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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2260 of 1999

1. Beko Samad, S/o Bheema, aged about 38 years,
2. Beko Pidtin, S/o Bheema, aged 40 years,
3. Beko Sukku S/o Bheema, Madiya, aged about 35 years,
4. Beko Budroo S/o Bheema, Madiya, aged about 31 years,

(All residents of Gram Mutanpal, P.S. Frezarpur, Distt. Bastar (MP))

---- Petitioner

Versus

- State Of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For appellants : Shri K.K. Singh, Advocate
For Respondent/State : Shri S.K. Mishra, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

20/08/2015

This appeal arises out of the judgment of conviction and order of sentence dated 16.7.1999 passed by II Additional Sessions Judge, Jagdalpur, Bastar in S.T.No.384/98 convicting the accused/appellants under Sections 304 Part-I/34, 452, 324/34 of IPC and sentencing each of them to undergo R.I. for 10 years, pay a fine of Rs.500/-; R.I. for 3 years, fine of Rs.500/- and R.I. for 3 years, fine of Rs.500/- respectively with default stipulations.

02. As per the prosecution case, on 18.5.1998 ox of appellant No.1

Beko Sukku had eaten *Mahua* of PW-2 Beko Sukda. The said ox was driven out by PW-4 Beko Kariya son of PW-2. It is alleged that out of anger the accused/appellants entered the house of PW-2 carrying axe & club in their hands and caused injuries to Beko Kade (wife of PW-2) and others. The injured was shifted to hospital and on the basis of report lodged by PW-2 offences under Sections 452, 324, 34 of IPC were registered against the accused persons. During treatment on 23.5.1998 the injured succumbed to her injuries. Postmortem on the body of the deceased was conducted vide Ex.P/15 by Dr. Pradeep Pandey who noticed injury over left parietal region of size 3 x 2 cm and opined that the cause of death was coma due to head injury. After completion of investigation, charge sheet was filed against the accused persons and accordingly charges were framed against them under Sections 452, 302/34 and 324/34 of IPC.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 8 witnesses. Statements of the accused persons were also 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.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting the accused of the charge under Section 302/34 of IPC, convicted and sentenced them as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits that during pendency of

the appeal, appellants No.2 and 4 namely Beko Pidtin and Beko Budroo have expired and this fact is evident from the report submitted by Station House Officer, P.S. Kodenar, Distt. Bastar. As per the said report, appellant No.2 expired on 5.6.2008 whereas appellant No.4 Beko Budroo expired on 7.7.2010. He submits that the appeal so far as it relates to appellants No. 2 & 4 stands abated and now it is confined only in relation to appellants No. 1 & 3 namely Beko Samad and Beko Sukku. It has been argued that even if the entire prosecution case is taken as it is, at best the appellants No. 1 & 3 can be convicted under Section 304 Part-II of IPC and not 304 Part-I of IPC, as has been done by the trial Court. Lastly, it is submitted that after passing of the impugned judgment, the appellants were never granted bail by this Court and during pendency of this appeal as they served the entire jail sentence, they have already been set free.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no illegality in the same. He submits that considering the weapon of offence and the nature of injuries, the trial Court has rightly convicted and sentenced the the accused/appellants.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-2 Beko Sukda, husband of the deceased and lodger of FIR, is an injured eyewitness to the incident. He has stated that there was previous dispute between him and the accused persons. On the date

of incident the accused persons had caused injuries to his wife with axe. He has further stated that he too was assaulted by appellant No.4 Boko Budroo. PW-1 Laluram is a hearsay witness who attended the Panchayat, in which the incident was discussed. He is also a witness to memorandum of accused/appellant No.1 (Ex.P/1) pursuant to which axe was seized. PW-3 Muchaki Kodu, is also an eyewitness to the incident. He has duly supported the prosecution case and stated that at the relevant time while he was grazing the cattle, he saw quarrel between the accused persons and the deceased and it is the accused/appellants who caused injuries to the deceased. PW-4 Boko Kariya, son of the deceased, is another eyewitness to the incident. He too has categorically supported the prosecution case. PW-5 Smt. Sushila Tekam recorded mereg intimation Ex.P/5. PW-6 Dr. Lakhan Jury medically examined Boko Sukda (PW-2) vide Ex.P/6 and noticed following injuries:

- (i) Bruise, size 1" x 1" over middle of the back,
- (ii) Bruise, size 1" x 1", over right side of the back,
- (iii) Bruise, size 1" x 1/2", over middle of the back.

All the injuries were simple in nature and caused by hard and blunt object.

On the same day, he also examined Lakkhu, S/o Sukda, vide Ex.P/7 and noticed lacerated wound measuring 1" x 1/2" x 1/4", over occipital region of skull and opined that the said injury was simple in nature and caused by hard and blunt object.

09. PW-7 Anukul Chandra, Head Constable, did initial part of investigation. PW-8 Dr.A.K. John, Assistant Surgeon, has proved the

postmortem report Ex.P/15 of the deceased which was conducted by Dr. Pradeep Saxena. He has stated that he was working in the same hospital and he recognized the signature of Dr. Pandey.

10. Close scrutiny of the evidence makes it clear that on 18.5.1998 it is the accused/appellants who caused injuries to PW-2 Beko Sukda, PW-4 Beko Kariya, Lakhme and deceased Beko Kade with club and axe as a result of which Beko Kade died. PW-2 Beko Sukda, PW-3 Muchaki Kodu and PW-4 Beko Kariya have duly supported the prosecution case and the defence has failed to elicit anything in their cross-examination to discredit their testimonies. Their version also finds corroboration from the medical evidence. Thus, taking into consideration the entire evidence, oral and documentary, available on record, the circumstances under which the deceased was assaulted and other persons were caused injuries, the weapon of offence used for assault and the manner in which it was used, I am of the opinion that the trial Court was justified in holding the accused/appellants guilty under Sections 304 Part-I/34, 452, 324/34 of IPC. The findings recorded by the trial Court are based on proper appreciation of the evidence, calling for no interference by this Court.

11. In the result, the appeal fails and is, accordingly, dismissed.

Sd/-
Pritinker Diwaker
Judge

Khan