
(2003) 11 CHH CK 0003
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1285 of 2002

Madari @ Dhiraj and Others

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 06-11-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2003) 11 CHH CK 0003

Hon'ble Judges : K.H.N. Kuranga, C.J.; L.C. Bhadoo, J

Bench : Full Bench

Advocate : R.K. Jain, Mr. Arun Kochar and Shailendra Dubey, for the Appellant;
Praveen Das, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

L.C. Bhadoo, J.—Accused/appellant Umakant alias Kallu has preferred Criminal Appeal No. 1137 of 2002, accused/appellant Lavelesh Tandi has preferred Criminal Appeal No. 1138 of 2002, accused/appellants Madari alias Dhiraj, Alim Khan, Santosh alias Gudda alias Prashant, Girwar and Mahadeo have preferred Criminal Appeal No. 1285 of 2002 and accused/appellant Ram Kumar has preferred Criminal Appeal No. 3401 of 2003. The above named accused/appellants have preferred these appeals u/s 374(2) of the Code of Criminal Procedure, 1973 being aggrieved by the judgment of conviction and sentence dated 29-10-2002, passed by the learned First Additional Sessions Judge, Durg in Sessions Trial No. 381 of 1999 by which the learned Additional Sessions Judge after holding the accused/appellants guilty of the offences punishable under Sections 147, 148 302 read with Section 149 and Section 325 read with Section 149 of the Indian Penal Code convicted and sentenced each of them to undergo rigorous imprisonment for two years u/s 147, rigorous imprisonment for three years u/s 148 and to undergo imprisonment for life and to pay a fine of Rs. 1,000/- in default of payment of fine to further undergo rigorous imprisonment for four months u/s 302 read with Section 149 and to undergo rigorous

imprisonment for two years u/s 324 read with Section 149 of the Indian Penal Code. The case of the prosecution is that PW-1 complainant Ranjeet Singh was residing at Panch Rasta Supela along with his family. On 25-05-1999 at about 5.30 p.m. accused Gudda alias Prashant came to his house to inform Narendra alias Nabbu (since deceased) that he was being called by accused Mahadev and said that since last so many days Mahadev was calling him why he was not meeting him. Narendra alias Nabbu said that he was going to meet Mahadev. Narendra left the house saying that he was going to meet Mahadev inspite of the objection by Ranjeet. Ranjeet also followed him and when Narendra alias Nabbu reached near Subhash Chowk, accused Mahadev, Alim, Giriwar, Gudda, Matari, Kallu, Ramkumar and Lavlesh were coming towards Ajay Poultry Farm House Road having sword, knife, iron rod and Banka in their hands. All of them surrounded Narendra alias Nabbu and started assaulting him with the weapons they were holding. When Ranjeet tried to intervene to save his brother the accused persons also started assaulting him with sword and rod. He received injuries on his hands and legs. At that time PW-7 Rajendra Singh and his nephew Sheru alias Sher Singh also reached the scene of offence. The accused persons started assaulting them also and they received injuries on their head and legs and they ran away from the scene and took shelter in the house of one Basant Gupta. Sub-Inspector D.C. Singh received telephonic information at the Police Station that some quarrel had taken place in Purani Basti. On receiving this information he left for the scene and asked Assistant Sub-Inspector B.S. Sharma to reach the spot. The matter was reported to the Police by Ranjeet Singh (PW-1) at about 7.30 P.M. and the Police recorded the report (Ex. P/1) and sent injured Narendra alias Nabbu along with constables Triyuginath and Divesh to the Government Hospital, Durg where the doctor after examining Narendra alias Nabbu declared him "brought dead". Constable Triyuginath presented the report (Ex. P/34A) at the police Station. On this Merg intimation No. 36 of 1999 (Ex. P/49) was recorded and the information was sent to SDM, Durg. After giving notices to the Panchas, Panchanama (Ex. P/13) of the dead body of the deceased was prepared and the dead body was sent to the District Hospital, Durg, for post mortem examination. Dr. Prabhat Pandey (PW-10) conducted the post mortem examination on the dead body of the deceased and prepared the post mortem report Ex. P/38. The doctor had opined that the cause of death of the deceased was due to excessive bleeding and shock as a result of serious injuries received by him. He also medically examined Ranjeet Singh, Sheru alias Sher Singh and Rajendra Singh and prepared the injury reports Ex. P/35, P/36 and P/37. Inspector Ajit Yadav (PW-14) registered the first information report (Ex. P/1) and prepared the site plan (Ex. P/50) and seized one blood stained iron Banka, Rampuri Knife stained with blood, one razor stained with blood from the place of the incident. He also seized plain soil and blood stained soil from the place of the incident under Ex. P/46. One sword stained with blood which was lying on the scene of the occurrence was also seized vide Ex. P/47. On 28-05-1999 accused Santosh alias Gudda, Alim, Umakant alias Kallu, Girwar, Matari, gave memorandums Exs. P/15, P/16, P/17 and P/18 respectively and in pursuance of

the above memorandums one blood stained sword, blood stained iron rod, one blood stained iron angle and one sword were recovered and seized vide Exs. P/22, P/23, P/24, P/25. One shirt was recovered and seized from the body of accused Girwar under Ex. P/3. These articles were sent for chemical examination to the Forensic Science Laboratory, Raipur and the report (Ex. P/55) was received.

2. The Police after completing the investigation filed the charge-sheet against the accused/appellants in the Court of Judicial Magistrate First Class, Durg who in turn committed the case to the Court of Sessions from where the learned First Additional Sessions Judge received the case on transfer.

3. The learned Additional Sessions Judge after hearing the counsel for the parties and perusing the records found that there were sufficient materials to frame charges under Sections 147, 148, 302 read with Section 149, 307 read with Section 149 of the Indian Penal Code against the accused persons. Accordingly he framed the charges against the accused/appellants and the same were read over and explained to the accused/appellants. The accused/appellants denied the charges and claimed to be tried.

4. The prosecution in order to prove the charges against the accused/appellants examined in all fourteen witnesses at the trial. The statements of the accused/appellants were recorded u/s 313 of the Code of Criminal Procedure. In reply to the questions the accused/appellants denied their involvement in the crime. They stated that the evidence of the prosecution is false and they do not know anything about the crime. They are innocent and have been falsely implicated in the case. In support of their defence the accused appellants examined DW-1 Shyamlal Ratre and DW-2 Sevak Prasad.

5. After hearing the arguments of the learned Addl. Public Prosecutor and the learned counsel appearing for the accused/appellants and after believing the evidence adduced by the prosecution, the learned First Additional Sessions Judge reached the conclusion that the accused/appellants are the persons who had committed the murder of the deceased. He accordingly held the accused/appellants guilty of the offences and convicted and sentenced them as mentioned above.

6. We have heard Shri R.K. Jain, Shri Arun Kochar and Shailendra Dubey, counsel for the accused/appellants and Shri Praveen Das, Panel Layer, for the State/respondent.

7. As far as the nature of the death of deceased Narendra alias Nabbu being homicidal is concerned, it is not in dispute. Dr. Prabhat Pandey (PW-10) in his evidence has stated that on 26-5-1999 at about 12.30 p.m. he conducted autopsy on the dead body of deceased Narendra alias Nabbu and found 22 injuries on the various parts of his body which were incised and cut injuries. In the opinion of the doctor the cause of death of the deceased was due to excessive bleeding and shock as a result of the dangerous injuries received by

him. The death was homicidal in nature. The post mortem report is Ex. P/38. In view of the evidence of Dr. Gyaneshwar Choubey (PW-11), it stands proved that the death of deceased Narendra alias Nabbu was homicidal. Dr. Pandey (PW-10) also examined injured Rajendra Singh, Sher Singh and Ranjeet Singh and proved the injury reports Ex. P/35, P/36 and P/37, respectively.

8. In order to prove the offences against the accused/appellants the prosecution has examined three eye witnesses who saw the incident and out of them PW-1 Ranjeet Singh and PW-7 Rajendra Singh are the injured witnesses who are real brothers of the deceased.

9. As far as the evidence of PW-7 Rajendra Singh is concerned, he has turned hostile and not supported the case of the prosecution. Even he has denied that the matter has been compromised with the accused persons. PW-3 Rajesh Kumar has stated in his evidence in the examination in chief that on 25-05-1999 in the evening at about 5.30-6.00. In Supela near Ajay Poultry Farm accused Matari, Gudda, Girwar, Umakant, Mahadev, Lavlesh Tandi, Ramkumar and Alim had assaulted Narendra alias Nabbu with swords and rod. Thereafter when Ranjeet Singh tried to intervene the accused persons assaulted him also. Rajendra Singh, brother of Narendra alias Nabbu, also reached the scene of incident to save his brother but all the eight accused persons assaulted him also. After assaulting, the accused persons went towards Panch Rasta. Deceased Narendra alias Nabbu fell down at the place of the incident and Ranjeet and Rajendra took shelter in the house of one Basant. The accused persons assaulted Sheru alias Sher Singh also. As mentioned above Rajendra Singh has not supported the case of the prosecution. Sher Singh has not been produced by the prosecution as a witness. The witnesses namely Rajesh Kumar in cross examination in para 16 has totally given contradictory evidence and he has stated that he was doing the business of selling milk and he normally returns at 9.00 p.m. to his house after selling the milk. On the date of the incident he returned to his house between 9-9.30 p.m. He has further stated that one Babloo informed him that 8-10 persons had committed the murder of Narendra alias Nabbu and thereafter only when the Police arrested the accused persons and the news published in the newspaper that Narendra alias Nabbu has been murdered only then he came to know the names of the accused persons. He further stated that Babloo disclosed the names of the accused persons to him. He has not seen accused Mahadev assaulting Narendra. He has gone to the extent of stating that it is correct to say that at the time of the incident he was not at the scene of the indecent and it is also true that he had not seen the incident. He has stated that it is also correct that he gave the statement to the Police on the basis of the information given by Babloo. It is also correct to say that he gave the evidence in the Court on the basis of whatever has been told to him by Babloo. Therefore, in view of this evidence it is not safe to rely on his evidence. Even the prosecution has not taken the trouble to declare this witness as hostile after the above answers given by him in the cross-examination in order to elicitate the true facts of the case by cross examining him. Similarly, PW-1 Ranjeet Singh who is also said to be the

