
(2010) 11 CHH CK 0019
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 959 of 1993

Mohanlal and Others

APPELLANT

Vs

State of M.P. (Now State of CG)

RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 323, 324, 34

Citation : (2010) 11 CHH CK 0019

Hon'ble Judges : Rajeev Gupta, C.J.; S.K. Sinha, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the judgement dated 29th September, 1993 passed in Sessions Trial No. 45/91 by the Third Additional Sessions Judge, Bilaspur.

2. By the impugned judgement, the appellants have been convicted u/s 302 IPC and sentenced to undergo imprisonment for life. Appellants 1 & 2 have been further convicted u/s 323 IPC and sentenced to undergo R.I. for six months with a direction to run their sentences concurrently.

3. The facts, briefly stated are as under: -

The appellants, deceased - Buchuwa and injured - Johan (PW-1) were residents of same village. On 23.10.90 at about 11.00 a.m., a quarrel took place between Johan (PW-1) and appellant- Kaushal Prasad, as a she - goat belong to Johan entered into the badi of one Khuburam. In the said quarrel, appellants - Kaushal and Mohan allegedly assaulted complainant-Johan (PW-1) by hands and fists. The case of the prosecution is that at about 2.00 p.m. when the deceased and Johan (PW-1) were taking their she - goats towards village Machkuliya, the appellants assaulted them by lathis. Buchuwa (since deceased) and Johan (PW-1) both received injuries. The matter was reported to the police station at about 4.30 p.m. on the same day, on which, a First Information Report (Ex - P/1) was

registered. Buchuwa and Johan (PW-1) were sent for their medical examinations. They were examined by Doctor Y.K. Singh (PW-10). Buchuwa received the following injuries: -

- (i) Lacerated wound 5 cm x 1 cm x bone deep on the middle of the scalp.
- (ii) Lacerated wound 3 cm x 0.5 cm x bone deep above right ear - pinna.
- (iii) Lacerated wound 1 cm x 0.5 cm x 0.2 cm near left eye &
- (iv) Left eye - lid was blackish.

Injury no. (I) and (ii) were grievous injuries, therefore, X - Ray examinations were advised. His injury report is Ex - P/11 - A Johan (PW-1) has received following injuries: -

- (i) Bluishness 6 cm x 3 cm on the back.
- (ii) Bluishness 3 cm x 1 cm on the left side of the neck.
- (iii) Lacerated wound 1 cm x 1 cm on the base of ring finger of left hand &
- (iv) Lacerated wound 1 cm x 1 cm on the left heel.

His injury report is Ex-P/16-A.

Deceased - Buchuwa was referred to District Hospital, Bilaspur, where he was admitted on 25.10.90. He died in the hospital during the course of his treatment on 5.11.90. An intimation of his death was sent by the Hospital Authorities to the concerned police station vide Ex. P/12, on which a merged intimation Ex. - P/13 was lodged. Dr. K K Sao (PW -14) performed autopsy on the dead body of deceased - Buchuwa and found that blood clots were present beneath injury on the skull. He also noticed a fracture on the parietal region of the skull. Blood clots were also found on the dura -membrane beneath fracture. The Autopsy Surgeon opined that the death occurred due to cardio respiratory arrest on account of head injury. The injuries were ante-mortem. The death was homicidal. Appellants /accused person namely Kaushal Prasad and Mohan also sustained injuries. They were also examined by Dr. Y.K. Singh (PW-10) who noticed following injuries on the person of appellant - Kaushal: -

- (i) Incised wound 7 cm x 1 cm x 5 cm on the right parietal region of skull, blood clots present.
- (ii) Abrasion 1 cm x 1 cm, reddish on the lower portion of leg &
- (iii) Abrasion 1 cm x 1 cm on the left shoulder.

Injury report of Kaushal Prasad is Ex - D/3-C.

Appellant/Accused - Mohanlal has received following injuries: -

- (i) Bluish 13 cm x 1.5 cm on the left shoulder.

- (ii) Lacerated wound 6 cm x 2 cm x bone deep on the left parietal region, blood clots present.
- (iii) Bluish 15 cm x 2 cm on the left scapular region.
- (iv) Bluish 13 cm x 2 cm on the left scapular region.
- (v) Bluish 10 cm x 2 cm on the middle of the back.
- (vi) Bluish 10 cm x 3 cm on the right scapular region and
- (vii) Bluish 2 cm x 1 cm on the upper portion of right elbow.

His injury report is Ex. - D/4-C. The injuries sustained by the appellants 1 & 2/ accused persons were simple injuries.

The case of the prosecution was based on eye - witness's account of Johan (PW-1), Kumar Rawat (PW-2) and Panchram (PW -4) turned hostile and he did not support the case of the prosecution.

The appellants claimed their acquittal on the ground of non - explanation of their injuries by 2 eye - witnesses namely Johan (PW -1) & Kumar Rawat (PW-2). The Sessions Judge held that the injuries were simple injuries and if the witnesses have not explained then, it would not be fatal to the prosecution. The Sessions Judge also held that in the facts and circumstances of the case, right of private defence was not available to the appellants. Sessions Judge, therefore, convicted and sentenced the appellants as aforementioned.

4. Mrs. Renu Kochar, learned counsel appearing on behalf of the appellants, argued that the Sessions Judge erred in law in holding that the non - explanation of the injuries sustained by the appellants was not fatal to the prosecution. She also argued that on account of a petty matter, a marpit took place between the two groups, in which the person of both the groups sustained injuries and the deceased died after 13 days of the incident, therefore, the conviction of the appellants u/s 302 IPC was not justified. She argued that even admitting the entire prosecution case, the appellants would be liable for punishment under some lesser Section preferably Part - II of Section 304 IPC. She relied on the judgements rendered in Harish Kumar Vs. State (Delhi Administration), and Babu Lal and others Vs. State of Madhya Pradesh, .

5. On the other hand, Mr. Jameel Akhtar Lohani, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgement passed by the Sessions Court.

6. We have heard the learned counsel for the parties at length and have also perused the records of the sessions case.

7. There is no dispute that the 2 appellants namely Kaushal Prasad & Mohanlal also sustained injuries in the same transaction. Mr. K. R. Karsaal (PW -15 - Investigating Officer) deposed, vide Para -11, that on 23.10.90, appellant - Kaushal had lodged a report against Johan (PW -1), Buchuwa (deceased) and

Firtu, on which an offence u/s 324/34 IPC was registered against them. The copy of the F.I.R is Ex. D/5. It reveals from his evidence that a criminal case vide No. 1776/90 was also pending against the above persons. He further admitted that after the said report, appellants - Kaushal & Mohan were sent for their medical examination through requisition Ex./ P-3 C C and P -4 C C, which were prepared by him. He very categorically admitted that the counter case registered on the report, of accused persons was pending before the concerned Court. This shows that a separate action was taken by the prosecution against the complainant party. The learned Sessions Judge has gone into this aspect and held that the injuries sustained by the accused persons were simple injuries and if the said injuries were not noticed by 2 witnesses namely Johan (PW-1) & Kumar Rawat (PW -2), that would not be fatal to the prosecution. We have considered the evidence of PW -1 & PW -2 and have also seen the injury reports. The injuries sustained by appellant - Mohan were only bluish, and except injury No. (I) sustained by appellant - Kaushal Prasad his other 2 injuries were also abrasions. Therefore, in the facts and circumstances of the case, if the above injuries were not explained by the prosecution witness, that would not render their evidence wholly unreliable.

8. So far as the second argument is considered, admittedly, the incident took place on a petty matter of entering a she - goat of the complainant party into the badi of the accused party. Firstly, a quarrel took place at about 11.00 am. and thereafter another quarrel took place at 2.00 pm. There is no report relating to the first quarrel of 11.00 am. So far as the second quarrel is concerned, the evidence of Johan (PW-1) and Kumar Rawat (PW -2) would show that the appellants assaulted the deceased by lathi, and the deceased received the above injuries and was taken to the hospital on 23.10.90, from where, he was referred to the District Hospital where he died during the course of his treatment on 5.11.90. Therefore, death of the deceased was not instantaneous and had occurred on 13th day of the incident. The accused persons had also received injuries in the same incident for which a separate case was registered and a charge sheet was filed u/s 324/34 IPC. Neither the Doctor, who examined the deceased on 23.10.90, nor the Autopsy Surgeon, who conducted the post - mortem examination had opined that the injuries sustained by the deceased, were sufficient to cause death in ordinary course of nature. In Harish Kumar (supra), the appellant was convicted u/s 302 IPC. It was established that the appellant alone had inflicted the injury which caused the death but the deceased died 2 days after infliction of the injury. The Supreme Court, after considering the entire facts and circumstances of the case and taking note of the nature of the injuries as also the time gap between the time of infliction of the injury till the death which was two days after the injury was inflicted and further that there was no sufficient material as to the nature of the treatment given to the deceased during those two days, set aside the conviction u/s 302 IPC and convicted the appellant u/s 304 Part-II IPC. In Babu Lal (supra), three accused persons came together armed with sharp - edged weapons and inflicted injuries

which resulted in the fracture of the skull bone. The fracture of the tibia, fracture of the metacarpal bone and some other injuries were also caused. The deceased died six days later to the incident. The Supreme Court held that in the facts and circumstances of the case, it cannot be said that the accused persons had a common intention for causing the death. But they must be attributed that by inflicting such injuries they were likely to cause the death of the deceased, in which case the offence will amount only to culpable homicide and not murder. The Supreme Court, therefore, set-aside the conviction u/s 302/34 IPC and convicted the appellants u/s 304 Part-11/ 34 IPC and sentenced each of them to 5 years imprisonment.

9. In case on hand, as stated above, none of the Doctors deposed that the injuries sustained by the deceased were sufficient to cause his death in ordinary course of nature. The quarrel took place on a petty matter of entry of the she - goat in the badi of the accused party. The accused persons used lathi for assaulting the deceased and the victim, and the deceased died on 13th day of the incident while his treatment in the hospital. Therefore, while holding the participation of the appellants in inflicting the injuries to the deceased, it cannot be held that the appellants had an intention to cause death of the deceased. However, they must be attributed that by inflicting such injuries they were likely to cause death of the deceased. Therefore, we are of the considered view, that in the facts and circumstances of the case. the appellants would be liable for conviction u/s 304 Part - II/34 IPC for their above act.

10. In the result, the appeal is partly allowed. The conviction and sentences awarded to the appellants u/s 302 IPC are set aside. Instead, all the three appellants are convicted u/s 304 Part - II /34 IPC and are sentenced to the period already undergone by them, which is more than 4 years in this matter. The conviction and sentences awarded to appellants 1 & 2 u/s 323 IPC are maintained. It is stated that the appellants are on bail. Their bail bonds are cancelled and sureties stand discharged.