
(2013) 04 CHH CK 0022
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1888 of 1997

Ganesh Ram

APPELLANT

Vs

State of M.P. (Now state of C.G.)

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) 2 CGBCLJ 538 : (2013) 3 CGLJ 225

Hon'ble Judges : Sunil Kumar Sinha, J; Prashant Kumar Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—These appeals are directed against the judgment dated 3rd of September, 1997 passed in Sessions Trial No. 405/96 by the Second Additional Sessions Judge, Durg. By the impugned judgment, the appellants have been convicted u/Ss. 302/34 IPC and sentenced to undergo imprisonment for life. The facts, briefly stated, are as under:-

1.1. Appellants (A-1 to A-4) and deceased-Jagdish were residents of same locality. On 22.3.96 at about 9.00 p.m., the deceased was present in his house along with his sister-Sakunti Bai (PW-9). The case of the prosecution is that the appellants (A-1 to A-4) came to the house of the deceased and called him to a nearby place, and demanded Rs. 200/- as contribution (chanda) for agitation against Special Area Development Authority (SADA). The allegations are that when the deceased denied to give the amount, the appellants attacked over the deceased by sword, bhujali, danda and wooden plank. The deceased had sustained multiple serious injuries. He was taken to the hospital, where he died during the course of treatment in the same night. The incident was witnessed by as many as seven eye-witnesses namely-Mansingh (PW-1), Tulshi (PW-2), Vedprakash (PW-3), Visheshwar (PW-4), Bhagwani (PW-6), Mohd. Ishaq (PW-8) and Sakunti Bai (PW-9). Sakunti Bai (PW-9) lodged First Information Report (F.I.R.-Ex.-P/13). After the report, the deceased, while alive, was sent for medical examination and was examined by Dr. R.M. Pandey (PW-10) at about

10.15 p.m. He had noticed following injuries on the person of the deceased:-

- (i) Incised wound of 3 x 4 inch x bone deep on the nose and upper portion of left eye;
- (ii) Incised wound of Vz x Vz inch x bone deep on the left mandibular region;
- (iii) Incised wound of 1 x Vz inch x bone deep above right eye;
- (iv) Incised wound of 4 x 1 inch x bone deep on the right parietal region;
- (v) Incised wound of 1 x 1 x Vz inch on the right tibia;
- (vi) Two incised wounds of 1 x Vz inch x bone deep on the right knee;
- (vii) Incised wound of 1 x Vz inch x bone deep on the left knee;
- (viii) Incised wound of 2 x Vz inch x bone deep on the left leg;
- (ix) Contusion of 6 x 2 inch on the right patella and knee joint area; &
- (x) There was fracture on patella.

The MLC report is Ex.-P/14.

1.2. After the death, notices (Ex.-P/25) were given to the Panchas and inquest (Ex.-P/26) was prepared on the dead body of the deceased and the dead body was sent for postmortem. The postmortem examination was conducted by Dr. P.C. Deshmukh (PW-7) who on the internal examination found that the deceased had sustained a fracture of about 3 inch on the left parietal bone and there was also an incised wound on the angle of the left jaw. The Autopsy Surgeon opined that the cause of death was shock and haemorrhage on account of head injury and the other injuries and the death was homicidal in nature. The postmortem report is Ex.-P/11. The requisition for postmortem is Ex.-P/27.

1.3. The appellants (A-1 to A-4) were named in the F.I.R. (Ex.-P/13). They were taken into custody and their memorandum statements (Ex.-P/6, P/7, P/8 and P/9) were recorded u/S. 27 of the Evidence Act and wooden plank was seized at the instance of appellant-Egal @ Nahar Kumar Netam (A-1); bhujali was seized from appellant-Ganesh Ram (A-2); danda was seized from appellant-Santosh Kumar (A-3) and sword was seized from appellant-Ravi Shankar @ Ravi (A-4) vide seizure memo(s) Ex.-P/6-A, P/7-A, P/8-A and P/9-A. The seized articles were sent for their chemical examination to Forensic Science Laboratory (FSL), Raipur and a report dated 17.5.96 was received. According to the FSL report, blood stains were found on almost all the articles except plain soil (Article-B). On Serologist examination, blood stains over stained soil, shirt, chaddi and danda were found to be of human blood. However, the origin of the blood stains on other articles could not be determined on account of insufficient for test and disintegration.

