
(2012) 02 CHH CK 0081

In the Chhattisgarh High Court

Case No : Criminal Appeal No's. 1519 of 1994 and 200 of 1995

Dinesh Jaiswal

APPELLANT

Vs

State of M.P. (Now State of Chhattisgarh)

RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 34, 460

Citation : (2012) 02 CHH CK 0081

Hon'ble Judges : Rajeev Gupta, C.J.; Sunil Kumar Sinha, J

Bench : Full Bench

Advocate : Savita Tiwari, for the Appellant; J.A. Lohani, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—These appeals are directed against the judgment dated 27th of October, 1994 passed in Sessions Trial No. 64/1994 by the Third Additional Sessions Judge, Bastar. By the impugned judgment, the appellants have been convicted under sections 302/34, 307 and 307/34, IPC and sentenced to undergo imprisonment for life and to pay fine of Rs. 2,000/- and R.I. for 7 years under each count with a direction to run the sentences concurrently.

2. The facts, briefly stated, are as under:-

Three accused persons namely - Hari Kumar, Dinesh and Vipin were prosecuted for the offences punishable under sections 460, 302/34 and 307, IPC. Vipin was acquitted of the charges framed against him, however, the two accused persons were convicted as above. The case of the prosecution is that in the intervening night of 23rd - 24th of March, 1992, at about 8 p.m., the accused persons entered into the house of Rambati Naag (P.W. 1). Accused - Hari Kumar and Dinesh were armed with swords. They directed Ku. Savita (daughter of Rambati Naag (P.W. 1) to call Jija and Jiji of Rambati Naag (P.W. 1) namely-Bhoklu and Dhirobai (deceased). After some time, Bhoklu, Dhirobai and Rajjula came there.

They tried to convince the accused persons. But the accused persons assaulted Bhoklu (P.W. 2), Dhirobai and Rajjulal (P.W. 3). In fact, they attempted to the lives of Bhoklu (P.W. 2) and Rajjulal (P.W. 3) by attacking over them by knife and sword. They also cause multiple injuries by sword to Dhirobai. Dhirobai succumbed to the injuries sustained by her. The accused persons also caused injuries to Maniram. Rambati Naag (P.W. 1) lodged the report in Kotwali Jagdalpur vide Ex. P-1. The injured were sent for their medical examination. Bhoklu (P.W. 2) and Rajjulal (P.W. 3) were examined by Dr. S.R. Tandon (P.W. 5). He noticed following injuries on Rajjulal (P.W. 3)

- i. Palm of right hand was completely chopped and detached.
- ii. Lacerated wound over right middle finger, 2 inch X 2 inch X 2 c.m.

Injury No. 1 was caused by sharp edged weapon and was a grievous injury. Following injuries were received by Bhoklu (P.W. 2)

- i. Incised wound on the left lower portion of the chest, 2.5 c.m. X 1 c.m. X 1 c.m.
- ii. Incised wound on the right middle portion of chest, 2 c.m. X 0.5 c.m. X 1 c.m.

Both injuries were caused by sharp edged weapon, they were grievous injuries and were sufficient to cause death in ordinary course of nature.

Following injuries were received by Maniram

- i. Incised wound just below the left nipple over the chest, 2 inch X 1 c.m. X 1 c.m.

This injury was also grievous injury caused by sharp edged weapon.

Dr. N.S. Thakur (P.W. 6) conducted autopsy on the body of Dhirobai. He found following injuries on her dead body.

- i. Incised wound on the right parietal region, 6 inch X 1? inch X bone deep, parietal bone was also cut.
- ii. Incised wound on the right palm, 6 inch X 2 inch, second, third, fourth and fifth metacarpal bones were completely cut.
- iii. Incised wound on the base of right middle finger, 2 inch X 1 inch X bone deep.
- iv. Incised wound on the right palm, 4 inch X 1 inch X bone deep, second, third and fourth metacarpal bones were cut.
- v. Penetrating wound on the right elbow, 3 inch X 1 inch X bone deep.
- vi. Incised wound on the upper portion of the left shoulder, 4 inch X 1 inch X muscles deep.
- vii. Penetrating wound on the left upper portion of abdomen, 1? inch X ? inch X deep into abdomen.

viii. Peritoneum membrane was cut, portion of liver was also cut and huge amount of blood was accumulated in abdomen cavity.

ix. Penetrating wound on the left upper portion of stomach, 1? inch X ? inch, it has gone to the back, peritoneum membrane was cut and small intestine was also cut. Blood vessels were also cut.

x. Penetrating wound on the back, 1 inch X ? inch bone deep.

xi. Incised wound on the left knee, 3 inch X 1 inch X bone deep.

xii. Abrasion on the right portion of stomach, 1 inch X 2 inch.

xiii. Abrasion on the lower portion of left arm, 1 inch X ? inch.

xiv. Abrasion on the elbow, 2 inch X 1 inch.

xv. Incised wound on the right shoulder, 3 inch X ? inch X muscles deep.

xvi. Penetrating wound on the right pelvic region, 1 inch X ? inch X bone deep.

The injuries were caused by sharp edged weapon. The cause of death was shock due to haemorrhage. It was homicidal in nature. The post-mortem report is Ex. P-20. The case of the prosecution was based on eye-witness account of Rambati Naag (P.W. 1), Bhoklu (P.W. 2) and Rajjulal (P.W. 3) supported by the evidence of two doctors namely - Dr. S.R. Tandon (P.W. 5) and Dr. N.S. Thakur (P.W. 6). The learned Sessions Judge relied on the testimonies of these witnesses and convicted and sentenced the appellants as aforementioned. Since there was no evidence relating to the third accused - Vipin, he was acquitted of the charges framed against him.

3. Mrs. Savita Tiwari, learned counsel appearing on behalf of the appellants, argued that the above witnesses are not reliable, therefore, conviction based on their testimonies cannot be sustained.

4. On the other hand, Mr. J.A. Lohani, learned Panel lawyer appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Sessions Court.

5. We have heard the learned counsel for the parties at length and have also perused the records of the Sessions case.

6. Rambati Naag (P.W. 1) deposed that on the fateful day, the appellants came to her house and said Ku. Savita Bai (daughter of Rambati aged about 12 years) to call Dhirobai (deceased). Thereafter, her Jija - Bhoklu (P.W. 2) came there. Dinesh was holding a Gupti, Hari Kumar was holding a sword. Both assaulted Bhoklu (P.W. 2) by sword and Gupti, they gave repeated blows. Bhoklu (P.W. 2) became seriously injured. When Dhirobai (deceased) came there, she was assaulted by the appellants by sword and Gupti. Dhirobai had tried to save herself by putting her hands against the blows, but the appellants had caused injuries to her stomach etc., infact, repeated blows were given to her.

7. Bhoklu (P.W. 2) corroborated the evidence of Rambati Naag (P.W. 1). He also deposed in similar fashion. The evidence of Rambati Naag (P.W. 1) and Bhoklu (P.W. 2) is further corroborated by the evidence of Rajjulal (P.W. 3). The case of the prosecution is that Bhoklu (P.W. 2) and Dhirobai (P.W. 3) were called by the appellants by sending the daughter of Rambati Naag (P.W. 1). Rajjulal (P.W. 3) also accompanied them to the house of Rambati Naag (P.W. 1). Bhoklu (P.W. 2) and Rajjulal (P.W. 3) are injured witnesses, therefore, their presence at the time of occurrence cannot be doubted. In appreciation, we find that evidence of Rambati Naag (P.W. 1) was fully corroborated by these two injured witnesses. It was further corroborated by the contents of the First Information Report (Ex. P-1), which was lodged in the police station.

8. We further note that the evidence of above 3 witnesses is further corroborated by the medical testimonies of Dr. S.P. Tandon (P.W. 5) who examined Bhoklu (P.W. 2) and Rajjulal (P.W. 3) and Dr. N.S. Thakur (P.W. 6) who conducted autopsy on the dead body of deceased Dhirobai. Smt. Tiwari has tried to bring discrepancies in the evidence of above witnesses. We have gone through the entire evidence of these witnesses and we do not find any such discrepancy in their evidence, on which, their testimonies may be discarded. Though, these witnesses were put to lengthy cross-examinations by the defence, but the defence has not been able to elicit any discrepancy, on which, either their testimonies may be discarded or it may be said that these witnesses (eyewitnesses) are falsely implicating the appellant in crime in question.

9. After going through the entire evidence on record, we find that the learned Sessions Judge has not committed any error while relying on the testimonies of the above eye-witnesses, which is fully corroborated by the medical evidence. For the foregoing reasons, we do not find any substance in the appeals. The appeals, therefore, are liable to be dismissed and are hereby dismissed.