

(2015) 01 CHH CK 0014
In the Chhattisgarh High Court
Case No : Cri. A. No. 709 of 2000

Aktiram

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2015) 3 CGLJ 475 : (2015) 2 MPJR 22

Hon'ble Judges : Navin Sinha, A.C.J; Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Meena Shastri, for the Appellant; Vinod Deshmukh, Dy. Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Navin Sinha, Acting C.J—The Appellant stands convicted under Section 302 IPC to life imprisonment along with fine of Rs. 1,000/-. In the event of failure to pay the fine he was required to undergo six months further rigorous imprisonment as ordered by the 1st Additional Sessions Judge, Balod Bazar in Sessions Trial No. 18 of 1994 on 29.02.2000. F.I.R. was registered on 3.7.1993 at about 11.00 a month settlement of PW 2 Rambai wife of the deceased, marked Exhibit P9 with regard to an occurrence the same morning at 7.00 am. Talking of a land dispute she specifically named the Appellant as having assaulted her husband who succumbed to his injuries. The witness was also injured in the assault by the Appellant and her MLC Exhibit P22 was proved by PW 11, Dr. Chandrasekhar Patel The post-mortem of the deceased Exhibit P21 was also conducted by PW 11 who found one sharp cutting injury on the deceased commencing from the left cheek passing the collar bone transverse of size 3 x 3/4 x 1/2 cm x 3 1/2 cm and swelling on the rear portion of the right hand. Death was opined to have occurred due to deep injury travelling down to the chest area cutting vital arteries.

2. Learned Counsel for the appellant submitted that there was a land dispute

between the parties. PW 2, Rambai, in the FIR mentioned the presence of independent witnesses including one Chadrika who has not been examined while PW 1, Antram and PW 9, Ram Pratap have turned hostile. In view of the statement of PW2 that her thumb impression was taken at five places when she reached the Police Station to lodge an FIR and at ten places when the Police came to where the body was found, on blank paper, the possibility of a false FIR having been drawn up to implicate the Appellant in view of the land dispute cannot be ruled out. It will not be safe in the facts to convict on the singular testimony of a related and interested eye-witness. The alleged weapon seized was never sent for Forensic report and the seizure list of witnesses, PW 5. Manharan Das and PW 7, Narsingh have also turned hostile. In the alternative, it was submitted that the assault was without any premeditation. Tangi is a common agricultural instrument kept by any villager and cannot be specifically described as a weapon of offence with which the Appellant may have come armed intending to assault. It was a case of single blow and if intention to cause death had been there nothing prevented the Appellant from repeating the Tangi blows to ensure that the deceased had absolutely no chances of survival. In view of the land dispute and finding the deceased on his agricultural fields the Appellant acted on the grave and sudden provocation. At best the conviction may be sustained under Section 304 Part II IPC attributing knowledge to him. Reliance was placed on Ankush Shivaji Gaikwad Vs. State of Maharashtra, (2013) 4 ABR 648 : (2013) 9 AD 294 : AIR 2013 SC 2454 : (2013) CriLJ 3044 : (2013) 7 JT 26 : (2013) 2 RCR(Criminal) 1036 : (2013) 6 SCALE 778 : (2013) 6 SCC 770 .

3. Learned Counsel for the State submitted that PW 2 during her deposition has confirmed that the FIR was correctly recorded as per statements made by her. The fact that her thumb impression may have been taken on a blank paper is therefore irrelevant. He next submits that PW 2 both in the FIR and in Court has stated that she was also assaulted in the first part of the episode. As an injured witness, proved by her MLC report Exhibit P22 her credibility has to be high. She was the wife of the deceased and the person most interested in ensuring conviction of the real assailant. The intention of the Appellant is evident from the fact that first the Appellant indulged in fisticuffs with the deceased and when the latter started to walk away saying he would go to the village and ask for a Panchayat, the Appellant came running again and assaulted him.

