

(2017) 04 CHH CK 0019
In the Chhattisgarh High Court
Case No : 734 of 2007

Kunwar Lal, S/o Milau Satnami

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 26-04-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#), [Section 147](#), [Section 307](#), [Section 323](#), [Section 148](#), [Section 149](#) - Punishment for murder - Punishment for rioting - Attempt to murder - Punishment for voluntarily causing hurt - Rioting, armed with deadly weapon - Every member of unlawful assembly guilty of offence committed in prosecution of common object

Citation : (2017) 04 CHH CK 0019

Hon'ble Judges : Pritinker Diwaker, Rajendra Chandra Singh Samant

Bench : Division Bench

Advocate : A.K. Prasad Shri Vivek Sharma, V.A. Goverdhan, Rahul Tamaskar

Judgement

1. Since the above appeals have been filed against the judgment dated 6.8.2007 passed in S.T. No.37/85 by which the 12th Additional Sessions Judge (FTC), Durg (CG) convicted the accused/appellants herein under Sections 147 & 302/149 of the Indian Penal Code (for short "the IPC") and sentenced each of them to undergo R.I. for 1 year & and R.I. for Life and fine of Rs.1,000/-, in default to undergo additional RI for 6 months respectively, the same are being disposed of by this common judgment.

2. The prosecution case, in brief, is that in village Malpuri-khurd, PS Nandini Nagar, District Durg there were two groups namely "Satnami Group" and "Hindu Group" and there was long standing rivalry between the said two groups. The appellants herein belong to "Satnami Group", whereas the complainant (PW-2) and others belong to "Hindu Group". On 7.10.1984 at about 3.30 p.m. when PW-2 Dina was in his house, his wife informed him that some persons are beating their son Ganesh. On this, PW-2 along with his other two sons namely

Bholaram & Radhe came out of the house and saw that his son Ganesh is lying on the ground near the school and accused Parmersshwar, Jethu, Nohar and Yadunand were standing there carrying stick in their hands. All the aforesaid accused persons came to the house Dina (PW-2) and assaulted him and his other two sons Bholaram & Radhe. On hearing commotion, some members of PW-2 Dina's group had also come on the spot carrying sticks in their hands and thereafter a free fight had taken place between both the parties and members of both the groups suffered grievous injuries. Further case of the prosecution is that due to fear when Dina & others went inside the house, the accused persons chased Jhaman (since deceased) whose dead body was recovered from a pit after four days of the incident. Report of incident was lodged by Dina (PW-2) on 7.10.1984 at 10.10 p.m. based on which Dehati Nalishi (Ex.D-21) was recorded at Police Station Nandini Nagar. FIR (Ex.P-19) was registered on 8.10.1984 at 1.35 a.m. for the offence under Sections 147, 148 & 307 IPC against the members of Hindu Group namely Parmeshwar, Jethu, Mohar, Yadunand, Kunwar Singh, Narsingh, Sarju & Shiv Guha. However, after the recovery of dead body of Jhaman, inquest was prepared on his body vide Ex.P-17 and the body was sent for post-mortem examination which was conducted on 12.10.1984 by Dr. S.A. Khan (PW-26) and he noticed one wound of 5x3 cm in size on the left mid clavicular region and fracture of right ulna bone at two places. Since the body was highly decomposed & mutilated, no definite opinion regarding cause of death was given by the doctor.

3. On completion of investigation, charge sheet for the offence punishable under Sections 147, 302/149 & 323/149 IPC was filed against the accused persons followed by framing of charge by the trial Court under those section against them. The prosecution in order to bring home the charges levelled against the accused/appellants had examined 30 witnesses in all. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.

4. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, while acquitting the accused/appellants from the charge under Section 323/149 IPC, convicted and sentenced them in the manner as described above.

