
(2014) 12 CHH CK 0050
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1232 of 1997

Ashok and Others

APPELLANT

Vs

State of M.P

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161 — Penal Code, 1860 (IPC) - Section 302

Citation : (2015) 2 CGLJ 112

Hon'ble Judges : Navin Sinha, Acting. C.J.; Manindra Mohan Shrivastava, J.

Bench : Division Bench

Advocate : N.L. Soni, Advocate, for the Appellant; Vinod Deshmukh, Deputy Government, for the Respondent

Final Decision : Dismissed

Judgement

Navin Sinha, Actg. C.J.—The present appeal arises from the judgment of conviction dated 6.5.1997 of the VIIth Additional Sessions Judge, Bilaspur, in Sessions Trial No. 366 of 1991. The Appellants have been convicted to life imprisonment under Section 302 IPC. By order dated 24.3.2014, on a plea of juvenility on the date of occurrence by Appellant No. 2, enquiry had been ordered to be conducted by the Sessions Judge, Bilaspur. The enquiry report received dated 30.4.2014 states he was 19 years 8 months on the date of occurrence. The Sessions Judge held that P.W. 9, Ajay Kumar, was a relative of deceased, Bharat Lal. There existed previous enmity between the deceased and the accused. As an interested witness PW9 was falsely trying to implicate the accused persons. Holding P.W. 18, Kejuram to be a reliable eye witness who named the three Appellants only as the assailants, the other five accused have been acquitted.

2. The deceased Bharat Lal is stated to have been assaulted on 2.3.1991 at about 18:00 hours leading to his death on the spot. Dehati Nalishi, Exhibit P15 was lodged by P.W. 9, Ajay Kumar at 20:15 hours the same day after the police

had come. The witness stated that he had gone to his orchard in the evening when he heard cries for help. He saw the appellants and those acquitted assaulting the deceased. He shouted for help when P.W. 3 Raghunandan, Kejuram P.W. 18, Shatrughan P.W. 12, Dhanush P.W. 10 and other villagers arrived. The assailants ran away on seeing them. The same day an FIR, also marked Exhibit P15, was also registered at night by one Chhatlal Kaushik stating that he went to the village of the deceased as he suspected the deceased had been killed. He learnt that the Appellants and those acquitted had killed the deceased. Daroga Gupta was present in the village and had sent him to lodge the report regarding death.

3. The post mortem of the deceased was conducted on 3.3.1991 by P.W. 14, Dr. V.K. Khetrapal, marked Exhibit P14. Nine incised wounds and four abrasions were found on the deceased. Exhibit P2 was the inquest report, Exhibit P3 was the spot map, Exhibit P5 was the seizure of the lathi, Exhibit P6 was the seizure of the spade and Exhibit P7 was the seizure of seven la this. The injuries on the deceased were as follows:

(i) Incised wound over the right anterior part of neck with blood clot measuring 3 1/2 inch x 3 inch x deep upto cervical vertebrae cutting 4, 5 and 6 vertebrae partially. All structures including trachea, carotid, nerves, muscles were cut at that level.

(ii) Incised wound over right eyebrow frontal region 1 1/2 inch x 1/2 inc x deep upto skull bone.

(iii) Incised wound over nape of neck 4 1/2 inch x 2 1/2 inch x 2 1/2 inch deep at structures at that level are cut including C7, - TI vertebrae, spinal cord structure are also cut at that level.

(iv) Incised would over the back at mid line at the level of TI 1/2 inch x 1/4 inch x 1/4 inch.

(v) Abrasion over back left shoulder 1 1/2 inch in length.

(vi) Abrasion over left arm middle.

(vii) Abrasion over left scapular region.

(viii) Abrasion over both scapular region.

(ix) Abrasion of left gluteal region.

(x) Incised wound over right leg lower 1/3rd 2 inch x 1/2 inch x 1/2 inch medial aspect.

(xi) Incised wound over right leg at medial aspect at its lower 1/3rd 1 inch x 1/2 inch x 1/4 inch.

(xii) Incised wound over left leg medial aspect at its lower 1/3rd 1 inch x 1/2 inch x 1/4 inch.

(xiii) Incised wound over right frontal region 1 1/2 inch x 1/2 inch x deep upto skull bone.

(xiv) Incised wound over left parietal frontal region 3 1/2 inch x 1/2 inch x deep upto skull bone piece of frontal bone is almost out of its rest of bone part 2 inch x 2 inch in size.

The injuries were ante-mortem in nature caused by sharp and hard object and the death had occurred within 18-24 hours of post-mortem.

4. Learned Counsel for the Appellants submitted that on the same set of evidence, the others made accused had been acquitted. They are all alleged to have assaulted in the same transaction. On the same reasoning the Appellants are also entitled to acquittal. The Trial Judge has declined to accept the evidence of P.W. 9, Ajay Kumar holding him to be an interested witness related to the deceased and that there existed previous animosity between the deceased and the accused persons. The other informant Chhatlal Kaushik has not been examined as a prosecution witness and no explanation has been given for not examining him. The FIR by him was based on hearsay and no source of information has been mentioned. Likewise, Daroga Gupta has also not been examined with no explanation for the same. The Investigating officer has also not been examined.

5. That leaves P.W. 18 Kejuram as the only alleged eye witness. The blood stained lathi at Exhibit P5 and Exhibit P.W. 6, the spade have been seized from P.W. 18, Kejuram. The witness has denied that any others apart from the Appellants were present. The narration and sequence of events mentioned by this witness was fundamentally different from that made by P.W. 9, Ajay Kumar. The latter did not state that the deceased was accompanied by P.W. 18 Kejuram while P.W. 18 did not state that PW9 had come to the place of occurrence also. It is therefore possible that the deceased may have been killed by another and in a different manner. In cross examination a suggestion was made to P.W. 18, Kejuram that he had made an extrajudicial confession to eight persons named therein that he had killed the deceased. The statement of those eight persons had been recorded during investigation under Section 161 Cr.P.C. He acknowledged that lathi (with blood on it) Exhibit P5 and the spade Exhibit P6 was recovered from him. The Appellants therefore deserved to be acquitted giving them the benefit of doubt.

6. Learned Counsel for the State submitted that the Dehati Nalishi lodged by P.W. 9, Ajay Kumar finds corroboration from the evidence of P.W. 3, Raghunandan, P.W. 4, Durgaprasad, and P.W. 12, Satrugan Prasad. It was next submitted that P.W. 9, Ajay Kumar was a reliable eye witness of the assault on the deceased. His statements of the manner of assault find corroboration from the post mortem report of the deceased. His evidence cannot be rejected only because he fell in the category of a related and thus interested witness. If Chhatlal Kaushik, Daroga Gupta or the Investigating Officer have not been examined it cannot be

fatal to the prosecution case as there was otherwise cogent and reliable eye witness account available. Reliance was placed on Mano Dutt and Another Vs. State of U.P., . The FIR lodged by Chhatlal Kaushik in any event is not a piece of substantive evidence, but only information of a cognizable offence in pursuance of which an investigation has been made.

7. We have considered the submission on behalf of the parties and perused the evidence on record also. P.W. 1, Santram, proved the inquest report Exhibit P2 and spot map Exhibit P3. He also proved the seizure of lathi and spade recovered from Kejuram, P.W. 18 marked Exhibit P5 and Exhibit P6. P.W. 3, Raghunandan, deposed that P.W. 9, Ajay Kumar, came and informed him that the Appellants and the other accused had assaulted the deceased. P.W. 4, Durgaprasad, likewise deposed that P.W. 9 and P.W. 3 had come together and informed of the assault on the deceased by the accused. P.W. 9, Ajay Kumar deposed that he was going to his orchard near the Ghonga River when he heard cries for help from the river side. He saw from about 50 feet the accused persons including the Appellants; assaulting the deceased with lathi and tabbal. Some of them had tangiya also. He went and informed P.W. 12, Satrugan, P.W. 3, Raghunandan and P.W. 4, Durgaprasad and returned to the place of occurrence accompanied by them. No other person was present at the time of assault. P.W. 18, Kejuram, Kotwar, was not present at the time of occurrence or when the police came at night the same day. If his statement under Section 161 Cr.P.C. contained anything to the contrary he would not know how it had been so written.

8. P.W. 18, Kejuram, stated that he met the deceased at 4 O'Clock and went together to the house of Kewal. The deceased then asked him to accompany towards the river side where they were both standing when the three Appellants assaulted the deceased and chased him also. The witness then went away to Khalepar Mohalla where a video was being shown and told the villagers about assault without naming any one person so informed. No one apart from the witness and the deceased was present except the accused at the time of assault. In cross examination, he stated having told Judel and generally children in the village about the assault. He did not go to the police station in the night and gave statement to the police only when it came at about 10-11 in the night.

