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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1746 of 2000

Judgment Reserved on : 4.9.2017

Judgment Delivered on : 27.10.2017

Raju alias Ramesh, S/o Zumuklal, aged 30 years, R/o Gram Tarod, P.S. Balod, District Durg, M.P. (now Chhattisgarh)

---- Appellant

versus

State of M.P. (now Chhattisgarh) through P.S. Balod, District Durg, M.P. (now Chhattisgarh)

--- Respondent

For Appellant : Shri Adil Minhaj, Advocate
For Respondent/State : Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 6.7.2000 passed in Sessions Trial No.131 of 1998 by the Additional Sessions Judge, Balod convicting the accused/Appellant under Section 307 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 5 years.
2. Case of the prosecution, in brief, is that on 22.11.1997 at about 5:30 a.m., injured Sonbati (PW3) was sweeping in the lane constructed in front of her house. At that time, the accused/Appellant came there and assaulted her on the head by a Sabbal. As a result of the assault, she fell down. Thereafter, the Appellant again assaulted her twice with an intent to kill her saying that he will kill her today. The Appellant thereafter lifted her up,

took her away through his fence (*badi*) and threw her near the pond. Same day, in the morning, when Sonbati was not seen, her husband Deviprasad (not examined by the prosecution) and sons Girdharilal (PW2) and Duluram (PW4) searched her. They found her lying down in the bush grown near the pond. Sonbati told them that the Appellant had thrown her there after assaulting her. First Information Report (Ex.P3) was lodged by Girdharilal. Sonbati was examined by Dr. Anil Agrawal (PW6). In his report (Ex.P8), he found two incised wounds over the skull, one behind left ear, i.e., left occipital region of the skull and the other from left parietal region of the skull to right parietal region of the skull of injured Sonbati. He opined that the injuries suffered by the injured were dangerous to her life. During investigation, after taking disclosure statement of the Appellant, the weapon of offence Sabbal was seized from his possession vide Ex.P6. His vest, gamchha and full shirt were also seized in which some blood stains were present. Blood stained soil was also seized from the place of occurrence, i.e., from the front place of the house of the Appellant. Blood stained soil was also seized from near the pond vide Ex.P7. Blood stained scrap of the gate of the fence (*badi*) of the Appellant was also seized vide Ex.P7. All the seized articles were sent for chemical examination. According to the FSL Report (Ex.P12), blood stains were found in the chemical examination on the articles sent to the FSL for examination. After investigation, a charge-sheet under Section 307 of the Indian Penal Code was filed against the accused/Appellant. Charge under Section 307 of the Indian Penal Code was framed against him.

3. So as to hold the accused/Appellant guilty, the prosecution

examined as many as 7 witnesses in support of its case. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied the charge and pleaded that the husband of injured Sonbati, her son Beniram and younger brother of her husband Hansuram were accused of committing murder of Kaushal Yadav and injured Sonbati and her family members were at inimical terms with many villagers. Therefore, some unknown person would have assaulted Sonbati and he has been falsely implicated in the case. He examined 3 witnesses in his defence.

4. After trial, the Trial Court convicted and sentenced the accused/Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the accused/Appellant argued that injured Sonbati (PW3) was discharged from Sector-9 Hospital, Bhilai on 26.11.1997, but her statement under Section 161 Cr.P.C. was recorded on 17.12.1997. Delay has not been explained by the prosecution. It was further argued that as per the prosecution story, injured Sonbati was assaulted in front of the house of the Appellant at about 5:00–5:30 a.m., From there, the accused/Appellant had lifted her up and thrown her near the pond. The distance from the place of occurrence and the pond is about 150 metres, therefore, had the Appellant dragged Sonbati from the place of occurrence to the pond, she would have suffered injuries on her body and some person would have seen the dragging. But, in the medical report, no such injury was found on her body and no witness has deposed about the dragging. Therefore, this version of the prosecution is not reliable. It was further argued that Dr. Anil

Agrawal (PW6) has clearly opined that injuries which were found on the body of injured Sonbati were not caused by a Sabbal. Therefore, the whole prosecution story is doubtful. Hence, the accused/Appellant is entitled for benefit of doubt.

6. On the other hand, Learned Counsel appearing for the State supported the impugned judgment and submitted that after discharge of injured Sonbati (PW3) from Sector-9 Hospital, Bhilai, she was not in a position to make a statement. Therefore, her statement was recorded later on. He further argued that as per the prosecution story, the accused/Appellant had lifted up the body of Sonbati and thrown her near the pond, i.e., he had not dragged her body. Therefore, question of presence of any injury caused due to dragging does not arise.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment minutely.
8. Girdharilal (PW2), who lodged the FIR (Ex.P3), has deposed that on 22.11.1997 at about 7:00 a.m., he and his family members got together to take tea. At that time, they did not see their mother Sonbati (PW3). He and his brother Duluram (PW4) went out for her search and when they went towards the pond, they saw that the bush grown near the pond were budging. They went near the budging bush and saw that their mother Sonbati was lying down in the bush and she had sustained injuries on the head and near the ears and she was bleeding from those injuries. He further deposed that on being asked, she told him that the accused/Appellant had assaulted her with a Sabbal. His brother Duluram (PW4) has

categorically supported the above statement of Girdharilal (PW2).

9. Sonbati (PW3) has deposed that at about 5:00 a.m., she was sweeping in front of her house. The accused/Appellant was standing at the door of his house with a Sabbal. He assaulted her with the Sabbal on the head, as a result of which she fell down. She further deposed that the Appellant saying that he will kill her, again assaulted her with the Sabbal behind her ear. Thereafter, the Appellant took her to his house and then threw her in the bush. When her children came there, she told them that the Appellant had assaulted her with a Sabbal.
10. Sonbati (PW3) was medically examined by Dr. Anil Agrawal (PW6). As per his statement and MLC Report (Ex.P8), Sonbati was examined on 22.11.1997 itself and he found two incised wounds, one incised wound over skull behind left ear, i.e., left occipital region of the skull measuring 5"x1½"x1½" transversally placed and the other incised wound over skull from left parietal region to right parietal region measuring 7"x1½"x1½" transversally placed. He also found that both the wounds were bleeding. He opined that the injuries were caused by a hard and sharp edged weapon and were dangerous to her life.
11. Dr. R.S. Waghmare (PW1) has deposed that on 22.11.1997, Sonbati (PW3) was admitted in semi-conscious condition in their hospital at Sector-9, Bhilai. She was discharged on 26.11.1997.
12. B.K. Dutt (PW7), Station House Officer has deposed that during investigation, he recorded disclosure statement (Ex.P5) of the accused/Appellant in which the Appellant informed that he had

hidden the Sabbal in his house. He further deposed that as per the disclosure statement, he had seized the Sabbal and clothes of the Appellant from his possession vide Ex.P6. During investigation, blood stained soil from the place of occurrence and blood stained scrap of the door of the house of the Appellant were seized vide Ex.P7. The above statement of B.K. Dutt (PW7) is duly corroborated by Sanwal Singh (PW5). The seized articles including the Sabbal were sent for chemical examination. As per the chemical examination report (Ex.P12), blood stains were found on the soil seized from the place of occurrence, on the scrap of the door of the house of the Appellant and the Sabbal.

13. It was argued by Learned Counsel appearing for the Appellant that Sonbati (PW3) and her family members were at inimical terms with many villagers and, therefore, some other unknown person would have assaulted her. The Appellant has later been falsely implicated in the case.
14. Mrityunjay Yadav (DW2) has deposed that husband of Sonbati (PW3) Deviprasad and his brother Hansu and son Beniram were accused of murder of Kaushal Kumar Yadav. Sanwal Singh (PW5), who is an independent witness, has admitted this fact in paragraph 7 of his cross-examination. According to the statement of Mrityunjay Yadav (DW2), Sonbati and her family members had disputes with many villagers. But, the Appellant has not placed on record any particular of those disputes that with which of the villagers what were the disputes. Girdharilal (PW2), Sonbati (PW3) and Duluram (PW4) have not admitted this fact.
15. Even if it is accepted for the sake of argument that there was any

dispute between Sonbati and her family members and many villagers then leaving those villagers why did she implicate the Appellant only. This has not been explained by the Appellant.

16. It was further argued by Learned Counsel appearing for the Appellant that as per the prosecution story, the distance between the place of occurrence and the pond is about 150 metres and had the Appellant dragged the injured from the place of occurrence to the pond, she would have suffered injuries on her body as a result of dragging. But, no such injury was found on her body and no person saw dragging of the injured to the pond. Therefore, the prosecution story is doubtful. This argument is not acceptable because as per the prosecution story, the Appellant had lifted up the body of Sonbati (PW3), took her to the pond through his fence (*badi*) and thrown her in the bush grown near the pond. The incident took place at about 5:00 a.m. In the circumstance, when the Appellant had carried the body of injured to the pond through his fence (*badi*), it is less possible that some person would have seen carrying of the body of Sonbati by the Appellant at about 5:00 a.m. Besides this, not a single question or suggestion was put to Sonbati whether she was dragged from the place of occurrence to the pond or not. When the dragging did not take place, non-presence of any injury as a result of dragging is natural.
17. It was further argued by Learned Counsel for the Appellant that Dr. Anil Agrawal (PW6) has opined that the injuries sustained by the injured could not be caused by a Sabbal. It is true that in paragraph 7 of his cross-examination, Dr. Anil Agrawal (PW6) has admitted that the injuries suffered by the injured could not be

caused by a Sabbal, but in paragraph 2 of his examination-in-chief, he has clearly opined that both the injuries found on the body of the injured could be caused by an article having sharp edge. In paragraph 8 of his cross-examination, he has clearly stated that on 9.12.1997 he examined the seized Sabbal and found that one of its edges was sharp. Therefore, it is clear that the injuries suffered by the injured were caused by the seized Sabbal only.

18. Regarding recording of statement under Section 161 Cr.P.C. on 17.12.1997, explanation has been submitted by Investigating Officer B.K. Dutt (PW7). In paragraph 15 of his cross-examination, he has explained that Sonbati (PW3) was not in a good mental state and she was unable to speak clearly. He tried to record her statement 2-3 times. Since she was not able to speak clearly, he recorded her statement on 17.12.1997. Therefore, no adverse inference can be drawn because of belated recording of statement of Sonbati.
19. From the above discussion, it is established that as per the statement of Sonbati (PW3), the Appellant assaulted her with a Sabbal on 22.11.1997 at about 5:00–5:30 a.m. when she was sweeping in front of her house. As a result of the assault, she sustained injury on the head. Thereafter, the Appellant, saying that he will kill her, again assaulted her with the Sabbal and caused injuries over her skull in the occipital and parietal regions and thrown her body in the bush grown near the pond. When sons of Sonbati, in her search, reached near the bush, she told them about the incident. This version of Sonbati is duly corroborated by her sons Girdharilal (PW2) and Duluram (PW4). Her statement also

finds support from the medical report (Ex.P8). The weapon of offence and the blood stained clothes were also seized from the possession of the Appellant. On the basis of evidence on record, it is not seen that the Appellant has been falsely implicated in the case. Therefore, the finding of conviction arrived at by the Trial Court deserves to be affirmed.

20. In the premises of aforestated, the judgment of conviction and sentence under challenge, being unexceptionable, is affirmed and the instant appeal is dismissed.
21. It is reported that the Appellant is on bail. He shall immediately surrender before the Trial Court or shall be taken into custody forthwith for undergoing remaining part of the sentence.
22. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE