

(2013) 04 CHH CK 0012
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 763 of 1997

Chhedila, Chheduram and Birichhram	APPELLANT
Vs	
State of Madhya Pradesh	RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 304, 323

Citation : (2013) 3 CGLJ 132 : (2013) CriLJ 4827

Hon'ble Judges : Sunil Kumar Sinha, J; Rangnath Chandrakar, J

Bench : Full Bench

Advocate : Sharmila Singhai in Cr. A. No. 763 of 1997 and Mr. V.C. Ottalwar, Mr. Kamlesh Singh and Mr. Sumeet Singh, in Cr. A. No. 764 of 1997, for the Appellant; Akhil Mishra, Dy. Govt. Advocate and Mr. Anant Bajpai, Panel Lawyer, for the Respondent

Judgement

Sunil Kumar Sinha, J.—These appeals are directed against the judgment dated 26th of March, 1997 passed in Sessions Trial No. 262/92 by the Additional Sessions Judge, Janjgir. By the impugned judgment, appellant-Vedram (A-3) was convicted u/ss. 302 & 323 IPC and sentenced to undergo imprisonment for life and R.I. for 3 months and the other appellants (A-1, A-2 & A-4) were convicted u/s. 304 Part-II IPC and sentenced to undergo R.I. for 7 years and to pay fine of Rs. 500/- with default sentence of S.I. for 6 months.

Facts of the Case:

1.1. Four accused persons namely Chhedilal (A-1), Chheduram (A-2), Vedram (A-3) and Birichhram (A-4) were prosecuted u/s. 302 IPC. Vedram (A-3) was also prosecuted u/s. 323 IPC. The case of the prosecution is that on 14.11.91 at about 5.00 p.m., Dukhiram (PW-1) and his brother-Lachhiram (deceased) left their house for going to Korba. As soon as they reached near the village tank, they saw that Chheduram (A-2) was fishing in the tank. There, some altercation took place between these persons. Hearing the altercation other accused namely-

Birichhram (A-4), Chhedilal (A-1), Vedram (A-3) and a juvenile offender-Bablu came there with lathi and tangia. They assaulted Dukhiram (PW-1) and Lachhiram (deceased). Dukhiram (PW-1) escaped from the place of occurrence, whereas, Lachhiram (deceased) could not escape. The allegations are that thereafter the accused persons threw him in a nearby field and assaulted him who sustained multiple serious injuries and succumbed to those injuries. The further allegations are that when the accused persons were running away from the place of occurrence, Santoshi Bai (PW-9 - wife of the deceased) was also assaulted by Vedram (A-3) who received simple injuries.

1.2. The incident was witnessed by as many as seven persons namely-Dukhiram (PW-1), Sahasram (PW-7), Baliram (PW-8), Santoshi Bai (PW-9), Janturam (PW-10), Shantilal (PW-11) and Fondol (PW-12). Dukhiram (PW-1) lodged First Information Report (F.I.R. - Ex. P/1) on the same day at about 21.30 hours.

1.3. The Investigating Officer reached to the place of occurrence, gave notice (Ex.-P/14) to the Panchas and prepared inquest (Ex.-P/5) on the dead body of the deceased. The dead body was sent for postmortem. The postmortem examination was conducted by Dr. Y.R. Krishna (PW-15). He notice following injuries on the dead body of the deceased:-

- (i) Incised wound of 5.2 x 1 cm x bone deep on the upper portion of right ear having fracture of corresponding bone which was visible from outside;
- (ii) Incised wound of 3 x 1/2 cm above the right ear;
- (iii) Lacerated wound of 3.6 x 1 1/2 cm x bone deep on the back portion of the right ear;
- (iv) Lacerated wound of 7 x 1 cm on the left occipital region;
- (v) Lacerated wound of 5 x 1 cm on the left occipital region;
- (vi) Lacerated wound of 1 x 1 cm just 2 cm below injury no. (v); &
- (vii) Incised wound of 3 x 1/2 cm on the left portion of forehead.

On internal examination, he found that there was a depressed fracture (having depressed segment of 4.8 x 4.2 cm) over the right occipital bone. The bone has broken into multiple pieces. There was a corresponding injury on the brain tissue also where there was swelling and clotted blood was present. Blood clots were also present on the other portion of skull. The Autopsy Surgeon opined that all the above injuries were ante-mortem. The cause of death was shock and hemorrhage on account of injuries and fracture over the skull and the death was homicidal in nature. The postmortem report is Ex.-P/23.

1.4. Dukhiram (PW-1) was also sent for his medical examination. He was examined by Dr. H.R. Tharwani (PW-2) who noticed following injuries on his person:-

- (i) Lacerated wound of 2 x 1/2 x 1/4 inches on the right parietal region; and

(ii) Contusion on the middle finger of the left palm.

Both the injuries were simple injuries caused by hard and rough object. His MLC report is Ex.-P/3.

1.5. Accused-Chheduram (A-2) was also examined by Dr. Tharwani (PW-2). He (A-2) had sustained an abrasion of 1/2 x 1/2 inches on the middle finger of the left palm. This was also a simple injury.

1.6. Accused-Chhedilal (A-1) had also sustained following injuries:-

(i) Contusion on the back portion of right palm; and

(ii) Lacerated wound of 1 1/2 x 1/2 x 1/2 inches on the left parietal region.

Both the injuries were simple injuries caused by hard and rough object. His MLC report is Ex.-P/4.

1.7. In further investigation various articles including tangia were seized. The seized articles were sent for examination to the local Doctor and thereafter they were sent for further examination to Forensic Science Laboratory (FSL), Sagar, from where, a report (Ex.-P/21) was received. According to the FSL report, blood stains were found on all the articles except the plain soil (Article-B). In Serologist Examination, human blood was found on lathi seized from one of the accused and cloths of the deceased. However, their blood group could not be determined on account of insufficiency and disintegration.

1.8. The case of the prosecution was based on eye-witness account of above seven eye-witnesses. The learned Sessions Judge relied on their testimonies and held that all the accused persons (A-1 to A-4) had assaulted the deceased by lathi, hands and fists in the first instance and till then, there was no intention to commit murder of the deceased. However when the deceased fell down, Vedram (A-3) again assaulted the deceased by tangia due to which he sustained incised injuries, therefore, Vedram (A-3) was liable for punishment u/s. 302 IPC and the other accused persons (A-1, A-2 and A-4) were liable for punishment u/s 304 Part-II IPC. Vedram had also assaulted Santoshi Bai (PW-9), therefore, he was also liable for punishment u/s. 323 IPC. The accused persons (A-1 to A-4), thus, were convicted and sentenced as above.

Hence these appeals.

2. Chhedilal (A-1) and Chheduram (A-2), appellants 1 & 2 in Cr.A. No. 763/97, died during the pendency of the appeal, therefore, the appeal filed on behalf of these two appellants-Chhedilal and Chheduram has abated.

Main Arguments:

3. Learned counsel for the appellants have argued that the main witnesses relied by the Sessions Judge are Dukhiram (PW-1), Santoshi Bai (PW-9), Janturam (PW-10) and Shantilal (PW-11) who are brothers, wife and son of the deceased, therefore, they are interested witnesses; Dukhiram (PW-1) did not mention in

the F.I.R. (Ex.-P/1) that the accused persons had assaulted the deceased by tangia; the case diary statement of Santoshi Bai (PW-9) was belatedly recorded; there are many contradictions and omissions in the evidence of these witnesses; these eye-witnesses are unreliable, therefore, conviction based on the testimonies of these witnesses cannot be sustained. Apart from the above, they raised other arguments relating to the conduct of the prosecution.

4. On the other hand, learned State counsel have opposed these arguments and supported the judgment passed by the Sessions Court.

5. We have heard counsel for the parties.

Interested Witnesses:

6. Relationship is not a factor to affect credibility of a witness. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused. A witness who is a relative of deceased or victim of the crime cannot be characterized as "interested". The term "interested" postulates that the witness has some direct or indirect "interest" in having the accused somehow or other convicted due to animus or for some other oblique motive. A close relative cannot be characterized as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinized carefully. If on such scrutiny his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness (See- Harbans Kaur and Another Vs. State of Haryana, ; Namdeo Vs. State of Maharashtra, ; Sonelal Vs. State of M.P., ; and Dharnidhar Vs. State of U.P. and Others,

7. Therefore, the argument of counsel for the appellants that the evidence of the relative witnesses should be discarded on they being interested witnesses cannot be sustained. However, their evidence has to be scrutinized with great care and caution and if their evidence is found to be reliable, the conviction based on their evidence can well be sustained.

8. Dukhiram (PW-1) is brother of the deceased. He was accompanying the deceased at the time of the incident. He deposed that as soon as they reached near the tank, Chheduram (A-2) said him that he was abusing him. He replied that he was not abusing. An altercation begun between them. Lachhiram (deceased) tried to convince that he was not abusing Chheduram (A-2). Thereafter scuffling took place between Chheduram (A-2) and his brother-Lachhiram (deceased). Then Chhedilal (A-1), Birichram (A-4) and Vedram (A-3) all started assaulting his brother (deceased). When he tried to intervene he was also assaulted by them. Then he went to police station and lodged the report (Ex.-P/1).

9. Mr. Ottalwar has argued that Dukhiram (PW-1) did not depose that the deceased was assaulted by Vedram (A-3) by a tangia. Even he did not depose

that tangia was used by accused-Vedram (A-3). He has also not mentioned in the F.I.R. (Ex.-P/1) that a tangia was used by the accused in the said incident, whereas, the deceased had sustained multiple incised wounds also, therefore, his evidence becomes suspicious.

10. We shall appreciate the evidence of Dukhiram (PW-1) in light of other evidence available on record.

11. Santoshi Bai (PW-9) is wife of the deceased. She is also an injured witness. She deposed that she was also present near the tank at the time of the incident. When she heard commotion, she saw that all the accused were assaulting her husband (deceased). Chhedilal (A-1), Birichram (A-4), Chheduram (A-2) and Vedram (A-3) were the persons who were assaulting him. Bablu was also there. After the assault, they threw her husband near the tank. They were assaulting him by lathi and tangia. Chhedilal (A-1) was saying to forgive his life, but Vedram (A-3) again started abusing him by mother and he took tangia from the hands of Bablu and gave 3-4 tangia blows on the temporal region of her husband. It is after this, her husband has died. Then Vedram (A-3) came to her and assaulted her by benth (wooden portion of tangia). She sustained injuries on her left temporal region and become unconscious. By that time many persons had gathered there. It was argued that her diary statements u/s. 161 Cr.P.C. (Ex.-D/1) was recorded after about more than one month and there were certain omissions in her diary statement, therefore, her entire evidence may be discarded. So far as omissions are concerned, they are not very material. About delay in recording her diary statement, nothing material was asked from I.O., P.R. Kashyap (PW-13) and it was only suggested that Santoshi Bai (PW-9) and Shantilal (PW-11) had not seen the incident, therefore, their statements were recorded belatedly. We further note that Santoshi Bai (PW-9) was also examined by the Doctor on 1.1.92 and she had sustained simple injuries for which Vedram (A-3) has been convicted u/s. 323 IPC. It is not a case that Santoshi Bai (PW-9) was the solitary eye-witness. There are many eye-witnesses who have supported the incident.

12. Janturam (PW-10) is an other eye-witness. He has also deposed in similar fashion. He deposed that Chhedilal (A-1) had assaulted Lachhiram (deceased) by lathi and then Lachhiram (deceased) snatched his lathi and assaulted Chhedilal (A-1). Thereafter Chhedilal (A-1), Chheduram (A-2), Birichram (A-4), Bablu and Vedram (A-3) assaulted the deceased and pushed him in the field of Chum Bai. Field of Chum Bai was situated by the side of the tank. Lachhiram (deceased) became unconscious. Chhedilal (A-1) said that "now it was sufficient", "he should be forgiven", but Vedram (A-3) said that they should not forgive him and saying this, he took tangia from the hands of Bablu and assaulted the deceased by tangia. Thereafter the accused persons ran away. Santoshi Bai (PW-9) was also present there. While running away from the place of occurrence, Vedram (A-3) assaulted Santoshi Bai (PW-9) by the benth (wooden portion of tangia) due to which Santoshi Bai (PW-9) became unconscious.

13. Referring to the case diary statement of Santoshi Bai (PW-9), it was argued that theory of tangia was planted by the police by taking her statement at a belated stage. But the said argument cannot be accepted because Janturam (PW-10) has also deposed that the deceased was assaulted by tangia in the above manner and his 161 Cr.P.C. statement (Ex.-D/2) was recorded on 15.1.91 i.e. on the next day of the incident. Therefore on the evidence of Santoshi Bai (PW-9) and Janturam (PW-10) it cannot be said that theory of using tangia was brought by the prosecution after a very long time by recording diary statement of Santoshi Bai (PW-9).

14. Shantilal (PW-11) is son of the deceased. He deposed that his father was assaulted by Chhedilal (A-1), Birichram (A-4), Vedram (A-3) and Bablu. After the assault, he was pushed in the paddy field near the tank. Chhedilal (A-1) said that now he should be forgiven, however, Vedram (A-3), abusing his father by mother, and said that he should be committed to death. He also deposed that his mother was also assaulted by Vedram (A-3).

15. Sahasram (PW-7) deposed that he had seen scuffling between Lachhiram (deceased) and Chhedilal (A-1). Lachhiram (deceased) had given a lathi blow to Chhedi. Thereafter Lachhiram (deceased) was assaulted by Chhedilal (A-1), Birichram (A-4) and Chheduram (A-2). They were assaulting him by lathi. In cross-examination, Para-4, he admitted that the accused persons had come to the place of occurrence one-after-another and Vedram (A-3) came in the last.

16. Baliram (PW-8) is also an eye-witness. He reached to the place of occurrence after hearing commotion. He saw scuffling between Chheduram (A-2) and Lachhiram (deceased). He had intervened and had separated them. Thereafter Chhedilal (A-1) attacked Lachhiram (deceased) by lathi which was caught by Lachhiram. Thereafter Lachhiram assaulted Chhedilal. Then Lachhiram (deceased) was pushed in the paddy field of Chum Bai and was assaulted by Chhedilal (A-1), Chheduram (A-2), Birichram (A-4) and Vedram (A-3).

17. Fondol (PW-12) is also an eye-witness. He has also deposed in similar fashion that the accused persons had assaulted the deceased after scuffling between Chheduram (A-2) and Lachhiram (deceased) by using lathi. He has also supported the first part of the incident.

18. In appreciation of evidence of these eye-witnesses, we find that, in fact, the incident occurred in two parts. In first part, scuffling took place between Chheduram (A-2) and Lachhiram (deceased), then Chheduram tried to assault Lachhiram by lathi which was caught by him and Lachhiram (deceased) had given a lathi blow to Chhedilal (A-1) and thereafter the other accused persons, who later on reached there, assaulted Lachhiram (deceased) by lathi. At that time they had also assaulted Dukhiram (PW-1). Dukhiram, who also got injuries in the same incident, then escaped from the place of occurrence for saving his life, and thereafter, the second part of the incident took place when Vedram (A-3), even after request of the other accused persons to forgive the life of the

deceased saying that the assault given to him in the first part was sufficient, snatched tangia from the hands of Bablu saying that the deceased should be committed to death and attacked over him in the paddy field of Chum Bai and gave multiple tangia blows to him.

19. Since Dukhiram (PW-1) had ran away from the place of occurrence just after the first part of the incident was over, in which only lathi was used, therefore, he could not see the assaults given in the second part by using tangia by Vedram (A-3). It does not come on record that Dukhiram (PW-1) was briefed by the other eye-witness before lodging the First Information Report. It is for all these reasons, Dukhiram (PW-1) did not mention in the F.I.R. (Ex.-P/1) that the deceased was assaulted by Vedram (A-3) by tangia also. Thus the above omission in the F.I.R. was natural as he mentioned that part of the incident which, in fact, he had witnessed. Therefore, the above omissions in the F.I.R. (Ex.-P/1) was not fatal to the prosecution. We have gone through the evidence of all above eye-witnesses and we find their evidence to be wholly trustworthy and reliable. Nothing material could be brought in their cross-examination on which their testimonies may be discarded. Their evidence is natural. The Sessions Judge was justified in relying on their testimonies.

Other Arguments:

20. Mr. Ottalwar then argued that the injuries sustained by Chhedilal (A-1) were not explained by the prosecution. He relied on the decision of Subramani and Others Vs. State of Tamil Nadu, .

21. In the instant case, two accused persons, Chheduram (A-2) and Chhedilal (A-1) had sustained some injuries which we have described in Para-2.5 and 2.6 (supra). It comes in the evidence of Dukhiram (PW-1) and Baliram (PW-8) that Lachhiram (deceased) had assaulted Chhedilal (A-1) by snatching his danda. These witnesses have said about the injuries sustained by two accused in the same transaction and they have explained the manner as to how the above injuries were received by them. Thus the injuries sustained by the accused persons were explained by the prosecution and nothing was suppressed.

22. Mr. Ottalwar then argue that though tangia was seized during the course of investigation, but it was not sent to the Forensic Science Laboratory (FSL), where as, many other articles were sent, therefore, the case of the prosecution becomes suspicious. Reliance was placed on the decision of State of M.P. -Vs- Ram Singh and Others, Cr.L.R. (M.P.) 1987, 228. Tangia was seized from the possession of Vedram (A-3) vide seizure memo Ex.-P/11. It has not been mentioned in the seizure memo that tangia was stained with blood or blood like substance. Therefore, the prosecution was not obliged to send it to the Forensic Science Laboratory (FSL) along with other articles which were sent for confirmation of blood stains over them. We are of the view that in the above facts and circumstances of the case, if the tangia was not sent to the FSL, it was not an infirmity in the prosecution case.

23. Mr. Ottalwar then argued that two sets of evidence were available in this case. According to the first set, the deceased was assaulted by lathi and according to second set, he was also assaulted by tangia. Therefore, both the sets contradicts each other and make the other unreliable, therefore, benefit should be given to the accused. He placed reliance on the decision of Harchand Singh and Another Vs. State of Haryana, . In the said judgment, it was held that "If in a case the prosecution leads two sets of evidence, each one of which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the Court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably, the accused would have the benefit of such a situation."

24. In the instant case, there is no situation that there were two sets of evidence, as claimed, one making assault by using lathi and other making assault by using tangia at the same time. We have held that the incident took place in two parts. In the first part, the accused persons used lathi which was seen by some witnesses including the maker of the F.I.R., and in the second part, later on, one of the accused used tangia which was seen by some witnesses who had not left the place of occurrence after the first part was over. Therefore, present is not a case of two sets of evidence coming on record and benefit cannot be extended on this account.

Conclusions:

25. The learned Sessions Judge has held that so far as first part of the incident is concerned, the act of the accused persons would show that there was no intention to commit murder of the deceased, therefore, the accused persons, who participated in the quarrel in the first part, were liable for punishment u/s. 304 Part-II IPC. It was further held that when the deceased was pushed in the paddy field of Chum Bai and he was almost unconscious, Vedram (A-3) abused the deceased by his mother and said that he should be committed to death. The other accused persons said that the assault given to him was enough and they should forgive him, but Vedram (A-3) said that he should not be forgiven and then he snatched the tangia from the hands of Bablu and gave 3-4 tangia blows to the deceased and while running away from the place of occurrence, he also assaulted Santoshi Bai (PW-9) by benth of tangia. The Sessions Judge, therefore, has convicted Vedram (A-3) u/ss. 302 & 323 IPC and has further convicted the other accused persons u/s. 304 Part-II IPC. We are of the view that in the above facts and circumstances of the case, the learned Sessions Judge was fully justified in convicting the accused persons as above. The appeals have no merits. They are liable to be dismissed and are hereby dismissed.

HEADLINE

Appreciation of evidence of interested eye-witnesses - Discussed.