

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Appeal No. 474 OF 2001

Judgment Reserved on: 14.12.2016
Judgment delivered on: 14.02.2017

Ramphal aged 26 years son of Kushal Prasad Lodhi resident of village Bidbida P.S.
Patharia District Bilaspur (Chhattisgarh)

---- Appellant

Versus

State of Chhattisgarh through P.S. Patharia District Bilaspur (Chhattisgarh)

----Respondent

For Appellant	: Shri Shailendra Dubey, Advocate
For State/Respondent	: Shri Ravindra Agrawal, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

C A V Judgment

Per Sanjay Agrawal, J.

1. This criminal appeal is filed by the accused/appellant against the judgment and order dated 31.03.2001 passed by the learned Additional Sessions Judge, Mungeli in Session Trial No. 294/1999 whereby the appellant has been convicted for having committed an offence punishable under Section 302 of the Indian Penal Code (hereinafter referred as 'IPC') and sentenced to undergo imprisonment for life with fine of Rs.1,000/-. In default of payment of fine amount, he would further have to undergo rigorous imprisonment for three months. While convicting the appellant as such, the learned trial Court has acquitted co-accused Vinod Kumar for having committed an offence punishable under Sections 302/34 of the IPC and against the said acquittal,

criminal revision has been instituted before this Court by deceased's brother Ram Saran Lodhi. The said criminal revision which was registered as Criminal Revision No. 307 of 2001, has been dismissed by Division Bench of this Court vide its order dated 24.06.2016.

2. The prosecution story, briefly stated, is that, in the intervening night of 1st and 2nd of June, 1999 the deceased Ramavtar who was sleeping at the Verandah of his house along with his wife Smt. Rekha Verma (PW-5), had shouted at about 1.00 AM (in the night) that Ramphal has assaulted him with *Gaiti* (a big iron instrument for digging earth). At the relevant time, other family members i.e. (nephew) Rajesh Kumar (PW-1), mother- Sonbai (PW-2), brother- Ram Sharan Lodhi (PW-6) and brother's wife Jamna Bai, who were sleeping on the roof on their house have rushed towards him and saw that Ramphal was running away from the spot with *Gaiti* through lane (*Gali*) after assaulting him (Ramavtar), while other co-accused Vinod Kumar had followed him. They also saw that the deceased Ramavtar has received injuries on his chest and the blood was coming out due to the said injury.

3. Based upon the aforesaid incident, the Merg intimation (Exhibit P-15) and then the First Information Report (Exhibit P-18) was lodged by Rajesh Kumar, the nephew of the deceased immediately after the occurrence of the said incident in the morning at about 6.15 AM on 02.06.1999 by narrating the aforesaid incident.

4. Pursuant to the aforesaid information, the matter was investigated and the accused Ramphal was charged for having commission of offence punishable under Section 302 of the IPC and the co-accused Vinod Kumar was charged for having commission of offence punishable under Sections 302/34 of the IPC.

5. Both the accused persons have denied the charges as framed and pleaded not guilty by submitting that they have been falsely implicated in connection with the said crime.

6. In support, the prosecution has examined 12 witnesses in order to establish the above mentioned crime, while one witness examined by the accused persons in their defence.

7. The trial Court, after considering the evidence adduced by the parties, has found the accused-appellant Ramphal guilty for having committed an offence under Section 302 of the IPC and has acquitted the co-accused Vinod Kumar for having committed an offence under Section 302/34 of the IPC vide its impugned judgment and order dated 31.03.2001 and sentenced the accused/appellant as aforesaid.

8. Being dissatisfied with the aforesaid conviction, the accused/appellant Ramphal has preferred this appeal while exercising the powers enumerated under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as "CrPC") on the ground that the judgment and order as passed by the trial Court is perverse and illegal inasmuch as it did not appreciate the prosecution evidence in its proper perspective and thereby erred in convicting him.

9. On the other hand, the learned counsel for the State/respondent has supported the impugned judgment delivered by the trial Court and argued that the same has been based upon due and proper appreciation of evidence, and therefore, does not require to be interfered as far as conviction of the appellant is concerned.

10. We have heard learned counsel appearing for the parties and have

perused the entire record carefully.

11. Rajesh Kumar, nephew of the deceased was examined as PW-1, who had lodged Merg intimation (Exhibit P-15) and First Information Report (Exhibit P-18), has stated that his uncle Ramavtar has shouted at about 12.00 – 1.00 AM that Ramphal and Vinod Kumar have assaulting him. Upon hearing the sound, he rushed towards him and saw that accused Ramphal and Vinod Kumar were running away from the spot after assaulting his uncle through the lane (*Gali*) and at that time, his uncle, though alive, but was unable to speak. He stated further that the appellant Ramphal holding a *Gaiti* when he was running away from the spot. He stated further that his father Ram Sharan Lodhi, grand mother Sonbai and mother Jamna Bai were also rushed towards the deceased, besides him. He stated further that the name of other co-accused Vinod Kumar might have been skipped over by him while lodging the First Information Report because of hurriedness and that his uncle Ramavtar has some boundary dispute with the appellant.

12. Similar version was put by Sonbai (PW-2), the mother of the deceased, who has stated that Ramphal was holding a *Gaiti* when he was running away from the spot. This witness has stated that upon her asking deceased Ramavtar had stated that he was assaulted by Ramphal and Vinod Kumar. She stated further that when her son Ramavtar had shouted, it was about 1.00 AM in the night. She stated further in paragraph-6 that she had not seen the other accused Vinod Kumar. Although, there is some discrepancy in her evidence with that of Rajesh Kumar (PW-1) but her entire evidence cannot be ruled out particularly when the alleged incident had taken place in the house of deceased Ramavtar and that too at about 1.00 AM in the night. The material piece of evidence adduced by this witness could not have been rebutted in her

cross-examination.

13. Rekha Verma (PW-5), the wife of the deceased, who was sleeping nearby her husband i.e. deceased has stated that she saw both the accused persons standing besides the cot of her husband when he had shouted by saying that “both the accused are assaulting him”. She stated further that they were running away through the lane (*Gali*) after assaulting her husband who informed her that he was assaulted by appellant Ramphal and co-accused Vinod Kumar.

14. Likewise, Ram Sharan Lodhi (PW-6), the brother of the deceased has also stated more or less similar things. Evidence of these witnesses have been corroborated by Dr. Anil Kumar Gupta (PW-7), who has submitted its report (Exhibit P-14) after examining the seized weapon “*Gaiti*”. It was opined by him on 19.07.1999 that while he was conducting the postmortem, it was found that the alleged injury could be inflicted by the seized article ‘*Gaiti*’.

15. The other prosecution witnesses are formal witnesses as they were not rushed to the place of incident when the alleged occurrence had taken place in the intervening night of 1st and 2nd of June, 1999.

16. From close scrutiny of the entire evidence of Rajesh Kumar (PW-1) and Sonbai (PW-2), coupled with the First Information Report (Exhibit P-18) and Merg intimation (Exhibit P-15), it cannot be held that the other co-accused Vinod Kumar was present on the spot and was therefore, involved in the said crime. However, from examination of the entire evidence of the witnesses as discussed aforesaid, it is crystal clear that the alleged incident was occurred in the said intervening night of 1st and 2nd of June, 1999 when the deceased Ramavtar was assaulted badly by accused/appellant Ramphal by using a

“*Gaiti*” and was seen running away from the spot through the lane (*Gali*) by holding a *Gaiti*.

17. In view of the aforesaid discussions, we find no merit in this appeal and therefore, dismissed accordingly.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE