

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1023 of 2015

Judgment reserved on : 04.01.2017

Judgment delivered on : 25 .01.2017

Ramnath @ Ramhu @ Dhoni, S/o. Rohit Lal Dehariya, Aged about 45 years, R/o. Kanchan Nagar Chartola, Malajkhand, Balaghat, Thana Bamhani banjar Mandla (M.P.), Presently R/o. Hamara Dhaba Thana Somni, District Rajnandgaon (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through District Magistrate, Police Station Ghumka, District Rajnandgaon (C.G.)

---- Respondent

For Appellant : Shri Sanjeev Sahu, Advocate

For Respondent/ State : Shri Suryakant Mishra, Panel Lawyer

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 26.08.2014 passed by the learned Second Additional Sessions Judge, Rajnandgaon in Sessions Trial No. 78/2012, whereby learned Second Additional Sessions Judge convicted the appellant for the offence punishable under Sections 450, 307 and 324 of the IPC and

sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs. 200/- in default of payment of fine, to further undergo rigorous imprisonment for two months, rigorous imprisonment for seven years and to pay fine of Rs. 200/-(two counts) in default of payment of fine, to further undergo rigorous imprisonment for two months (two counts), rigorous imprisonment for three years, respectively with a direction to run the sentences concurrently.

2. As per the case of the prosecution, a Dhaba namely Chanchal Dhaba was situated at village Mohndi, Police Station-Ghumka, where complainant Mujibkhan was working as a cook. He lodged Dehatinalishi (Ex.P-13) on 22.10.2012 at 1.10 PM that on 21.10.2012 at about 9.00 PM, after closing the Dhaba, Geeta Bai, who was working as a maid in the said Dhaba, was sleeping with her children namely Surendra Sahu and Narad Sahu in a room of the Dhaba. Complainant Mujibkhan was also sleeping in the same room. In the night, at about 1-2 AM, the appellant, who had also been employed in the Dhaba earlier and was removed from the service by the owner of the Dhaba, came inside the Dhaba by jumping the main gate of the Dhaba and picked up a spade lying near the counter. After hearing chirm of the appellant, complainant Mujibkhan got up. The appellant asked the complainant that how did he sleep with Geeta Bai, while she was kept by him. He also said to the complainant that he will kill him and on the same day he assaulted the complainant by the spade on the

head. Geeta Bai got up and intervened between them. The appellant also assaulted Geeta Bai with the spade, as a result of which, she sustained injuries on her cheek, wrist and elbow. The appellant further assaulted on the head of Surendra and Narad as a result of which they sustained injuries. The appellant after the assaults leaving the spade at the place of incident fled from there to village Mohndi and narrated the incident to Nilambar Sahu (PW-2) and Fattelal (PW-3).

3. On the complaint of complainant Mujibkhan, Dehatinalishi was registered vide Ex.P-13. Later on, First Information Report (Ex.P-22) was registered against the appellant by Police Station Ghumka for the offences punishable under Sections 307, 323 and 324 of the IPC. Memorandum statement of the appellant was recorded vide Ex.P-1. At his instance, weapon of assault i.e. spade, blood stained material and a blood stained empty bottle of Kinley make were recovered and seized vide Ex.P-2. Blood stained full shirt and full pant of the appellant were also seized vide Ex.P-3. Blood stained T-shirt of Surendra was seized from Geeta Bai vide Ex.P-4. A green colour Hero bicycle was seized from Bijeram (PW-6) vide Ex.P-5. Injured persons were medically examined by two doctors and query report was submitted by Dr. R. K. Nayak (PW-16) vide Ex.P 15A, Ex.P-16A and Ex.P-17 A, in respect of injured Geeta Bai, Surendra and Narad. Statements of witnesses under Section 161 Cr.P.C. were recorded.

4. After completion of the investigation, charge-sheet was filed against the appellant in the Court of Judicial Magistrate First Class, Rajnandgaon, who committed the case to the Court of Session at Rajnandgaon, from where it was received on transfer by the learned 2nd Additional Sessions Judge, Rajnandgaon, who conducted trial and convicted and sentenced the appellant as mentioned in the first paragraph of this judgment.

5. Shri Sanjeev Sahu, learned counsel for the appellant argued that the trial Court has wrongly interpreted the facts and law. He further argued that the trial Court has erred in appreciation of evidence available on record. The report of CT scan regarding injured persons is doubtful and the eye-witness of the incident complainant Mujibkhan has not been examined before the Court below. Learned counsel further argued that from the FSL report (Ex.P-24) it is not clear that the blood which was found on the spade was human blood. The intention of the appellant was not proved before the Court below. The conviction recorded by the learned Second Additional Sessions Judge is not sustainable and, therefore, the appellant deserves to be acquitted. In support of his argument, learned counsel for the appellant placed reliance on **Shatrughan v. State of M.P. 2013(1) C.G.L.J. 4** and **Thakur Ram v. State of M.P. (Now C.G.) 2013 (4) C.G.L.J. 299.**

6. On the contrary, Shri Suryakant Mishra, learned Panel Lawyer for the State/ respondent, supporting the impugned

judgment, submitted that the impugned judgment of conviction and sentence passed by the trial Court is impeccable and does not warrant any interference by this Court.

7. I have heard learned counsel for the parties at length and have also perused record of the Court below with utmost circumspection.

8. The questions arising for consideration before this Court are -

(i) Whether the Appellant committed the offence of house trespass punishable with imprisonment for life?

(ii) Whether the injuries caused to Surendra, Narad and Mujibkhan were sufficient for their death?

(iii) Whether the appellant caused injury to Geeta Bai voluntarily with dangerous weapon ?

9. To hold the appellant guilty, the prosecution examined Tukaram Lahre (PW-1), Nilambar Sahu (PW-2), Fattelal (PW-3), Pawan Rai (PW-4), Sundar Lal Sahu (PW-5), Bijeram (PW-6), Suresh Kumar (PW-7), Chetanand (PW-8), Uttam Yadav (PW-9), Geeta Bai (PW-10), Surendra (PW-11), Narad (PW-12), T.R. Sonkar (PW-13), Pramod Kumar Singh (PW-14) and Dr. Uttam (PW-15). The appellant did not examine any witness in his defence.

10. Assistant Sub Inspector T.R. Sonkar (PW-13) deposed that a complaint was lodged by complainant Mujibkhan that appellant Ramnath @ Ramhu @ Dhoni entered the Dhaba and assaulted him and Geeta Bai (PW-10) and Dehatinalishi (Ex.P-13) was lodged by Complainant Mujibkhan.

11. On perusal of Dehatinalishi (Ex.P-13) it reveals that on 22.10.2012 at about 1.10 PM, complainant Mujibkhan lodged the complaint against the appellant that after closing the Dhaba at about 9.00 PM, Geeta Bai (PW-10) was sleeping with their sons Surendra Sahu and Narad Sahu in a room of the Dhaba. Complainant Mujibkhan was also sleeping in the same room. At about 1-2 AM, the appellant entered the Dhaba and picked up a spade lying near the counter. The appellant asked the complainant that how did he sleep with Geeta Bai (PW-10) while Geeta Bai was kept by him and he threatened the complainant that he will kill him. The appellant assaulted the complainant with the spade. When Geeta Bai (PW-10) got up and intervened between them, the appellant assaulted Geeta Bai (PW-10) also with the spade as a result of which she sustained injuries on her cheek, wrist and elbow. The appellant also assaulted Surendra Sahu and Narad Sahu and thereafter leaving the spade fled from there.

12. Statement of complainant Mujibkhan was not recorded before the Court below, but immediately after the incident, complainant Mujibkhan narrated the incident to Nilambar Sahu

(PW-2) and Fattelal (PW-3) whose statements were recorded before the Court below.

13. Nilambar Sahu (PW-2) deposed at para-4 of his deposition that complainant Mujibkhan told him that the appellant assaulted him with a spade.

14. Fattelal (PW-3) deposed at para-2 of his deposition that on the fateful day, at about 3-4 AM, complainant Mujibkhan came to his village Mohndi and told him that someone had assaulted him and there was blood on his face. This witness has also stated that he went to the said Dhaba on motorcycle along with Sundar and Nilambar and at that time Geeta Bai (PW-10) was sitting there with her children. Geeta Bai (PW-10) told him that the appellant assaulted her and her children with a spade. This witness in his cross-examination at para-6 has deposed that complainant Mujibkhan had himself narrated the incident to him.

15. Pawan Rai (PW-4), owner of the Dhaba deposed that complainant Mujibkhan was working as a cook in his Dhaba. Manager of the Dhaba Fattelal (PW-3) informed him on his mobile about a fight took place in the Dhaba. When he reached his Dhaba, Geeta Bai (PW-10) and Mujibkhan had already been taken to hospital. This witness has turned hostile. In his cross-examination, this witness has stated that on the next day of the incident, Fattelal (PW-3) told him that the appellant had assaulted Mujibkhan, Geeta Bai, Surenda and Narad. This witness further deposed that the appellant

entered the Dhaba through the kitchen of the Dhaba and picked up a spade lying near the counter and assaulted the injured. Sunderlal (PW-5) deposed that Geeta Bai (PW-10) told him that the appellant had assaulted her and her children.

16. Geeta Bai (PW-10) deposed that she knew the appellant. She was working as a maid in the Chanchal Dhaba. Fattelal (PW-3) and Mujibkhan were working in the same Dhaba. Geeta Bai (PW-10) sustained injuries on her right hand and her children Surendra and Narad had also sustained injuries on their head. She further deposed that she did not see the assailant due to injuries sustained by her. This witness has turned hostile. In her cross-examination, Geeta Bai (PW-10) has stated that on the date of incident, the appellant came to the Dhaba 2-3 times and was seeing her angrily. She further stated that the main gate of the Dhaba was closed and the appellant entered the Dhaba by jumping the main gate. Due to the injuries sustained by her, she could not see the assailant. She had sustained injuries with the spade. This witness has also partly supported the case of the prosecution.

17. Surendra (PW-11) deposed that it was the time of Navratri. He was sleeping with his brother and mother in the Dhaba. He sustained injuries on his head and cheek. He did not know how did he sustain the injuries. This witness has turned hostile. In the cross-examination, this witness accepted that the appellant entered the Dhaba by jumping the main gate of the Dhaba. His mother and brother were assaulted in

the incident and after the incident Nilambar Sahu (PW-2) and Sundar Lal Sahu (PW-5) had come there.

18. Narad (PW-12) deposed that after the Dhaba closed, the appellant entered the Dhaba. Since he was sleeping, he did not know how did he sustain injury on his head. He stated that he sustained injuries a spade. In para-1 of his deposition, Narad deposed that the appellant entered the Dhaba and after consuming liquor with other person he went out from the Dhaba.

19. Statement of the appellant was recorded under Section 313 of Cr.P.C in which he stated that he had not gone to the Dhaba, but in his defence, the appellant has not stated anything regarding his presence at the time of incident in the Dhaba. The prosecution has proved its case that on the date of incident, the appellant was present in the Dhaba and after closing the Dhaba he entered the Dhaba by jumping the main gate and assaulted complainant Mujibkhan, Geeta Bai (PW-10), Surendra (PW-11) and Narad (PW-12).

20. Dr. R. K. Nayak (PW-16) examined injured Mujibkhan. Mujibkhan has not been examined before the Court below by the prosecution.

21. Apart from complainant Mujibkhan, Dr. R.K. Nayak (PW-16) examined Geeta Bai (PW-10) and gave his report (Ex.P-15A), in which, he found the following injuries:

(i) Lacerated wound 5x ½ cm muscle deep on right elbow

- (ii) Lacerated wound 2x1 cm subcut deep on right shoulder
- (iii) Contusion 8x3 cm on right forearm
- (iv) Swelling on right cheek and on right eye.

He opined that the injuries sustained by Geeta Bai (PW-10) were simple in nature and caused by a hard and blunt object and the nature of remaining injuries were required opinion of a Radiologist and treating doctor.

22. Dr. R.K. Nayak (PW-16) examined Narad (PW-12) and gave his report (Ex.P-16A), in which, he found lacerated wound 7x 5 cm bone deep on left fronto-parietal region. In his opinion he stated that the injury required opinion of a Radiologist and treating doctor.

23. Dr. R.K. Nayak (PW-16) also examined Surendra (PW-11) and gave his report (Ex.P-17A), in which, he found the following injuries:

- (i) Lacerated wound 13 cm bone deep on occipital region.
- (ii) Incised wound 7x2 cm bone deep on left parietal region
- (iii) Incised wound 5x1 cm bone deep on left parietal region
- (iv) Incised wound 2x ½ cm bone deep on left parietal region
- (v) Incised wound 2x ½ cm bone deep on left parietal region
- (vi) Incised wound 1x ½ cm sub cut deep on cheek.

He opined that the injury no. 1 was caused by hard and blunt object and remaining injuries were caused by hard and sharp object. He further opined that the injuries No. 1 to 5

required opinion of a Radiologist and treating doctor and injury No. 6 was simple in nature.

24. Dr. Uttam (PW-15) deposed that on 22.10.2012 he examined Surendra (PW-11). He found 6 bone deep grievous injuries on the head of injured Surendra in the size of 7cm, 5cm and 2cm. Surendra was admitted in the hospital in unconsciousness condition. The left side of skull bone had been fractured and displaced from its original place and clotted blood was present on the left side of the head.

25. Dr. Uttam (PW-15) deposed that on 22.10.2012 he examined injured Narad (PW-12) and found that Narad had sustained bone deep grievous injury on front portion of his head. He was admitted in the hospital in unconsciousness condition. After CT scan, it was found the front bone of the head had displaced from its original place and had fractured and clotted blood was present on the front portion of the head. The doctor proved his report as Artcile- B. In the cross examination, Dr. Uttam (PW-15) deposed that there was fracture in the heads of both the injured persons.

26. In the instant case, the injuries were caused on the vital parts of Surendra (PW-11) and Narad (PW-12) with the spade. According to doctor R. K. Nayak (PW-16), had the injured not been treated on time, there was possibility of their death. Therefore, causing the above mentioned injuries to Surendra (PW-11) and Narad (PW-12) constitutes the offence under Section 307 IPC.

27. So far as the conviction imposed upon the appellant under Section 324 IPC is concerned, the injuries sustained by Geeta Bai (PW-10) were stated to be simple in nature and the same is corroborated by the medical evidence. Therefore, the conviction imposed upon the appellant under Section 324 IPC is impeccable and does not warrant interference.

28. So far as the offence under Section 450 IPC is concerned, it is proved that the appellant entered the Dhaba in the night and caused injuries to Geeta Bai (PW-10), Surendra (PW-11) and Narad (PW-12) while they were sleeping in a room of the Dhaba, therefore, the conviction imposed upon the appellant under Section 450 IPC also does not warrant interference.

29. Thus, the findings arrived at by the Court below being just, legal and proper, do not warrant interference by this Court.

30. In the result, the criminal appeal being devoid of merit is dismissed and the impugned judgment of conviction and sentence is affirmed.

Sd/-
(Anil Kumar Shukla)
Judge