

(2011) 09 CHH CK 0056
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 136 of 1996

Vinod	Vs	APPELLANT
State of M.P. (Now State of Chhattisgarh)		RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302

Citation : (2011) 5 MPHT 46

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

Bench : Full Bench

Advocate : Uttam Pandey, for the Appellant; Ashish Shukla, Govt. Advocate for the State, for the Respondent

Final Decision : Dismissed

Judgement

Radhe Shyam Sharma, J.—This appeal is directed against the judgment dated 17th January, 1996 passed in Session Trial No. 274/1991 by 2nd Additional Session Judge, Durg. By the impugned judgment, appellant Vinod has been convicted u/s 302 of Indian Penal Code and sentenced to undergo imprisonment for life. The facts, briefly stated, are as under :--

On 5-6-91, at about 1.15 p.m., deceased Sukalu Ram was returning from the house of Bhikamlal Soni. When he reached near Shastri Square, appellant Vinod and acquitted co-accused persons, namely, Kuljeet Singh and Rambachan stopped him and appellant Vinod demanded money from the deceased for drinking liquor. Upon denial by the deceased, the appellant assaulted the deceased with knife on his chest and ran away. Deceased Sukalu Ram narrated the incident to Bhikamlal Soni and thereafter both went to Police Station, Chhawani, Bhilai to lodge the First Information Report (Exh. P-18). Sukalu Ram was sent for medical treatment to District Hospital, Durg, from where, he was referred to Sector 9, Main Hospital, Bhilai and at about 7.00 p.m. on the same day, Sukalu Ram died due to the injuries sustained by him. Investigating Officer

reached to the Hospital, gave notice (Exh. P-16) to the Panchas and prepared inquest (Exh. P-17) on the dead body of the deceased. Dead body of the deceased was sent for post-mortem examination to District Hospital, Durg. Post-mortem examination was conducted by Dr. R.N. Pandey (P.W. 1), who gave his report vide Exh. P-4. He found incised wounds on the right side of the chest at the level of the nipple. The doctor opined that cause of death was shock and haemorrhage, as a result of injuries on vital organs. In further investigation, blood stained soil and plain soil were seized. At the instance of the appellant, knife and clothes of the appellant were seized vide Exh. P-13. Shirt of the deceased was also seized vide Exh. P-5 and bye-cycle and hand-kerchief were seized from the place of occurrence vide Exh. P-7. Site plan (Exh. P-6) was prepared by Patwari Dileep Chandrikapuri (P.W. 4). Identification parade was conducted by Naib Tehsildar, C.R. Netam (P.W. 7) and identification parade memo (Exh. P-9) was prepared. In the identification parade, the appellant was identified by Fakira Ram Yadav (P.W. 5).

2. After completion of the investigation, charge-sheet was filed against the appellant and co-accused persons in the Court of Chief Judicial Magistrate, Durg, who in turn committed the case to the Court of Session, from where, it was received on transfer by the 2nd Additional Session Judge, Durg, who conducted the trial and convicted and sentenced the appellant as mentioned above and acquitted the co-accused persons Kuljeet Singh and Rambachan from the charges framed against them.

3. Shri Uttam Pandey, learned Counsel appearing for the appellant has argued that evidence of Fakira Ram Yadav (P.W. 5) is not reliable. He was not acquainted with the appellant and even he was not aware of name of the appellant. He is solitary eye-witness and his evidence is full of contradictions and is contrary to the medical evidence. Therefore, his evidence is not reliable and the appellant cannot be convicted only on the basis of his evidence.

4. On the other hand, Shri Ashish Shukla, learned Govt. Advocate appearing for the State has supported the impugned judgment and submitted that the conviction and sentence awarded by the learned Additional Session Judge does not warrant any interference by this Court.

5. We have heard learned Counsel for the parties at length and have perused the impugned judgment as also the record of the Session Court. The conviction of the appellant u/s 302 of the IPC is based on the solitary testimony of Fakira Ram Yadav (P.W. 5), who had witnessed the incident. He is an independent witness.

6. Fakira Ram Yadav (P.W. 5) has deposed that on the date of the incident, he was reposeing inside his house during 12.00 noon to 1.00 p.m. Having heard the abusive words from the betel shop of Sahadev, he came out of his house. Accused persons Rambachan, Vinod and Kuljeet were standing near the betel shop. Vinod was abusing. At that time, Sukalu Ram was coming from the house of Gayaram Soni. Appellant Vinod caught hold of the collar of the deceased and

asked him to give Rs. 10/- for drinking liquor. The deceased told that he did not have money. On this, the appellant left the deceased after slapping him. Thereafter, the appellant gave a hint to Kuljeet shaking his head. In the meantime, the appellant took out knife (chakoo) from his pocket, showing the chakoo to the deceased, he demanded money from him. The deceased took his steps back. As soon the deceased took his steps back, the appellant pierced the chakoo on the left side of the stomach of the deceased and took out the chakoo from the body of the deceased. After taking the chakoo out, Kuljeet said that work has been completed. Thereafter all the three accused persons fled towards Graveyard (Mashan Ghat). The deceased, holding his stomach went towards the house of Gayaram Soni.

7. Bhikamlal Soni (P.W. 2), who is the son of Gayaram Soni has deposed that the deceased was engaged for centering of his house. On the fateful day, the deceased had met him at his house and told that he is going out, however, the work of centering will be completed today. While he was taking meals at his house, he heard noise of save me save me. When he opened the door he saw that the deceased, smeared with blood, was standing near the door. Thereupon, the deceased entered into his house and lay down in the courtyard (parchhi) of the house. He asked the deceased about the incident. The deceased told him that he has been assaulted with chakoo.

