
(2014) 06 CHH CK 0026
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 3150 of 1999

Narayan

APPELLANT

Vs

State of M.P. (Now C.G.)

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 437A
Penal Code, 1860 (IPC) — Section 294, 300, 302, 304, 323

Citation : (2014) 4 CGLJ 124 : (2015) 1 MPJR 102

Hon'ble Judges : Yatindra Singh, C.J.; Pritinker Diwaker, J

Bench : Division Bench

Advocate : Shakti Raj Sinha, Advocate for the Appellant; Ravindra Agrawal, Panel Lawyer, Advocate for the Respondent

Judgement

1. This appeal arises out of the judgment of conviction and order of sentence dated 22.10.1999 passed by the First Additional Sessions Judge, Ambikapur, Distt. Surguja in S.T. No. 289/98 convicting each of the accused/appellants under Section 302/ 34 of IPC and sentencing them imprisonment for life. Case of the prosecution, in brief, is that on 24.8.1998 at 6 pm FIR (Ex. P/21) was lodged by Parsuram (since deceased) alleging therein that he is an agriculturist, on that day he was ploughing his field in the morning along with his son Sukhlal (PW-1), at that time accused/appellant No. 1 Narayan who was also ploughing his field came to him and asked as to why he is encroaching upon his field whereupon he (deceased) replied that he is not encroaching upon his field but is trying to level the field. On this, accused/appellant No. 1 Narayan went back to his house and after some time returned with his nephew accused/appellant No. 2 Leduram, both of them were carrying clubs in their hands, they started abusing and beating him with intention to cause his death. He has stated that after seeing the incident of marpeet, his son left the place. Based on this FIR, offences under Sections 294, 506B and 323 of IPC were registered against accused/appellant No. 1 Narayan and accused/appellant No. 2 Leduram. On 24.8.1998 Parsuram was sent for medical examination vide Ex. P/10A by the police and after medical

examination Dr. Sharad Grewal gave MLC (Ex. P/10) and had advised for x-ray of the injuries. He had also examined the lathis seized by the police and vide Ex. P/13 & P/14 opined that the injuries sustained by the deceased could be caused by said lathis and death may be possible due to such injuries. On 25.8.1998 Parsuram expired in hospital and thereafter, merg intimation (Ex. P/20) was recorded. Postmortem on the body of the deceased was conducted on 25.8.1998 by Dr. Ghanshyam Singh (PW-13) vide Ex. P/17 and he opined that the cause of death is the cumulative effect of extra-dural haemorrhage and other injuries resulting into shock and mode of death is syncope. After investigation, charge sheet was filed against the accused/appellants under Sections 294, 323, 506B & 302/ 34 of IPC and thereafter, charge under Section 302/ 34 of IPC was framed against the accused/appellants.

2. In order to hold the accused/appellants guilty, the prosecution examined 15 witnesses in all. Statements of the accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence they examined Gajrup and Budhna as DW-1 and DW-2.

3. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellants as mentioned in para-1 of this judgment.

4. Contention of learned counsel for the appellants is as under:

"(i) that in the promptly lodged FIR (Ex. P/20) by the deceased himself names of accused/appellants No. 1 & 2 (Narayan & Leduram) only have been mentioned and therefore, under no circumstances, accused/appellants No. 3 & 4 (Suranram & Dashru) can be convicted for commission of any offence;

(ii) as names of appellants No. 3 & 4 are missing from the FIR, it also affects the so-called oral dying declaration of the deceased made before PW-2 Sulkaram, PW-3 Jhurmatia, PW-8 Motilal and PW-9 Basantlal and further affects the statement of so-called eyewitness PW-1 Sukhlal;

(iii) that statement of PW-10 Birbal in relation to extra judicial confession made by appellant No. 2 Leduram is not reliable and therefore, the same is required to be ignored;

(iv) even accepting the entire prosecution case as it is, it is apparent that intention of accused/appellants No. 1 & 2 was not to cause death of the deceased and it appears that their only intention was to cause some injuries to him, which unfortunately resulted in his death and therefore, considering this aspect of the case, act of accused/appellants No. 1 & 2 would not come within the definition of Section 300 of IPC and at best, would fall under Section 304 Part-II of IPC;

(v) that accused/appellants No. 1 & 2 have already remained in jail for more than 6 years and 3 months and therefore, after converting their conviction from 302/34 to 304 Part-II of IPC, their sentence may be reduced to the period

already undergone by them."

5. On the other hand, supporting the impugned judgment learned counsel for the State submits as under:

"(i) that conviction of the accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the impugned judgment warranting interference by this Court:

(ii) that there is no reason for this Court to disbelieve the statement of PW-1 Sukhlal as well as the statements of the witnesses before whom oral dying declaration was made by the deceased;

(iii) that statement of PW-10 Birbal is also fully reliable and the defence has failed to elicit anything from him in the cross-examination to render his evidence untrustworthy or doubtful;

(iv) that it is not a case of single blow but a case where repeated assault was made by the accused persons causing as many as 7 injuries, including one on vital part head, and considering the manner in which the deceased was assaulted, intention of the accused/appellants is writ large and therefore, their conviction under Section 302/ 34 of IPC is fully justified."

6. Heard learned counsel for the parties and perused the material available on record including the impugned judgment.

7. PW-1 Sukhlal, son of the deceased, has stated that on the date of incident he was ploughing his field along with his father Parsuram and at about 10-11 am accused/appellant No. 1 Narayan reached there and asked his father as to why he is ploughing his (Narayan's) field, whereupon it was replied by his father that he is ploughing his own field. Thereafter, accused/appellant Narayan went back to his house and at about 12 noon returned along with appellant No. 3 Suran, both of them were having clubs in their hands and despite his intervention they started beating his father. He immediately rushed to his house and informed his mother and brother about the entire incident and then all of them reached their filed and took Parsuram to hospital, however, he expired in the hospital.

8. PW-2 Sulkaram is also son of the deceased. He has stated that he was informed by his brother Sukhlal that their father has been beaten by Narayan, Suran and Ledu whereupon he went to the place of occurrence and found his father lying unconscious there. He has further stated that when his father regained consciousness, he informed him that he (Parsuram) was assaulted by all the accused/appellants. Thereafter, he along with other family members took Parsuram to Ambikapur hospital and on the next day he expired. He is also a witness to inquest notice (Ex. P/2) and inquest (Ex. P/3).

9. PW-3 Jhurmatia, wife of the deceased, has stated that immediately after the incident her son Sukhlal came running to her house and informed that the deceased was beaten by accused/appellant No. 1 Narayan and appellant No. 3

Suran. In cross-examination, she has stated that on being asked from her husband/deceased, he informed her that he has been beaten by accused/appellants Narayan and Suran.

10. PW-8 Motilal and PW-9 Basant are also witnesses to oral dying declaration. They have stated that while injured Parsuram was being taken to hospital, on the way he informed them that accused/appellants Suran, Narayan and two sons of Narayan have beaten him.

11. PW-4 Vishwanath Tiwari, Patwari, prepared and proved the spot map Ex. P/4. PW-5 Kaluwa, Village Kotwar, is a witness to Ex. P/5, P/6, P/7, P/8 & P/9 i.e. seizure of club from accused/appellants Narayan, Ledu, bedhead tickets, arrest memo of accused/appellants Narayan & Leduram respectively. He has partly supported the prosecution case. PW-6 Sahju, a witness to seizure Ex. P/5, P/6 and arrest memo Ex. P/8 & P/9, has also partly supported the prosecution case.

12. PW-7 Dr. Sharad Grewal medically examined Parsuram when he was first brought to hospital on 24.8.1998 and as per MLC (Ex. P/10) noticed following injuries on his person:

"(i) one lacerated wound over right parietal region 6 cm above right ear measuring 2 cm x 2 cm skull deep, blood oozed and had clotted, tenderness was there;

(ii) swelling and tenderness on left hand at mid region, restriction of movement;

(iii) swelling and tenderness on right elbow region, restriction of movement;

(iv) abrasion on left leg 4 cm above the ankle joint of size 2 cm x 2 cm, blood oozed and dried up, tenderness;

(v) abrasion on right leg, tenderness, blood oozed and dried up."

In his opinion, all the above injuries were caused by some hard and blunt object and injury No. (i) was simple in nature. He had referred the injured to District Hospital, Ambikapur for x-ray. He has further stated that the lathis seized by the police were sent to him for examination and opinion as to whether the injuries found on the body of the injured could be caused by these lathis and further, whether such injuries could result into death of the injured in the ordinary course of nature. He has stated that after examination, he had opined vide Ex. P/13 that the injuries sustained by Parsuram could be caused by the said lathis and as per Ex. P/14, in relation to the query whether such injuries could result into death of the injured in the ordinary course of nature, he had opined in the affirmative.

13. PW-10 Birbal is a witness before whom extra judicial confession was made by accused/appellant No. 1 Leduram. He has stated that on the date of incident when he was working in his field, accused/appellant No. 2 Leduram reached there. When he asked Leduram as to from where he is coming, he informed that he is coming from the field, there was some quarrel between the deceased and himself, it is he and Narayan who have beaten the deceased and that after the

incident Suran and Dasru also reached there.

14. PW-11 Jagdish is a witness to inquest notice (Ex. P/2) and inquest (Ex. P/3). PW-12 U.S. Mishra conducted part of the investigation and supported the prosecution case.

15. PW-13 Dr. Ghanshyam Singh conducted postmortem on the body of the deceased and as per postmortem report Ex. P/17, found following injuries on the body of the deceased :

"1. Single anti-mortem lacerated wound size 2 cm long stitched on the right parietal bone present, skin deep. Obliquely placed and clotted blood few present. On dissection of wound, there was no fracture of skull bone visible. On further dissection of skull bone, there was large quantity of clotted and liquid blood present in between the skull bone and meninges. Whole extra-dural space was full of clotted and liquified blood. On further dissection there was no injury seen in brain but brain was pale looking, extra dural haemorrhage.

Opinion : Above injury could be caused by hard and blunt object and fatal in nature.

2. Single anti-mortem abrasion size 5 cm x 4 cm on the right side of back, irregular in shape, clotted blood present. Black in colour (over scapular region).

3. Single abrasion anti-mortem size 2 x 1/2 cm on the left side of back present (on scapular region), irregular in shape and clotted blood present.

4. There was swelling of the whole right upper limb present. Slight blackish in colour. Bony crepitus was present. On dissection there was clotted blood deposited under the skin and deep muscles of whole swelled right upper arm and muscles were stained with blood. On further dissection there was complete fracture of right radius bone, bone ends were stained with blood and it was anti-mortem in nature. Fracture present in the middle 1/3 part of right forearm.

5. There was swelling of left forearm below elbow joint. Forearm was deformed in shape also and bony crepitus present. On dissection there was clotted blood deposited below left elbow, whole limb under skin and deep fascia. On further dissection there was fracture of both bone radius and ulna (left side) was present in lower 1/3 part. Fracture end of bone were stained with blood.

6. There was swelling and abrasions anti-mortem, dressed on the lateral malleolus of right ankle joint size 2x2 cm. On dissection of wound there was multiple compound fracture of lower end of right tibia was present. Size of fracture was 6 cm x 4 cm. Blood stained bone pieces were present. Clotted blood was also present inside the wound.

7. One anti-mortem dressed abrasion size 2 cm x 2 cm on the anterior surface of left leg 4 cm above left ankle joint. On dissection there was little quantity of clotted blood present but no bony fracture seen. Abrasion was irregular in shape.

Opinion of injuries : Injuries No. 4, 5 & 6 are grievous in nature and 2, 3 & 7 are simple in nature. All above injuries could be caused by hard and blunt object. All injuries are anti-mortem in nature."

In his opinion, cause of death is the cumulative effect of extra-dural haemorrhage and other injuries resulting into shock and mode of death is syncope.

16. PW-14 Motichand Kushwaha, Assistant Sub Inspector, who helped in the investigation and PW-15 Agastus Min, Head Constable, who conducted major part of the investigation, have duly supported the prosecution case.

17. DW-1 Gajrup has taken a plea of aibi in respect of accused/appellants Dasru, Suran and Narayan. DW-2 Budhna has also taken a plea of alibi in respect of all the accused/appellants.

18. Minute examination of the evidence makes it clear that on 24.4.1998 when deceased Parsuram was ploughing his field along with his son Sukhlal (PW-1), accused/appellants No. 1 & 2 (Narayan and Leduram) reached there and caused number of injuries to the deceased with lathi. Deceased himself lodged FIR naming accused/appellants No. 1 & 2 as assailants. Even as per extra-judicial confession made by appellant No. 2 before PW-10 Birbal, which has been duly proved by this witness, it is accused/appellants No. 1 & 2, who caused fatal injuries to the deceased. Though as per statements of PW-2 Sulkaram, PW-3 Jhurmatia, PW-8 Motilal and PW-9 Basantlal, before whom oral dying declaration was made by the deceased, accused/appellant No. 3 & 4 (Suranram and Dashru) were also present at the time of occurrence, but taking into consideration the contents of FIR, extra-judicial confession made by appellant No. 2 Leduram before PW-10 Birbal, it will not be safe for this Court to uphold the conviction of appellants No. 3 & 4 for commission of murder of the deceased. The prosecution has not been able to prove involvement of appellants No. 3 & 4 in commission of the crime beyond reasonable doubt and therefore, they are definitely entitled to be acquitted of the charge under Section 302/ 34 of IPC by extending them benefit of doubt. As regards accused/appellants No. 1 & 2, the prosecution has successfully proved their involvement in commission of murder of the deceased on the basis of evidence adduced by it.

19. Now the question which arises for consideration of this Court is as to whether act of accused/appellants No. 1 & 2 (Narayan and Leduram) would come within the definition of Section 300 of IPC or not?

20. From perusal of the MLC (Ex. P/10) as well as postmortem report (Ex. P/17) it is found that in the incident the deceased apart from other minor abrasions sustained one lacerated wound over head, fracture of right radius bone, fracture in middle 1/3 part of right forearm, fracture of both bone radius and ulna and multiple compound fracture of lower end of right tibia and the injury sustained by the deceased on his head was fatal in nature. This fact remains unrebutted that on the date of incident it is accused/appellant No. 1 Narayan after quarreling with

the deceased over ploughing of field went back to his house and after some time returned to the place of occurrence along with accused/appellant No. 2 Leduram armed with lathi and then assaulted the deceased. The said act of these appellants can not be said to be done in the heat of passion upon a sudden quarrel without premeditation. Thus from the ocular as well as medical evidence, intention of appellants No. 1 & 2 to cause death of the deceased is quite evident. The trial Court was fully justified in convicting them under Section 302/ 34 of IPC and we find no illegality or infirmity in the said finding. In the result, the appeal is allowed in part. Conviction of the accused/appellants No. 3 & 4 Suranram and Dashru under Section 302/ 34 of IPC is set aside. They are acquitted of the said charge. They are on bail, therefore, their bail bonds shall continue for a period of six months from today in view of Section 437-A of Cr.P.C. As regards accused/appellant No. 1 & 2 Narayan and Leduram, their conviction and sentence under Section 302/ 34 of IPC are hereby upheld. They are also on bail, therefore, their bail stands cancelled and they are directed to be taken into custody forthwith to serve out sentence imposed upon them.