
(2012) 01 CHH CK 0044

In the Chhattisgarh High Court

Case No : Criminal Appeal No. 1786 of 1995, with Cr.A. No. 1787 of 1995

Ramnandan and another

APPELLANT

Vs

State of M.P. (now State of Chhattisgarh)

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2012) 2 Crimes 496 : (2012) 2 MPHT 36

Hon'ble Judges : Sunil Kumar Sinha, J; R.S. Sharma, J

Bench : Full Bench

Advocate : Kiran Jain, for the Appellant; Ravindra Agrawal, Panel Lawyer, for the Respondent

Judgement

Radhe Shyam Sharma, J.:-

1. Against judgment dated 19-10-1995 passed by Additional Session Judge, Manendragarh, District Surguja in Session Trial No. 140/1994, accused persons/appellants Ramnandan and Buddhu alias Sukhnandan have preferred Criminal Appeal Nos. 1786 of 1995 and 1787 of 1995, respectively.

This judgment shall govern disposal of both the appeals.

By the impugned judgment, accused persons/appellants Ramnandan and Buddhu alias Sukhnandan have convicted u/s 302, IPC and sentenced to undergo imprisonment for life. Case of the prosecution, in brief, is as under :--

On 9-10-1993, at about 7 a.m., the appellants were quarreling with deceased Jailal. Quarreling, they went in front of house of Ramadhar (P.W. 1), where the appellants assaulted the deceased with lathi. Ramadhar (P.W. 1) and Dhaniram (P.W. 10) witnessed the incident. After assaulting the deceased, the appellants fled from there. Village Chowkidar Gulab Singh (P.W. 4) lodged First Information Report (Exh. P-7). Merg Intimation (Exh. P-9) was also recorded. The Investigating Officer reached the place of occurrence and prepared inquest (Exh.

P-1) on the body of the deceased. Dead body of the deceased was sent for post mortem examination to Primary Health Centre, Khadgawan. The post mortem was conducted by Dr. K.L. Banjare (P.W. 9), who gave his report (Exh. P-13). He found (i) lacerated wound on left side of face at lower jaw, 2" x 1" x 1", (ii) lacerated wound over frontal region of head at middle part, 1" x 1/2" x 1/2" blood clots were present, (iii) fracture of two teeth, middle incisor in lower jaw, (iv) lacerated wound over left leg, 1.5" x 1 1/2" x 1", blood clots were present, (v) lacerated wound over medial aspect of lower one-third of right leg, 1" x 1/2" x 1/2" (vi) bruise, three in numbers, at postero-lateral aspect of right foot, 4" x 1", (vii) bruise, five in numbers, at right shoulder at antero lateral aspect of right upper arm, 3.5" x 1/2" x 1/2" and (viii) multiple bruise in both sides of scapular region, six in numbers, 3.5" x 1/2". He opined that the cause of death was shock due to head injury and the death was homicidal in nature.

In further investigation, memorandum statement (Exh. P-2) of appellant Buddhu alias Sukhnandan was recorded u/s 27 of the Evidence Act on 10-10-1993 and at his instance, a lathi was seized vide Exh. P-3. Another lathi was seized from appellant Ramnandan vide Exh. P-5. Plain soil and blood stained soil were seized from the place of occurrence vide Exh. P-4. Shirt and Lungi were also seized from appellant Ramnandan vide Exh. P-6. Seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur vide Exh. P-10. Report of FSL was received vide Exh. P-11.

After completion of the investigation, charge-sheet was filed against the appellants in the Court of Judicial Magistrate First Class, Manendragarh, who, in turn, committed the case to the Court of Session, Ambikapur (Surguja), from where the Additional Session Judge, Manendragarh received the case on transfer and conducted the trial and convicted and sentenced the appellants as mentioned above.

2. Smt. Kiran Jain, learned Counsel for the appellants argued that the evidence of prosecution witnesses are not reliable. The conduct of the prosecution witnesses Ramadhar (P.W. 1) and Dhaniram (P.W. 10) is unnatural. The prosecution story itself is doubtful. She also argued that the appellants were provoked by the deceased. There was severe exchange of abuse between the appellants and the deceased. The appellants would not be punishable u/s 302, IPC. Even after admitting the entire case of the prosecution, they would be liable for punishment u/s 304, IPC.

3. On the contrary, Shri Ravindra Agrawal, learned Panel Lawyer for the State/respondent, supporting the impugned judgment, submitted that the conviction and sentence awarded by the learned Additional Session Judge to the appellants do not warrant any interference by this Court.

4. We have heard learned Counsel for the parties at length and have perused the impugned judgment as also the record of the session case.

5. The conviction of the accused/appellants u/s 302, IPC is based on the

testimonies of Ramadhar (P.W. 1), Beegan (P.W. 2) and Dhaniram (P.W. 10). who are eye-witnesses of the occurrence and their evidence are supported by the medical evidence.

6. Ramadhar (P.W. 1) deposed that on the date of incident, at about 7-8 a.m., he was taking breakfast. He heard noise of some quarreling. He came out of the house and saw that the appellants were assaulting the deceased with lathi. Due to fear and being an old person, he did not rescue the deceased. After committing marpeet with the deceased, the appellants fled from there.

7. Dhaniram (P.W. 10) deposed that on the date of incident, at about 7-8 a.m., he was ploughing his badi (fence). The appellants had caused the deceased to run towards the house of Ramadhar (P.W. 1) and thereafter they assaulted the deceased with lathi. The deceased fell down due to the assault. Due to fear, he did not rescue the deceased. When the appellants fled from there, he went near the deceased and saw that he had sustained injuries on the head, back and leg. Ramadhar (P.W. 1), Beegan (P.W. 2) and one Motiram witnessed the incident.

8. Beegan (P.W. 2) has not deposed about the incident clearly, but he deposed that on hearing noise of some quarrel, he came out of the house and saw that quarreling with each other, the appellants and the deceased were going towards the house of Ramadhar (P.W. 1). He asked them not to quarrel. On this, they went away.

9. Ramadhar (P.W. 1) was aged about 60 years on the date of incident. The appellants were armed with lathi. They were causing the deceased to run and immediately thereafter they assaulted the deceased. The conduct of witnesses Ramadhar (P.W. 1) and Dhaniram (P.W. 10) is not unnatural. The appellants were armed with lathi and they attacked the deceased with lathi. In this situation, creation of fear in the minds of witnesses is natural that in case they would intervene in the assault, they would also be assaulted by the appellants. It is very difficult to predict or express any opinion as to what could have been normal or natural conduct of a person. In such a situation, response of individuals, in any situation, may differ from person to person. It is not possible to reject the evidence or doubt the presence of Ramadhar (P.W. 1) and Dhaniram (P.W. 10) on that ground.

10. In *Mehmood Alam Tariq and Others Vs. State of Rajasthan and Others*, , the Hon"ble Supreme Court observed as follows :--

11. In the light of these principles, we may now consider the first contention urged by the learned Counsel for the appellants. The contention relates to the failure of the prosecution to examine independent witnesses. The High Court has examined this contention but did not find any infirmity in the investigation. It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are

generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil disputes is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner. In *Rana Partap and Others Vs. State of Haryana*, ..

Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.

11. The evidence of Ramadhar (P.W. 1) and Dhaniram (P.W. 10) are duly corroborated by Beegan (P.W. 2). According to Beegan (P.W. 2), he heard noise and he came out of the house. He saw that quarreling with each other, the appellants and the deceased were going towards the house of Ramadhar (P.W. 1) and Ramadhar (P.W. 1) and Dhaniram (P.W. 10) saw that the appellants assaulted the deceased with lathi near the house of Ramadhar (P.W. 1).

12. We have carefully perused the evidence of Ramadhar (P.W. 1) and Dhaniram (P.W. 10). These witnesses have categorically deposed that on the date of incident the appellants assaulted the deceased with lathi. Their evidence is corroborated by Beegan (P.W. 2) as also by the medical evidence. From the medical evidence, we find that cause of the death of the deceased was shock due to head injury and the death was homicidal in nature.

13. Therefore, we do not find any infirmity in the finding recorded by the learned Additional Session Judge that it was the appellants who caused the injuries on the body of the deceased with the lathi and the deceased died on account of the injuries caused by them.

14. Smt. Kiran Jain, learned Counsel for the appellants argued that some quarrel

had taken place between the appellants and the deceased. It appears that the appellants were provoked by the deceased. They abused each other. Therefore, the act of the appellants would not be punishable u/s 302, IPC and they would be guilty of the offence punishable u/s 304, IPC.

