

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 916 of 2004

- Dhanbal @ Dhanwar Behra, aged about 39 years, son of Shri Kudapa Behra, resident of village Kusumguntari, PS Koksara, Distt.Kalahandi (Orissa)

---- Appellant

Versus

- The State of Chhattisgarh

---- Respondent

For Appellant : Shri Tarun Dadsena, Advocate

For Respondent/State : Shri Arvind Dubey, PL

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Anil Kumar Shukla**

Judgment on Board by Prashant Kumar Mishra, J.

28.02.2017

- 1) Appellant would challenge his conviction under Section 302 of the IPC for committing murder of deceased Manglu Satnami at about 01 AM on 09.01.2004.
- 2) The prosecution case as emerging from the First Information Report (Ex.P/5) lodged by PW-3 Horilal is that PW-4 Kamlesh, PW-5 Varun and PW-6 Jairam and one Maniram (not examined) were sleeping in the pump house at the agricultural field belonging to Horilal. At about 01 AM Varun, Kamlesh and Maniram awoke him and informed that one person knocked at the door of the

pump house and when the door was opened, the man picked up a pick-axe and had assaulted the deceased seriously injuring him. The informant and other witnesses went to the pump house, but found the door locked from inside. They removed the tin roof and witnessed that the deceased was lying unconscious having injuries over wrist, testicles, left ear and armpits and the appellant was sitting naked in one corner of the room.

- 3) The weapon and other articles were recovered from the spot. The appellant had suffered burn injuries therefore, he was not taken into custody immediately, but, was admitted in the hospital where he remained for treatment for about 28 days. His MLC was conducted by PW-10 Dr SA Ali, who submitted report vide Ex.P/15A finding two simple lacerated wounds and four superficial burn injuries on the person of the appellant.
- 4) Appellant's conviction is based on the statement of two eyewitnesses, namely, PW-4 Kamlesh and PW-5 Varun.
- 5) Assailing the conviction, Shri Dadsena, learned counsel for the appellant would argue that the appellant has exercised right of self defence because he was set on fire by Horilal, Kamlesh and Varun, therefore, he picked up the pick-axe lying on the spot and inflicted injuries in his self defence.
- 6) Per contra, learned Panel Lawyer would submit that there is absolutely no evidence that the appellant was attacked or assaulted or even threatened by Horilal, Kamlesh or Varun and

further that in his examination under Section 313 Cr.P.C. the appellant has not pleaded right of self defence.

- 7) In the FIR itself, the Police was informed within six hours of the incident that the appellant knocked the door of the pump house where the deceased was sleeping with Kamlesh and Varun and when the deceased opened the door, he was assaulted by the appellant by means of a pick-axe. These allegations have been reiterated by eyewitnesses PW-4 Kamlesh and PW-5 Varun in their Court statement. There is nothing in their statement which may discredit them or make them untrustworthy for any reason, whatsoever. There is no material contradiction or omission in their statement, therefore, their testimony deserves to be relied upon.
- 8) Referring to judgment in the matter of **Ram Charan Vs State of UP** (1992 CRLJ 1567), learned counsel for the appellant tried to make out a case of right of self defence. However, in the case at hand, the prosecution case is plain and simple that at about 01 AM in the midnight, the appellant knocked the door of the pump house and when deceased Manglu Satnami opened the door, the appellant straight away attacked him without any conversation, much less any threat, quarrel or provocation. It has also been put forth that the appellant has evidently suffered burn injuries which were inflicted by Horilal or the other witnesses for which the appellant had to exercise his right of self defence. However, in the statement of PW-8 SL Chandrakar, the Investigating Officer,

who conducted the investigation, he would depose that when the appellant was admitted in the hospital for treatment of burn injuries for 28 days, he investigated the matter, wherein he found that the appellant suffered burn injuries because of fall over the camp fire (*aalav*). Thus, it is apparent that the appellant had not suffered any burn injuries either in the same transaction or immediately before the incident so that he can be said to have exercised right of self defence. Even otherwise, the appellant has not taken this defence in his accused statement.

- 9) The appellant has also been convicted under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act 1989'). The said conviction does not hold any merit on two counts. Firstly, there is no evidence that the appellant was aware that the deceased belong to SC Community or that the appellant committed the offence on the ground that the deceased is a member of SC Community. Secondly, for an offence under the Act 1989, the investigation has to be carried out by an Officer not below the rank of Deputy Superintendent of Police in view of the provisions contained in Rule 7 of the SC ST (Prevention of Atrocities) Rules, 1995.
- 10) Rule 7 of the SC ST (Prevention of Attrocities) Rules, 1995, framed under the Act, 1989 reads as under :

"7. Investigating Officer - (1) An offence committed under the Act shall be investigated by a police officer not below the rank of Deputy Superintendent of Police. The

investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer-in-charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer."

- 11) In the case at hand, the entire investigation has been conducted by PW-8 SL Chandrakar, who is an Assistant Sub-Inspector, much below the rank of a DSP. Therefore, he could not have conducted the investigation for an offence under Section 3(2)(v) of the Act, 1989.
- 12) For the foregoing, the appeal preferred by the appellant deserves to be and is hereby allowed in part. While maintaining his conviction under Section 302 of the IPC, his conviction under Section 3(2)(v) of the Act 1989 is set aside.

- 13) The appellant is on bail. His bail bond is cancelled and he be taken into custody forthwith and be sent to the concerned jail for serving the remainder of the sentence.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Anil Kumar Shukla