State supported the judgment of the trial Court and submitted that the trial Court has properly appreciated the oral as well as documentary evidence adduced by the prosecution and found the guilty to appellants/accused persons under Section 302/34 and 323/34 of IPC.

9. Heard the counsel for the parties.

10. Dr. A.K. Sharma (PW-6), who medically examined firstly the injured Ramesh Basor and Ramnaresh Basor, stated that he found one-one



injury on both arm of Ramesh Basor of reddish black in colour measuring 7x2 cm. He complained of neck pain, but no injury was found on examination. He opined that the above injuries were inflicted by a hard and blunt object. All the injuries were simple in nature and were occurred within 12 to 24 hours of examination. His report is Ex.P-20. This prosecution witness also stated that on examination of injured/deceased Ramnaresh Basor he found following injuries namely (i) three lacerated wounds in the parietal region of the front of the head measuring 6x1 cm. each and deep bone, in which a blood clot had accumulated and slight bleeding was occurring, and the edges of the wound were irregular and sunken. (ii) A lacerated wound on the left side and front of the head measuring 3x0.5 cm. and deep bone, in which blood clots had accumulated and there was dried blood and the edges of the wound were irregular and sunken. (iii) Blueness and swelling around the left eye. (iv) A swollen injury near the left palm measuring 7x2 cm. He opined that the condition of the injured/deceased Ramnaresh was critical, he was unconscious and in a coma and was not in a position to give a statement. He further opined that the injury No.1 and 2 were life-threatening, injury number 3 and injury number 4 of the were simple in nature, all the injuries were done within 4 hours of the examination. He stated that he advised to X-ray. His report is Ex.P-21. This witness in his cross-examination has denied that the head injuries sustained by the injured Ramesh could have been self-inflicted. He also denied that the injuries sustained by the injured/deceased Ram Naresh could have been caused by a fall. It means there is nothing in his cross-examination on the basis of which can get any benefit.



11. Dr. Smt. Vimla Khes (PW-8) stated that she had conducted postmortem and she opined that deceased Ramnaresh died due to shock of the head injury.

12. Ramesh Kumar Basor (PW-1), who is the injured witness during the incident, stated in his examination-in-chief that on the date of incident he went to the house of Hriday Lal Basor in invitation where many relatives were present. When at about 04:00 p.m. he had started serving food and drinks to the grandchildren and relatives, sister Urmila was also sitting for taking meal. During servicing the food, some excess pulse fell on her plate. Urmila got up and grabbed his collar and said "you have put so much pulse, your father will eat it." She pounced on him, then accused, Bantu, Patiraj, and Udal came with sticks and started assaulting to him. When his brother Ramnaresh (deceased) tried to get them to leave and told them not to fight, then accused Bantu, Udal, and Patiraj Basor beaten him with sticks and threw him on the ground by causing severe head injuries. When he went to rescue his brother, they assaulted him as well and he ran away and his uncle Nandlal called the 100 dial and took him to Bargawa Hospital. He was referred to Baidhan from the hospital, but Ramnaresh died on the way. He had lodged dehati nalishi (Exp-1).

13. This witness in para 4 of his cross-examination denied that the distance between his house and accused house is 1 Km. and he himself stated that distance between his house and accused are 200 meters. In para 7 of his cross-examination he admitted that a counter case was registered against him



under Section 325 of IPC and he alleged that he was accused of breaking of hands of accused Patiraj by beating him, but in para 8 he denied that he and his brother Ramnaresh had assaulted to Patiraj by sticks, due to which, Patiraj's hand was fractured.

14. Lalle (PW-2), Nandlal (PW-3) and Hridaylal (PW-4) have turned hostile and have not supported the case of prosecution.

15. Rajkumari Basor (PW-5), who is the sister of deceased Ramnaresh Basor and injured Rameh Kumar Basor, stated that on the date of incident Ramesh during serving pulse, serve more pulse in plate of Urmila, who daughter of Bantu Basor, but Urmila did not took food and grabbed Ramesh by the collar and began beating him. Due to this reason, the dispute started, but some people intervened. She and her father Motilal Basor were present there, then accused persons assaulted her father Motilal, who received injuries on his head. After the incident her younger brother Ramesh went his house and thereafter her elder brother Ramnaresh with younger brother Ramesh came at the place of incident, then accused Bantu, Patiraj, Udal Basor started beating her elder brother Ramnaresh, in which Ramnaresh got head injuries. When the accused persons had beaten Ramnaresh and fallen down, then Ramesh reached at the place of incident. She had also tried to intervene, but accused persons had also beaten her, she received injury in her head. In her cross-examination, she denied that she gave any statement to the police.

16. Godhal @ Hiralal (PW-9) stated that police had prepared



panchnama (Ex.P-6) of dead body of Ramnaresh and also expressed that Motilal was his nephew and he has died.

17. D.S. Chauhan (PW-7) stated that on 02.05.2016, he visited to PHC Bargawa on information of Ramesh Basor, he registered a dehati nalishi (Ex.P-1) vide Crime No.0/16 under Sections 294, 323, 506, 307/34 of IPC. On basis of Dehati Nalishi, he also registered FIR (Ex.P-23) vide Crime No.177/2016 against accused persons namely Bantu Basor, Patiraj Basor and Udal Basor. Ramnaresh Basor died on 02.05.2016 at District Hospital Baidhan. After receiving information, he registered Marg No.0/16 (Ex.P-4) under Section 174 of the Criminal Procedure Code. On 03.05.2016, he registered original Marg No.32/16 (Ex.P-24) at Police Station Bargawan.

