
(2014) 11 CHH CK 0040

In the Chhattisgarh High Court

Case No : Criminal Appeal Nos. 1113 of 2007, 125, 204 and 205 of 2008

Johatarin Baiyadav and Others

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 302

Citation : (2015) 1 CGLJ 366

Hon'ble Judges : T.P. Sharma, J; Inder Singh Uboweja, J

Bench : Division Bench

Advocate : Janak Ram Verma, Advocates for the Appellant; Rama Kant Mishra, Deputy Advocate General, Advocates for the Respondent

Judgement

T.P. Sharma, J.—Criminal Appeals No. 1113 of 2007, 125, 204 and 205 of 2008 filed against the common judgment dated 22.11.2007 are being disposed of by this common judgment. By filing the above appeals, the aforesaid appellants have challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 22.11.2007 passed by the Additional Sessions Judge, Korea Dhamtari in Sessions Trial No. 34 of 2006 whereby and whereunder after holding the appellants guilty for commission of homicidal death amounting to murder of Sukhiya Bai, causing grievous injury to Nohar and simple injury to Suresh, Naresh and Mehtarin Bai, after formation of unlawful assembly and in sharing common intention, the Court below convicted the appellants under Sections 302/34, 325/34, 323/34 and 148 of the I.P.C. and sentenced them to life imprisonment with fine of Rs. 500/- each, in default to undergo additional RI for two months each under Section 302/34, to undergo RI for one year with fine of Rs. 100/-, in default to undergo RI for two months each under Section 325/34, to undergo RI for six months each under Sections 323/34 of the I.P.C. and to undergo RI for one year each under Section 148 of the I.P.C.

2. The conviction is impugned on the ground that without there being any iota of

evidence, the Court below convicted and sentenced the appellants as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 04.04.2006 at 8.00 p.m., the complainant-party went to the house of the appellants for some compromise on account of report (Ex. D 1) earlier lodged by Kiran, daughter of the appellant-Kriparam and report lodged by the appellants, at that time all the appellants were having deadly weapons. They assaulted Sukhiya Bai and caused grievous injury. They also caused grievous injury to Nohar when he interfered to save Sukhiya Bai and simple injury to Suresh, Naresh and Mehtarin Bai. P.W. 1 Naresh went to police station Kurud, District Dhamtari and lodged F.I.R. vide Ex. P. 1, which was registered under Sections 147, 148, 294, 506 and 323 of the I.P.C.

4. Injured Sukhiya Bai was examined vide Ex. P. 22 by Dr. V.K. Pandey, P.W. 14, who found the injuries (1) diffuse swelling over her forehead and (2) diffuse swelling upon both front upper part of shoulders. He also examined Nohar vide Ex. P. 18 and found (1) one lacerated wound of 2" x 1" over the face and (2) diffuse swelling over both shoulders. Injured Suresh was also examined vide Ex. P. 9 by Dr. V.K. Pandey, who found four injuries upon the body of Suresh, those are (1) diffuse swelling over the top of skull and tenderness, (2) lacerated wound of 1" x 1/2" over forehead (skull) and tenderness, (3) contusion over right elbow, which is diffuse swelling and (4) abrasion over left shoulder and was swelling. Likewise, Mahetarin was also examined by him vide Ex. P. 20 and found (1) contusion over occipital region and swelling and (2) diffuse swelling over the back found in red colour. Similarly, Naresh was also examined by him vide Ex. P. 21 and after examination, Dr. V.K. Pandey found one abrasion of 1/2" x 1/2" over forehead.

Sukhiya Bai was admitted in hospital and during the course of treatment she succumbed to the injuries. Death of Sukhiya Bai was intimated by the Hospital vide Ex. P. 12 by Dr. R.H. Mishra P.W. 10 and merg intimation was recorded vide Ex. P. 13. The above injured persons were also hospitalised for treatment and intimation was given vide Ex. P. 14, 15 and 16.

5. Investigation Officer left for scene of occurrence and after summoning witnesses vide Ex. P. 2, inquest over the dead body was prepared vide Ex. P. 3. Dead body of Sukhiya Bai was sent for autopsy to District Hospital, Dhamtari, where P.W. 12 Dr. Sanjay Wankhede conducted autopsy vide Ex. P. 10-A and found following injuries:--

1. Stitched wound in 6 c.m. length over right side of parietal bone (head), swelling and clotted blood are seen around it.
2. Stitched wound of 4 c.m. length over left side of parietal bone (head), swelling and clotted blood are seen around it.
3. Abrasion of 3 x 2 c.m. over left side of elbow wrist.
4. Contusion of 3 x 3 c.m. over right side of elbow wrist.

