

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2563 of 1998

Judgment reserved on : 22.02.2017

Judgment delivered on : 20.04.2017

1. Chouberam, S/o Chaituram, Aged 32 years.
2. Rambraksh, S/o. Chaituram, Aged 29 years.

Both residents of village Newra, Police Station Sarguja, District Sarguja (M.P.)(now C.G.)

---- Appellants

Versus

State of Madhya Pradesh (now Chhattisgarh), Through Police Station Surajpur, District Sarguja

---- Respondent

For Appellants : Ms. Smriti Shrivastava, Advocate

For Respondent/ State : Mr. Sanjeev Pandey, Govt. Advocate

Hon'ble Shri Justice Anil Kumar Shukla

C. A. V. Judgement

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 17.10.1998 passed by the Additional Sessions Judge, Surajpur, District Sarguja in Sessions Trial No. 173/1992, whereby the learned Additional Sessions Judge, convicted the appellants for the offence punishable under Sections 304 (Part-I) and 307 IPC and sentenced each of them to

undergo rigorous imprisonment for 10 years and to pay fine of Rs. 1000/- and rigorous imprisonment for 7 years and to pay fine of Rs. 500/- with default stipulations with a direction to run the sentence concurrently.

2. The case of the prosecution is that, on the date of incident i.e., 29.04.91 at 9.00 AM, Aagarsai (PW-6) and Jagsai went to the house of Goutam (PW-3), who is cousin of Aagarsai (PW-6) for courtesy visit as the mother of Goutam (PW-3) was sick. After the visit, when they were returning through the *Badi* of Budhram and reached near the Pipal tree, appellants Chouberam and Rambraksh, who were hidden at that time armed with a Tabbal and a Lathi, respectively, suddenly came near Agarsai (PW-6) and Appellant Chouberam assaulted Agarsai with the Tabbal. On this, Agarsai (PW-6) took turn towards the appellants and having seen the appellants armed with the aforesaid weapons, challenged them to assault from his front. Thereafter, both the appellants came before Agarsai(PW-6) and assaulted him with the Tabbal and Lathi. Having seen this *marpeet*, Jagsai fled to the house of Gopal. Ramdasiya (PW-1), who lived in the house of Agarsai (PW-6) itself, Goutam (PW-3) and other villagers, having seen the *marpeet*, reached the place of occurrence. On their intervention, the appellants stopped the *marpeet* and began to return their home. Having informed by Jagsai, deceased Gopal came out of his house and went to the appellants. He asked the appellants why did they assault his uncle Agarsai (PW-6), on this a hot talk took place between them and thereafter appellant

Rambraksh with the Tabbal and appellant Chouberam with the Lathi assaulted Gopal. Even after intervention of the present people, the appellants did not stop assaulting. As a result of their assaults, Gopal, having injured, fell down on the road in front of the house of the appellants. Thereafter, the appellants entered their house. Ramdasiya (PW-1), after completing the distance of 6 Kms from the place of occurrence Village Newra to Police Station Surajpur, reached to Police Station Surajpur and lodged First Information Report (Ex.P-1) against the appellants on the same day at about 11 AM. On the basis of her report, a crime was registered against the appellants vide FIR (Ex.P-1).

During the course of investigation, when Sub-Inspector R.P. Singh (PW-13) was going to the place of occurrence, but before he could arrive there, Baran (PW-4) Dharamsai (PW-9) and other villagers were taking Agarsai (PW-6) to the hospital. Sub Inspector R.P. Singh (PW-13), who was taking Gopal in his jeep towards the hospital, also took injured Agarsai(PW-6) in his jeep and handed over both of them to the hospital at Surajpur for their medical examination. In the meantime, R.P.Singh (PW-13) tried to get dying declaration of injured Gopal registered, but he could not succeed. Dr. B.R. Hotchandani (PW-11), after primary medical examination of both the injured persons, advised to take them to the Hospital at Ambikapur for their further treatment. When both the injured persons were being taken to the hospital at Ambikapur, Gopal died on the way. Agarsai (PW-6) was admitted in the District Hospital Ambikapur for further treatment.

Dr. M.K. Jain (PW-8) performed postmortem examination on the dead body of deceased Gopal and opined vide Ex.P -4 that cause of death was shock, multiple incised wounds and excessive blood loss.

3. In further investigation, plain soil and blood stained soil were also seized from the place of occurrence vide Ex.P-14. Patwari Suresh Rai (PW-2) prepared site-map vide Ex.P-2. Statements of witnesses were recorded vide Ex.P-9 and Ex.P-10. Memorandum statements of the appellants were recorded and at their instances, the Tabbal was seized from appellant Chouberam vide Ex.P-16 and the Lathi was seized from appellant Rambraksh vide Ex.P-17. The seized articles were sent to Forensic Science Laboratory for chemical examination, but no FSL report is available on the record.

4. After completion of the investigation, a charge-sheet was filed against the appellants in the Court of Judicial Magistrate First Class, Surajpur, who, in turn, committed the case to the Court of Session, Ambikapur from where the Additional Sessions Judge, Surajpur received the case on transfer and after conducting the trial convicted and sentenced the appellants as mentioned above.

5. Ms. Smriti Shrivastava, learned counsel for the appellants argued that the evidence adduced by the prosecution is not properly appreciated by the Court below. Learned counsel further argued that the trial Court has erred in convicting the appellants as the whole case of the prosecution is based on the

evidence of highly interested and inter-related witnesses. Learned counsel further argued that there are major contradictions, omissions and improvements in the statements of the witnesses recorded under Section 161 Cr.P.C. Learned counsel further argued that the medical evidence has not supported the case of the prosecution. Learned counsel further argued the conviction and sentence awarded to the appellants are not sustainable in the eyes of law. Hence, she prayed that the appellants be acquitted of the charges framed against them.

6. On the other hand, Mr. Sanjeev Pandey, Govt. Advocate for the State/respondent, supporting the impugned judgment, submitted that the conviction and sentence awarded to the appellants do not warrant any interference by this Court.

7. After the incident, FIR (Ex.P-1) was lodged by Ramdasiya (PW-1). She was one of the eyewitnesses of the incident and she identified the appellants before the Court below. Ramdasiya (PW-1) stated that injured Agarsai (PW-6) is her real brother and the appellants are her cousins and thus she is the relative of the injured and the appellants. She further deposed that the incident had happened at about 9.00 AM on 29.04.1991 and after hearing the hue and cry of the people, she came out of her house and saw that Rambraksh was having a lathi and Chouberam was having a Tabbal in their hands and both were assaulting to Agarsai (PW-6). She saw the incident at about 50 meter. After the assault when the appellants reached at 150 meters at that time Gopal came and asked to them why did they assault his

maternal uncle. On this, the appellants started assaulting Gopal and as a result of which he fell down on the road and the appellants made a comment on Gopal that he was becoming more smart. She further deposed that injured Agarsai (PW-6) sustained injuries on his chest, and abdomen and deceased Gopal sustained injuries on his nose and both the thighs and while the appellants were making assaults on Gopal, Rambai (PW-5), Phoolbai (PW-7) and Dharamsai (PW-9) were present there. She further deposed that Baran (PW-4) and Dakhal were present there. Statement of Dakhal was not recorded by the prosecution whereas Baran (PW-4) and Dharamsai (PW-9) have not supported the case of the prosecution and they turned hostile. In this situation, in addition to the statement of eye witnesses Ramdasiya (PW-1), statements of other eye witnesses Rambai (PW-6) and Phoolbai (PW-7) become more important.

8. Ramdasiya (PW-1) deposed before the Court below that the appellants assaulted deceased Gopal and injured Agarsai with Lathi and Tabbal. In the cross examination, Ramdasiya (PW-1) and Rambai (PW-5) have supported the case of the prosecution. Injured Agarsai was the maternal uncle of Rambai (PW-5) and deceased Gopal was the brother of Rambai (PW-5) and the appellants Chouberam and Rambraksh are the real brother of witness Rambai (PW-5).

