

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 45 of 2013

- Dalli @ Dalgeet Singh S/o Late Jagat Singh Aged About 54 Years R/o Near Forest Depot, Bada Bazar, PS Chirmiri, Distt Korea, CG

---- Appellant

In Jail

Versus

- State Of Chhattisgarh Through PS Chirmiri, Distt Korea, CG

---- Respondent

For appellant : Shri Vivek Sharma, Advocate.

For Respondent/State : Shri Vivek Sharma, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment on Board by Justice Pritinker Diwaker

04/01/2016

This appeal arises out of the judgment of conviction and order of sentence dated 24.11.2012 passed by the Special Judge {Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989}, Korea (Baikunthpur) in Special S.T.No.11/09 convicting the accused/appellant under Section 302 IPC on two counts and sentencing him to undergo imprisonment for life, to pay a fine of Rs.1000/- with default stipulations respectively on each count.

02. As per prosecution case, in the intervening night 12-13th March, 2009 the appellant committed murder of Rajkumar and Rajkishore,

who were the employees of liquor shop (शराब भट्टी) by causing injuries with *Kripan* (a small sword-like weapon). The incident was witnessed by PW-3 Shyam, PW-4 Arvind Soni and PW-9 Devnath Pathak, however, in the Court PW-3 and PW-4 turned hostile and only PW-9 supported the prosecution case. At the instance of Rakesh Dubey (PW-19) FIR (Ex.P/31) was registered on 13.3.2009. Immediately thereafter mere intimations (Exs.P/33 and P/34) were also registered by the police. Inquest over the dead bodies of Rajkumar and Rajkishore were prepared vide Exs.P/8 & P/10. Dead bodies of Rajkishore and Rajkumar were sent for postmortem which was conducted by PW-11 RR Gajbhiye vide Exs.P/16 & P/17, who noticed numerous injuries on their bodies and opined the cause of death to be hemorrhagic shock due to antemortem injuries and that the death was homicidal in nature. After completion of investigation, charge sheet was filed and as deceased Rajkishore belonged to scheduled caste, in addition to charge under Section 302 IPC on two counts, charge under Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (in short "the Act") was also framed against the accused/appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 19 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 while acquitting the accused/appellant of the charge under Section 3(2)(v) of the Act, convicted and sentenced him as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that PW-9 Devnath Pathak, the sole eyewitness to the incident is not reliable and a very improbable story has been put forth by him. Statement of this witness has not been supported by other eyewitnesses PW-3 Shyam and PW-4 Arvind Soni.

(ii) that the incident occurred in the intervening night of 12-13th March, 2009, at that time it was absolutely dark and therefore, the question of seeing the occurrence by PW-9 does not arise.

(iii) had the incident been witnessed by PW-9, a government servant, in natural course he would have lodged FIR or at least would have informed the police about any such incident.

(iv) though from the possession of the accused/appellant, Kripan, turban, shirt and pant were seized vide Ex.P/2 which were subsequently found to be stained with blood vide FSL report (Ex.P/27) but in absence of serological report, the FSL report has no evidentiary value.

(v) that the appellant was of unsound mind at the time of commission of the offence and therefore, he is entitled for protection under Section 84 IPC.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

(i) that it is the quality of the evidence which is important and not the

quantity. Even if PW-3 and PW-4, who are other eyewitnesses to the incident, have not supported the prosecution case, but PW-9 Devnath Pathak, another eyewitness, has duly supported the prosecution version and remained very firm in his cross-examination as well.

(ii) that on the basis of memorandum of the accused/appellant (Ex.P/1), seizure (Ex.P/2) of *Kripan*, shirt, pant and turban of the appellant was effected and as per FSL report (Ex.P/27) blood was found on these articles.

(iii) considering the evidence of eyewitness (PW-9) coupled with the medical evidence, according to which corresponding injuries were found on the body of the deceased persons, though serological report is not there, the same is not fatal to the prosecution case.

(iv) this apart, the appellant has also failed to offer any explanation as to how the articles seized at his instance were found to be bloodstained. In the same incident the accused/appellant also suffered injuries vide Ex.P/19 and he further failed to explain as to how he sustained those injuries.

