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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.453 of 2010

Mintoo @ Manpreet Marva, S/o Raju @ Rajendra Singh Marva, aged 22 years, R/o Pandri Talab Paar, PS Pandri, Distt. Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through PS Pandri, Distt. Raipur.

---- Respondent

Criminal Appeal No.548 of 2010

Prem Shankar Nirmalkar, aged 25 years, S/o Ram Avatar Nirmalkar, R/o Naharpara Pandari Tarai, Thana Pandari, Distt. Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Police Station Pandari, Raipur (C.G.)

---- Respondent

AND

Criminal Appeal No.308 of 2011

Krishna Sahu, S/o Aasharam Sahu, aged about 30 years, R/o Pandari Talab, Near Shiv Mandir, Thana Pandri, Distt. Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Pandri, Distt. Raipur (C.G.)

---- Respondent

For Appellant in Cr.A.No.453/2010: Mr. Devershi Thakur, Advocate.

For Appellant in Cr.A.No.548/2010: Mr. A.D. Kuldeep, Advocate.

For Appellant in Cr.A.No.308/2011: Mrs. Fouzia Mirza, Advocate.

For Respondent / State: Miss Pushpa Dwivedi, Panel Lawyer.

Hon'ble Shri Justice T. P. Sharma and
Hon'ble Shri Justice Inder Singh Uboweja

Judgment On Board By T.P. Sharma, J

27/04/2015

1. Cr.A.Nos.453/2010, 548/2010 & 308/2011 filed against judgment dated 30-6-2010 passed by the Sessions Judge, Raipur in Sessions Trial No.208/2009 are being disposed of by this common judgment.
2. By filing aforesaid three criminal appeals, the appellants have challenged legality and propriety of the judgment of conviction & order of sentence dated 30-6-2010 passed by the Sessions Judge, Raipur in Sessions Trial No.208/2009, whereby & whereunder learned Sessions Judge after holding the appellants guilty for causing homicidal death amounting to murder of Karpal Singh in sharing common intention and causing simple injuries to Giru Yadav (PW-1) in sharing common intention, convicted the appellants under Sections 302 read with Section 34 and 323 read with Section 34 of the IPC and sentenced them to suffer imprisonment for life & pay fine of Rs.1,000/- each, in default additional RI for three months, and RI for six months, respectively.
3. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellants and thereby committed an illegality.
4. As per case of the prosecution, on account of previous dispute at morning time on 22-8-2009 between the appellants and brother of injured witness Giru Yadav (PW-1) namely Basant Yadav, while Giru Yadav (PW-1) and unfortunate deceased Karpal Singh were working in tent on the eve of Ganesh Puja, the appellants came, they were holding knife, they assaulted Giru Yadav (PW-1) by knife, thereafter, they assaulted Karpal Singh by knife and caused fatal injuries to him. They shouted, then witnesses Bhanu Yadav, Durgesh Kolhe, Raspal Singh, Deepak Yadav, Chhotu Yadav and others came, they took the injured to hospital and police station. Giru Yadav (PW-1) lodged FIR vide Ex.P-1 at Police Station Pandri, Raipur. Injured Giru Yadav (PW-1) was taken to Mekahara Medical College Hospital for treatment. He was examined by Dr. Vinay Jaiswal (PW-21) vide Ex.P-32 and one lacerated wound of 6 c.m. X 4 c.m. on posterior lateral aspect of right shoulder was found. Injured Karpal Singh was taken to hospital for examination vide Ex.P-14, but he was found dead. Death was intimated and morgue was recorded vide Ex.P-16. The investigating officer left for the scene of occurrence. After summoning the witnesses vide

Ex.P-4, inquest over the dead body of the deceased was prepared vide Ex.P-5.

5. Dead body was sent for autopsy to Mekahara, Raipur. Dr. Shivnarayan Manjhi (PW-5) conducted autopsy vide Ex.P-9 and found following injuries:

1. Stab injury on left inguinal region 3 c.m. interior to anterior superior iliac 4 c.m. X 3 c.m. vertically 10 c.m. deep, abdominal cavity deep. After cutting skin soft tissue which extend in inguinal sheath then cut through and through femoral vessels and iliac vessels border $\frac{1}{3}$ point through and through then extend descendary canal through and through all and red colour ecchymosis.
2. Abdominal cavity contains glitter blood, injury diverted anterior to posterior down to upwards.