9. Rambai (PW-5) deposed that on the date of incident at about 8-9 AM, Jagsai, shouting, came to Gopal's house and said that Appellants Rambraksh and Chouberam were assaulting Agarsai. Gopal was sleeping in his house. After hearing the voice of Jagsai, Gopal got up and went to see Agarsai. Rambai (PW-5) also went along with Gopal to see Agarsai. When they reached near the Pipal tree, they saw that Agarsai had fallen down on the road and Appellants Rambraksh and Chouberam were coming there towards from the Pipal tree. Rambraksh was holding Tabbal in his hand and Chouberam was holding Lathi in his hand. Gopal asked both of them why did assault his maternal uncle. On this, the appellants caught the hands of Gopal and thereafter Chouberam and Rambraksh made a comment to Gopal that he was becoming more smart and dragged him towards the road and assaulted on his head, nose and feet with the Tabbal and Lathi. Rambai (PW-5) asked them not to beat Gopal, but they did not stop and left Gopal there after beating him and thereafter went away from there. Rambai (PW-5) deposed that the Appellants assaulted Agarsai and Gopal with Tabbal and Lathi. The statement of this eye witness is not opposed and has supported the case of the prosecution.

10. The most important witness of the incident is injured Agarsai (PW-6), who had been assaulted by the Appellants. Agarsai (PW-6) deposed that on the date of incident at about 9.00 AM, he went to the house of Goutam along with Jagsai, as the Goutam is the cousin of Agarsai (PW-6). After the visit, in the return,

Agarsai and Jagsai were going to Gopal's house and when they reached near the Pipal tree through the Badi of Budhram, at that time, Appellant Chouberam armed with Tabbal and Appellant Rambraksh armed with Lathi were waiting there. Appellant Chouberam assaulted Agarsai with Tabbal and as a result of which he fell down on the road. Therefore, he does not know about the assaults made to Gopal and Agarsai (PW-6) got conscious in Ambikapur Hospital after the incident and there his wife Sundari Bai had informed him that his niece Gopal was killed. Agarsai (PW-6) was cross examined in detail and his statement has not been rebutted. In his statement, Agarsai (PW-6) deposed before the Court below that due to unconsciousness, he could not see the assaults made to Gopal.

11. Phoolbai (PW-7) deposed that after hearing the voice of Rambai (PW-5) and Ramdasiya (PW-1), she reached to the spot and saw that Gopal was lying unconscious on the road and Appellant Rambraksh was holding a Tabbal in his hand and Appellant Chouberam was holding a Lathi in his hand and after making the assaults, both the Appellants were going towards their house. The statement of Appellant Rambraksh was recorded under Section 313 Cr.P.C in which he deposed that Agarsai was armed with a Tabbal and Gopal was armed with a Lathi. They abused him and entered his house and after entering his house, Agarsai and Gopal committed marpeet with him and his family members. Appellant Rambraksh has not established

this fact in his statement regarding the marpeet committed inside his house by Agarsai and Gopal.

12. As for as the injuries caused to Gopal is concerned. Dr. B.R. Hotchandani (PW-11), who examined injured Gopal, found the following injuries (Ex.P-11):

(I) incised wound over left side of scalp extending from left temporal area of scalp to behind the left ear, size 6'X1' bone deep profound bleeding.

(ii) incised wound in the size of 4'x1' on the right heel medial surface profound bleeding.

(iii) incised wound over the left knee and lower thigh in the size of 9/2'x2x1' profound bleeding muscle tissues cut, bone visible.

(iv) incised wound left lower circle just below calf area in the size of 3"x2"x1/2" profound bleeding.

(v) incised wound over post surface and right thigh upper part in the size of 3/4x1/2x1/2' profound bleeding.

(vi) incised wound over middle of upper lip in the size of 1x1" profound bleeding.

The doctor opined that the injuries were dangerous to life. Patient's condition was poor and pulse was unrecordable. The injuries were caused by hard and sharp object. The condition of the patient was serious so he referred him to Ambikapur Hospital for

further treatment. The doctor has verified his report (Ex.P-11).

13. Dr. B.R. Hotchandani (PW-11) in his report (Ex.P-11) deposed that injury No.1 was serious in nature and he found profuse bleeding in it and the injuries No. 2,4,5 and 6 were dangerous to life. Thereafter, Gopal was referred to District Hospital Ambikapur for further treatment, but on the way, before reaching the hospital, Gopal died.

Dr. M.K. Jain (PW-8), who conducted postmortem on the dead body of deceased Gopal in District Hospital Ambikapur, found the following injuries:

(I) Incised wound over the left temporal region obliquely place behind the left ear size 4"x1/2" upto bone deep with crack fracture of temporal bone.