(v) that the accused/appellant cannot take the defence that at the time of commission of offence he was of unsound mind. The burden of proving the existence of circumstances bringing the case within the purview of Section 84 IPC lies on the accused under Section 105 of Evidence Act but he has failed to discharge the said burden as required under the law.

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

08. PW-1 Ghanshyam Gupta is the proprietor of the hotel where the

accused/appellant used to take his meals. He has stated that on the eve of Holy, the accused/appellant had come to his hotel to have his meals and ordered only for rice because he was not able to eat *chapati* as according to him he had sustained injuries on his lips. He has stated that the accused/appellant confessed before him that he had a quarrel with the employees of the liquor shop, he assaulted them and in turn, they also assaulted him.

09. PW-2 Rajesh Kumar Jain is a witness to disclosure statement of the accused/appellant (Ex.P/1) and seizure (Ex.P/2). Though he has not supported the prosecution case in respect of disclosure statement given by the appellant but has supported the seizure Ex.P/2. Similar is the position with other witness of memorandum and seizure PW-6 Rameshwar. PW-3 Shyam and PW-4 Arvind Soni, eyewitnesses to the incident, have not supported the prosecution case and have been declared hostile. PW-5 Taraknath Ghosh is a witness to inquest Exs.P/8 and P/10. PW-8 Banarsiram, father of deceased Rajkishore, has proved caste of deceased Rajkishore.

10. PW-9 Devnath Pathk, eyewitness to the incident, while supporting the prosecution case has stated that he knew the accused/appellant and deceased Rajkumar and Rajkishore also, who were working in the liquor shop. He has stated that he was residing in a government accommodation and opposite to his accommodation there is a liquor shop. On the eve of Holy, after hearing the sound of quarrel when he opened the door of his house, he saw the accused/appellant assaulting the employees of the liquor shop with iron rod. He has further stated that when he shouted as to why he (appellant) is assaulting them and

asked him not to do so, even then the appellant continued to assault those persons till death. He has stated that after assaulting them, the appellant left the place, however, after some time he again came there to ensure death of those persons whom he had assaulted. In cross-examination this witness remained very firm and reiterated as to the manner in which he saw the incident and witnessed the appellant committing murder of the deceased persons. He has stated that PW-4 Arvind Soni was working with him, after hearing the cries he came to him and enquired and then he informed him about the incident.

11. PW-10 C.K. Paikra, Patwari prepared the spot map Ex.P/5. PW-11 Dr.R.R. Gajbhiye conducted postmortem on the bodies of deceased persons Rajkishore and Rajkumar vide Exs.P/16 & P/17 respectively and noticed following injuries on their persons:

Injuries suffered by deceased Rajkishore:

- (i) lacerated wound on left palm of size 1 x ½ inch and cut of palm bone.
- (ii) lacerated wound of size 7 x 2 x ½ inch over left side of neck, cutting of vessels and bifurcation of left ear.
- (iii) abrasion on right leg.
- (iv) abrasion on left foot.

In corresponding to injury No.(ii) which is deep upto bone fracture and brain material came out. All the injuries were antimortem, dangerous to life and caused for death.

In his opinion, the cause of death was hemorrhagic shock due to antimortem injuries and the death was homicidal in nature.

Injuries suffered by deceased Rajkumar:

- (i) lacerated wound horizontally on base of nose measuring about 2" x

1" x 1" and cut of maxilla bone.

(ii) lacerated wound measuring 3" x 1" x 1 ½" depth and fracture of right tempoparietal region and brain material lacerated, cut of vital structure, blood vessels.

Both the injuries are dangerously inflicted and antimortem in nature. In his opinion, the cause of death was antimortem dangerously inflicted injuries leading to hemorrhagic shock and the death was homicidal in nature.

The doctor had also examined the accused/appellant vide Ex.P/19 and noticed following injuries on his person:

Injuries suffered by the accused/appellant:

- (i) abrasion on left knee below knee joint.
- (ii) abrasion on the right leg posterior aspect.
- (iii) abrasion on the right little ring finger.
- (iv) abrasion on right palm and wrist.
- (v) abrasion on left wrist and fingers.
- (vi) abrasion on both lips - upper and lower.
- (vii) swelling with pain on the nose.
- (viii) abrasion on the right lower lid.
- (ix) abrasion on the back.

