

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.91 of 2001

Naresh, son of Budheram Yadav, aged about 22 years, resident of Village Dakachaka, Police Station Pathariya, District Bilaspur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer Pathariya, District Bilaspur, Chhattisgarh

---- Respondent

For Appellant	:	Smt. Kiran Jain, Advocate
For State/Respondent	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

11/4/2016

1. The Appellant stands convicted under Section 302 IPC to life imprisonment with fine of Rs.1,000/-, in the event of failure to pay which he was required to undergo 3 months further rigorous imprisonment. The conviction is also under Section 323 IPC to 1 year rigorous imprisonment with fine of Rs.500/-, in the event of failure to pay which he was required to undergo 1 month further simple imprisonment ordered on 25.11.2000 by the Additional Sessions Judge, Mungeli in Sessions Trial No.152 of 1998.

2. PW-3, Ramtabai, wife of deceased Mishrilal, who was the uncle of the Appellant lodged First Information Report, Exhibit P-22 on 8.12.1997 at 11:00 A.M. regarding an assault upon the deceased the same morning around 8:00 A.M. The deceased died at midnight the same day. The post mortem report, Exhibit P-8, dated 9.12.1997 by PW-15, Dr. S. Mukherjee found the following injuries: multiple injuries were seen over the scalp. One lacerated wound over occipital region (8cms.x7cms.), one lacerated wound over left parietal region (7cms.x½cm.), one lacerated wound over crown of

head (10cms.x1½cm.), one lacerated wound over right temporal region (6cms.x1½cm.) and one incised wound over right parietal region (4cms.x1½cm.). Linear fracture of occipital bone corresponding with injury and hematoma below scalp. Abrasions were seen over the left shoulder and scapula region. The cause of death was ascribed to shock due to multiple scalp injuries and head injury.

3. PW-5, Dukhitram was also injured in the occurrence and his MLC, Exhibit P-7 was proved by PW-19, Dr. P.K. Singh observing as follows: one lacerated wound 6"x1" over head with inverted margin, one lacerated wound with inverted margin in front of the head 4"x1" and bleeding from the left ear. The witness was rendered unconscious and required hospitalisation for 15 days.

4. Learned Counsel for the Appellant submitted that the deceased was the uncle of the Appellant. They were all sitting at home together when a minor altercation ensued with regard to grains. The Appellant assaulted the deceased with a Lathi on the spur of the moment. A Lathi is not a weapon of assault but an item which is found in the house of any villager. Therefore, it cannot be said that the assault was with intention to kill. Even if the Appellant ran behind the deceased subsequently with a Tabbal, a sharp cutting instrument, he made only one assault causing an incised wound. If the Appellant intended to cause death, nothing prevented him from repeating the assault. There is no independent witness even though the assault has taken place in the lane. PW-3, Ramtabai, PW-4, Dularbai and PW-10, Goutrahinbai are all related to the deceased as also PW-5, Dukhitram. There existed no previous enmity between the parties so as to provide any motive. The Appellant has already remained 7 years in custody before being released on bail. The conviction therefore deserves to be altered to one under Section 304 Part II IPC in a family dispute. The

Appellant has suffered enough by long incarceration. Budheram, the co-accused has been let off very lightly by convicting under Section 323 IPC only when both are alleged to have assaulted the deceased with Lathis.

5. Learned Counsel for the State opposing the appeal submitted that intention is to be gathered from all surrounding circumstances. There can be no direct evidence with regard to intention. If it was an assault on the spur of the moment in a dispute with regard to grains and the Appellant had given a single blow with a Lathi, matters may have been different. He first assaulted the deceased with a Lathi and when the deceased ran for his life, the Appellant went inside the house, came back with a Tabbal, chased the deceased, hit him on the head and when he fell down, the Appellant and co-accused Budheram assaulted him repeatedly leading to death. There are several injuries on the person of the deceased and all of them on the head, a very sensitive part of the human body. Merely because co-accused Budheram may have been convicted under Section 323 IPC only, the Appellant cannot claim the benefit of Section 304 Part II IPC as his intentions were very clear evident from the nature of assault made. PW-3, Ramtabai was the wife of the deceased, an eyewitness, most interested in ensuring that the real assailant of her husband is brought to book. If the incident took place inside the courtyard of the house, there can be no independent witness and only the inmates will be available to give evidence. The presence of PW-4, Dularbai and PW-10, Goutharinbai has been corroborated by PW-3, Ramtabai. Similarly PW-5, Dukhitram has also been mentioned as present and injured by PW-3, Ramtabai. PW-5, Dukhitram is an injured witness whose credibility is very high. If the facts reveal an intention to cause death, the conviction cannot be altered to Section 304 Part II IPC and the Appellant is required to serve out the remaining period of sentence. Blood has been found in the FSL Report, Exhibit P-27 on the Lathi and Tabbal.

6. We have considered the submissions on behalf of the parties and perused the evidence on record.

7. PW-3, Ramtabai, PW-4, Dularbai and PW-10, Goutharinbai are eyewitnesses to the occurrence. PW-5, Dukhitram is an injured witness. The credibility of an injured witness is high because the law presumes that having been injured in the same occurrence the witness is speaking the truth. Part of the occurrence has taken place inside the courtyard of the house. The deceased ran out chased by the Appellant followed by the other witnesses imploring not to assault the deceased. Even if the second assault has taken place in the lane independent witnesses may not be available for myriad reasons as observed in (2012) 4 SCC 79 (Mano Dutt v. State of U.P.) :-

“24. Another contention raised on behalf of the appellant-accused is that only family members of the deceased were examined as witnesses and they being interested witnesses cannot be relied upon. Furthermore, the prosecution did not examine any independent witnesses and, therefore, the prosecution has failed to establish its case beyond reasonable doubt. This argument is again without much substance. Firstly, there is no bar in law in examining family members, or any other person, as witnesses. More often than not, in such cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. Those alone are the people who take the risk of sustaining injuries by jumping into such a quarrel and trying to defuse the crisis. Besides, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the prosecution, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was a family member or an interested witness or a person known to the affected party.”

8. There is no invariable rule that the evidence of related witnesses must be rejected. It is only required to be examined with caution and corroboration sought if there be any doubts. There existed no previous enmity between the parties. The deceased, the Appellant and the other

eyewitnesses were together in the house. The Appellant tried to pull out the grains to which the deceased who was sitting on the ground objected. The Appellant is alleged to have assaulted him more than once with a Lathi. The deceased ran towards the village lane. The Appellant chased him with a Tabbal in his hand and assaulted him when the deceased fell down. Thereafter, both the Appellant and co-accused Budheram assaulted the deceased. At this stage, PW-5, Dukhitram sought to intervene when they both assaulted him also. The post mortem report of the deceased itself reveals that he has been assaulted by more than one person. Considering that the first assault with a Lathi was made when he was sitting, the possibility of it having been on the head also cannot be ruled out. We find it difficult to ascribe the only one incised wound caused to the deceased by the Appellant. In any event, it was so severe as to cause linear fracture of the occipital bone apart from causing incised wound over the parietal region. The fact that co-accused Budheram may have been booked under Section 323 IPC only without proper appreciation of evidence which was sufficient to convict both of them under Section 302 read with Section 34 IPC and no appeal has been preferred by the State, does not persuade us to hold that death was not caused due to the assault made by the Appellant and it is possible that death was caused only due to the injuries caused by co-accused Budheram. On the contrary, a cumulative assessment of the post mortem report reveals that all the injuries were on the sensitive part of the human body caused by both of them acting in unison.

9. PW-3, Ramtabai, PW-4, Dularbai and PW-10, Goutharinbai are eyewitnesses to the assault who have corroborated each other and including their presence at the time of occurrence. There is nothing on record to discredit their evidence. PW-5, Dukhitram as noticed is an injured witness whose presence is also confirmed. The mere fact that they are related witnesses cannot discredit their evidence if their presence is proved

was noticed in (2013) 14 SCC 581 (Mohd. Ishaque v. State of W.B.) as follows :-

“17. In this respect, reference may be made to the judgment of this Court in *Jaishree Yadav v. State of U.P.* wherein this Court held that whether witnesses are interested persons and whether they had deposed out of some motive cannot be the sole criterion for judging credibility of a witness, but the main criterion would be whether their physical presence at the place of occurrence was possible and probable.”

10. PW-3, Ramtabai was the wife of the deceased. The Appellant was the nephew of the deceased. There is no reason why she would not be speaking the truth to save the real culprit who may have been the assailant of her husband and falsely implicate her own nephew without any motive. In view of the convincing and cogent eyewitness account available, the FSL Report loses much of its relevance.

11. Considering the entirety of the facts and circumstances of the case, the relationship between the parties, the genesis and origin of the occurrence, the manner of assault, the absence of any previous enmity between them and that only one assault was made on the head with the Tabbal, a sharp cutting weapon, it can safely be inferred that the Appellant and co-accused intended to cause the very injuries that they caused to the deceased. Even if the Appellant had no intention to cause death in the nature and number of injuries caused along with the co-accused Budheram on the head, a sensitive part of the human body, knowledge that death was likely to ensue can easily be attributed to the Appellant and co-accused Budheram under clause thirdly of Section 300 IPC to invite conviction under Section 302/34 IPC. Unfortunately no appeal has been preferred against the conviction of co-accused Budheram under Section 323 IPC only which according to us is palpably wrong. The conviction of the Appellant is altered to one under Section 304 Part I IPC and he is sentenced for a period of 10 years.

12. With the aforesaid modification of the conviction and the sentence, the appeal is dismissed.

13. The bail bonds of the Appellant are cancelled and he is directed to surrender forthwith and/or be taken into custody forthwith for serving out the remaining period of sentence.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE