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C 21/1/19

Checked & Verified, 20/1/19

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

CRIMINAL APPEAL NO. 799 of 2000. Single Bench (Criminal)

Appellants.::: 1). Sukhnandan son of Makhan,
aged about 33 years.

Along
10/2/19

2). Balbhadra son of Makhan, aged
about 50 years.

3). Daduram son of Makhan Kashyap,
aged about 34 years.

Along
11/2/19

All residents of village Birgaon, Police-
Chowki, Jarhagaon, P.S. Mungeli, Distt:
Bilaspur M.P.

Versus.

Respondent.:::

The State of M.P.

Through the Police-Station, Mungeli,

Distt: Bilaspur M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE
CODE OF CRIMINAL PROCEDURE.

3005
22/3/2000
S.A. Kishor



417

1

HIGH COURT OF CHHATTISGARH, BILASPUR
Hon'ble Shri Justice Rajendra Chandra Singh Samant

CRA No.799 of 2000

Balbhadra & others

Versus

State Of M.P. (now Chhattisgarh)

CAV JUDGMENT

Post for 29 /11/2016

Sd/-
Rajendra Chandra Singh Samant
Judge

29 /11/2016

seen

R (R.K. Palsal)



42

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 799 of 2000

Judgment Reserved on 08/11/2016

Judgment Delivered on 29/11/2016

1. Sukhnandan(dead) S/o Makhan, aged about 33 years.
2. Balbhadra S/o Makhan, aged about 50 years.
3. Daduram(dead) S/o Makhan Kashyap, aged about 14 years.

---- Appellants

Versus

1. State of M.P. Through the Police-Station Mungeli, District-Bilaspur

---- Respondent

For the Appellant : Shri Arun Kochar, Advocate.

For the Respondent : Shri R.K. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Judgment

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by the Additional Sessions Judge, Mungeli, District-Bilaspur in Sessions Trial No.372/1995 on 09.02.2000, whereby appellants were convicted under Section 324/ 34 of IPC and sentenced to R.I. for a period of years with a fine of Rs.1,000/-, under Section 325/34 of IPC and sentenced to R.I. for a period of three years with a fine of Rs.1500/- and under Section 323/34 of IPC and sentenced to R.I. for one year with a fine of Rs.500/- respectively.



43

2. The facts of the case are these that it was festival of *Holi* on the date of incident i.e. 17.03.1995, complainant Jagat Ram Kashyap (PW/1) was at his residence in village-Birgaon, he was told that appellants and four others armed with clubs and *tabbals* (large axe) are on the doors of his residence and using abusive words. Hearing this complainant came out of his house along with his brothers Dashrath(PW/6), Gorelal(PW/5) and one nephew, seeing them appellant Sukhnandan assaulted Gorelal by axe, appellant Daduram assaulted with a club. When complainant and his brother tried to pacify with appellant/accused persons, meanwhile appellant Balbadhra assaulted him with club on his left hand. Other accused along with appellants assaulted Faguram with clubs and causing injury to him. Injured Gorelal(PW/5) went unconscious in this incident. There had been a dispute with the appellant party regarding the contract of a fisheries pond since eight years previous to the date of incident and the appellant/accused persons had this grudge against the complainant party which resulted in this incident. On information by Jagat Ram Kashyap (PW/1) unnumbered F.I.R. Ex.P/1 was lodged in Police Outpost-Jarhagaon under P.S.-Mungeli later on, which was recorded as numbered F.I.R. in P.S. Mungeli Ex.P/16. In the investigation, the injured persons in the complainant party were medically examined, seizure of blood stained clothes from



44

injured Gorelal (PW/5) was made vide Ex.P/3, one axe was seized from the appellant Sukhnandan vide Ex.P/16, clubs were seized from the possession of appellant Daduram and Balbadhra vide Ex.P/17 and Ex.P/18. From the spot, blood stained and plain soil were preserved and seized vide Ex.P/19. Spot map Ex.P-20 was prepared. In X-ray examination, complainant Jagatram(PW-1) was found to have suffered grievous injury of fracture on his left hand. Seized articles were sent for F.S.L. examination and report was obtained vide Ex.P/31. On completion of investigation, appellants and four others were charge-sheeted.