(ii) Incised wound over the left occipital region left side zigzag in the size of 2½ x1 upto bone deep on dissection brain material was in pale condition and was not intra cranial haemorrhage.

(iii) Lacerated wound on the upper lip 1/2".

(iv) Three abrasion over the forehead two on the let side above and eyebrow 2"x1"x1/2"x1 one on the right side 1"x1'.

(v) incised wound over the right buttock "3X1 up to muscle deep.

(vi) incised wound over the right medical aspect on the heel 5"x1/2" upto bone deep the underling bone and tenderness.

(vii) incised wound over the left knee joint lateral aspect in the size 4"x2" cut on left tibia and fibula bone and cutting of blood vessels.

(viii) incised wound on the middle of knee in the calf muscle in the size of 3"x2" muscle deep upto bone deep.

(ix) Two contusions over left arm and left shoulder and chest in the size of 3"x1" and 13"x1".

The doctor opined that cause of death was shock due to excessive blood loss as a result of multiple incise wounds and the time passed since death was 12 to 24 hours.

14. From the medical report, it appears that the injuries were caused to deceased Gopal with the hard and sharp edged object. The eyewitnesses have also supported the medical evidence in their statements.

15. As far as the injuries caused to injured Agarsai (PW-6) is concerned. Dr. B.R. Hotchandani (PW-11), who treated inured Agarsai (PW-6), found the following injuries :-

(I) incised wound over forearm at middle vide gaping bone muscle blood vessels cut in the size of 4"x2"x1" bone cut profusely bleeding.

(ii) incised wound over middle of chest obliquely placed 5"x2"x1" bone cut profusely bleeding.

(iii) incised wound over left upper arm $\frac{1}{2}$ "x 1x $\frac{1}{2}$ " profusely bleeding.

(iv) Two incised wounds over left scapular area in the size of 3"x3 $\frac{1}{2}$ ' x $\frac{1}{2}$ x $\frac{1}{2}$ " profusely bleeding.

(v) Incised wound over left intra scapular area of scalp in the size of 3"x1"x1/2" profusely bleeding.

(vi) Incised wound wide gaping over lower part of right side and back extending upto mid low size of 3x2x2 profusely bleeding.

(vii) Incised wound left forehead in the size of $\frac{1}{2}$ "x $\frac{1}{2}$ "x $\frac{1}{2}$ " profusely bleeding.

(viii) Incised wound left temporal area profusely bleeding in the size of 2 $\frac{1}{2}$ x1"x $\frac{1}{2}$ '.

The doctor opined that the injuries were dangerous to life and the patient's condition was poor and the injuries were caused to him by hard and sharp object.

16. Dr. B.R. Hotchandani (PW-11) in his report (Ex.P-12) deposed that injuries caused to Agarsai (PW-6) were serious in nature and he found profuse bleeding in those injuries. Thereafter, Agarsai was referred to District Hospital Ambikapur for further treatment where Dr. M.K. Jain (PW-8) examined injured Agarsai and verified his report (Ex.P-8) with regard to examination of Agarsai (PW-6)

in which injuries No. 1 to 3 were found serious in nature and dangerous to life.

17. I have carefully perused the evidence of Ramdasiya (PW-1). She specifically deposed that the appellants assaulted deceased Gopal and injured Agarsai (PW-6) with Tabbal and Lathi. Her evidence is corroborated by the evidence of Rambai (PW-5) and Phoolbai (PW-7) as also by medical evidence. The evidence of Rambai (PW-5) and Phoolbai (PW-7) are cogent. It appears from the record that they had no motive to implicate the appellants falsely.

18. On due appreciation of the entire evidence of Rambai (PW-5), Phoolbai (PW-7), who were eyewitness of the incident, I find that their evidence is wholly reliable and can be based for conviction of the appellants and, therefore, the findings recorded by the learned Additional Sessions Judge convicting the appellants on the basis of the evidence of Rambai (PW-5) and Phoolbai (PW-7) do not call for any interference by this Court.

19. For the foregoing reasons, I do not find any substance in the instant appeal; it deserves to be and is hereby dismissed.

20. It is reported that the Appellants are on bail. They shall be taken into custody forthwith for serving out remaining part of sentence, if any.

Sd/-
(Anil Kumar Shukla)
Judge