
(2013) 02 CHH CK 0029
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 694 of 1997

Deen Dayal Yadav and Another

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Citation : (2013) 4 CGLJ 375

Hon'ble Judges : Yatindra Singh, C.J;Pritinker Diwaker, J

Bench : Division Bench

Advocate : Ashok Verma, for the Appellant; Vivek Sharma, P.L., for the Respondent

Judgement

1. This appeal has been preferred against the judgment and order dated 17.03.1997 passed by Additional Sessions Judge, Raipur in Sessions Trial No. 377/96 convicting the accused/appellants for the offence punishable u/s 302 IPC and sentencing each of them to undergo imprisonment for life with fine of Rs. 1,000, with default stipulations. In the present case, name of the deceased is Samaru and the incident is said to have taken place on 10.5.96 at 7.00 a.m. in which deceased Samaru, entered the house of accused/appellants after consuming liquor where he was beaten by them and was tied up with a rope. Thereafter the village Kotwar was called and while being shifted on a bullock cart, Samaru died at about 2.35 p.m. Merg intimation Ex. P-1 was recorded at the instance of Chhannu Das, village Kotwar (PW-1). Postmortem examination on the body of deceased was conducted on 10.5.96 by Dr. Gopal Kela (PW-7) vide Ex. P-8 who opined that cause of death was shock due to intracerebral haemorrhage and laceration of both lungs. On the basis of merg intimation FIR Ex. P-5 was recorded on 11.5.96 u/s 302 IPC against both the appellants. Charge sheet was filed on 31.7.96 u/s 302/34 IPC and accordingly charge was framed u/s 302 IPC.

2. In support of its case, the prosecution has examined 21 witnesses. Statements of the accused persons were also recorded u/s 313 Cr.P.C. in which

they denied the charge levelled against them and pleaded their innocence and false implication in the case.

3. By the judgment impugned the Court below has convicted and sentenced the accused/appellants as mentioned in paragraph 1 of the judgment. Hence this appeal.

4. Contention of Shri Verma, counsel for the appellants is that the accused/appellants have been convicted mainly on the basis of evidence of Daya Bai (PW 4) which is not reliable because in her statement recorded u/s 161 Cr.P.C. she has stated that it is the accused/appellant No. 1 Deen Dayal who gave a club blow on the deceased as a result of which he fell down whereas while improving in the court she has stated that after one blow was given by accused/appellant No. 1-Deen Dayal, accused/appellant No. 2 Johat Ram also gave two club (lathi) blows on the head of the deceased. He submits that considering the improvement made by Daya Bai (PW 4) in her court statement, her statement becomes doubtful and even if the entire statement is accepted as it is, at best the appellant No. 1-Deen Dayal could be held guilty for causing the death of the deceased. He further submits that even he cannot be convicted u/s 302 IPC because he had no intention to kill the deceased and it is the deceased who, in a drunken condition, entered the house of the accused/appellants and if during this period he was beaten by the appellant No. 1, his case would fall u/s 304-II IPC and not u/s 302 IPC. He argues that appellant No. 1 has already remained in jail for about 6 years and therefore after converting his conviction u/s 304-II IPC, his sentence may be reduced for the period already undergone by him. It has been further argued that according to Chhannu Das (PW-1), Bhoj Ram (PW-9), Chetan Das (PW-10) and Pitamber (PW-11) no case whatsoever is made out against the accused/appellants. Shri Verma further submits that statements of Rukmni Bai (DW-1), Rohit Das (DW-2) and Ballu Ram (DW-3) falsify the statement of Daya Bai (PW-4) because as per her statement, Ballu Ram (DW-3) who was also present at the spot, has not been examined as prosecution witness and though examined as defence witness he has not deposed anything against the accused persons.

5. On the other hand, supporting the impugned judgment, it has been argued by the State counsel that the conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same. It has been further argued that the deceased was not only brutally beaten by the accused/appellants but was tied up with rope and while being shifted to Thana, he died on the way.

6. Heard counsel for the parties and perused the material available on record.

7. Chhannu Das (PW-1) Kotwar at whose instance merger intimation Ex. P-1 was recorded has stated that on the date of incident, he was informed by appellant No. 2-Johat Ram that as usual the deceased after consuming liquor entered his house and he had tied him up and thereafter appellant No. 2 requested him to accompany him along with other panchas to his house. He has stated that when

he reached his house he found deceased Samaru in the house of accused/appellants being tied up with rope. He has stated that when he inquired from the appellants as to who tied him up, he was informed by appellant No. 1 Deen Dayal that it was he who did so. He has further stated that thereafter accused/appellant No. 1 set him free and then he offered water to the deceased. He has stated that after consulting the village panchas a decision was taken to lodge report in the police station and with the help of villagers deceased was brought up to bus stand where they met the Station House Officer of Police Station Rajim to whom the entire incident was narrated. He has stated that near the bus stand itself when the deceased was being shifted to other vehicle it was noticed that he died. He has stated that information about the death of the deceased was forwarded to police station vide Ex. P-1, inquest notice Ex. P-2 was given to him and then inquest Ex. P-3 was prepared. In cross-examination, he has stated that deceased was in the habit of consuming liquor and after consuming liquor he used to enter the, house of villagers. He has stated that earlier also deceased entered the house of appellant No. 1 after consuming liquor for which a case was registered against him and which is pending. He has further stated that he came to know about the fact that the deceased was in a drunken condition since the previous night and was moving around the village. Jai Ram Yadav (PW-2) is the Jeep driver and witness to seizure Ex. P-6, inquest notice Ex. P-3 and inquest Ex. P-2. Smt. Daya Bai (PW 4) has stated that she knew the accused/appellants as well as the deceased and on the date of incident when she was going to the house of one Kumar she saw the accused/appellant No. 1 causing a club injury on the head of the deceased. She has further stated that she saw accused/appellant No. 2 Johat Ram giving two blows of lathi to the deceased who fell down and then the accused persons dragged him inside their house. She has stated that on account of fear she went back to her house. In paragraph-5 of her cross examination, she has stated that when the incident of maarpeet had taken place she was inside her house along with Lata Bai. Various suggestions were given to this witness in respect of false implication of the accused/appellants at the instance of one Harish Agrawal but she has denied the same. Chetu Ram (PW-5)-witness of inquest notice Ex. P-3 and P-2 has duly supported the prosecution case. Khilawan (PW-6) son of the deceased has not stated anything against the accused persons. Dr. Gopal Kela (PW-7) conducted the postmortem examination on the body of the deceased vide Ex. P-8 and opined that cause of death was shock due to intracerebral haemorrhage and laceration of both lungs. He further found following internal and external injuries on the body of the deceased:

- (i) blood clot present on temporal abdominal and frontal muscles and aponeuosis of scalp anteriorly on right side in between intercostal muscles on both sides of chest in upper part
- (ii) fracture of II, III, IV rib anteriorly at anti axillary line on both sides.
- (iii) fracture of frontal and parietal bone present right and temporal.

External injuries:

- (i) abrasion two in number on mid forehead at distance of 2 cm.-2.5 cm x 0.5 cm., 1 x 0.5 cm.
- (ii) abrasion three in number on right side of forehead at distance of 1 cm. 1 x 0.5 cm., 1 x 1.5 cm.
- (iii) abrasion below chin 1.5 x 0.5 cm. On left side 0.5 x 0.5 cm.
- (iv) Contusion Ant. in suprapubic region of abdomen 5 x 3 cm.
- (v) Contusion and middle part of right thigh 8 x 1 cm. Two in number parallel to each other at distance of 4 cm.
- (vi) contusion on lateral side of left thigh 1.4 cm. x 6 cm.
- (vii) abrasion lateral side of left thigh upper part.
- (viii) abrasion lateral and post part of left glutei region 14 x 5 cm.
- (ix) abrasion on post part of left thigh 5 x 3 cm.
- (x) abrasion left glutei region 2 x 2 cm. Left abrasion left glutei region 2 x 2 cm.

He has stated that the injuries sustained by the deceased could have also been caused after being hit against the frame of the door or while being shifted on to the bullock cart. Kumari Hemlata Sinha (PW-8) has been declared hostile. Bhojram (PW-9) - a villager who reached the house of accused/appellants along with village Kotwar has stated that he saw the deceased tied up with rope in the house of accused/appellants. He is also a witness to Ex. P-4 i.e. panchanama prepared by the villagers after detaining the deceased. He has further stated that when the deceased was being taken to the police station, on the way he made an attempt to escape as a result of which he sustained injury on his head. Chetan Das (PW-10), witness of Ex. P-4 had gone to the house of accused/appellant along with other villagers. Pitamber (PW-11), Leela (PW-12) Bhagwati (PW-13) have not supported the case of the prosecution have been declared hostile. Ravindra Kumar Upadhyaya (PW-21) is the Investigating Officer has duly supported the prosecution case.

8. Minute examination of the evidence makes it clear that on the previous night of the incident after consuming liquor the deceased entered the house of the accused/appellants. Though in the court statement Daya Bai (PW-4) has stated that both the accused persons caused club injuries to the deceased but in her statement recorded u/s 161 Cr.P.C. Ex. D-1 she has stated that it is only the accused/appellant No. 1 who gave club blow to the deceased as a result of which he fell down. Further she has not made any specific allegation of assault against appellant No. 2 and has merely stated that the deceased was taken by both the accused/appellants inside their house. Thus, so far as the question of assault is concerned, the only allegation is against appellant No. 1-Deen Dayal Yadav and not against accused/appellant No. 2-Johat Ram. Likewise, defence witness Smt.

