

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 532 of 2011

- Ashok Kumar Nai, age 20 years, son of Parasram Nai, resident of Village Kataipali D, PS Dharamjaigarh, Distt. Raigarh (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh through District Magistrate Raigarh (CG)

---- Respondent

For appellant : Shri Aman Kesharwani, Advocate.
For Respondent/State : Shri Adil Minhaj, PL

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board by Justice Pritinker Diwaker

05/11/2015

This appeal arises out of the judgment of conviction and order of sentence dated 25.1.2011 passed by the Special Judge, Raigarh in Special ST No.1/10 convicting the accused/appellant under Sections 302/34, 307 of IPC and Section 3(2)(v) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act and sentencing him to undergo imprisonment for life, RI for 7 years and imprisonment for life respectively.

02. As per the prosecution case, accused/appellant Ashok and his brother absconded accused Santosh were working as barber in Village Kataipali (D), P.S. Dharamjaigarh, Distt. Raigarh. It is said that

deceased Jailal Rathia and his brother Belal Rathia (injured) had stopped the work of accused persons as barbar in the village as a result of which the accused persons were annoyed with the deceased and his brother Belal and had inimical relations with them. On 7.7.2009 at about 8 pm the accused persons had gone to the house of the deceased and his brother, hurled abuses at them and defied them. Upon hearing the commotion, when injured Belal and deceased Jailal came out of their house, the accused/appellant Ashok is said to have caused injury on the neck of Belal by knife and when his brother Jailal intervened, both the accused persons caused him injuries as a result Jailal died. Merg intimation Ex.P/17 was recorded on 8.7.2009 at the instance of PW-1 Basant Rathia. Unnumbered FIR (Ex.P/14) was recorded and thereafter, numbered FIR (Ex./13) was registered against the accused persons under Sections 302, 307/34 of IPC and Section 3(2)(v) of the Scheduled Case & Scheduled Tribe (Prevention of Atrocities) Act. Injured Belal was medically examined vide Ex.P/10 by PW-9 Dr. BL Bhagat whereas inquest on the body of the deceased Jailal was performed vide Ex.P/4. The body of the deceased was sent for postmortem which was conducted by PW-9 vide Ex.P/9 wherein he noticed number of injuries on the body of the deceased and opined that the cause of death was syncope as a result of excessive bleeding and that the death was homicidal in nature. After investigation charge sheet was filed against the accused/appellant and his brother Santosh showing him as absconder. Thereafter, charges under Sections 302/34, 307/34 of IPC and Section 3(2)(v) of the Act were framed against the accused/appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 13 witnesses. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him 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 convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that eyewitnesses to the incident i.e. PW-2 Gangaram and PW-5 Smt. Devmati have made contradictory statement and therefore, they are not reliable.

(ii) that considering the nature of injuries sustained by the deceased, offence under Section 302 of IPC is not made out and it appears that the only intention of the accused/appellant was to cause bodily injury to the deceased and therefore, at best he is liable to be convicted under Section 304 Part-I or II of IPC.

(iii) that looking to the nature and extent of injuries suffered by injured Belal (PW-8), conviction of the appellant under Section 307 of IPC is also not sustainable and it is liable to be converted into Section 324 of IPC.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same. He

submits that even assuming that statements of PW-2 and PW-5 are self-contradictory to the extent of seeing the incident by these witnesses but the fact remains that in the incident Belal (PW-8) got injured and Jailal was done to death. He submits that PW-2 is very consistent in his diary statement as well as in his Court statement and therefore, there is no reason for this Court to disbelieve this witness. He further submits that PW-3 and PW-8 are the eyewitnesses in relation to injuries caused to Belal and from their statements it reveal that Jailal was done to death in continuity of the said incident by the accused persons.

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

08. PW-1 Basant Rathia, brother of the deceased Jailal and injured Belal, has stated that they belong to tribal community. On the date of incident one Umesh and Deendayal brought Belal in injured condition and Belal informed him that it is the accused/appellant who had caused injury on his neck by a knife. He has further stated that when he had gone to search his other brother Jailal, on the way he met Gangaram and his mother, who informed him that Jailal has been killed by the accused/appellant and his brother Santosh. Thereafter, he found dead body of Jailal. He has further stated that as he and his family members were not having their hair cut and beard shaved from the accused persons, the accused/appellant was annoyed.

09. PW-2 Gangaram Rathia, an independent eyewitness to the incident, has stated that his house is adjacent to the house of the

deceased Jailal and injured Belal. On the date of incident he saw the accused/appellant quarreling with Jailal and Belal, upon hearing the commotion when he came out he saw the accused/appellant hurling abuses at Jailal and Belal and then the accused/appellant caused injury by an axe on the neck of the deceased. When he (PW-2) intervened he was threatened and chased by the accused persons, however, he immediately rushed to Kotwar and narrated the entire incident to him. He has stated that he met his mother and informed her about the incident. In para-3 while describing the incident he has stated as to the manner in which the appellant caused injury to deceased Jailal. He has further stated that after sustaining injury deceased became unconscious and fell and then he with the help of others tried to lift him. He has further clarified that he was also chased by the accused persons for beating. In cross-examination, but for minor contradictions this witness also remained very firm. Though he admits that at the place of incident there was no source of light but as the accused persons were known to this witness and he had seen them quarreling, the question of light may not be relevant.

10. PW-3 Deendayal, is an eyewitness to the incident where Belal was assaulted prior to murder of Jailal. He has stated that he saw the accused/appellant causing injury to Belal by a knife after chasing him and that he with the help of one Umesh brought injured Belal to his elder brother. He has further stated that while he was returning from the house of brother of Belal, on the way he met Gangaram (PW-2) and his mother Smt. Devmati (PW-5) who informed him that the accused/appellant killed Jailal and then he saw dead body of Jailal

drenched with blood lying near house of accused/appellant. In cross-examination this witness remained very firm and nothing could be elicited from him by the defence to make his evidence untrustworthy or doubtful.

11. PW-4 Ganpatram is seizure witness of Ex.P/1 by which bloodstained and plain soil, one iron knife and clothes of the accused/appellant were seized. PW-5 Smt. Devmati is another independent eyewitness to the incident. She has stated that when she had gone to the bore-well of the village, the accused/appellant and Santosh came there carrying Farsa and assaulted Jailal. When she tried to intervene, she too was chased by the accused persons and on account of fear she ran towards the village and thereafter, she narrated the incident to the villagers. She has stated that her son (PW-2 Gangaram) also reached there and when he tried to intervene, he too was threatened and chased by the accused persons. In cross-examination she has categorically stated that on the date of incident accused/appellant was there in the village and she saw him committing the offence. PW-6 Madho Singh is a witness to memorandum of the accused/appellant (Ex.P/2) and seizure of axe Ex. P/3. PW-7 Kalapram Nishad is a witness of inquest Ex.P/4, seizure Ex.P/5 and Farari Panchanama Ex.P/6 and spot map Ex.P/7. PW-8 Belal Rathia, an injured eyewitness to the incident, while supporting the prosecution case has stated that on the date of incident the accused persons came to his house, asked his brother Jailal to accompany them and thereafter, he saw the accused persons quarreling with Jailal and then accused/appellant Ashok caused injury on his neck. He has stated that

he remained in the hospital for about 15 days and as he was beaten, on account of fear he ran away from the spot and immediately thereafter he came to know that the accused persons have killed his brother Jailal by causing him injury with knife. In cross-examination he remained very firm. PW-9 Dr. BL Bhagat conducted postmortem on the body of deceased Jailal vide Ex.P/9 and noticed following injuries:

- (i) incised wound in the post aspect of lower part of the neck, size 12 x 8 x 7 cm with fracture;
- (ii) incised wound in right supra scapular region, size 4 x 2 cm;
- (iii) incised wound in post aspect of right upper arm, size 4 x 2 x 4 cm;
- (iv) contusion in post aspect of left abdomen, size 2 x 1 cm .

In his opinion, the cause of death was syncope as a result of excessive bleeding and that the death was homicidal in nature.

He had also done MLC of injured Belal (PW-8) vide Ex.P/10 and noticed one lacerated wound in the middle part of the neck, size 10 x 1 cm with regular margin and clotted blood. The said injury was caused by hard and sharp edged object.

12. PW-10 Kanhaiyalal Tiwari registered the FIR (Ex.P/13) and unnumbered FIR (Ex.P/14). PW-11 Anandram Sidar, Patwari, prepared spot map Ex.P/7. PW-12 Babulal Sharma recorded merg intimation and helped in the initial investigation. PW-13 GN Patel, investigating officer, has duly supported the prosecution case.

13. Close scrutiny of the evidence makes it clear that there was quarrel between the accused persons and the deceased Jailal and his brother Belal (PW-8) as they were not allowing the accused persons to perform

the work of barber in the village. On the date of incident the accused persons had gone to the house of deceased, started hurling abuses at them and then first caused injury to Belal by knife and when he ran away from the spot, they caused injury to Jailal which resulted in his death. The incident was witnessed by PW-2 Gangaram and PW-5 Smt. Devmati. Though there are some contradictions between statements of these witnesses, but if the case diary statement of PW-2 is seen and compared with his Court statement, in both the statements he has made the same version and remained very firm in the Court. He has categorically stated as to the manner in which the deceased was done to death by the accused/appellant with the help of co-accused Santosh. Even if the statement of PW-5 is ignored considering the improvement in her Court version, statement of PW-2 is good enough to uphold the conviction of the appellant, especially when the other circumstances clearly establish the fact that in the incident Jailal was killed by the accused/appellant by causing him injury with axe. This apart, PW-1 Basant Rathia and PW-3 Deendayal were also informed about the incident by PW-2 and PW-5 immediately and they too have deposed that the accused persons assaulted Belal and Jailal. Medical evidence also lends support to the version of the prosecution according to which corresponding injuries were noticed on the body of injured Belal and deceased Jailal. PW-6 Madho Singh who is a witness to memorandum of the accused/appellant (Ex.P/2) pursuant to which weapon of offence axe was seized vide Ex. P/3 has also duly supported the prosecution case. Thus, in view of the material available on record, minor contradictions in the statements of the witnesses are required to be ignored as eyewitness PW-2 Gangaram has been very

consistent throughout and therefore, conviction of the accused/appellant under Section 302/34 of IPC being in accordance with law is hereby upheld.

14. As regards conviction under Section 307 of IPC, looking to the nature and extent of injuries suffered by Belal (PW-8), which have been opined by the doctor as simple in nature, conviction of the accused/appellant under Section 307 of IPC is liable to be converted into Section 324 of IPC and sentenced to undergo RI for two years thereunder.

15. As there is no reliable evidence in respect of caste of the injured and the deceased and this apart, the prosecution has failed to satisfy the requirement of the Act for bringing home the offence under Section 3(2)(v) of the Act, conviction of the appellant under this section is not sustainable.

16. For the reasons stated above, the appeal is allowed in part. While maintaining conviction and sentence of the appellant under Section 302/34 of IPC and acquitting him of the charge under Section 3(2)(v) of the Act, his conviction under Section 307 of IPC is altered to Section 324 of IPC and he is sentenced to undergo RI for two years. All the sentences shall run concurrently. As the accused/appellant is already in jail, no further order regarding his surrender etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(C.B. Bajpai)

Judge