8. Looking to the evidence of Fakira Ram Yadav (P.W. 5), it appears that he was not aware of the name of the appellant. FIR (Exh. P-18) was lodged by the deceased himself. Name of the accused persons were not mentioned in the FIR.

9. Fakira Ram Yadav (P.W. 5) has deposed that he was not aware of the name of the appellant but he was acquainted with him with his face. The incident took place on 5-6-91 at about 1.15 p.m. in a broad day light. The statement of Fakira Ram Yadav (P.W. 5) was recorded u/s 161, Cr. PC on 5-6-91 and in his police statement, the name of the appellant was mentioned.

10. C.R. Netam (P.W. 7) has deposed that on 14-6-91, he conducted test identification parade of the appellant and other acquitted co-accused persons. In the test identification parade, Fakira Ram (P.W. 5) had identified the appellant and other acquitted co-accused persons. He also prepared identification memo (Exh. P-9). Fakira Ram (P.W. 5) had deposed that he was called to District Jail, Durg for identification and he correctly identified the appellant vide Exh. P-9.

11. In Malkhansingh and Others Vs. State of Madhya Pradesh, , the Hon''ble Supreme Court has held thus :--

16. It is well settled that the substantive evidence is the evidence of identification in Court and the test identification parade provides corroboration to the identification of the witness in Court, if required. However, what weight must be attached to the evidence of identification in Court, which is not preceded by a test identification parade, is a matter for the Courts of fact to examine. In the instant case the Courts below have concurrently found the evidence of the

prosecutrix to be reliable and, therefore, there was no need for the corroboration of her evidence in Court as she was found to be implicitly reliable. We find no error in the reasoning of the Courts below. From the facts of the case it is quite apparent that the prosecutrix did not even know the appellants and did not make any effort to falsely implicate them by naming them at any stage. The crime was perpetrated in broad day light. The prosecutrix had sufficient opportunity to observe the features of the appellants who raped her one after the other. Before the rape was committed, she was threatened and intimidated by the appellants. After the rape was committed, she was again threatened and intimidated by them. All this must have taken time. This is not a case where the identifying witness had only a fleeting glimpse of the appellants on a dark night. She also had a reason to remember their faces as they had committed a heinous offence and put her to shame. She had, therefore, abundant opportunity to notice their features. In fact on account of her traumatic and tragic experience, the faces of the appellants must have got imprinted in her memory, and there was no chance of her making a mistake about their identity.

12. In Heera and Another Vs. State of Rajasthan, the Hon"ble Supreme Court has held thus :--

6. "16. As was observed by this Court in Matru alias Girish Chandra Vs. The State of Uttar Pradesh, , identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in Court. [See : Santokh Singh Vs. Izhar Hussain and Another, . The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eye-witnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

15. It seems to us that it has been clearly laid down by this Court in Parkash Chand Sogani Vs. State of Rajasthan, Criminal Appeal No. 92 of 1956, decided on 15-1-1957 that the absence of test identification in all cases is not fatal and if the accused person is well known by sight it would be waste of time to put him up for identification. Of course if the prosecution fails to hold identification on the plea that the witnesses already know the accused well and it transpires in the course of the trial that the witnesses did not know the accused previously, the prosecution would run the risk of losing its case.

13. The incident took place in a broad day light and Fakira Ram (P.W. 5) had sufficient time to identify the appellant. It is well settled that the substantial evidence is the evidence of identification in the Court and test identification parade provides corroboration to the identification of the witnesses in the Court. In the test identification parade, Fakira Ram (P.W. 5) had correctly identified the appellant and in the Court also he identified the appellant. Therefore, the evidence of Fakira Ram Yadav (P.W. 5) inspires full confidence of the Court. We have carefully perused the evidence of Fakira Ram (P.W. 5). He specifically deposed that on the date of the incident, the appellant was abusing the deceased and the appellant demanded Rs. 10/- for drinking liquor from the deceased. Upon refusal by the deceased, the appellant slapped the deceased and took out chakoo from his pocket and pierced the chakoo near the chest of the deceased. Dr. R.N. Pandey (P.W. 1) has deposed that he found incised wounds on the right side of the chest at the level of the nipple. He opined that the cause of death was shock and haemorrhage as a result of injuries on the vital organs of the body of the deceased. The evidence of Fakira Ram (P.W. 5) is duly corroborated by the medical evidence. From the above evidence, it is apparent that Fakira Ram (P.W. 5) has no motive to implicate the appellant falsely and his evidence is clinching and cogent.

14. On due appreciation of the entire evidence, we find that the testimony of the Fakira Ram (P.W. 5), who is the eye-witness, is wholly reliable and can be based for conviction of the appellant. Therefore, the finding of the learned 2nd Additional Session Judge, convicting the appellant on the basis of the evidence of Fakira Ram Yadav (P.W. 5) does not call for any interference by this Court.

15. It is not possible to hold that every case of single injury would show the absence of the intend to kill. It would depend on the facts of the each case and type of weapon used would also be one of the important aspects to be kept in view. In the instant case, the appellant demanded money from the deceased for drinking liquor and upon refusal by the deceased, the appellant took out the chakoo from his pocket and assaulted him. Due to that assault, right lung of the deceased was ruptured and there was also a cut-injury on the right ventricle of the heart. This injury was sufficient to cause death. Death was homicidal in nature. The injury which deceased Sukalu Ram suffered clearly shows that the appellant used the knife with a considerable force and the injury was caused on

the vital part of the body. We are of the considered opinion that in the above facts and circumstances, the act of the appellant is punishable u/s 302 of the IPC. For the foregoing reasons, we do not find any substance in the appeal, which deserves to be, and is, accordingly dismissed.