
(2011) 11 CHH CK 0026
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1062 of 2007

Loknath alias Loku and Others

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 374(2)
Penal Code, 1860 (IPC) — Section 148, 149, 300, 302, 304

Citation : (2011) 11 CHH CK 0026

Hon'ble Judges : T.P. Sharma, J;Rangnath Chandrakar, J

Bench : Full Bench

Advocate : J.P. Yadu, for the Appellant; Madhunisha Singh, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Rangnath Chandrakar, J.—The appellants have preferred this appeal u/s 374(2) of the Code of Criminal Procedure against the judgment of conviction and order of sentence dated 21-6-2007 passed in Sessions Trial No. 17 of 2005 whereby learned 4th Additional Sessions Judge, Durg, after holding the appellants guilty for formation of unlawful assembly being armed with deadly weapons and in prosecution of the common object committing murder of Ashok and caused injuries to Devendra and Heeralal, convicted them under sections 302, 148 and 149/324 of the Indian Penal Code and sentenced them to undergo imprisonment for life and to pay fine of Rs. 2000/- each, in default of payment of fine to further undergo RI for six months, R.I. for one year and RI for one year respectively. All the sentences are directed to run concurrently. The prosecution story, in brief, is that prior to the incident wife of Ashok (since deceased) fell ill and she was not being cured despite the treatment due to which Ashok had suspicion that witchcraft was being played by the wife and daughter-in-law of appellant No. 1 Loknath for which a meeting was convened in the village wherein a fine of Rs. 2500/- was imposed on Loknath but the wife of Ashok did not recover from her illness. The aforesaid fact was the genesis of the enmity between the parties due

to which Loknath called Ashok near his house and in sharing common intention with the other appellants assaulted him with lathis and clubs on 16-12-2004, as a result of which Ashok died on the spot. The matter was intervened by Devendra and Heeralal who were also assaulted by the appellants due to which they sustained injuries.

2. The matter was reported to Outpost Kumhari. The investigating Officer left for scene of occurrence, recorded Dehati Nalisi vide Ex. P/3, merg intimation vide Ex. P/4 and took up the matter for investigation. During the course of investigation, issuing summons to the witnesses vide Ex. P/1, prepared inquest over the dead body vide Ex. P/2. The injured Devendra Kumar and Heeralal were sent for medical examination to District Hospital, Durg vide Ex. P/18-A & P/19-A respectively. Dehati Nalisi and merg intimation were sent to Police Station Old Bhilai for registration where FIR was registered vide Ex. P/29 and merg intimation vide Ex. P/30. Spot map was prepared vide Ex. P/32. Blood smeared earth, plain earth, one piece of stick and one piece of bamboo stick were seized from the spot vide Ex. P/9. Broken piece of jaw with bone and teeth was seized from spot vide Ex. P/14. One bamboo club was seized from appellant Loknath vide Ex. P/8, one bamboo stick was seized from appellant Shivkumar vide Ex. P/10, one bamboo club was seized from appellant Shivdayal vide Ex. P/11, one bamboo club and full shirt were seized from appellant Leeladhar vide Ex. P/12, one bamboo club was seized from appellant Siyaram vide Ex. P/13; one bamboo club and full shirt were seized from appellant Thakur Ram vide Ex. P/15 and one bamboo club and full shirt were seized from appellant Pahru @ Kanhaiya vide Ex. P/16. The clothes of the deceased removed at the time of autopsy were seized vide Ex. P/6. Spot map was prepared by Patwari vide Ex. P/31. The appellants were arrested vide Ex. P/35 to Ex. P/41. The seized articles were sent for chemical examination to FSL, Raipur vide Ex. P/42 and a report thereof was received vide Ex. P/44 whereby presence of blood was confirmed on all the seized articles, except the plain earth.