Mode of death was haemorrhagic shock and death was homicidal in nature.

6. Bloodstained and plain soil were recovered from the spot vide Exs.P-18 and P-20. Registered morgue was recorded vide Ex.P-24. Sealed clothes of the deceased and viscera were seized vide Ex.P-25. Spot map was prepared vide Ex.P-26. Bloodstained clothes of Giru Yadav (PW-1) were seized vide Ex.P-2. Spot map was prepared by the Patwari vide Ex.P-3.
7. During the course of investigation, appellant Prem Shankar was taken into custody, he made disclosure statement of knife vide Ex.P.10 and same was recovered at his instance vide Ex.P-11 along with clothes. Appellant Minto @ Manpreet also made disclosure statement of knife vide Ex.P-12 and same along with clothes was seized at his instance vide Ex.P-13.
8. Seized articles were sent for chemical examination to the FSL vide Ex.P-28. Criminal record of the appellants was collected vide Exs.P-29 to P-31. As per FSL report Ex.P-34, presence of blood was found upon the knife. Statements of the witnesses were recorded under Section 161 of the CrPC.
9. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Raipur, who committed the case to the Court of Sessions, Raipur, where the trial was conducted.
10. In order to prove the guilt of the accused/appellants, the prosecution has examined as many as 21 witnesses. The accused were examined under Section 313 of the CrPC in which they denied the circumstances appearing

against them, pleaded innocence and false implication in the crime in question.

11. After providing opportunity of hearing to the parties, learned Sessions Judge convicted & sentenced the appellants as aforementioned.
12. We have heard learned counsel for the parties, perused the judgment impugned and records of the Courts below.
13. Mrs. Fouzia Mirza, Mr. Devershi Thakur and Mr. A.D. Kuldeep, learned counsel for the appellants, vehemently argued that injured witness Giru Yadav (PW-1) has deposed that he and deceased Karpal Singh sustained injuries near the tent, but Raspal Singh (PW-15) – brother of deceased Karpal Singh, has deposed that he heard the sound of 'bachao' then he rushed towards the spot and saw injured Karpal Singh, his brother, and Giru Yadav (PW-1), Karpal Singh made dying declaration that present appellants have caused injuries by knife to them, then they brought Giru Yadav and Karpal Singh to hospital where Karpal Singh died, however, his presence has not been admitted by other eyewitnesses namely Giru Yadav (PW-1), Deepak Yadav (PW-3) and Mukesh Kumar Yadav (PW-4). Even Ex.P-1 FIR does not disclose that the deceased made dying declaration before Raspal Singh (PW-15). Therefore, if the evidence of Raspal Singh (PW-15) is considered, then only the part of evidence that would be available for consideration is that he has seen injured Karpal Singh and injured Giru Yadav (PW-1), but the deceased has not made any dying declaration before him. Learned counsel further argued that even as per case of the prosecution, there was some enmity between injured Giru Yadav (PW-1) and the appellants, not with Karpal Singh, they came and caused injuries to Giru Yadav, but when Karpal Singh tried to save him, they caused single blow to Karpal Singh which shows that they have not caused injury to the deceased with intent to cause his death amounting to murder. Therefore, if case of the prosecution and evidence of Raspal Singh (PW-15) are considered in its face value, even then the act attributed to the appellants does not travel beyond the scope of Sections 304 Part-II read with Section 34 and 323 read with Section 34 of the IPC.
14. On the other hand, learned State counsel opposed the appeals and submitted that evidence of Raspal Singh (PW-15) by itself is sufficient to prove the fact that the appellants having grave intention to commit murder

of Giru Yadav and Karpal Singh have caused injuries to them and caused homicidal death of deceased Karpal Singh amounting to murder. After appreciating the evidence available on record, the trial Court has rightly convicted and sentenced the appellants.

15. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
16. In the present case, homicidal death as a result of fatal injuries found over the body of deceased Karpal Singh has not been substantially disputed on behalf of the appellants. On the other hand, it is also established by evidence of Giru Yadav (PW-1), Deepak Yadav (PW-3), Mukesh Kumar Yadav (PW-4), Raspal Singh (PW-15), FIR Ex.P-1, morgues Exs.P-16 & P-24, evidence of Dr. Shivnarayan Manjhi (PW-5) and autopsy report Ex.P-9 that death of deceased Karpal Singh was homicidal in nature. Injury caused to Giru Yadav (PW-1) has also not been substantially disputed on behalf of the appellants and same stands established by evidence of Giru Yadav (PW-1), Dr. Vinay Jaiswal (PW-21) and injury report Ex.P-32.
17. As regards complicity of the appellants in the crime in question, conviction of the appellants is substantially based on the evidence of Giru Yadav (PW-1) and Raspal Singh (PW-15).
18. As per evidence of Giru Yadav (PW-1), there was some dispute between his brother Basant Yadav and the appellants at morning time, thereafter, at evening while they were present near Ganesh tent, persons who were closing their mouth came to them and caused injury to him and Karpal Singh, then they shouted and other members of the ward came who took them to hospital and police station where he lodged FIR vide Ex.P-1. As per case of the prosecution, Giru Yadav (PW-1) is eyewitness and injured witness, but he has not supported the case of the prosecution relating to the fact that the appellants have caused injury to him and the deceased. The prosecution has declared him hostile, but even then he has not supported the case of the prosecution.
19. Another witness Raspal Singh (PW-15), brother of the deceased, has deposed that after hearing the sound, he rushed towards Giru Yadav (PW-1) and the deceased. Deceased Karpal Singh made dying declaration that these appellants have caused injury to him then he took the injured to

hospital where the doctor informed that the deceased had died. His presence on the spot has not been admitted by Giru Yadav (PW-1), Deepak Yadav (PW-3) and Mukesh Kumar Yadav (PW-4), but Ex.P-1 FIR reveals his presence just after the incident though as per FIR Ex.P-1, the deceased was unconscious and it does not reflect about the dying declaration. His presence and active participation shows that Raspal Singh (PW-15) was present on the spot. He rushed towards the place of incident within view seconds. Injury upon thigh and lower part of abdomen, virtually, was not fatal, therefore, it would be difficult to hold that just after sustaining injury the deceased become unconscious, inter alia, at least he was having some time to state. Therefore, his evidence relating to dying declaration made by the deceased cannot be discarded. Inter alia, his evidence relating to dying declaration inspires confidence and is trustworthy, and same is sufficient for proving the fact that the deceased made dying declaration that the appellants have caused injury to him.

20. As per evidence of Giru Yadav (PW-1), persons who have closed their face came towards them and caused injury shows the common intention. As per evidence of Raspal Singh (PW-15) and Giru Yadav (PW-1), there was enmity of the appellants with Giru Yadav (PW-1) and his brother, but not with Raspal Singh (PW-15). Evidence of both the witnesses and FIR Ex.P-1 reveal that initially, the appellants proceeded for causing injury to Giru Yadav (PW-1) and they have caused injury to Giru Yadav (PW-1), but the deceased was also present on the spot, may be the case that he was trying to save Giru Yadav (PW-1) and, therefore, they have caused injury to him. This shows that the appellants were not having any motive for causing injury or committing murder of deceased Karpal Singh, but at the time of causing injury they have shared common intention and they were having knowledge that the deceased may die.

21. Consequently, the act of all the appellants squarely falls within the ambit of Section 304 Part-II of the IPC. Conviction and sentences of the appellants under Section 323 read with Section 34 of the IPC has not been disputed by the appellants, inter alia, same is proved by evidence of Giru Yadav (PW-1) and Raspal Singh (PW-15). While convicting and sentencing the appellants under Section 323 read with Section 34 of the IPC, the trial Court has not committed any illegality, but while convicting and sentencing the

appellants under Section 302 read with Section 34 of the IPC, the trial Court has not considered the aforesaid facts and circumstances of the case and thereby committed an illegality.

22. Consequently, the appeals are partly allowed. Conviction and sentences of the appellants under Section 323 read with Section 34 of the IPC are hereby affirmed. Conviction of the appellants under Section 302 read with Section 34 of the IPC is altered to Section 304 Part-II read with Section 34 of the IPC and the appellants are hereby sentenced to undergo RI for six years and pay fine of Rs.1,000/- each, in default additional RI for three months. The appellants are in custody since 24-8-2009. They are entitled for set-off of the period already undergone by them.

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