eye witness to the incident and who also received the injuries in the incident and reported the matter to the Police, in the examination in chief, has stated that on the fateful day i.e. 25-05-1999 at about 5.30 p.m. he was in his house and at that time accused Gudda came to his house and informed him that accused Mahadev was calling Narendra alias Nabbu. At that time his elder brother Narendra alias Nabbu was present in the house. In the first instance his brother refused to go to Mahadev, but after sometime he said that he would go to meet Mahadev. He tried to stop him but he left the house saying that nothing would happen and he would come back. Narendra alias Nabbu left the house but he followed him. When deceased Narendra alias Nabbu reached near Ajay Poultry Farm accused Mahadev. Alim, Gudda and Matari started assaulting the deceased. At that time he was at the distance of 100 feet away. When he rushed to save his brother Nabbu, accused Kallu and Hirwar assaulted him with the rod and knife and thereafter accused Lavlesh Tandi and Ramkumar also assaulted him. About other two accused he has not stated anything. But this witness also improved his evidence before the Court and the facts which were not mentioned in the report (Ex. P/1) were stated before the Court. There are omissions in the Police statement (Ex. D/1) and he improved the evidence before the Court. In Para 50 of his cross examination dated 19-02-2002 he has given totally contradictory evidence and stated that on the date of the incident he was not knowing the accused Mahadev. On the date of the incident he went to the pump house at about 2-2.30 p.m. and returned from there at about 7.30 p.m. He came to know about the murder of his brother only when he was returning from the pump houses. Being perturbed he ran towards his house. When he reached the house he saw people had gathered at his house and he fell down from his Suzuki motorcycle and received injuries. He reached the scene of the incident and saw the dead body of his brother. Sheru and Rajendra were not present there and the Police people were taking the dead body of the deceased. When he enquired about his brother Rajendra and nephew Sheru, he was told that they were taken to the hospital. In para 51 he has stated that Sheru and Rajendra had not met him in the hospital. He returned in the night between 12.00 and 1.00. He had not seen the incident. He received the injuries in the accident. In para 52 of his evidence he has stated that when the Police came he was mentally upset. He asked the Police to enquire his family members about the incident. He had not disclosed the name of accused Mahadev. He has gone to the extent of stating that it is correct to say that he had not seen the incident and he had not disclosed the name of anyone and that he had not disclosed to the Police how the incident happened. In view of this, the evidence given by this witness in his examination-in-chief cannot be relied upon. The prosecution has not declared this witness as hostile to cross examine him in order to elicit the truth relating to the incident and to ascertain the involvement, if any, of the accused persons in committing the murder of deceased Narendra alias Nabbu. Since all the three eye witnesses have turned hostile and in view of the contradictory evidence of PW-1 Ranjeet Singh and PW-3 Rajesh Kumar in the examination in chief and in the cross examination, no reliance could be placed on their evidence. Moreover, while

cross examining PW-1 certain suggestions were made to him regarding the character of deceased Narendra alias Nabbu. He has not denied that one case u/s 307 of the Indian Penal Code was pending against the deceased and he was in the habit of harassing the ladies of the locality. He has also not denied that the deceased was detained under the National Security Act for one year. With this background and considering the contradictory evidence of PW-1 and PW-3, we are of the opinion that the evidence of PW-1 Ranjeet and PW-3 Rajesh Kumar does not inspire confidence in the mind of the Court in order to hold the accused persons guilty of forming unlawful assembly to commit the murder of the deceased, committing the murder of deceased Narendra alias Nabbu and assaulting Ranjeet and Rajendra. therefore, the judgment of the trial Court convicting and sentencing the accused/appellants under Sections 147, 148, 302 read with Section 149 of the Indian Penal Code and Section 324 read with Section 149 of the Indian Penal Code cannot be sustained and the same are liable to be set aside. In the result, the appeals of the accused/appellants succeed and the same are allowed. The convictions and sentences passed against the accused/appellants by the trial Court are set aside. The appellants are acquitted of the charges under Sections 147, 148, 302 read with Section 149 and 324 read with Section 149 of the Penal Code. They be set at liberty forthwith if not required in any other case.