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

12. PW-14 K.M.S. Khan conducted initial investigation and then the matter was referred to PW-13 Vishnu Prasad Sharma who completed the investigation and filed the charge sheet. Both these witnesses have duly supported the prosecution case. PW-17 Vipin is a witness to inquet Exs.P/8 and P/10. PW-19 Rakesh Kumar is lodger of FIR and merg intimations.

13. Close scrutiny of the evidence makes it clear that in the night intervening 12th & 13th March, 2009 it is the accused/appellant who committed murder of the deceased Rajkishore and Rajkumar by causing them injuries with *Kripan*. The incident was witnessed by PW-9 Devnath Pathak who has fully supported the prosecution case. This witness is a government servant, his residence was just opposite the liquor shop where the incident had taken place. There is no reason for him to falsely implicate the accused/appellant.

14. It is the mandate of Section 134 of Evidence Act that quality and not quantity of evidence is material. Section 134 enshrines the well recognized maxim "Evidence has to be weighed not counted". the matter thus depends upon the circumstances of each case and the quality of evidence even of a single witness whose testimony has either to be accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof.

15. Though the prosecution cited two other witnesses namely PW-3 Shyam and PW-4 Arvind Soni as eyewitnesses to the incident who subsequently turned hostile in the Court and did not support the prosecution case, but another eyewitness PW-9 Devnath Pathak has consistently deposed before the Court as to the manner in which he witnessed the whole incident and the appellant committing murder of the deceased persons.

16. This apart, as per statement of PW-1 Ghanshyam Gupta the accused/appellant came to his hotel after the incident to have his

meals and there he admitted that he had quarrel with some persons of liquor shop and in that incident he suffered injuries. Medical evidence lends support to the version of this witness, according to which the appellant also suffered simple injuries on various parts of his body vide Ex.P/19.

17. Furthermore, on the basis of disclosure statement of the appellant Ex.P/1, seizure (Ex.P/2) of *Kripan*, shirt, pant and turban of the appellant was effected at his instance and as per FSL report (Ex.P/27), these articles were found to be stained with blood. Seizure witnesses (PW-2 & PW-6) has supported the seizure made from the appellant. No explanation has been offered by the appellant in his statement under Section 313 of Cr.P.C. as to how he suffered injuries or as to how bloodstained articles were seized from his possession.

18. As regards the argument of the counsel for the appellant that at the time of incident, he was suffering from insanity or unsoundness of mind, this Court could not lay its hand even on a single substantive piece of evidence which is suggestive of the same. In the entire trial, this point has not been raised and established by leading any reliable evidence. No medical papers to show that the appellant was suffering from any such mental ailment or the opinion of the medical expert has been brought on record. While dealing with the point of insanity or unsoundness of mind the the Apex Court has in many cases - some of them being - ***Surendra Mishra Vs. State of Jharkhand*, (2011) 11 SCC 495; *Mariappan Vs. State of Tamil Nadu*, (2013) 12 SCC 270; *Sheralli Wali Mohammed Vs. State of Maharashtra*, (1973) 4 SCC 79; *Oyami Ayatu Vs. State of M.P.*, (1974) 3 SCC 299 and *Bhikari***

Vs. State of Uttar Pradesh, AIR 1966 SC 1, has unequivocally held that unless pleaded and proved during trial, the accused/appellant is not entitled to derive the protection of Section 84 of IPC simply by raising the issue at a belated stage. Here also, the defence has not been taken in a position to prove in accordance with law that the cognitive faculties of the accused were so impaired that he was not in a position to see the repercussions of his act and since it has not been done, the accused/appellant cannot disown his guilt of murdering the deceased persons. Further, the act of the accused/appellant in denying the charges, pleading trial and innocence in his statement under Section 313 Cr.P.C. makes this Court to draw an inference that his mental faculties were not so impaired to provide him the strength to wriggle out of the rigor of law. Thus, in these circumstances and keeping in mind the aforesaid legal position, the appellant is held to be dis-entitled to have the protection of Section 84 of IPC.

19. On the basis of aforesaid discussions, we are of the considered opinion that the findings of guilt of the appellant recorded by the trial Court are based on proper appreciation of the entire evidence available on record. There is no illegality or infirmity in the judgment impugned warranting interference by this Court.

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

Sd/

(Pritinker Diwaker)
Judge

Sd/

(C.B. Bajpai)
Judge