5. Learned counsel for the accused/appellants submits that:- ? there is no legally admissible evidence that the dead body found in the pit on 11.10.1984 was the body of said Jhaman as the body has not been identified by anyone. Even there is no report of DNA test suggesting that the recovered body was that of said Jhaman. ? in the post-mortem report the cause of death has not been mentioned and thus the prosecution has miserably failed to prove that the death of deceased was homicidal in nature. ? even assuming some incident of maarpeet took place on 7.10.1984 between the members of two rival groups, but there is no evidence showing that it is the appellants who committed murder of deceased Jhaman. ? alleged body of deceased Jhaman was recovered about 2 km away

from the place of occurrence and thus the theory of last seen as enumerated by alleged eyewitnesses of the incident does not come against the appellants. ? Only evidence against the appellants is that on seeing Jhaman coming towards the house of Dinha, the appellants chased him but there is no material on record to show that the appellants could catch him or could made any assault on him. ? it has come in the statement of PW-17 that deceased committed rape upon one Nembai prior to 7-8 days of the incident and since then he was missing. In these circumstances it cannot be said that said Jhaman was done to death by the appellants. ? Once the statements of the eyewitnesses have been disbelieved by the trial Court, the question of conviction of appellants does not arise when other prosecution witnesses have not stated anything against them.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

7. We have carefully considered the evidence, materials on record and the rival contentions and gone through the judgment of the trial Court.

8. Pyarelal (PW-1) has been examined as eyewitness of the incident. He has stated that on the date of incident at about 3-4 p.m. 2-3 boys were hurling abuses which was objected by wife of Dina. Hearing this, the family members of Dina & Ganesh also came out and asked them as to why they are hurling abuses. Meanwhile, Narsingh came there and thereafter quarrel started between Narsingh & Dina and seeing this he went inside his house. In Para-4 this witness has categorically stated that he did not see any person assaulting Jhaman. He has admitted that body of Jhaman was found in a pit on 11.10.1984.

9. Dina (PW-2) is injured witness who lodged Dehati Nalishi. While describing the manner in which incident occurred, he has stated that he saw behind the hay that Kunwarlal & Manrakhan were assaulting the deceased. He has further stated that various persons had entered his house and beaten him. In Para-6 he has stated that he is facing trial under Section 302 IPC in connection with murder of Narsingh. He had not gone to the place of occurrence nor he had seen any accused causing injuries to anyone.

10. Bhola (PW-3) in his examination-in-chief has made allegation against the accused persons for taking part in the maarpeet. He also saw Jhaman being beaten by certain persons but he did not lodge report nor inform the said fact to anyone. He has stated in Para-3 that he is making incorrect statement and he is telling lie in the court.

11. Motilal (PW-4) has also been examined by the prosecution as an eyewitness. According to him also, he saw some persons chasing deceased Jhaman but he has nowhere stated that he saw anyone causing injuries to Jhaman. In Para-4 he has stated that by the time he could return from the village pond, the incident had already taken place.

12. Gangaram (PW-5) is another injured witness. He has stated that there was a free fight between two groups and he does not know as to who had caused injuries to whom.

13. Kalyandas (PW-6), Ganesh Ram (PW-7), Fagua (PW-8), Chhatar Singh (PW-10) & Manglu (PW-11) have not made any specific allegation against the accused persons.

14. Radheshyam (PW-9) did not support the prosecution case and turned hostile.

15. Laxmi (PW-12) & Bisasa (PW-13) have stated that Jhaman was chased by members of Hindu group. They have further stated that their diary statements were never recorded and for the first time they are deposing in the Court. Ramdayal (PW-14) has stated that he along with the police persons was searching for the deceased and after about four days, body of the deceased was recovered from a pit.

16. Durga Prasad (PW-17) is the village Kotwar. He has stated that in the incident between two rival groups, Narsingh had expired and he had gone to lodge the report. He has further stated that at the place of incident, he was not present. He has further stated that 7-8 days prior to the incident, one Nembai was raped by the deceased for which a meeting was called, report was lodged and since that day Jhaman was not seen in the village.

17. Jaanbai (PW-18) has stated that Jhaman was being chased by the members of Hindu party. Jaggu (PW-19), Tetku (PW-20), Lachhan (PW- 21), Manbhawti (PW-23) have not supported the prosecution case and turned hostile. Agraphij Ram (PW-23) is the Patwari who prepared the spot map of Ex.P-14. Harihar Prasad (PW-24) & Lilendra Singh Nayak (PW-25) are the police persons who helped in the investigation.