1.4. On trial, except Sakunti Bai (PW-9) all other eye-witnesses named above,

turned hostile and they did not support the case of the prosecution. The Sessions Judge relied on the testimony of Sakunti Bai (PW-9) and convicted and sentenced the appellants (A-1 to A-4) as above.

Hence these appeals.

2. Learned counsel for the appellants have mainly argued on the testimony of Sakunti Bai (PW-9). They assailed her testimony on she being an interested witness. According to them, the solitary testimony of Sakunti Bai (PW-9) was not dependable. In addition to that, Mr. Yashwant Tiwari has also argued that the copy of the F.I.R. (Ex.-P/13) was not sent to the Ilaqa Magistrate; the scribe of the F.I.R. was not examined, and as such, the F.I.R. which bears thumb impression of Sakunti Bai (PW-9), was not proved; and the F.I.R. was ante-dated, therefore, the entire story of the prosecution should be disbelieved. He also argued that even assuming that the incident took place in the above manner, the appellants would not be liable for punishment u/S. 302 IPC and they would be liable for punishment under Part-I or Part-II of Section 304 IPC.

3. On the other hand, Mr. Akhil Mishra, Dy. Govt. Advocate and Mr. Anant Bajpai, Panel Lawyer, appearing on behalf of the State, have opposed these arguments and supported the judgment passed by the Sessions Court.

4. We have heard counsel for the parties.

5. So far as relationship is concerned, it cannot be a factor to affect credibility of a witness. No one can propose that a relative would always be treated as untruthful witness. Strict principle of appreciation has to be applied to judge credibility of a relative witness. If on a close scrutiny, the evidence of a relative witness is found to be trustworthy and wholly reliable, the Court may rest the conviction on the solitary testimony of a relative witness. In *Namdeo Vs. State of Maharashtra*, it was held that a close relative cannot be characterized as an "interested" 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. Therefore, if the above three characteristic are found in the evidence of a relative or interested witness, there may not be any hesitation in resting the conviction on his sole testimony. Because the principles relating to a natural witness cannot be ignored even in cases of "interested" or "relative" witnesses.

6. Now we shall scrutinize the evidence of Sakunti Bai (PW-9).

7. Sakunti Bai (PW-9) is sister of the deceased. They were residing together in a house. According to her, in the fateful night, at about 8.00 p.m., all the four accused (A-1 to A-4) came to her house and took her brother (deceased). When her brother denied to give contribution (chanda), demanded by them, they assaulted him (deceased) and committed his murder. She added that Ganesh Ram (A-2) was holding a sword, Egal (A-1) was holding a danda, Ravi (A-4) was holding a danda and Santosh Kumar (A-3) was holding a stick. They were

assaulting the deceased near the house of a goldsmith which was adjacent to their house. After the assault, when the deceased fell down, the accused ran away. Thereafter she went to lodge the F.I.R. The contents of the F.I.R. (Ex.-P/13) were read over to her and she admitted the contents and she also admitted to put her thumb impression on the F.I.R.

8. Counsel for the appellants have argued that in the F.I.R. (Ex.-P/13), she had mentioned that Ravi (A-4) and Ganesh Ram (A-2) had assaulted her brother (deceased) by sword, however, in the Court evidence, she deposed that Ravi was holding a danda, therefore, there was contradiction regarding holding of the weapons by the accused and thus, her version becomes unreliable. We note that the contents of Para-13 of her cross-examination shows that she had deposed that Ravi (A-4) was holding a danda is correct which she also deposed in examination-in-chief. If we keenly examine the contents of the F.I.R., the things would be clear. In the F.I.R. (Ex.-P/13), she simply mentioned that Ravi (A-4) and Ganesh Ram (A-2) two accused persons had assaulted her brother by sword. Different persons may hold different articles at the time of the incident, but it is not necessary that they would use that very article for assaulting the deceased. There may be a case in which two accused persons may use the same article to assault the deceased, therefore, only on this account that she gave different descriptions about the weapons held by the accused, her entire evidence cannot be discarded.

9. In *Krishna Mochi and Others Vs. State of Bihar*, it was held that normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so.

10. We have examined the evidence of Sakunti Bai (PW-9) and we find that there are normal discrepancies in her evidence. Those discrepancies cannot be said to be the material discrepancies which may go to the root of the prosecution case and may demolish her entire testimony. Sakunti Bai (PW-9) is sister of the deceased. There is no dispute that they were residing together. The incident took place at about 8.00 p.m. near her house and the case of the prosecution is that the accused persons (A-1 to A-4) had called the deceased from her house in her presence and she had also followed them. Therefore, her presence at the place of occurrence cannot be doubted. Her presence appears to be natural and she appears to be a natural witness of the incident. Since the accused persons were well known to her, therefore, there was no question of mistaken identity. The incident was reported to the police within a very short time by her and the F.I.R. (Ex.-P/13) was registered u/s. 307/34 IPC. In the F.I.R., she has mentioned the

names of all the accused persons and has also mentioned the role attributed to them. On due appreciation of her entire evidence, as we have already stated, we do not find any material discrepancy in her evidence so as to hold that she was not reliable. Sakunti Bai (PW-9) has been cross-examined at length, but nothing material could be brought in her cross-examination, on which, either her testimony may be discarded or it may be said that she was falsely implicating the appellants in the above incident. We are of the view that the learned Sessions Judge was fully justified in holding that Sakunti Bai (PW-9) was wholly reliable and her evidence was trustworthy which was corroborated by the medical evidence and the F.I.R.

11. It is true that the scribe of the F.I.R. was not examined and the F.I.R. bears thumb impression of its maker. Whether on this account only the F.I.R. (Ex.-P/13) and contents thereof could be rejected? Sakunti Bai (PW-9) deposed in clear words that after the incident was over, she went to the police station and lodged the report which was reduced into writing. The F.I.R. was read over to her in the open Court and she admitted the contents of the F.I.R. (Ex.-P/13) and she also admitted to put her thumb impression on the F.I.R.

12. In *Naaina Sharma and others -Vs- The State of Bihar*, 1991 CRI. L.J. 1195. the Investigating Officer was not examined to say that he registered the F.I.R. The concerned police officer only proved the carbon copy of the F.I.R., however, the informant himself had admitted the contents of the F.I.R. in all its entirety and particulars. It was held that in these circumstances, the Court cannot presume that the fard-beyan and the F.I.R. were spurious or fabricated documents and the non-examination of the officer registering the F.I.R. had any effect fatal to the prosecution.

13. In case on hand, as we have already stated, Sakunti Bai (PW-9) admitted to lodge the F.I.R. (Ex.-P/13); she further admitted to put her thumb impression on the F.I.R.; and she also admitted the contents of the F.I.R. and nothing material could be brought against her testimony. Therefore, we are of the view that in the above facts and circumstances of the case, non-examination of the scribe of the F.I.R. would not be fatal to the prosecution.

14. Mr. Tiwari has also contended that the copy of the F.I.R. (Ex.-P/13) was not sent to the Ilqa Magistrate and it was ante-timed and ante-dated, therefore, benefit should be given to the accused.

15. In *Shivlal and Another Vs. State of Chhattisgarh*, , it was held that *Bhajan Singh @ Harbhajan Singh and Others Vs. State of Haryana*, has elaborately dealt with the issue of sending the copy of the FIR to the Ilqa Magistrate with delay and after placing reliance upon a large number of judgments including *Shiv Ram and Another Vs. State of U.P.*, and *Arun Kumar Sharma Vs. State of Bihar*, , it was held that CrPC provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be

immediately informed of every serious offence so that he may be in a position to* act u/s 159 CrPC, if so required. The object of the statutory provision is to keep the Magistrate informed of the investigation so as to enable him to control the investigation and, if necessary, to give appropriate direction. However, it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or the investigation is not fair and forthright. In a given case, there may be an explanation for delay. An unexplained inordinate delay in sending the copy of the FIR to the Ilaqa Magistrate may affect the prosecution case adversely. However, such an adverse inference may be drawn on the basis of attending circumstances involved in a case. In the instant case, copy of the FIR was not sent to the Magistrate at all as required u/s 157(1) CrPC. In such a case, in the absence of any explanation furnished by the prosecution to that effect, would definitely cast a shadow on the case of the prosecution. The Supreme Court, thus, in Shivilal held that in such a fact situation, it can simply be held that in spite of the fact that any lapses on the part of the 10, would not confer any benefit on the accused, the case of the prosecution may be seen with certain suspicion when examined with other contemporaneous circumstances involved in the case.

16. Therefore, a consequence of not sending the F.I.R. to the Ilaqa Magistrate, being a lapse on the part of the Investigating Officer, would not lead to any more than the case of the prosecution may be seen with certain suspicion and if the other circumstances are also favourable to the accused, the benefit may be give, however, the entirety of the evidence shall have to be considered.