18. U.P. Singh (PW-8) is an Investigating Officer and on perusal of his evidence, it appears that he had prepared Shav Panchnama (Ex.P-6). Postmortem form (Ex.P-26) was filled by him for doing postmortem of deceased Ramnaresh and he also recorded the statement of witnesses Ramesh Kumar, Lalle Basor, Smt. Rajkumari Basor, Nandlal Baor, Motilal Basor on 02.05.2016 and he recorded the statement of Hriday Lal Baor on 04.05.2016. He had visited at the place of incident on 03.05.2016 and seized blood stained soil and plain soil from the place of incident. Seizure memo is Ex.P-18. On said date he also recorded the memorandum statements of accused Bantu Basor, Patiraj Basor and Udal Basor and seized lathi from their possession before the witnesses and also he arrested the accused persons and had prepared arrest memo i.e. Ex.P-15, Ex.P-16 and Ex.P-17 respectively. On the same date i.e. on 03.05.2016, Constable Arvind Rawat



had produced the cloth of deceased Ramnaresh. He seized aforesaid cloth (Ex.P-28). Seized articles were sent to the FSL, Sagar through letter No.104/2016 of Superintendent of Police, Singrauli. In para 15 of his cross-examination he admitted that when he arrested accused Patiraj Basor, then Patiraj Basor told him that due to beaten by complainant his left hand was fractured and also plastered. He also admitted that he had registered Crime No.176/2016 against Ramesh Kumar and deceased Ramnaresh Basor and challan No.150/2016 had been filed before the Judicial Magistrate R.P. Singh. He also admitted in para 16 that counter case State Vs. Ramesh Kumar Basor had been presented by him before the Court.

19. After perusal of evidence adduced by this witness, it appears that on the information of the accused Patiraj Basor a crime was registered against Ramesh Kumar Basor (PW-1) and deceased Ramnaresh Basor and it appears that Patiraj Basor had also received injury during the incident.

20. Accused Patiraj Basor also examined himself as DW-1 and he stated that deceased Ramnaresh and Ramesh Kumar Basor had come from the village and started beating to them. Ramesh had assaulted him and caused injury in his left hand wrist, neck and leg. Deceased Ramnaresh and Ramesh had also been assaulted with his father and his father received injuries on his back, leg and whole body parts. Deceased Ramnaresh and Ramesh had also beaten to his brother Udal, who had also received injury. During the fighting Ramesh assaulted him, but the stick did not hit him, the same hit to Ramnaresh, due to which, Ramnaresh died. They had not assaulted.

21. Looking to the evidence of this witness, he only tried to get benefit



by receiving the injury during the fight, but looking to the whole evidence of prosecution, specially Ramesh Kumar Basor (PW-1) and Rajkumari Basor (PW-5), it appears that these witnesses had not given their correct evidence, they only tried to save the accused persons from the murder of deceased Ramnaresh.

22. As per evidence of Dr. A.K. Sharma (DW-2), it appears that he also medically examined to accused Patiraj Basor, Bantu Basor and Udal Basor on 02.05.2016, but on perusal of his evidence, it appears that no any external injury was found by this witness on the body of Patiraj Basor and Bantu Basor. All injuries were internal like swelling and contusion. In this situation, it is not possible for prosecution witnesses that they explained the injuries of the accused persons. As far as the injuries of the Urmila Basor is concerned, it appears that one lacerated wound was found by this witness on the head of Urmila, but Urmila is not an accused in this case.

23. After analyzing the evidence of the prosecution, it appears that since altercation took place at the spur of moment and there is no history of any previous enmity. Thus, murder was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel without offender having taken undue advantage. Provision of Exception 4 to Section 300 of IPC will be attracted. Thus, when these facts are taken into consideration, then except for Ramesh Kumar Basor (PW-1) and Rajkumari Basor (PW-5), all other eye witnesses Lalle (PW-2), Nandlal (PW-3) and Hridaylal (PW-4) have turned hostile.

24. Looking to the aforesaid reason, it is appropriate to alter the conviction from Section 302/34 of IPC to Section 304 Part-I read with section 34 of



IPC.

25. Accordingly, looking to the fact that altercation was occurred suddenly and there was no previous enmity, we alter the conviction from one under Section 302/34 IPC to Section 304/34 Part-I IPC and direct the appellants to undergo rigorous imprisonment for a period of 10 years each and fine of Rs.5,000/- (fine thousand only) each, with default stipulation of rigorous imprisonment for a period of six months. As far as conviction under Section 323/34 IPC is maintained and need no interference.

26. In the above terms, with the aforesaid modification in the impugned judgment dated 12.04.2017 passed in Sessions Trial No.501000/2016, **the appeal is allowed in part.**

27. The **appellant No.1 Bantu Basor** is on bail. His bail bonds are cancelled. He shall surrender before the trial Court forthwith to undergo remaining jail sentence as imposed aforesaid, failing which the trial Court shall take necessary steps to take him into custody for serving remaining jail sentence.

28. Record of the trial Court be sent back immediately.

(VIVEK AGARWAL)  
JUDGE

(RATNESH CHANDRA SINGH BISEN)  
JUDGE

sp/-