Rukmani Bai (DW-1) and Rohit Das (DW-2) have also stated that after consuming liquor when the deceased was trying to enter the house of the accused/appellants, at that time deceased was carrying club and when he was trying to assault accused/appellant No. 1, the said club was taken by him as a result of which the deceased fell down. These two witnesses have further stated that at the relevant time accused/appellant No. 2 Johat Ram was not present in the house and he came subsequently. Similarly, Ballu Ram (DW-3) has stated that at the relevant time he was in the house of Kumari Hemlata along with Daya Bai (PW-4). So far as the postmortem report (Ex. P-8) is concerned, though number of injuries have been found by Dr. Gopal Kela (PW-7) on the head, chest and abdomen of the deceased, in cross-examination he has admitted the fact that these injuries could have been sustained by the deceased when he was being carried in the bullock cart or after being hit against the doorframe.

9. Considering the entire evidence as adduced by the prosecution, it is also apparent that while the deceased was walking out he fell down and got hit against the door frame. Close scrutiny of the evidence makes it clear that the deceased was assaulted by the accused appellant No. 1-Deen Dayal but there is no legally admissible evidence against accused/appellant No. 2-Johat Ram for causing any such injury to the deceased and the evidence reflects that he helped the accused/appellant No. 1 in tying the deceased in their house. Even as per the defence witness, presence of the accused/appellant No. 2 at the place of incident becomes doubtful. There is no conclusive evidence against appellant No. 2 for connecting him with the murder of the deceased.

Looking to the facts and circumstances of the case, we are of the view that appellant No. 2-Johat Ram is entitled for benefit of doubt and therefore he is acquitted of the charge u/s 302 IPC.

10. Section 304 IPC provides punishment for culpable homicide not amounting to murder. It draws a distinction between the penalty to be inflicted in cases, where, an intention to kill being present, the act would have amounted to murder, but for its having fallen within one of the Exceptions in Section 300, and cases in which the crime is culpable homicide not amounting to murder, that means, where there is knowledge that death will be a likely result, but the intention to cause death, or bodily injury likely to cause death, is absent. The first part of Section 304 applies where there is intention, whereas the second part applies where there is knowledge but the important thing is that before holding the accused guilty under any part of Section 304, it has to be observed that a death must have been caused by him under any of the circumstances mentioned in the five Exceptions to Section 300, which include death caused while deprived of power of self-control under grave and sudden provocation, while exercising in good faith the right of private defence of person or property, and in a sudden fight in the heat of passion without premeditation. Knowledge of consequences which may result in doing an act is quite different than the intention which denotes that a particular consequence should ensure. For attracting the former

part of Section 304, an element of intention is a factor whereas for attracting the later part, an element of knowledge is a factor. The intention is the purposeful doing of a thing to achieve a particular result, whereas the knowledge is an awareness which attributes to be well informed that a particular result may happen by doing a thing.

11. So far as the case of appellant No. 1-Deen Dayal Yadav is concerned, there is no evidence that he had any prior intention to kill the deceased and it appears that his only intention was to detain the deceased and during the said period he caused injury on the head of the deceased. Taking into consideration the allegation against him. we are of the view that case of appellant No. 1-Deen Dayal Yadav would not come within the purview of Section 302 IPC and would fall u/s 304-II IPC.

12. From the evidence, it also emerges that the deceased was in the habit of consuming liquor and after consuming liquor he used to enter the house of villagers. Even on the previous night of the incident after consuming liquor he had entered the house of accused/appellants. In the case in hand, accused/appellant No. 1 is alleged to have remained in jail for more than 6 years, incident had taken place in the year 1996 and that the above act of the appellant does not show his intention to commit murder of the deceased, but it certainly attributes knowledge that his act was likely to cause death or to cause such bodily injury to the deceased as is likely to cause death. Thus, we partly allow this appeal and set aside the conviction and sentence awarded to the appellants u/s 302 IPC. Instead thereof, the appellant No. 1 is convicted u/s 304 Part-II IPC. As regards sentence, looking to the fact that the incident had taken place in the year 1996 and that he has already remained in jail for six years, his sentence is reduced to the period already undergone by him. Appellant No. 1 is on bail. Bail bonds stand discharged.

So far as appellant No. 2 Johat Ram is concerned, he deserves to be acquitted by giving benefit of doubt. Accordingly, the conviction and sentence awarded to him u/s 302 IPC is set aside. He is acquitted of the charges framed against him. As the appellant is on bail, his bail bond shall continue for a period of 6 months from today in view of Section 437A Cr.P.C..