9. The Learned Trial Judge did not come to a finding that P.W. 9, Ajay Kumar was not eye witness. Without discussing that aspect he proceeded to hold that because he was related to the deceased and there existed previous enmity between the deceased and the Appellants, the evidence of PW9 had to be rejected as an interested witness falsely implicating the Appellants. The evidence of an interested witness cannot be rejected merely for that reason completely. It may require closer scrutiny to test its genuineness and truthfulness. These are the aspects which the learned trial Judge did not consider at all while rejecting the evidence of P.W. 9 completely only on the ground that he was an interested witness. In Mano Dutt and Another Vs. State of U.P., relied upon on behalf of the State it was observed:--

"24. Another contention raised on behalf of the appellant-accused is that only family members of the deceased were examined as witnesses and they being interested witnesses cannot be relied upon. Furthermore, the prosecution did not examine any independent witnesses and, therefore, the prosecution has failed to establish its case beyond reasonable doubt. This argument is again without much substance. Firstly, there is no bar in law in examining family members, or any other person, as witnesses. More often than not, in such cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. Those alone are the people who take the risk of sustaining injuries by jumping into such a quarrel and trying to defuse the crisis. Besides, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the prosecution, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was a family member or an interested witness or a person known to the affected party."

10. The nature of assault by all eight accused persons lodged by P.W. 9 finds corroboration from post-mortem report of the deceased revealing the manner in which he was assaulted containing nine incised wounds and four abrasions.

11. The Dehati Nalishi Exhibit P15 has been completely misread and not properly appreciated by the Sessions Judge to hold that P.W. 18, Kejuram was an eyewitness. It is in two parts. The first relates to the assault witnessed by P.W. 9 immediately after he heard the cries for help. When the accused continued with the assault on the deceased, PW9 shouted for help when other's named including P.W. 18, Kejuram came to the spot. P.W. 9, Ajay" Kumar has specifically denied that P.W. 18 was present at the time of assault. It is difficult to uphold the finding of the Sessions Judge that P.W. 18, Kejuram was an eyewitness. Furthermore, PW9 gave the Dehati Nalishi to the police after it came to the place of occurrence at the village in the same night. P.W. 18, Kejuram admits he went away home and did not go to the police but gave his statement only after the police came to the village at night. This conduct of his is not natural if he was an eyewitness to the assault. Even this becomes doubtful in view of the recovery of the spade and lathi from P.W. 18, Kejuram himself.

12. In the facts of the case, the Dehati Nalishi, Exhibit P15 having been lodged by P.W. 9, Ajay Kumar within hours of the assault the same night leaving no time for embellishments by thinking, the erroneous rejection of his evidence as interested without doubting his presence by reasons, the non-examination of Chhatlal Kaushik or Daroga Gupta or even the Investigating Officer, becomes irrelevant. A FIR is not a piece of substantive evidence but only information of a cognizable offence leading to investigation. Again reference may be made to Mano Dutt and Another Vs. State of U.P., observing:--

"22. It is not always mandatory for the prosecution to examine the investigating officer, provided it can establish its case beyond reasonable doubt even in his

absence. The present case certainly falls in the latter class. Where the accused lead no defence, they cannot take benefit of the fact that the prosecution did not examine any independent witnesses....."

13. Since the acquittal of other appellants was based only on the reasoning that PW9, Ajay Kumar was an interested witness without doubting his presence, it could not inure to the benefit of the appellants to contend that for the same reason they are entitled to acquittal also. The mere erroneous acquittal of co-accused cannot by itself be a ground to acquit other accused if there be material against them In Gurcharan Singh and Another Vs. State of Punjab, , it was observed:

"9. ... The highest that can be or has been said on behalf of the appellants in this case is that two of the four accused have been acquitted, though the evidence against them, so far as the direct testimony went, was the same as against the appellants also; but it does not follow as a necessary corollary that because the other two accused have been acquitted by the High Court the appellants also must be similarly acquitted."

14. We find no reason to interfere with the conviction of the Appellants, though for different reasons. The bail bonds of the Appellants are cancelled and they are directed surrender and to be taken into custody forthwith to serve the remaining part of the sentences awarded to them. The appeal is dismissed.