3. Dead body of deceased was sent for autopsy to District Hospital, Durg, where Dr. A.K. Soni (PW-12), conducted autopsy vide Ex. P/20 and found following injuries:

- i) Lacerated wound of 7 cm x 2 cm x 1 cm over right frontal area of the scalp bone
- ii) Lacerated wound of 4 cm x 1? cm x ? cm over left side of the frontal area of the scalp.
- iii) Lacerated wound of 3 cm x 1 cm x ? cm over right parietal region of the scalp;
- iv) Lacerated wound of 7 cm x 7 cm x 1 cm over right parietal occipital region of the scalp bone exposed;
- v) Lacerated wound of 10 cm x 6 cm x 1 cm bone deep right and left parietal region of the scalp;

- vi) Bruise 18 cm x 15 cm blackish colour on supra scapular region on right side of the back of the chest;
- vii) Bruise 16 cm x 1 cm on right shoulder;
- viii) Bruise 17 cm x 2 cm on right infra scapular region;
- ix) Bruise 14 cm x 2 cm on right infra scapular region 8 cm below the injury No. 8.

The Doctor opined that the injuries No. 1 to 5 were in grievous in nature and cause of death was coma due to the injuries sustained by the deceased and death was homicidal in nature.

4. Injured Devendra and Heeralal were also examined by Dr. J.P. Meshram (PW/11) who found one lacerated wound of 8 cm x 1 cm x 2 cm on right middle finger and contusion in the size of 4 CM x ? cm on left shoulder of Devendra and one lacerated wound of 4 cm x 2 cm skin deep at left parietal region, lacerated wound of 3 cm x 2 cm skin deep at occipital region, contusion of 4 cm x 1 cm at right elbow, contusion of 2 cm x 1 cm over left wrist and contusion of 3 cm x 1 cm over left buttock of Heeralal. Both the doctors opined that the injuries sustained by the deceased and the injured would have been caused by hard and blunt object.

5. Statements of witnesses were recorded u/s 161 of the Criminal Procedure Code, and after completing the investigation, charge-sheet was filed against the appellants under sections 149, 148, 302/149 and 324/149 of the Indian Penal Code in the Court of Additional Judicial Magistrate First Class, Durg, who in turn committed the case to the Court of Sessions Judge, Durg. Learned Additional Sessions Judge, received the case on transfer for trial, who framed charges under sections 148, 302/149 and 324/149 of the Indian Penal Code against the appellants who abjured the guilt.

6. In order to prove the guilt against the appellants, prosecution examined as many as 17 witnesses. Statements of the accused/persons were recorded u/s 313 of the Code of Criminal Procedure, in which they denied the circumstances appearing against them and pleaded innocence and false implication in the case by examining Dr. J.P. Meshram (DW/1), Dr. S.K. Chaube (DW/2), Bharat Nishad (DW/3) and Dr. Sobharam Banjare (DW/4) in their defence.

7. After affording opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellants as aforesaid mentioned.

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

9. Mr. J.P. Yadu, learned counsel appearing for the appellants vehemently argued that conviction of the appellants is based on the evidence of alleged injured eye-witnesses Heeralal (PW/1) & Devendra Kumar (PW/3) and evidence of eye-witnesses Mansharam (PW/4) and Khilawan Yadav (PW/16) whose evidence do

not inspire confidence and trustworthy. There are omissions and contradictions in their statements and their evidence are not safe to rely for convicting the appellants. If the evidence adduced by the prosecution is considered in its entirety, the incident occurred in a free-fight between the parties and the case does not travel beyond the ambit of Exception 4 of section 300 of the Indian Penal Code. Learned counsel for the appellants in support of his arguments, placing reliance in the matter of Resham Singh and Another Vs. State of Punjab, and Smt. Dura Dei and Niranjan Mallick Vs. State of Orissa, argued that the case squarely falls within the ambit of section 304 Part-II of the Indian Penal Code.

10. Per contra, Smt. Madhunisha Singh learned Panel Lawyer appearing on behalf of the State supporting the impugned judgment submits that conviction of the appellants is based on the evidence of injured eye-witnesses Heeralal (PW/1) & Devendra Kumar (PW/3) and evidence of eye-witnesses Mansharam (PW/4) and Khilawan Yadav (PW/16). The incident was not the result of free fight but the deceased was called by the appellants near their house and assaulted. When Heeralal (PW/1) & Devendra Kumar (PW/3) reached the spot to save the deceased, they were also assaulted. The incident occurred near the house of appellants due to previous enmity with pre-meditation of mind. After appreciating the evidence available on record, the trial Court has rightly convicted and sentenced the appellants.

