

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.591 of 2003

Judgment Reserved on : 4.11.2017

Judgment Delivered on : 28.11.2017

Ramsatta Patel, aged about 20 years, S/o Daduram Patel, R/o Village Jhabadi. P.S. Kasdol, Tahsil and District Raipur, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh

--- Respondent

For Appellant	:	Ms. Usha Chandrakar, Advocate
For State/Respondent	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 31.3.2003 passed in Sessions Trial No.381 of 2002 by the Second Additional Sessions Judge, Baloda Bazar convicting the accused/Appellant under Section 307 of the Indian Penal Code and sentencing him with rigorous imprisonment for 5 years and fine of Rs.500/- with default stipulation.
2. Case of the prosecution, in brief, is that on 7.5.2002 at about 2:00 a.m., Complainant/injured Ramkirtan (PW1) was sleeping with his family in his house at Village Jhabadi. At that time, some unknown person came there and assaulted him as well as his wife Samund Kunwar. They sustained injuries on their head. Blood oozed out from the injuries. First Information Report (Ex.P2) of the incident

was lodged against some unknown person in Police Station Kasdol by Bharatlal (PW3). Ramkirtan was medically examined by Dr. R.S. Joshi (PW10). He gave his report (Ex.P13A) in which he found two lacerated wounds, one measuring 5 cms x 1 cm x bone deep caused on the left parietal region, clotted blood was present and the other measuring 1½ cms x 1½ cms x ½ cm caused on the fore head, clotted blood was present. He opined that the injuries could be caused by a hard and blunt object. Samund Kunwar was also medically examined by Dr. R.S. Joshi (PW10). He gave his report (Ex.P14A) in which he found two lacerated wounds, one obliquely placed, measuring 5 cms x 1½ cms, bone deep, caused on the left side of the fore head and the other vertically placed, measuring 2 cms x ½ cm x 1½ cms caused on the mid parietal region. He opined that the injuries could be caused by a hard and blunt object. A 51 inches lengthy bamboo of babool was seized from the front place of the house of Ramkirtan vide Ex.P12. Plain and blood stained soil were also seized from the place of occurrence vide Ex.P12 itself. The seized articles were sent for chemical examination vide Ex.P7. FSL Report is Ex.P9 in which it is reported that blood was found on all the articles other than the plain soil. On completion of the investigation, a charge-sheet was filed against the Appellant under Section 307 IPC. Charge was framed against him under Section 307 IPC.

3. In order to rope in the Appellant, the prosecution examined as many as 10 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him. He

claimed to be innocent and false implication in the case. No defence witness was examined by him.

4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that some unknown person assaulted Ramkirtan and his wife Samund Kunwar. The Appellant has been falsely implicated in the case. There is no eyewitness to the incident. Ramkirtan had sustained simple injuries. His wife Samund Kunwar was not examined by the prosecution.
6. On the other hand, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment minutely.
8. Admittedly, injured Samund Kunwar, wife of Ramkirtan (PW1) has not been examined by the prosecution. Regarding the incident, Ramkirtan has deposed in his Court statement that due to summer season, he and his wife Samund Kunwar were sleeping in the courtyard of their house. When they were sleeping, some unknown person assaulted him as well as his wife. They sustained injuries on their head. He further deposed that he fell unconscious. Thereafter, he was taken to the hospital. There he was treated.

Rathram (PW2) and Bharatlal (PW3), who lodged the FIR, have also supported the above statement of Ramkirtan and deposed that Ramkirtan was assaulted by some unknown person in the night and he sustained injuries on the head.

9. Dr. R.S. Joshi (PW10) examined Ramkirtan (PW1) on 7.5.2002 and found the injuries stated in the previous paragraph. Dr. Joshi also examined Samund Kunwar, wife of Ramkirtan and found the injuries stated in the previous paragraph. The above statements of the witnesses are unrebutted. Therefore, it is clear that in the fateful night, Ramkirtan and his wife had sustained injuries, as deposed by Dr. R.S. Joshi and Dr. S.N. Madhariya (PW8).
10. In this case, there is no eyewitness to the incident. Ramkirtan (PW1) himself has deposed that some unknown person had assaulted him and his wife. As per his Court statement, before 7-8 months of the incident, the Appellant had stolen one deck from his house. After that, the father of the Appellant had begged for forgiving the Appellant. For the said reason, the Appellant had said Ramkirtan that he had defamed him, therefore, he will take revenge. Ramkirtan has further stated that for this reason the Appellant would have assaulted him and his wife. Rathram (PW2) and Bharatlal (PW3) have also supported the above statement of Ramkirtan and deposed that the said dispute had arisen between the Appellant and Ramkirtan. In paragraph 5 of his cross-examination, Ramkirtan has admitted that since he was sleeping, therefore, he could not see the assailant. He has further admitted in paragraph 11 of his cross-examination that after the theft of his deck from his house, the Appellant had gone out of the village to

earn livelihood. Rathram (PW2), in paragraph 10 and Chhotulal (PW4) in paragraph 7 have also admitted that before the incident the Appellant had left the village and had gone to Delhi for the purpose of earning livelihood. There is no evidence on record to show that the Appellant was seen in the village on the date and time of incident nor before or thereafter.

11. As per the statement of Investigating Officer M.R. Sinha (PW6), the disclosure statement (Ex.P11) of the Appellant was recorded by him on 9.7.2002. He himself has deposed in paragraph 3 of his statement that before recording of the disclosure statement, he seized a red shirt and a bamboo of babool from the place of occurrence. Since the said articles were seized much earlier of the recording of the disclosure statement of the Appellant, therefore, the disclosure statement (Ex.P11) cannot be said to be legally admissible. There is nothing on record to show that the said seized bamboo of babool and the shirt belonged to the Appellant.
12. Chhotulal (PW4) has deposed that when the Appellant was brought to their village by the police, at that time, when they asked the Appellant, he admitted that he had assaulted Ramkirtan and his wife in the last night. The Trial Court has relied upon the statement of Chhotulal as extra judicial confession of the Appellant. But, the above statement of Chhotulal itself shows that at the time of making the said extra judicial confession by the Appellant, police officials were present. Since the said confessional statement was given by the Appellant in presence of the police officials, it is not admissible in evidence.

13. From the above discussion, it is clear that the assailant was an unknown person. There was no eyewitness to the incident. Admittedly, on the date and time of the occurrence, the Appellant was out of the village and he was not seen in the village by anybody. There is nothing on record to show that the seized articles, i.e., the bamboo of babool and the shirt belonged to the Appellant. So called confessional statement was made by the Appellant in presence of the police officials. Therefore, the same is not admissible in evidence.
14. From the foregoing, I find that there is nothing on record to show that the Appellant was the assailant.
15. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
16. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.
17. 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