
(2016) 04 CHH CK 0020
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 854 of 2000

Hemchand	Vs	APPELLANT
State of M.P. (Now State of Chhattisgarh)		RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

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

Citation : (2016) CriLJ 2826

Hon'ble Judges : Shri Navin Sinha, C.J. and Shri P. Sam Koshy, J.

Bench : Division Bench

Advocate : Ms. Indira Tripathi, Advocate, for the Appellant; Mr. U.K.S. Chandel, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Shri Navin Sinha, C.J.—The Appellants stand convicted under Section 302/34 IPC to life imprisonment with fine of Rs. 1000/- each, in the event of failure to pay which they were required to undergo six months further rigorous imprisonment as ordered on 24.5.1999 by the Second Additional Sessions Judge, Raigarh, in Sessions Trial No. 192 of 1997.

2. PW-1, Narmada, son of the deceased Dokri Prasad, lodged Merg, Exhibit P-24 on 31.7.1997 at 13:30 hrs with regard to an assault made the same morning on the deceased before PW-11, Bhuvneshwar Giri. FIR, Exhibit P-11 was registered on basis of same by the Investigating Officer PW-10, Chintamani Malakar. A land dispute existed between the parties. Whilst the deceased was having the fields cultivated, the Appellants came with a tangi and lathi respectively, asked the tractor driver to take it out of the fields. The Appellants then indulged in fisticuffs with the deceased, took him away simultaneously abusing and asking for their share of the crops and then assaulted him near the house of Appellant No. 2 which was adjacent to the fields. Appellant No. 1 assaulted with a tangi and Appellant No. 2 with the lathi. PW-1, Narmada and PW-2, Rajkiya Bai, daughter of the deceased, were also injured when they sought to intervene.

3. The post-mortem, Exhibit P-12, dated 1.8.1997 of the deceased conducted by PW-7, Dr. Shailendra Upadhyay found four incised wounds on the left side of the cheek extending to the neck, above the right eye, upper part of the neck, another wound on the upper part of the neck and one lacerated wound above left eye and another abrasion over the left upper arm at the back. The frontal bone on the right side and left side were found fractured as also the right and left parietal bone, occipital bone, second cervical vertebra was cut and there was fracture of the left body of the mandible. Cause of death was opined due to syncope occasioned by excessive hemorrhage due to cutting of large vessel of the neck, homicidal in nature.

4. Learned Counsel for the Appellants submitted that admittedly land dispute existed between the parties. The matter was pending in Court also. It was the deceased who was behaving as an aggressor by not allowing the Appellants to either cultivate the lands or to give them their share of the crops. The Appellants had gone to the fields only to persuade the deceased not to forcibly cultivate the lands unilaterally and not deny them their share of the crops. The Appellants had no intention to kill the deceased. Had it been otherwise nothing prevented the Appellants from assaulting the deceased murderously in the field itself with the tangi and lathi rather than to have indulged in fisticuffs with the deceased. The deceased also had a lathi as deposed by PW-3-14, Shivcharan. The Investigating Officer PW-10, Chintamani Malakar has deposed that Appellant No. 2 had come to the police station with injuries and had been sent by him for treatment to the hospital. This signifies that a fight took place due to which the Appellants acted under grave and sudden provocation in assaulting the deceased. Because of his hospitalisation Appellant No. 2 was arrested later on 5.8.1997 after his discharge from the hospital. Death did not ensue because of the assault but due to excessive bleeding. In the facts and circumstances of the case, no offence was made out under Section 302 IPC and at best the Appellants may be liable under Section 304 Part-II IPC.

5. In support of the last submission it was contended that the Appellants could not be said to have come armed with intention to assault, lathi and tangi are not weapons of offence but are normal tools carried by any villager.

6. Even if lathi and tangi have been seized on confession, the seizure witnesses have denied that it was done in their presence. Merely because their signatures may exist on the seizure memo it does not lead to the conclusion that the seizure was in fact effected in accordance with law on any confession made by Appellant No. 1. The fact that any blood may have been found either on the lathi and tangi or the clothes is therefore inconsequential. It has also not been alleged with certainty who made what nature of assault and on which part of the body. The allegations of assault are omnibus.

7. It was lastly submitted that Appellant No. 1 was in custody from 1.8.1997 till release during appeal on 15.9.2006. Similarly, Appellant No. 2 has remained in custody from 5.8.1997 to 14.6.2004 when he was also released on bail in appeal.

8. Learned Counsel for the State submitted that admittedly land dispute was the motive for the assault. Denial of cultivation rights or share of crops does not amount to grave and sudden provocation. The Appellants were the aggressors. They had come on the fields and told the tractor driver to go out of the fields and then dragged away the deceased abusing and assaulting him with fisticuffs. Despite being implored by the children of the deceased the Appellants did not relent in their assault. It is evidence of intention. Even if lathi and tangi are items of daily use carried by any villager they are also capable of being used as deadly weapons of assault, the latter being a sharp edged cutting weapon. PW-5, Diliram, before whom the seizure was made, has deposed that the edge of the lathi was frayed which is capable of causing serious injuries.

9. There can never be direct evidence of intention and it has to be culled out from all surrounding facts and circumstances. If two persons mercilessly assaulted an individual leading to death on the spot, that alone is sufficient indication of intention to cause death by causing such bodily injury with the intention to cause death or which the offender knows to be likely to cause death. The nature of the injuries caused to the deceased by the Appellants as also confirmed by the post-mortem report was sufficient in the ordinary course of nature to cause death.

10. PW-1, Narmada, son of the deceased and PW-2, Rajkiya Bai, daughter of the deceased, are eyewitnesses injured in the same occurrence. Manita, another daughter of the deceased was also injured. Their MLC have been proved by PW-7, Dr. Shailendra Upadhyay who had examined them.

11. The contention on behalf of the Appellants that they acted in self-defence when Appellant No. 2 was assaulted by the deceased with a lathi merits no consideration at all. Merely because the Investigating Officer may have stated that Appellant No.2 had come to him with injuries and he had referred him to the hospital or that the arrest memo was prepared on 5.8.1997 are all inconsequential in absence of a single question having been asked to the injured eyewitnesses with regard to any assault made on Appellant No. 2 by the deceased when a free for all fight may have followed. Furthermore, no such defence has been taken under Section 313 Cr.P.C. despite saying that they wanted to lead further evidence. The sole defence witness, DW-1, Pareshwar Ram, has not stated anything to this effect. There is no MLC of Appellant No. 2 or any evidence with regard to the nature of injuries caused to him, the hospital to which he may have been taken much less any documentary evidence produced from the hospital in question. The issue for any recovery and seizure loses its relevance in view of the convincing, reliable and unquestionable evidence of the two injured eyewitnesses to whom not even a suggestion was given that they were not present during the occurrence.

12. We have considered the submissions on behalf of the parties and perused the evidence on record also.

13. The deceased and the Appellants are relatives. Admittedly there was a land dispute between them and a Court case was also pending regarding the same. The genesis of the occurrence is not in dispute. The deceased was having the lands tilled with a tractor driven by PW-4, Nohar Sai. Even if this witness has gone hostile that part of his evidence that he was in the fields driving the tractor when the Appellants came possessed of a lathi and tangi respectively and asked him to leave the fields with the tractor finds corroboration from PW-1, Narmada, PW-2, Rajkiya Bai and PW-14 Shivcharan. In (2014) 3 SCC 421 (Birju v. State of Madhya Pradesh) with regard to a hostile witness it was observed as follows :-

"9....but the evidence of a hostile witness cannot be discarded as a whole and the relevant parts thereof, which are admissible in law, can be used, either by the prosecution or the defence."

14. The Appellants are then stated to have first indulged in abusive fisticuffs with the deceased and dragged him away from the fields to the house of Appellant no.2 adjacent to the fields. PW-1, Narmada, and PW-2, Rajkiya Bai, the children of the deceased, aged 17 and 20 years respectively, are eyewitnesses to the assault. Manita, another daughter of the deceased was also present. PW-1, Narmada has stated that Appellant No. 1 had a tangi in his hands while Appellant No. 2 a lathi. The first assault was made by Appellant No. 2 after which the deceased fell down. Appellant No. 1 then made repeated assaults with the tangi. Appellant No. 1 also assaulted the witness with a tangi as also his sister, PW-2, Rajkiya Bai, on the head. The fact that injuries were caused to the two witnesses along with their sister Manita is corroborated by PW- 7, Dr. Shailendra Upadhyay, who proved their MLC which were also marked as Exhibits. The fact that no separate offence may have been charged with regard to them cannot dilute the fact of their presence and injuries caused during the occurrence.