18. Dr. S.A. Khan (PW2-6) is the person who conducted post-mortem examination over the body of deceased and opined that no definite opinion can be given about the cause of death. Radheshyam (PW-27) is the witness of inquest (Ex.P-17). This witness has stated that he had not seen the dead body, but signed the document. He has stated in categorical terms that he does not know as to whose body was it. Ramnath Sahu (PW-28) did not support the prosecution and turned hostile. Bhola Singh (PW-29) is the police person who recorded Dehati Nalishi (Ex.D-2).

19. B.S. Thakur (PW-30) is the investigating officer who has duly supported the prosecution case.

20. On close scrutiny of the evidence available on record it is clear that there is no legally admissible evidence on record establishing involvement of accused/appellants in commission of the murder of deceased Jhaman as there is nothing to show that any grievous injuries was received by deceased Jhaman in the said incident which resulted in his death and/or the evidence available on record does not establishes as to who among the accused/appellants caused the fatal injuries

to the deceased because nobody saw the assaults on the deceased. True it is that two accused persons namely Kunwarlal & Manrakhan are alleged to have chased deceased Jhaman, as is come in the statements of PW-2, PW-3, PW-5, PW-7 & PW-12, but none of these prosecution witnesses has attributed a specific overt act that these two accused had assaulted the deceased with stick or any other weapon on any part of the body of the deceased. Even the fact that the deceased was being chased by above two accused persons did not find place in Dehati Nalishi (Ex.D-1) & FIR (Ex.P-19). Evidence on record clearly shows that there were two rival groups in the village, one is being headed by PW-2 and another is of the accused persons and because of the factional rivalry in the village, a free fight due to trivial issue took place between both the sides on 7.10.1984 and thus, it may be possible that due to groupism in village the members of complainant's group deposed falsely against the accused/appellants as in the cases arising out of acute factions it is the human tendency to implicate as many persons as possible of the opposite group falsely. Furthermore, none of the witnesses of recovery i.e. PW-15, PW-19, PW-20 & PW-28, supported the prosecution case and turned hostile, however, the trial Court did not take into consideration this important aspect while adjudicating the serious case of murder. In our opinion, when the witnesses of recovery are not supporting the prosecution case to prove the recovery of weapon and turned hostile then it creates serious doubt upon the prosecution case. That apart, in a case of murder exclusive burden lies on the prosecution to not only overrule the possibility of natural, accidental or suicidal death but also to prove homicidal death beyond reasonable doubt either by direct evidence or the expert evidence regarding cause of death is re. However, in the instant case, there is no direct evidence regarding attack on the deceased nor the expert evidence available on record is sufficient to establish homicidal death of the deceased. According to the autopsy surgeon, he could not give any opinion regarding the cause of death because the body was highly decomposed and mutilated. Apart from medical evidence, there is no other evidence by which the prosecution could succeed in establishing the cause of death. Thus, the deceased had met with homicidal death is not established by the prosecution beyond doubt and being so, benefit of same has to go to the accused/ appellants. Since the evidence is completely lacking to substantiate the involvement of accused/appellants in the offence in question, their conviction under Section 302 IPC with the aid of Section 149 IPC is not sustainable and liable to be set aside. Likewise, the prosecution has not collected any material to show that the accused/appellants formed an unlawful assembly and any force was used by any of its member to achieve the common object and therefore finding recorded by the trial Court convicting the accused/appellants under Section 147 IPC is not sustainable in law.

21. For the reasons given above, we are view that from the evidence available on record the charge under Sections 147 & 302/149 IPC levelled against the accused/appellants are not at all made out and therefore they cannot be convicted under those Sections.

22. In the result, both the appeals are allowed. Conviction and sentence of accused/appellants under Sections 147 & 302/149 IPC are hereby set aside and they are acquitted of the aforesaid charges. The appellants are already on bail, therefore, their bail bonds stand discharged.