

(2012) 02 CHH CK 0032
In the Chhattisgarh High Court
Case No : Acquittal Appeal No. 103 of 2009

The State of Chhattisgarh

APPELLANT

Vs

Ramlal Yadav and Others

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 173(2), 209, 313

Evidence Act, 1872 — Section 145, 27

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307

Citation : (2012) 2 CG.L.R.W. 137 : (2012) CriLJ 3661

Hon'ble Judges : I.M. Quddusi, J; Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Rajendra Tripathi, for the Appellant; Awadh Tripathi and Sanjeev Banjare, for the Respondent

Final Decision : Dismissed

Judgement

G. Minhajuddin, J.—This appeal has been filed u/s 378 of the Code of Criminal Procedure, 1973 against the judgment of acquittal dated 20-12-2001 passed by III Additional Sessions Judge, Raipur in S.T. No. 291/2001, acquitting the respondents of charges under Sections 147, 148, 149 and 307 of the Indian Penal Code. Case of the prosecution, in brief, is that on 26-5-2001 at about 8 p.m., while injured Jitendra Hirwani (PW-1) was returning home, the respondents waylaid him and alleging that he had been spreading rumour about respondent Hemlal and Kamleshwari Sahu and thereby defaming them, started assaulting Jitendra Hirwani with sticks, hands and fists as well as with knife. At that time, the respondents were threatening him that they will kill him. On alarm being raised by Jitendra, his mother Vimla Bai (PW-4), Amritbai (PW-2) and Janik Bai (PW-5) came there and intervened. After that, the respondents fled from the site of occurrence. Injured Jitendra (PW-1) was first taken to Dr. Sahu of his village, who on seeing the extensive injuries on his body, advised him to go to some big hospital for treatment. Thereafter, when the injured was taken to Medical College Hospital Raipur by his father Ramkumar, Sarpanch Mansharam and other persons

of the village, information regarding the incident was given by the doctor present in hospital to the police outpost situated within the premises of hospital. On receiving information, the police from the outpost had come, to whom the information about the incident was given by injured Jitendra (PW-1), which was reduced to writing and got signed by the injured.

2. After that, on the application of the police, the injured was got medically examined and was subsequently admitted in hospital. As the incident had taken place at Village-Baloda, situated within the local limits of Police Station - Dharseenva, therefore, information was given by the police outpost situated at Medical College Hospital Raipur to Police Station - Dharseenva. On receiving the information, Sub-Inspector R. N. Sahu (PW-11) proceeded to Medical College Hospital Raipur and reached there at about 00.30 hours on 27-5-2001, but as the injured was, at that time, not in a fit condition to give statement, his statement was recorded at about 9.20 a.m. on 27-5-2001 by R. N. Sahu (PW-11) in the form of Dehati Nalishi (Ex. P/1), on the basis of which FIR (Ex. P/1C) was registered at Police Station - Dharseenva on the same day under Cr. No. 82/01 for the offence punishable under Sections 147, 148, 149 and 307 of the IPC against the respondents.

3. After examining the injured, a report (Ex. P/8) was given by Dr. Santosh Bhandari (PW-8). Statements of the witnesses were recorded during investigation u/s 161 of Cr. P. C. On the basis of information given by respondent Ramlal u/s 27 of the Evidence Act, vide Memo Ex. P/4, one steel knife was seized in the presence of witnesses on being produced by respondent Ramlal vide seizure Memo Ex. P/5 by Inspector R.K. Lalwani (PW-10). From the spot, plain and blood-stained soil were seized in the presence of witnesses by R.N. Sahu (PW-11), Sub-Inspector, vide seizure Memo Ex. P/6. Blood-stained wearing apparels of the injured were seized in presence of the witnesses vide Ex. P/7. Spot map Ex. P/9 was prepared. The seized articles were sent for examination to Forensic Science Laboratory, Raipur vide Memo Ex. P/13.

4. After completion of investigation, charge-sheet was filed before the competent Magistrate u/s 173(2) of Cr. P. C. The Magistrate committed the case u/s 209 of Cr. P. C. to the Court of Sessions Judge, from where the same was received by the learned Additional Sessions Judge, Raipur on transfer for trial.

5. Learned trial Court framed charges under Sections 147, 148, 149, and 307 of the IPC against the accused persons/respondents, who abjured their guilt. The prosecution in order to prove its case examined as many as 11 witnesses. Thereafter, statements of the accused persons/respondents were recorded u/s 313 of Cr. P. C. in which they denied the circumstances appearing in evidence against them, pleaded innocence and false implication.

6. Learned trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment acquitted the respondents of the charge under Sections 147, 148, 149 and 307

of the IPC.

7. Heard Learned Counsel for the parties, perused the material available on record including the impugned judgment.

8. In addition to injured Jitendra Hirwani (PW-1), his mother Vimla Bai (PW-4), Amrit Bat (PW-2), Ravi Chandrakar (PW-3) and Janik Bai (PW-5) have been shown as eyewitnesses of the incident. Injured Jitendra (PW-1) has described the incident elaborately in his statement and has stated that the respondents Pakesh Kumar and Shivendra Kumar after abusing him had said that son of the teacher i.e. injured Jitendra Hirwani (PW-1) is coming and today he should be killed, on which respondent Ramlal and Hemlal had come and after that, respondent Hemlal gagged his mouth and respondent Ramlal started stabbing him with knife on his stomach and back, on account of which he sustained 8-9 injuries. Jitendra (PW-1) has further stated that on call being made by respondent Ramlal, that respondents Indal and Radhe had come on the spot and Indal struck him on his back and Radhe gave him blows by fists and kicks. Jitendra (PW-1) has further stated that after that respondents Rakesh and Dalu had also come and Rakesh had assaulted him with a stick on his back and Dalu had given him fist blow. This witness Jitendra (PW-1) has stated that at the last, respondents Pakesh and Shivendra also came and dealt him blows with first and kicks, after which his mother Vimla Bai (PW-4), Amrit Bai (PW-2) and Janik Bai (PW-5) had come on the spot and on their intervention, the respondents had left him and fled from the spot.

9. Jitendra Hirwani (PW-1) has been confronted with Dehati Nalishi (Ex. P/1) in which all these details have not been mentioned and it is only mentioned that the respondents had assaulted him with knife, sticks and fist blows. Omissions in the Dehati Nalishi (Ex. P/1) have duly been proved by Sub-Inspector R.N. Sahu (PW-11). Injured Jitendra (PW-1) has stated that immediately after the incident, he had first gone to the clinic of Dr Sahu of his village, but neither he had narrated the incident to Dr. Sahu, nor he (Dr. Sahu) had asked about the injuries sustained by him (injured). As per statement of Jitendra. (PW-1), he was taken from the clinic of Dr. Sahu to his residence by Santosh Sahu and Netram on bicycle, but to them also the incident was not narrated by the injured. In the circumstances, when injured Jitendra (PW-1) had sustained 7-8 injuries by knife, this conduct of the injured, can, by no stretch of imagination, be termed as natural human conduct. Jitendra (PW-1) has also admitted that he had not disclosed about the incident even to any member of his family, which is evident from the evidence of R. N. Sahu (PW-11), who, in para-4 of his statement, has stated that on arriving at Medical College Hospital Raipur, he had enquired from father of the injured about the incident, who had told him that he has no knowledge about the incident and he (father of the injured) had come on the basis of information received by him. On the contrary, injured Jitendra (PW-1), in para-9 of his statement, has stated that he was taken from his village to Medical College Hospital Raipur by Sarpanch Mansharam, Kotwar Narayan Das,

Thanuram, Punaram and his father Ramkumar.

10. Vimla Bai (PW-4) mother of the injured (PW-1), Amrit Bai (PW-2), Ravi Chandrakar (PW-3) and Janik Bai (PW-5) have been shown as eye-witness of the incident. Among these witnesses, Amrit Bai (PW-2) and Ravi Chandrakar (PW-3) have not supported the prosecution case.

11. At this stage, it is necessary to mention that as per injured Jitendra Hirwani (PW-1), Vimla Bai (PW-4) and Janik Bai (PW-5), the incident had occurred in front of house of Ravi Chandrakar (PW-3). Vimla Bai (PW-4) has also narrated the incident elaborately but the same does not find place in her statement Ex. D/1 and the omissions have been duly proved by the Investigating Officer R. N. Sahu (PW-11). In addition to this, the incident had occurred on 26-5-2001 and although this witness Vimla Bai was available, her statement u/s 161 of Cr. P. C. (Ex. D/1) was recorded belatedly on 4-7-2001 and no explanation, much less satisfactory explanation, has been given for the same. As per statement of injured Jitendra (PW-1), all the respondents had assaulted him with knife, stick, fists and kicks whereas Janik Bai (PW-5) has stated that only respondent Ramlal and Indal were assaulting injured Jitendra and the remaining accused had run away at that time.

12. Contrary to this, injured Jitendra Hirwani (PW-1) has himself stated in chronological order that firstly he was assaulted by respondent Ramlal and Hemlal, then by Radhe and Indal, then by Rakesh and Dalu and lastly by Pikes and Shivendra. As such, as per statement of the injured (PW-1), he was assaulted by Pikes and Shivendra in the last. If this is true, then there is major contradiction between the statements of injured Jitendra (PW-1) and Janik Bai (PW-5) because if the statement of injured Jitendra (PW-1) is taken to be true, then it is not believable that when Janik Bai (PW-5) had seen respondents Ramlal and Indal assaulting Jitendra (PW-1), at that time the remaining respondents had run away. At this stage, it is pertinent to mention that one of the accused named Rakesh being a juvenile was tried by the Juvenile Court.

13. None of the witnesses has stated that respondent Chetan had played any role in assaulting injured Jitendra (PW-1). Injured Jitendra has only stated in para-5 of his statement that when after the incident, he was getting up with the help of his mother Vimla Bai (PW-4), Amrit Bai (PW-2) and Janik Bai (PW-5), that he saw respondent Chetan standing there laughing and taking pleasure. Among the eye-witnesses, Amrit Bai (PW-2) and Ravi Chandrakar (PW-3), have not supported the prosecution case.

14. Injured Jitendra (PW-1) has admitted that in Gram Panchayat election held sometime prior to the incident, Sarpanch Mansharam and respondent Ramlal were rival candidates for the post of Sarpanch. Although Jitendra (PW-1) has stated that Sarpanch Mansharam only belongs to his community, but he is not his relative. However, on this point, Jitendra (PW-1) has been belied by the statement of Janik Bai (PW-5), who has stated that Sarpanch Mansharam and

Jitendra (PW-1) are her relatives. There are material omissions in the statement of injured Jitendra (PW-1) and Dehati Nalishi (Ex. P/1) as well as the statement of his mother Vimla Bai (PW-4) and her diary statement (Ex. D/1) and the same have been duly proved by the investigating officer R. N. Sahu (PW-11). These omissions are of such a nature that they amount to contradiction.

15. Statement (Ex. D/1) of Vimla Bai (PW-4) has been recorded on 4-7-2001 i.e. after more than a month from the date of incident, for which no explanation has been given. There is also material contradiction between the statements of injured Jitendra (PW-1) and Janik Bai (PW-5). It is not in dispute that the incident had occurred at about 8 p.m. and as per statement of injured Jitendra (PW-1), there was no bulb at that time in the election poll at the site of occurrence. Subsequent conduct of injured Jitendra (PW-1), in not narrating the incident to Dr. Suresh Sahu, Santosh Sahu, Netram and also to his family members had been highly unnatural.-Vimla Bai (PW-4) who is mother of the injured (PW-1) had stated in her cross-examination, in para-8, that before the incident, her son Jitendra (PW-1) had suffered mental problem.

16. So far as FIR is concerned, from the statements of injured Jitendra (PW-1) himself, it is clear that he had narrated about the incident to the police, who had come to Medical College Hospital Raipur immediately after his arrival and the same was reduced to writing by the police and was got signed by him. It is not in dispute that the so-called Dehati Nalishi (Ex. P/1) was recorded by R.N. Sahu (PW-11), Sub-Inspector, on the next day i.e. 27-5-2001 at about 9.20 am. From the statement of R. N. Sahu (PW-11) and injured Jitendra (PW-1), it is clear that before recording of Dehati Nalishi (Ex. P/1), on 27-5-2001 at about 9.20 am, information regarding the incident was given on the previous night by injured Jitendra (PW-1) to the police of police outpost situated within the premises of Medical College Hospital Raipur, which was reduced to writing and signed by the injured and after that only, the police had got the injured medically examined by Dr. Santosh Bhandari (P.W. 8) who had given his report (Ex. P/8). As such the so-called Dehati Nalishi (Ex. P/1) recorded by R. N. Sahu (PW-11), S. L. on 27-5-2011 at 9.20 a.m. cannot be termed as FIR and the report recorded by the police of police outpost situated at Medical College Hospital Raipur, which is definitely an FIR being the first in time, has not been produced and has been suppressed. As such, the FIR registered under Cr. No. 82/01 (Ex. P/1C), on the basis of so-called Dehati Nalishi (Ex. P/1), at Police Station - Dharseenva, can, by no stretch of imagination, be termed as first in time and at the most, it is only a statement by injured Jitendra (PW-1) recorded by the police during investigation u/s 161 of Cr. P. C. and the same being hit by Section 162 of Cr. P. C. can only be used for the purpose of contradicting the witness (injured Jitendra, PW-1) in the manner provided in Section 145 of the Evidence Act.

17. From perusal of the material available on record, particularly the statement of injured Jitendra Hirwani (PW-1), it appears that there was some enmity between Sarpanch Mansharam and respondent Ramlal with relation to election

for the post of Sarpanch of Gram Panchayat as Mansharam and Ramlal were rival candidates. The date on which injured Jitendra Hirwani (PW-1) was examined before the Court, Sarpanch Mansharam was also present there, though he was not cited as a prosecution witness, as is evident from para-17 of the statement of Jitendra (PW-1). It appears that Mansharam was over-interested in prosecution of the respondents. Further, Jitendra Hirwani (PW-1) has also tried to suppress his relationship with Sarpanch Mansharam, as has been discussed above. Thus, from the totality of the facts and circumstances, the possibility that due to there being political rivalry between the respondents and Mansharam, Sarpanch, in relation to Panchayat election, the respondents have been falsely implicated in the aforesaid offence, cannot be ruled out.

18. So far as recovery of knife on the basis of information given by accused Ramlal u/s 27 of the Evidence Act is concerned, Memo Ex. P/4 and recovery of knife on the basis of information given vide Seizure Memo Ex. P/5 have not been provide on the basis of evidence adduced by the prosecution as both the independent witnesses i.e. Kotwar Narayandas (PW-6) and Niranjana Sahu (PW-7) have not supported the prosecution case.

19. In view of the abovementioned discussions and looking to the infirmities in the prosecution case, it cannot be said that the prosecution has been successful in proving the charges against the respondents beyond the shadow of reasonable doubt. There is no good ground for interfering with the well reasoned impugned judgment of the trial Court acquitting the respondents of the charges under Sections 147, 148, 149 and 307 of the IPC. In the result, the appeal fails and is hereby dismissed.