15. Now, we shall examine the matter in light of the provisions of Section 302, vis-a-vis Section 304 of the IPC.

16. Section 304 of the IPC provides the punishment for culpable homicide not amounting to murder. It draws a distinction between the penalty to be inflicted in cases, where, an intention to kill being present, the act would have amounted to murder, but for its having fallen within one of the Exceptions in Section 300 of the IPC, and cases in which the crime is culpable homicide not amounting to murder, that means, where there is knowledge that death will be a likely result, but the intention to cause death, or bodily injury likely to cause death, is absent. The first part of Section 304 of the IPC applies where there is intention, whereas the second part applies where there is knowledge but the important thing is that before holding the accused guilty under any part of Section 304 of the IPC, it has to be observed that a death must have been caused by him under any of the circumstances mentioned in the five Exceptions to Section 300 of the IPC, which include death caused while deprived of power of self-control under grave and sudden provocation, while exercising in good faith the right of private defence of person or property, and in a sudden fight in the heat of passion without premeditation. Knowledge of consequences which may result in doing an act is quite different than the intention which denotes that a particular consequence should ensure. For attracting the former part of Section 304 of the IPC, an element of intention is a factor whereas for attracting the later part, an element of knowledge is a factor. The intention is the purposeful doing of a thing to achieve a particular result, whereas, the knowledge is an awareness which attributes to be well informed that a particular result may happen by doing a thing.

17. In Jagtar Singh Vs. State of Punjab, , the Hon"ble Supreme Court held as follows :--

8. The next question is what offence the appellant is shown to have committed ? In a trivial quarrel the appellant wielded a weapon like a knife. The incident occurred around 1.45 noon. The quarrel was of a trivial nature and even in such a trivial quarrel the appellant wielded a weapon like a knife and landed a blow in the chest. In these circumstances, it is a permissible inference that the appellant at least could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death. Therefore, the appellant is shown to have committed an offence u/s 304, Part II of the IPC and a sentence of imprisonment for five years will meet the ends of justice.

18. In Satish Narayan Sawant Vs. State of Goa, , the Hon"ble Supreme Court held as follows :--

40. That being the well-settled legal position, when we test the factual background of the present case on the principles laid down by this Court in the aforesaid decisions, we are unable to agree with the views taken by the High Court. As already noted, it is quite clear from the record that there was an altercation preceding the incident. The place of occurrence is a residence inhabited by both the parties and there is no evidence on record that the deceased was armed with any weapon. Initially the appellant-accused also did not have any weapon with him but during the course of the incident he went inside and got a knife with the help of which he stabbed the deceased. P.W. 7 in his cross-examination has categorically stated that death due to stab injury was in consequence of injury 1 and all other injuries were superficial in nature. So, it was only injury 1 which was fatal in nature. Factually therefore, there was only one main injury caused due to stabbing and that also was given on the back side of the deceased and therefore, it cannot be said that there was any intention to kill or to inflict an injury of a particular degree of seriousness.

19. In the instant case, from the evidence of Beegan (P.W. 2), it appears that some quarrel had taken place between the appellants and the deceased and the appellants had caused the deceased to run. Quarreling with each other, the appellants and the deceased were going towards the house of Ramadhar (P.W. 1). In the FIR (Exh. P-7), it is mentioned that the deceased had gone to Karma dancing place for dance where some altercation had taken place between the appellants and the deceased. Karma dancing is a local culture in which villagers gather at one place and use to dance with each other in groups. In the post mortem report (Exh. P-13), it is mentioned that injuries were caused by hard and blunt object, which was lathi in this case, which is normally carried by the villagers. There is positive evidence to show that the assault was preceded by altercation and quarrel. All these show that there was no intention on the part of the appellants to commit murder of the deceased but the knowledge can be attributed to them.

20. We are therefore, of the opinion that the appellants are liable to be convicted u/s 304, Part II of the IPC. For the foregoing reasons, both the appeals are partly allowed. The conviction and sentence awarded to the appellants u/s 302 of the IPC are set aside. Instead thereof, the appellants are convicted u/s 304, Part II of the IPC. It is stated that the appellants were arrested on 11-10-1993. They were released on bail vide order dated 1-4-2003. They have already undergone for about 9 years and 5 months. We feel that the ends of justice would be served if the appellants are sentenced with rigorous imprisonment for the period already undergone by them. Therefore, for their conviction u/s 304, Part II of the IPC, the appellants are sentenced to undergo rigorous imprisonment for 9 years and 5 months, i.e., the period already, undergone by them, Presently, they are on bail. Their bail bonds are cancelled and sureties stand discharged.