4. We have considered the submissions on behalf of the parties and perused the evidence on record also. PW 2, wife of the deceased is the sole eye-witness to the occurrence. The Appellant was her own brother. She deposed of a land dispute and litigation between them with regard to the same. While she was in the fields with her husband and labour Chandrika along with her sister, DW 1, Jeevan Bai, the Appellant came with his wife and pushed Chandrika. He then assaulted the witness with Tangi. When her husband came to her rescue fisticuffs followed between them. The deceased then stated that he would go to the village for a Panchayat. No sooner that he reached the boundary line of the adjacent plot, the Appellant assaulted him in his neck area. The witness went to the Police

Station and recorded the FIR. The entire lands of seven acres was in dispute. In cross examination, she acknowledged that the lands were in possession of the Appellant but that they had won the Court case and had therefore gone for cultivating the lands. No questions have been asked from her in this regard during cross examination. She specifically named the Appellant as the assailant and also having made this statement to the Police. Her husband was not possessed of any weapons capable of assault. She also stated that Ram Pratap, PW 9 and Antram, PW 1 had accompanied her to the Police Station. Once the witness deposed that the FIR was a correct rendition of the statement given by her to the Police, the contention that false implication cannot be ruled out because her thumb impressions were taken on blank paper stands ruled out and cannot give any benefit of doubt to the Appellant.

5. PW 5, Manharan Das proved the inquest report Exhibit P2. The fact that he acknowledged his signatures unconditionally on the memorandum and the seizure of the Tangi, marked Exhibits P14 and P15 is not very relevant in the absence of any forensic report. Similar is the petition with regard to PW7.

6. PW 9, Ram Pratap undoubtedly turned hostile. But there is no principle in criminal jurisprudence that the entire evidence of hostile witness must completely be excluded. That part of the evidence which finds corroboration can certainly be looked into. The witness acknowledged that there was a land dispute between the parties. More importantly in his cross-examination, he corroborated PW2 saying that he had gone with PW2 to the Police Station for lodging an FIR. In *Bhajju @ Karan Singh Vs. State of M.P.*, (2012) CriLJ 1926 : (2012) 2 JCC 1192 : (2012) 3 SCALE 438 : (2012) 4 SCC 327 : (2012) AIRSCW 1963 : (2012) 2 Supreme 439 it was observed:-

"It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence..."

7. PW 10, Bhikhwaram Sahu, the Patwari proved the spot map Exhibit P19. PW 11, Dr. Chandrasekhar Patel also proved the MLC Exhibit P22 of PW2 finding an abrasion on the rear area of the left hand and swelling on the elbow of the left hand with pain along with an abrasion in the middle of the right leg opining that it could have been caused by hard and blunt object. The fact that PW 2 was an injured witness in the same occurrence stands established beyond doubt. Her credibility has to be high, PW 12, S.S. Bamaniya, the investigating Officer proved Exhibit P28 the spot map in line with that by the Patwari.

8. DW 1, Jeewan Bai, sister of the Applicant and sister-in-law of the deceased also corroborated that the Appellant and the witness had gone to the fields along with her. That there was a land dispute and that the Appellant first abused and

then assaulted the deceased and when PW-2 tried to intervene she was also assaulted.

9. PW 2 undoubtedly is a solitary eye - witness and related to the deceased. The evidence of an eye - witness cannot be rejected only on the ground that the witness is related and therefore interested. There has to be some material to doubt the credibility of the witness when the relationship may become important with the possibility of false implication. Conversely PW 2 was the wife of the deceased. There would be no other person more interested to ensure that the real assailant of her husband is brought to book and not that another is falsely implicated voluntarily letting the real assailant to go free. Nothing has been elicited in her evidence and cross examination to doubt the credibility of her evidence. It is not the quantity but the quality of evidence which has always been considered important.

10. If there is a solitary eye - witness, corroboration may be desirable but is not such an essential requirement so as to reject the evidence in absence of the same even if it otherwise is fully reliable and convincing.

