

Moolchand Vs. State of Madhya Pradesh

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Court : Chhattisgarh

Decided On : Apr-16-2013

Judge : Sunil Kumar Sinha & Rangnath Chandrakar

Appeal No. : Criminal Appeal Nos. 891 & 892 of 1997

Appellant : Moolchand

Respondent : State of Madhya Pradesh

Judgement :

Sunil Kumar Sinha, J.

These appeals are directed against the judgment dated 14th of February, 1997 passed in Sessions Trial No.199/95 by the Additional Sessions Judge, Sakti, District Bilaspur. By the impugned judgment, the appellants have been convicted and sentenced in following manner with a direction to run the sentences concurrently:-

Conviction	Sentence
u/Ss. 302/34, IPC	Imprisonment for life and fine of Rs. 1,000/- with default sentence of R.I. for 6 month.

u/Ss. 307/34, IPC	R.I. for 5 years and fine of Rs. 500/- with default sentence of R.I. for 3 months.
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2. The facts, briefly stated, are as under:-

2.1 Two persons namely - Patwari Sahu and Rukmani Bai (husband and wife) died in the incident which took place at about 6.00 a.m. on 19-12-1994. The case of the prosecution is that at about 6.00 a.m. on 19-12-1994, the two deceased persons and their son Kirtan Sahu (P.W. 1) were threshing their paddy crops in their Khaliyan. The Khaliyan was just behind their house. Appellant-Itwari (A-1) is real brother of deceased-Patwari and appellant-Moolchand (A-2) is son of Itwari (A-1). The house of the appellants is situated by the side of the house of the deceased persons. The allegations are that on account of destroying the cow-dung-cakes of the appellants, the appellants become enraged and came to the Khaliyan of the deceased and attacked over them by lathi, kalari, kaderi etc. The two deceased persons sustained multiple serious injuries and succumbed to those injuries. The incident was witnessed by Kirtan (P.W. 1), Jhaduram (P.W. 3), Gorelal (P.W. 4) and Kewaldas (P.W. 5). The eye-witnesses narrated the incident to Tarachand (P.W.6) who lodged First Information Report (FIR-Ex. P/2). The FIR contains the names of the appellants (A-1 and A-2). The Investigating Officer reached to the place of occurrence, gave notices (Exs.P/3 and P/4) to the Panchas and prepared inquest(s) (Exs.P/17 and P/5) on the dead bodies of the deceased. The dead bodies were sent for post-mortem. The post-mortem examination was conducted by Dr. J.C. Meshram (P.W. 11). He noticed following injuries on the dead body of deceased-Patwari Sahu:

- (i) Lacerated wound of 5 x 1 x 1 cm. on the middle portion of the right eye-brow;
- (ii) Lacerated wound of 5 x 1 x 1 cm. on the left temporal region;
- (iii) Contusion over the nasal bone having blood clots on both the nostrils; the nasal bone was also dislocated;
- (iv) Multiple abrasions of about inches on the right cheek;

- (v) Incised wound of 3 x 1 x 1 cm. on the lower lip;
- (vi) Dis-figuration on the right portion of chin;
- (vii) Lacerated wound of 1.5 x 1 x 1 cm. on the middle portion of right cheek;
- (viii) Lacerated wound of 1.5 x 1 x 1 cm. on the right temporal region (zygomatic process);
- (ix) There was dislocation of the right lower jaw;
- (x) There was dislocation of the left lower jaw;
- (xi) Contusion over the left cheek;
- (xii) Left upper canine was uprooted; and
- (xiii) There was swelling over the front portion of the neck.

On internal examination, he found that there was a fracture over the left temporal bone. Fractures were also there on the bones of the right portion of skull, the brain matter and the brain membrane were congested, other internal organs like trachea, lungs, heart, liver and spleen etc. were also congested. The Autopsy Surgeon opined that all the injuries were ante-mortem caused by hard and rough object and the cause of death was shock and haemorrhage on account of the above injuries and it was homicidal in nature. The post-mortem report of deceased-Patwari Sahu is Ex. -P/22.

2.2 Following injuries were found on the dead body of deceased-Rukmani Bai:-

- (i) Contusion of 12 x 2.5 x cm. on the left scapular region;
- (ii) Contusion of 5 x 2.5 x cm. on the left upper portion of the back;
- (iii) Lacerated wound of 6 x 2.5 x 1 cm. on the right temporal region;
- (iv) Lacerated wound of 3.5 x 2.5 x 1 cm. on the left portion of chin;
- (v) Lacerated wound of 2.5 x 1.5 x 1 cm. on the right portion of chin;

(vi) Lacerated wound of 4 x 2.5 x 1 cm. on the back portion of skull; and

(vii) Multiple abrasions (6 to 8) of the size of x x cm. on the right portion of neck.

On internal examination, it was found that there was a fracture over the occipital bone. There was also a fracture on the mastoid bone. There was also a fracture on the middle portion of lower jaw. Brain, brain membrane, trachea, lungs all were congested. The Autopsy Surgeon opined that the above injuries were ante-mortem caused by hard and rough object and the cause of death was shock and haemorrhage on account of above injuries and the death was homicidal in nature. The post-mortem report of deceased/Rukmani Bai is Ex-P/24.

2.3 Kirtan (P.W. 1) was also sent for medical examination and was examined by Dr. P.R. Dewangaon (P.W. 10). He noticed following injuries on the person of injured-Kirtan (P.W. 1):

(i) Lacerated wound of 2: x x inches on the forehead; blood was oozing out and fracture of the corresponding bone was suspected;

(ii) Lacerated wound of 1: x x inches on the left portion of face near the left eye;

(iii) Contusion of the face having bluish eyes;

(iv) Lacerated wound on the chin;

(v) Contusion of the left scapular region; fracture of corresponding bone was suspected;

(vi) Contusion of the right scapular region; fracture was suspected; and

(vii) Contusion of the right forearm.

All the injuries were caused by hard and rough object. His MLC report is Ex. P/19. The injured was referred to District Hospital, Bilaspur and X-ray examination was advised for the above injuries. Kirtan (P.W. 1) was admitted in District Hospital Bilaspur and x-ray examination of the injuries were conducted by Dr. C.S. Sharma (P.W. 16). There was no bony injury on the bones of the skull, however, there was

a fracture on his right clavicle bone. The X-ray report is Ex.P/34 and X-ray plates are Exs.P/35 and P/36.

2.4 In further investigation, the appellants were taken into custody and their memorandum statements (Exs. P/6 and P/7) u/S. 27 of the Evidence Act were recorded and certain clothes including lathi were seized at their instances vide seizure memo(s) Exs. P/8, P/9, P/10 and P/11 etc.

2.5 Seized articles were sent for chemical examination to Forensic Science Laboratory (FSL), Raipur, from where a report was received. According to the FSL report, blood stains were found on almost all the articles except the three samples of plain soil and a piece of wood seized from the possessions of appellant-Itwari (A-1).

2.6 The case of the prosecution was based on the eye-witness account of Kirtan (P.W. 1), Jhaduram (P.W. 3), Gorelal (P.W. 4) and Kewaldas (P.W. 5). The learned Sessions Judge relied on the testimonies of these witnesses and held that the appellants (A-1 and A-2) had assaulted the deceased by danda and wood, therefore, they were liable for punishment u/S. 302/34, IPC. It was also held that they had attempted to the life of Kirtan (P.W. 1), therefore, they were also liable for punishment u/S. 307/34, IPC. The appellants (A-1 and A-2), thus, were convicted and sentenced as above. However, the third accused namely-Chhatram (A-3) was acquitted of the charges framed against him.

3. Mr. Abhay Tiwrai, counsel appearing on behalf of the appellants, has argued that they eye-witnesses were not reliable; in fact, deceased-Patwari had assaulted appellant-Moolchand (A-2) and then the quarrel begun between both the parties in which the deceased persons sustained above injuries; appellant-Moolchand (A-2) had also sustained injury in the said incident and his injuries were not explained by the prosecution; the deceased persons were aggressor who begun the fight; therefore, the conviction vitiates and the appellants (A-1 and A-2) deserve to be acquitted.

4. On the other hand, Mr. Ashish Gupta, Panel Lawyer appearing on behalf of the State, has opposed these arguments and supported the judgment passed by the

Sessions Court.

5. We have heard counsel for the parties.

6. Kirtan (P.W. 1) is an injured witness. It is undisputed that he had received above injuries in the same incident. He is son of the deceased persons. He deposed that on the fateful day at about 6-7.00 a.m. they were threshing their paddy crops in their Khaliyan. The accused persons came there with danda, kalari and wooden plank and assaulted them by the above articles. They had assaulted his parents causing more injuries on their skull. His parents have died. He further deposed that he was also assaulted by accused persons due to which he sustained injuries on various parts on his body. He became unconscious on account of injuries sustained by him. He was taken to Baradwar Hospital, from where, he was taken to Sakti and he was further referred to Bilaspur Hospital, where his X-ray examinations were conducted.

7. Mr. Tiwari has argued that there was an old land dispute between the parties which is admitted by this witness, he is son of the deceased persons; therefore, he is an interested witness and his testimony cannot be relied on. We have gone through the entire evidence of Kirtan (P.W. 1). Though he admitted in Para 7 of the cross-examination that there was a land dispute between both the parties (his father and uncle), but except the above nothing material could be brought on record against him. Even no suggestion was given to him that he had not sustained above injuries in the same incident. The occurrence took place at about 6.00 a.m. in the Khaliyan of this witness, therefore, his presence at the place of occurrence cannot be doubted. Moreover, he had also sustained multiple injuries in the said incident which further supports his claim that he was present at the place of occurrence. Nothing material could be brought in his cross-examination, on which, either his testimony may be discarded or it may be said that he was falsely implicating the appellants in the above incident. He appears to be a natural witness and his evidence appears to be intrinsically reliable, inherently probable and wholly trustworthy. Therefore, only on account of he being the son of the deceased persons, his evidence cannot be discarded (Vide : *Namdeo v. State of Maharashtra*, 2007 AIR SCW 1835).

8. It is not a case in which the conviction is based on the sole testimony of Kirtan (P.W. 1). The Sessions Judge has also relied on the testimony of other witnesses namely - Jhaduram (P.W. 3), Gorelal (P.W. 4) and Kewaldas (P.W. 5). They have also deposed that they had seen the appellants assaulting the deceased by lathi etc. All these witnesses have taken the names of the appellants. They were the neighbours of the appellants and the deceased as their houses were adjacently situated near the houses of the appellants and the deceased.

9. Mr. Tiwari has argued that Gorelal (P.W. 4) had stated in Para 2 that firstly deceased-Patwari had assaulted appellant-Moolchand (A-2) by a denga (danda) and thereafter the appellants had assaulted the deceased persons, therefore, the prosecution has not disclosed the genesis of the offences. He argued that a free fight took place between the appellants and the deceased after the first assault opened by the deceased. He also argued that Moolchand (a-2) has also sustained injuries in the above incident and the prosecution has not explained his injuries. We have gone through their evidence. The above version of Gorelal (P.W.4) is not supported by any other material on record. If Moolchand would have been assaulted in the above manner, he would have sustained some injury. However, neither he was sent for medical examination nor there is any document to show that he had also sustained injury in the same transaction. Even it was not asked from the Investigating Officer as to whether Moolchand (a-2) had also sustained any injury in the same incident. Therefore the above casual admission of Gorelal (P.W. 4) would not render the entire case of the prosecution as false and fabricated. Even no questions have been asked from the other eye-witnesses about the alleged fact that Moolchand (A-2) had also sustained injury in the same transaction. Therefore, no benefit can be extended to the appellants on the above casual admission of Gorelal (P.W. 4). That apart, we find from the map Ex.-P/30 that the entire incident took place in the Khaliyan of the deceased persons which was situated in their backyard just by the side of the Khaliyan of the appellants. This also shows that the appellants had gone to the place of the occurrence along with danda etc. and not that the deceased persons had gone to their place. Thus, the appellants were the aggressor who attacked over the deceased persons in the Khaliyan of the deceased persons by using the above weapons.

10. Kewaldas (P.W. 5) has deposed, in clear words, in para 2, that the assault was opened by Itwari (A-1), who gave a lathi blow to Patwari (deceased) and the lathi was broken. Jhaduram (P.W. 3) and Kewaldas (P.W. 5), the two independent eye-witnesses were put to lengthy cross-examination by the defence, but nothing material could be brought in their cross-examination to discard their testimonies. Therefore, even if we do not rely on the testimony of Gorelal (P.W. 4), the case of the prosecution was proved on the testimonies of Kirtan (P.W. 1), Jhaduram (P.W. 3) and Kewaldas (P.W. 5). We are of the view that the above witnesses were fully reliable and conviction of the appellants u/Ss. 302/34, IPC can well be sustained on the evidence of these witnesses.

11. So far as conviction of the appellants u/Ss. 307/34, IPC is concerned, we find that there is no medical evidence to show that the injuries sustained by Kirtan (P.W. 1) were endangerous to life. Kirtan (P.W. 1) had sustained multiple injuries on his person and the Doctor, who conducting his medical examination, had not expressed any opinion regarding nature of his injuries and advised for X-ray examination to determine the nature of injuries. In X-ray examination, it was found that there was fracture of clavicle bone. We are of the view that in the above facts and circumstances of the case, when his injuries were not endangerous to life and only one injury was found to be grievous, an offence u/Ss. 307/34, IPC would not be made out against the appellants, and at the most, as far as Kirtan (P.W. 1) is concerned, the appellants would be liable for punishment u/Ss. 325/34, IPC.

12. For the foregoing reasons, the conviction and sentences awarded to the appellants (A-1 and A-2) u/Ss. 302/34, IPC are maintained. However, their conviction and sentences u/Ss. 307/24, IPC are set aside. Instead thereof, they are convicted u/Ss. 325/34, IPC and sentenced to undergo R.I. for 3 years. The direction to run the sentences concurrently is maintained.

13. The appeals are allowed to the extent indicated above. It is stated that the appellants (A-1 and A-2) are on bail. Their bail bonds are cancelled. They be taken into custody to undergo the remaining part of the sentences.