15. They are not only injured witnesses, but more importantly they are the children of the deceased. The police report was lodged with promptness. Their presence is not disputed by the Appellants and neither is it disputed that injuries were caused to them during the occurrence. It stands to reason from ordinary common sense that if they saw their father being assaulted in front of their eyes they would still be falsely implicating the Appellants because of the land dispute letting go the real culprits whom they may have actually seen assaulting and killing their father. That would be completely contrary to normal human behaviour and the Court rejects any such possibility or suggestion. The Appellants were related to the deceased and the two injured witnesses. It certainly calls for courage and strength of conscience to name their own relatives as assailants.

16. In criminal jurisprudence, a presumption arises that an injured witness was speaking the truth as it confirms presence of the witness during the occurrence. There is no iota of evidence that they were not present during the occurrence and were not injured in the same occurrence. The credibility and reliability of an injured witness is always high. Merely because they were closely related to the

deceased cannot be such an incriminating factor so as to doubt the truthfulness of their evidence or seek independent corroboration of the same. Reference would be appropriate at this stage to (2013) 14 SCC 581 (Mohd. Ishaque v. State of West Bengal) observing as follows :-

"17. In this respect, reference may be made to the judgment of this Court in Jaishree Yadav v. State of U.P. wherein this Court held that whether witnesses are interested persons and whether they had deposed out of some motive cannot be the sole criterion for judging credibility of a witness, but the main criterion would be whether their physical presence at the place of occurrence was possible and probable."

17. The plea that a free for all fight ensued when the deceased also assaulted Appellant No. 2 with a lathi causing injuries to him relying on the deposition of the Investigating Officer, PW-10, Chintamani Malakar, or the arrest memo of Appellant No. 2 dated 5.8.1997 leaves the Court unimpressed for more than one reason. In cross-examination of these two witnesses no suggestion was given to them on behalf of the defence that any such assault was made by their deceased father and they had acted in their self-defence. The fact that the Investigating Officer may have said that Appellant No. 2 came to him at the police station and he referred him to the hospital where he remained for some days under treatment cannot be accepted as a gospel truth without any evidence in support of the same. If Appellant No. 2 had gone to the police station as deposed by the Investigating Officer, PW-10, Chintamani Malakar and he referred him to the hospital for treatment, it was the duty of the Investigating Officer to have at least made a station diary entry with regard to the same. Neither the witness nor the Appellants have mentioned anything about the nature of injuries, the hospital to which Appellant No. 2 was taken for treatment or produced any discharge slip etc. The defence is therefore fanciful and unacceptable.

18. In view of the reliable eyewitness account available from the two injured witnesses, issues with regard to confession and seizure loses much of its relevance and nothing much turns on it. In any event, the seizure witnesses have acknowledged their signatures on the seizure memos and blood has also been found on the same.

19. That brings to the fore the question with regard to the sentence as urged on behalf of the Appellants. Even if there was a land dispute between them and the deceased was acting unreasonably and arbitrarily, that did not vest authority in the Appellants to take law in their own hands. Two persons armed with a sharp cutting weapon, a lathi with a frayed edge and tangi, started to abuse and assault with fisticuffs. They then dragged away the deceased and assaulted him in a manner which can easily be said merciless from the post-mortem report, leading to death on the spot. Intention is not something tangible but has to be culled out from all surrounding circumstances such as the existence of a motive, the weapon with which the assault is made, the manner of assault, repeated assault, if any, etc. In the facts of the present case, considering the nature of

multiple injuries caused with a sharp cutting weapon, multiple fractures caused which obviously are attributable to a hard-blunt substance, this Court has no hesitation in coming to the conclusion of an intention to cause death. The submission that it could not be said with certainty who made what assault, of what nature and caused which nature of injury, in our opinion, merits no consideration at all in view of the specific prosecution evidence that Appellant No. 1 was possessed with a tangi which naturally relates to the incised wounds and that Appellant No. 2 was possessed with a lathi which naturally leads to the conclusion of fractures. We therefore find no merit in the appeal.

20. The appeal is dismissed. The Appellants are on bail. Their bailbonds are cancelled and they are directed to surrender forthwith and/or be taken into custody for serving out the remaining period of their sentence.