17. Let us examine the attending circumstances.

18. The incident took place sometime between 8 to 9.00 p.m. and the F.I.R. (Ex.-P/13) was shown to be lodged at about 10.05 p.m. to the police station at a distance of 1 Km. Mulhaija Form of the deceased was filled in, and the deceased was sent to Govt. Hospital, Durg for his medical examination. The deceased was examined in the hospital at about 10.15 p.m. in the same night and was immediately admitted in the hospital for further treatment. This is clear from the MLC report (Ex.-P/14) of the deceased proved by Dr. R.N. Pandey (PW-10). Dr. Pandey has mentioned the time of examination of the deceased by his own hand writing in the MLC report (Ex.-P/14). Not only this, the prosecution has also proved the original bed-head-ticket (Ex.-P/17) of the deceased which would further show that the deceased was admitted in the hospital at 10.30 p.m. and massive treatment was given to him. It has been mentioned in the end of the bed-head-ticket that the deceased had died at about 10.45 p.m. Even the treatment given at 10.40 p.m. is also mentioned in the bed-head-ticket In-between this period many medicines were administered on the deceased which is clear from the entries of the bed-head-ticket made by the concerned Doctor. We have no doubt to disbelieve the entries of these documents. We further note that in the requisition (Mulhaija Form), Rojnamchasana Number and the date of

22.3.96 has been endorsed. All these documents would show that the deceased was brought to the hospital at about 10.15 p.m. of 22.3.96 and after MLC examination, he was immediately admitted in the hospital, where he died during the course of treatment at about 10.45 p.m. We further note that the Mulhaija Form, in the description column contains the names of all the accused persons. It also contains the fact that the deceased was assaulted by the accused person by using sword and danda. We further note that the MLC report (Ex.-P/14) is in the prescribed format which is printed at the overleaf of requisition form which is also in printed format. Thus there is hardly any chance of manipulation in these documents. These attending circumstances would make it clear that they were in consonance with the contents of the F.I.R. (Ex.-P/13) and at least at 10.15 p.m. the police had definite knowledge about the names and identity of the accused persons which they mentioned in the Mulhaija Form. The F.I.R. was lodged at about 22.05 hours i.e. 10.05 p.m. A few minutes must have been consumed in writing the F.I.R. and filling up the Mulhaija Form for medical examination of the deceased which was conducted at 10.15 p.m. Therefore, there was only a difference of about 10 minutes in the time of lodging the F.I.R. and the MLC examination of the deceased. Thus in light of the above attending circumstances, which are intact on record, it cannot be held that either the F.I.R. was ante-timed or ante-dated or it was doubtful on account of not sending the copy of the F.I.R. to the Ilaqa Magistrate. We are of the view that looking to the short time gap between recording of the F.I.R. and the examination of the deceased, there was no possibility of any manipulation in the F.I.R., as alleged by counsel for the appellants. We, therefore, reject the above contention raised by him.

19. Mr. Tiwari has lastly argued that the alleged act of the appellants would not travel beyond Section 304 Part-II IPC as there was no intention. We have examined the entire case of the prosecution in light of the above submission made by Mr. Tiwari. The accused persons, four in number, came to the house of the deceased in between 8 to 9.00 p.m. At that time the sister of the deceased namely-Sakunti Bai (PW-9), was present in the house. They (accused-A-1 to A-4) took the deceased to a nearby place. Sakunti Bai (PW-9) also followed them. Mr. Tiwari has argued that since the appellants were demanding contribution (chanda) of Rs. 200/- and it was denied by the deceased, therefore, the incident took place. We see no justification in the said argument as if the intention of the appellants would have been to collect contribution from the deceased, they would not have armed themselves with deadly weapons like sword, bhujali and lathi etc. A person coming for contribution would not come armed with deadly weapons. Therefore, demand of chanda was nothing more than a simple reason to call the deceased from the house. The accused persons had attacked over the deceased by such weapons and had caused multiple serious injuries to him on the vital parts of his body. Looking to the nature and number of injuries caused by accused to the deceased, it would be clear that their intention was to commit murder of the deceased "By making repeated blows by such weapons. We are of the view that in the above facts and circumstances of the case, the learned

Sessions Judge was fully justified in holding that the accused persons were liable for punishment u/S. 302 read with Section 34 IPC. For the foregoing reasons, we do not find any substance in these appeals. The appeals are liable to be dismissed and are hereby dismissed.

Headline

Credibility of evidence of interested solitary eye-witness-Discussed.