5. On dissection, there was fracture over right parietal bone, fracture of linear and blood in brain matter Haematoma.

Cause of death was as a result of Head injury and fracture of skull bone.

During the course of investigation, appellants were taken into custody and they made disclosure statements of weapons of offence. Spot maps were prepared vide Ex. P. 32 and 34.

6. Statements of witnesses under Section 161 of the Code of Criminal Procedure, 1973 (for short "the Code") were recorded.

7. After completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Kurud, who in turn committed the case to the Sessions Judge. Learned Sessions Judge received the case on transfer for trial.

8. In order to prove the guilt of the appellants, prosecution examined as many as 20 witnesses. The accused persons were examined under Section 313 of the Code in which they denied the circumstances appearing against them and innocence and false implication in crime in question was claimed.

9. After providing an opportunity to the parties, the learned Sessions Judge convicted and sentenced the appellants as aforementioned.

10. We have heard the learned counsel for the parties and perused the record of trial Court and the judgment impugned.

11. Mr. Janak Ram Verma, learned counsel for the appellants, vehemently argued that prior to the incident, complainant-party assaulted Kiran, daughter of appellant-Kriparam and Kiran has lodged a report vide Ex. D. 1. Report has also been lodged against complainant-party and charge sheet has been filed vide Ex. D. 2 against the complaints Suresh, Nohar, Naresh, Devki Bai and Mahetarin Bai and they are facing trial of the offence before the J.M.F.C. Kurud. The incident took place at about 8.00 p.m. in front of the house of the appellant which is about one furlong away from the house of the complainant-party and there is no propriety of their attempt on the persons in presence of house of the appellants when they have lodged F.I.R. against the complainant-party and appellants have called them to police station in connection with the investigation of such offence. They have caused injuries to the appellants. If they would have gone near the house of the appellants for compromise or resolution of dispute, then there was no propriety for keeping sticks or causing injuries to complainant-party, which shows that complainant-party was aggressor and has caused injuries to the appellants. In exercise of right of private defence, the appellants caused injuries to the complainant-party. None of the witnesses have deposed that who has caused injury to Sukhiya Bai and in case of compromise firstly complainant-party had gone in front of the house of the appellants deliberately with preparation of assaulting the appellants. Even otherwise, out of the injuries, only one injury was found over the body of deceased-Sukhiya Bai, which is grievous in nature and other were simple in nature. F.I.R. Ex. P. 1 was registered for the offence

punishable under Sections 147, 148, 294, 506 and 323 of the I.P.C. and not for causing grievous injury and moreover deceased Sukhiya Bai has died on second day of the incident. Appellants were having ample opportunity to kill Sukhiya Bai and all other complainants because they were standing in front of their house but they have not caused much injuries to the complainant-party. The appellants were having complete opportunity to take Sukhiya Bai to their house, but, they have not taken Sukhiya Bai to their house. This shows that they have not caused injuries to complainant-party with intent to cause death of Sukhiya Bai. Reliance in the case of *Md. Isak Md. and Others Vs. State of Maharashtra*, was placed, in which, the Supreme Court has held that in case of injury caused without any motive or common intention, then conviction should not be under Section 302 or 304(1) of the I.P.C. and the act attributed to the appellants falls within the purview of Section 325/34.

12. On the other hand, Mr. Rama Kant Mishra, learned Deputy Advocate General, opposed the appeal and submits that the evidence adduced on behalf of the prosecution is sufficient for drawing inference that the appellants have caused homicidal death amounting to murder of Sukhiya Bai and they have also caused grievous injuries to three complainants.

13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the present case, the homicidal death as a result of fatal injury found over the body of Sukhiya Bai has not been substantially disputed on behalf of the appellants, on the other hand, also established by the evidence of P.W. 1 Naresh, P.W. 2 Nohar, P.W. 4 Suresh Kumar, P.W. 7 Sukaloram Sahu, P.W. 8 Mehtarin Bai, P.W. 12 Dr. Sanjay Wankede and his autopsy report Ex. 10A, P.W. 14 Dr. V.K. Pandey and injury report Ex. P. 22 and P.W. 20 Devki Bai Yadav and death of deceased-Sukhiya Bai was homicidal in nature.

14. As regards the injuries found over the body of complainants-Nohar, Suresh, Naresh and Mehtarin Bai, the appellants have also not disputed but, on the other hand, also established by the evidence of aforesaid witnesses and P.W. 14 Dr. V.K. Pandey and injury reports Ex. P. 18, 19, 20 & 21.

15. As regards complicity of the appellants in crime in question, the conviction is substantially based on P.W. 1 Naresh, P.W. 2 Nohar, P.W. 4 Suresh Kumar, P.W. 8 Mehtarin Bai and P.W. 20 Devki Bai Yadav, the alleged witness. As per their evidence, on account of earlier dispute between P.W. 2 Nohar and the appellant-Kriparam, the complainant-party called some persons from village for compromise and went near the house of the appellants where appellants were present with sticks, the appellants assaulted them and caused injuries. In their detailed examination, they have admitted that Kriparam lodged report against them and they were called by the police station in connection with the investigation. Thereafter, they reached near the house of the appellants. As per their evidence, it was for compromise and for that they have informed the appellants that they were interested in compromise and they will contact, but the

fact remain that when the complainant-party reached near the house of the appellants at 8.00 p.m., thereafter the incident took place. They have also deposed that Sukhiya Bai also received injuries but none of the witnesses has deposed as to who has caused injuries to Sukhiya Bai. Sukhiya Bai and Mehtarin Bai, being family members of the complainant-party, were also present at the time of incident and there was no propriety for their presence. Ex. D. 1 and Ex. D. 2 show that the charge sheet has been filed against P.W. 1 Naresh, P.W. 2 Nohar, P.W. 4 Suresh Kumar, P.W. 8 Mehtarin Bai and P.W. 20 Devki Bai, i.e., injured witnesses interested witnesses of this case. The evidence of these witnesses, defence taken by the appellants, material evidence adduced on behalf of the prosecution clearly reveal that firstly, the appellants have lodged a report against the complainant-party and complainant-party was called by the police in connection with the investigation, thereafter they reached near the house of the appellants for compromise and they have also caused injuries to them, the incident took place at 8.00 p.m., both the parties received injuries but during the course of incident, Sukhiya Bai received grievous injury and died on second day. Prosecution has failed to show that appellants were having knowledge that the complainant-party had reached near their house for the purpose of compromise and in absence of such facts, causing injury to complainant-party in exercise of right of private defence was not unnatural and two persons received grievous injuries and out of them one has died as a result of grievous injury and that too on second day. The evidence on record further clearly reveal that the appellants have not caused the homicidal death of deceased with intent to cause her death but they have caused grievous injury to Sukhiya Bai, who died on second day. They have also caused injuries to other persons/complainants, who have proved the same.

16. After appreciating the evidence available on record, learned Additional Sessions Judge convicted the appellants under Section 302/34, 325/34, 323/34 and 148 of the I.P.C. While convicting the appellants for causing grievous injury and simple injuries, the Court below has not committed any illegality whereas while convicting the appellants for commission of homicidal death amounting to murder of Sukhiya Bai with the help of Section 34 and 148 of the I.P.C., the Court below has committed an illegality. Consequently, all the above appeals are partly allowed. The conviction of the appellants under Section 302/34 of the I.P.C. is altered to Section 325/149 of the I.P.C. Likewise, their conviction under Section 325/34, 323/34 is also altered to Section 325/149 and 323/149 of the I.P.C. in the light of act attributed to them and the period of detention of the appellants. Last period of detention of the appellants Ganga Bai, Johtarin Bai and Nirasha Bai is 4 months and 22 days. They are sentenced to rigorous imprisonment for six months under the above Sections. The appellants are acquitted of the charge under Section 148 of the I.P.C. Remaining appellants (excepting the appellants-Ganga Bai, Johtarin Bai and Nirasha Bai) have suffered the sentence of imprisonment and they be set at liberty forthwith. Two appellants, namely, Raju and Brijjai Yadav in Criminal Appeal No. 125/2008 are in

custody. They shall be released forthwith.