11. The land dispute between the parties stands well established from the evidence of PW 2, PW 9 and DW 1. That PW 2 went immediately to the Police after the occurrence has been established from the cross-examination of PW 9. Chandrika being a labourer, who had been brought on the fields by PW2, the failure to examine him as a witness, is not fatal to the prosecution case. It is a matter common knowledge in criminal prosecutions that independent persons not concerned directly with the family of the deceased prefer to stay away and not get entangled un-necessarily apprehensive of their own safety. In *Manga @ Man Singh Vs. State of Uttarakhand*, (2013) 5 AD 333 : (2013) CriLJ 3332 : (2013) 7 JT 75 : (2013) 3 RCR(Criminal) 16 : (2013) 6 SCALE 603 : (2013) 7 SCC 629 it was observed as follows:-

"34. It was contended that according to the prosecution when the accused party attacked the injured party apart from the family members of the injured party, local villagers were also present but yet, none was examined by way of independent witness. The said submission has been rightly rejected by the High court by giving reasons. The High Court has rightly held that though the injured witnesses were related to each other, having regard to the nature of evidence tendered by them, there were no good grounds to discard their version. It has found that their evidence was natural and there was nothing to find fault with their version. It has further held rightly that it is the quality of the witness and not the quantity that matters. It has also taken judicial notice of the fact that the public are reluctant to appear and depose before the court, especially in criminal cases because of many obvious reason. We fully endorse the said conclusion of the High Court, while dealing with the said submission made on behalf of the appellants."

12. In view of the established ocular evidence that the deceased was assaulted

with a Tangi, the Doctor confirming injuries by a sharp cutting weapon the injury itself revealing that it travelled along with from the cheek to the chest area cutting vital arteries, the absence of any forensic report with regard to the Tangi alleged to have been seized is not considered very relevant.

13. The Appellant may have been in possession of the lands but PW 2 has stated in cross-examination that ultimately she had won the case and that is why they had gone on the lands to cultivate which has not been disputed or denied by the Appellant.

14. PW 2 was the sister of the Appellant. DW 1 was also the sister of the Appellant. Had they desired to save their brother they would not have spoken the truth. Having eye witnessed the assault, the fact that they have made voluntary statements against their won brother with the realization of the consequences for him leaves us satisfied that their evidence can safely be relied upon to uphold the conviction. The submission that the Appellant acted under grave and sudden provocation does not appeal to us. It has come in the evidence that the deceased and PW 2 were on the fields when the Appellants came and objected. Initially a scuffle took place and the assault was only PW 2. Having separated them the deceased said he was going to the village to seek Panchayat with regard to the dispute. The assault was made by the Appellant at this stage. We find it difficult to hold that it was an assault with a grave and sudden provocation. On the contrary, the nature of the assault made leaves us unsatisfied that it was intentional the motive for which was both a combination of the land dispute coupled with having lost the case in the Court. In *Mofil Khan Vs. State of Jharkhand*, (2014) 4 Crimes 529 : (2014) 4 RCR(Criminal) 683 it was noticed as follows:-

"57. It is heart-wrenching to fathom the plight of an old mother who witnessed her own sons killed their brother and his family. PW 2, the sole witness, despite being the mother of both the appellant - accused has supported the prosecution case and testified against them... No oblique motive has surfaced from the record which would impregnate her statement with suspicion against her own sons. Usually a brother, a sister or appellant who has seen the commission of crime, may resile in the court from a statement recorded during the course of investigation. It happens instinctively, out of natural love and affection, not out of persuasion by the accused person. The witness has an obvious stake in the innocence of the accused and therefore tries to save him from the guilt. Here, PW 2 has not only become forward by testifying for the prosecution but has also stood unshaken by the family ties in her tryst for justice to the slain half of her family. It would be the paramount duty of the court to provide justice to the incidental victims of the crime - the family members of the deceased persons."

15. The reliance on *Ankush Shivajai Gaikwad* (supra) is of no help to the Appellant as it related to a petty origin of the dispute leading to assault caused due to barking of the dog of the deceased. In that context it was held that there was no premeditation and there was no enmity to commit a serious offence like

murder. Hot words followed over the barking of the dog culminating in an assault hit with iron rod on the head of the deceased. The facts of the present case are completely distinguishable.

16. The conviction of the Appellant calls for no interference. The Appellant is directed to be taken into custody immediately and/surrender forthwith to serve out of the remaining period of the sentence. The appeal is dismissed.