3. Trial Court charged the appellants and others under Section 307/149, 325/149 and 323/149 of IPC, appellant and other accused persons denied the charges and pleaded innocence. After completion of prosecution evidence, appellants and other accused persons were examined under Section 313 of Cr.P.C., in which it was stated that on the date of incident, Gorelal(PW-5) was using abusive words for the appellants and other accused persons, as he was in intoxicated condition and was sent home. Later on, Jamunabai one of the accused persons passing through the road near the house of Satrugan Gorelal(PW-5) stopped her on the way, abused her, her blouse was torned and she was man handled. Rest of the accused persons came to intervene in this incident, who were also assaulted by the complainants and others in the same incident. Appellants /accused Jamunabai had lodged



75

report in the Police Station. It was pleaded that appellant/accused persons were falsely implicated. Defence witnesses have been examined. On completion of trial, the impugned judgment was passed, by which the appellants and others were acquitted of the charge under Section 307/149 of IPC. Rest of the accused persons Balbadhra, Jamunabai and Bhagwati were acquitted of all the charges, remaining accused. The appellants were convicted and sentenced has mentioned in the aforementioned paragraph.

4. The grounds in this appeal are these, the learned Trial Court erred in coming to the finding of conviction against the appellants and failed to appreciate the evidence on record, that the appellants acted under their right of private defence. The investigation was not done in fair manner, which has not been taken notice of by the trial Court. All the injured persons from the appellants side were not medically examined, this has caused miscarriage of justice. In the alternative, it has been pleaded that the sentences awarded to the appellants are too severe and uncalled for, prayed that appeal be allowed.
5. On behalf of appellants, it was argued that the injuries on the body of accused persons has not been explained by the prosecution. On the contrary, appellants/accused persons have successfully established, that they acted in the right of private defence. The material on record has not been appreciated by the trial Court,



46

thus, given incorrect finding.

6. On the other hand, learned counsel for the State has argued that the prosecution has successfully proved the case regarding the conviction and there is no scope for interference.
7. Considering this question whether the conviction against the appellant/accused persons is supported with the prosecution evidence or not, the evidence before the trial Court is perused and finding is arrived at for this appeal.
8. Jagat Ram (PW/1) has stated that at the time of incident, when he came out of the house, he saw the appellant/accused persons standing in front of his house armed with clubs and axes Faguram, Gorelal and Dashrath were trying to pacify appellant/accused persons, at that time appellant Sukhnandan assaulted Gorelal on his head, who went unconscious, at the same time. Balbadhra, Daduram and other accused persons started assaulting with clubs which caused injury to Faguram and this witness himself. Regarding this he lodged a report Ex.P/1. In cross examination, he has admitted that when he arrived of the Police Station to lodge a report, he saw appellant/ accused party already present in the Police Station. There is admission regarding the previous enmity, he has expressed ignorance on this suggestion, that just before this incident, accused Jamunabai was stopped, abused and assaulted by Gorelal. Further he has



47

admitted that on hearing the shout of Gorelal, he and others arrived at the spot, he has offered no explanation as to how appellant Balbadhra, Sukhnandan and accused Jamunabai got injured. He has remained consistent on rest of his statement, in cross-examination and denied that he has lodged false report against the appellant.

9. Satrugan (PW/4) has been cited as eyewitness but has not supported the prosecution and declared hostile. Gorelal (PW/5) has stated in favour of prosecution and narrated the incident in which, he was injured on being assaulted by appellant Sukhnandan with an axe. In cross examination, Gorelal (PW/5) admitted that incident took place near the house of Satrugan where accused Jamunabai used abusing words for him and he also abused her. He was confronted with his previous statement Ex.D/2 regarding some discrepancies with his previous statement, he has denied that he stopped Jamunabai on the way, assaulted and insulted her, but he admits that he met with accused Jamunabai in front of the house of Satrugan.

10. Dashrath (PW/6) has stated about the incident in which appellant/accused persons assaulted the complainant and party using axe and clubs. In cross examination, his statement remained unrebutted and denied the suggestion regarding the defence.

11. Champabai (PW/7) saw Gorelal (PW/5) in injured condition after the incident, another witness of the incident Bulwaram (PW/8) is a hostile witness, who has not supported the case of the prosecution, Parath Lal (PW/10) Shyamabai(PW-11) has supported the prosecution. In cross-examination she has stated, that hearing commotion she came out of her house and saw sukhnandan and Balbhdra on one side and Gorelal and Jagat on the other side man handling and beating each other. Prakash (PW/12) has given statement as eyewitness in support of incident which has remained unrebutted in his cross examination.
12. The witness present on the spot have narrated about the incident as discussed above, in which, there is no clear admission made by any of the witness so as to suggest that the appellant party acted under the right of private defence. In this respect, medical evidence needs consideration Dr. S.P. Baghel (PW9) has examined Balbhadra appellant No.2 vide Ex.P/7, who was having simple injury caused by hard and blunt object, appellant Sukhnandan was examined vide Ex.P/8 and found having injuries on his left leg and no question has been asked in cross examination regarding the injuries caused to these appellants and were medically examined. For the reason that they were injured in the same incident this fact needed explanation, although, it is denied on part of the prosecution witnesses that any of them

assaulted the appellant party. The ground raised in defence is not altogether fit to be discarded.