11. In order to appreciate the arguments advanced by learned counsel for the parties, we have examined the evidence adduced on behalf of the prosecution.

12. In the present case, homicidal death of the deceased as a result of fatal injuries found over the vital part of body of deceased Ashok and has not been disputed on behalf of the appellants. Even otherwise, it is further established by the evidence of Dr. A.K. Soni (PW-12) and autopsy report Ex. P/20. In the incident, Heeralal (PW/1) & Devendra Kumar (PW/3) also sustained injuries which is evident from medical reports (Ex. P/18 & P/19) corroborated by Dr. J.P. Meshram (PW/11).

13. As regards complicity of the appellants in crime in question is concerned, it is evident that the incident occurred near the house of appellants which is consistently corroborated by Heeralal (PW/1) and Devendra Kumar (PW/3), who categorically deposed that deceased Ashok Kumar was called by appellant No. 1 Loknath to his house. As soon as the deceased reached near the house of appellants, they all together started assaulting him with lathis and clubs due to which he fell down and when they reached to the spot with a view to rescue the deceased, they were also assaulted by the appellants as a result of which they sustained injuries. They further deposed that there was previous enmity between the parties on the pretext of playing witchcraft by the wife and daughter-in-law of appellant No. 1 Loknath on the wife of deceased Ashok for which a fine of Rs. 2500/- was imposed on appellant No. 1 Loknath in a meeting convened in the village. These witnesses were cross-examined at length but nothing could be elicited by the defence to discredit their testimonies. They categorically denied

the suggestion given by the defence that they were aggressors and the appellants assaulted them in their self-defence.

14. The evidence of the aforesaid injured witnesses is further corroborated by Mansharam (PW/4), father of the deceased and Khilawan Yadav (PW/16). Mansharam (PW/4) categorically deposed that when he reached the spot hearing the commotion and cry, deceased was lying on the ground and being assaulted by the appellants. He identified the appellants in the Court. In his cross-examination, he remained consistent to his statement and clearly stated that the deceased was being badly assaulted by the appellants though he fell on the ground.

15. As per evidence of Khilawan Yadav (PW/16), when he was returning from the school, he saw that the appellants were assaulting Ashok Yadav with clubs and lathis as a result of which he fell on the ground. After assaulting Ashok Yadav, the appellants went inside their house. He further deposed that the house of appellants is on the way to his house from the school. In his cross-examination, he categorically denied the suggestion that he had not witnessed the incident. Thus his presence on the spot and evidence appears to be natural and trustworthy.

16. The appellants took the plea that the deceased and his family members including Heeralal and Devendra were the aggressors. On the date of incident they came to the house of the appellants and committed marpit with them including the mother and daughter-in-law of appellant No. 1 Loknath. In the incident appellant No. 1 sustained head injury and jaw with three teeth of mother of appellant No. 1 was broken. The appellants examined Dr. J.P. Meshram (DW/1), Dr. S.K. Chaube (DW/2), Bharat Nishad (DW/3) and Dr. Sobharam Banjare (DW/4) in their defence. So far as injury sustained by the appellant No. 1 is concerned, Dr. J.P. Meshram (DW/1) deposed that the appellant No. 1 was brought to him for examination on 17-12-2004 and he found 1/3 cm x 2 cm lacerated wound over left parietal region. He opined that the injury to be simple in nature. He further deposed that generally the head injury is presumed to be fatal in nature but it can be well explained by the Doctor who treated the patient. In this regard Dr. Sobharam Banjare (DW/4) posted in the jail dispensary and treated the appellant No. 1 Loknath deposed that he treated the appellant No. 1 Loknath for 15 days and opined that if the patient would not have been given proper treatment, there was possibility of his death due to septicemia and brain infection. This witness while answering the questions put by the Court stated that on 18-12-2004 appellant No. 1 was entered into jail along with his medical examination report and there was no complication in the wound except watery discharge from stitches. He treated the patient upto 10-1-2005 till there was no complication in the wound and it was completely cured. Thus, on the basis of aforesaid appreciation of evidence of the experts, it is found that the injury sustained by appellant No. 1 Loknath was of a simple nature.

17. So far as the injury sustained by mother and daughter-in-law of the

appellant No. 1 Loknath is concerned, in his examination u/s 313 of the Criminal Procedure Code, appellant No. 1 stated that in a village meeting called by the deceased, a fine of Rs. 2500/- was forcibly imposed on him on a false charge of playing witchcraft by his wife and daughter-in-law. On the date of incident, deceased and his family members being armed with lathis came to his house and assaulted them. In the incident, appellant No. 1 sustained head injury, jaw and three teeth of his mother was broken. On going through the evidence on record, it is found that there is no such evidence pertaining to the injury sustained by mother of appellant No. 1 or any other family members. So far as the jaw and teeth are concerned, admittedly it was seized from the place of incident vide Ex. P/14 and the same was sent for examination by Dr. A.K. Soni (PW/12) who, in para 11 clearly stated that the teeth and gum were brought to him for examination in open condition and seeing the same, it was not possible for him to tell that the gum and teeth were of whom. Thus, in absence of evidence on record, it cannot be held that during the incident, mother of appellant No. 1 also sustained injury. The teeth and gum were seized from the place of incident i.e., the lane, not from the house of appellant No. 1 which further goes to show that the teeth and gum were not of the mother of appellant No. 1. Whatever the matter was, there would have been some evidence like FIR and medical examination report. The other witness DW/4 Bharat Nishad also does not appear to be reliable as he has not corroborated the plea of appellants on the material point which appears to be genesis of the incident. In para 6 of his cross-examination, he admitted that a meeting was convened in the village prior to incident regarding playing witchcraft by mother and daughter-in-law of appellant No. 1 but by whom it was called he did not know. He further denied that a fine of Rs. 2500/- was imposed on appellant No. 1. Thus, he has not supported the plea of appellants on the point of fine imposed on them though it was specifically pleaded by the appellants and shown the genesis of the incident. As discussed above, this witness also does not appear to be reliable and trustworthy.

18. In the matters of Resham Singh and another (supra), both parties exchanged attack, counter attack and sustained injuries and in Smt. Dura Dei and another (supra), injury sustained by accused was a lacerated injury on left parietal bone which could not be said a minor and superficial. Here in the present case, it is clear that this is not a case where incident took place on a grave and sudden provocation and in a heat of passion. There was no exchanged attack and counter attack and deceased alone sustained multiple injuries and died instantaneously as is evident from autopsy report (Ex. P/20). There is no evidence on record that except the appellant No. 1 any other person from his family had sustained injury and the incident occurred near the house of the appellants which in itself falsifies the plea of the appellants that the deceased party was aggressor and they entered forcibly into the house of appellants where the deceased died due to the assaults made by appellants in the right of private defence. That apart, the articles seized from the possession of the appellants were found blood stained vide FSL report (Ex. P/44). The multiple injuries found

over the body of deceased and injured witnesses Heeralal and Devendra go to show the pre-meditation of the appellants and their act was in a cruel or unusual manner. Thus, the act attributed to the appellants does not fall within the Exception 4 of section 300 of the Indian Penal Code wherein it is provided that culpable homicide is not murder if it is committed without pre-meditation in a sudden fight, in the heat of a passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner. In the instant case, it is evident that there was pre-enmity pertaining to witchcraft between the parties which originated the pre-meditated plan to cause the incident by the appellants and the plea taken by the appellants does not appear to be reliable as discussed above and after reappraisal of the entire evidence, it cannot be overruled that the appellant No. 1 might have been injured by his own companions as no weapon was seized from the deceased party. Thus, the case laws cited by learned counsel for the appellants are distinct from the facts of the present case.

19. Considering all the facts and circumstances of the case and on close scrutiny of the evidence, we are of the considered opinion that the Court below while convicting and sentencing the appellants has not committed any illegality or infirmity. Consequently, the appeal being devoid of merit is liable to be dismissed and is hereby dismissed.