13. In defence Head Constable Janakram Dahire(DW/1) of Outpost -Jarhagaon and Suresh (DW/2) are not the witnesses of incident and no evidence has been led by the defence to rebut the prosecution version that the appellant and party were the assailants in the incident in question. Although, it is a fact that two appellants namely Suresh and Balbhadra were found to be allegedly injured in the same incident, but no statement of admission is on record to this effect that any counter case was registered against the complainant party or they were prosecuted for it.

14. The injuries caused to the members of complainant party draws a different. Dr. S.P. Patel (PW/9) has stated that vide Ex.P/5 Faguram was found to be having simple injury, Dashrath(PW/6) vide Ex.P/6 was found to be having simple injury, for one of his injury, he was referred to orthopedician. Jagatram (PW/1) was found to have suffered injury for which X-ray was advised and he was referred to orthopedician, Gorelal(PW/5) was found having one lacerated wound on his head and other injuries on his body vide Ex.P/10 Dr.S. Chaterjee(PW/17) has on the basis of X-ray report of Jagatram (PW/1) reported that he had a fracture on left alna bone. This is the fact regarding injuries caused to the



members of complainant party, number of injured person in complainant party are definitely more than the number of injured persons in the appellant/accused party, though claimed and argued that other persons of the accused party also received injury but there is no evidence on record to support this version of defence.

15. Other than these circumstances, the evidence of Investigation Officer assumes importance. S.I. Mukesh Ram (PW/19) has stated about the investigation he conducted in this matter. In cross-examination, he has admitted, that on the same day the appellant Suresh also arrived at the Outpost-Jarhagaon and lodged a report and his report was lodged in Station House diary on 17.03.95 at 5:30 p.m. on the same day. He has denied that the report of Sukhnandan was knowingly lodged later on. He has denied the suggestion that apart from Sukhnandan and Balbhadra, other person accused party also suffered injuries and needed medical examination.

16. There is no other statement in his deposition so as to support the defence version that appellants were simply exercising their right of private defence. On the contrary, looking to the evidence on record the fact that Sukhnandan and Balbhadra from the appellant party received some injuries compared to the number of persons injured of the gravity of injury, caused to the persons from



81

the complainant party it is clear that the appellant and party were the assailants and on the contrary, it was the complainant party who exercised the right of private defence, thereby causing some injuries to Sukhnandan and Balbhadra.

17. There is no need to go through the statement of other witnesses and regarding the evidence of other investigative procedures. As on the basis of suggested defence it is clearly established that the appellant and party assaulted the complainant and others, which they have claimed to be in exercise of their right of private defence, but that has not been so, hence, the finding of conviction against the appellants in the impugned judgment cannot be interfered with.

18. Learned counsel for the appellant, raised this ground in appeal that sentence awarded is too harsh which needs rectification. It is submitted on behalf of the appellants that they have already undergone a period of 2 months and 9 days in custody, hence, appellants be punished with period of custody already undergone. Another ground raised, is this that it is almost 21 years in the date of incident. Looking to the role of appellant No.2 who is the living appellant, who is now more than 70 years of age, the sentence awarded be reduced.

19. Considering these factors that 21 years have elapsed since the date of incident and the appellant/accused Sukhnandan who

played the main role in the incident, is now dead. In such a case, appellant Balbhadra, who participated in the act just in furtherance of common intention, the sentence on his part can be modified on the ground mentioned above.

20. In view of above discussion, this appeal is partly allowed. The finding of conviction in the impugned judgment against the remaining appellant No.2 is confirmed. The sentence part of the impugned judgment regarding this appeal is set aside. The appellant Balbhadra is sentenced with imprisonment to the period of custody already undergone by him during investigation and trial for all the offences with this direction and all the sentences shall be regarded to have run concurrently and no part of sentence is remaining to be undergone by him. The fine amount as ordered by the Trial court is imposed along with the substantive sentence of imprisonment.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha