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Court : Chhattisgarh

Decided On : Jul-10-2014

Judge : The Honourable Chief Justice Mr. Yatindra Singh &Amp; Pritinker Diwaker

Appeal No. : Criminal Appeal No. 50 of 1998

Appellant : Soushal Prasad and Others

Respondent : State of M.P. (Now C.G.)

Judgement :

1. This appeal arises out of judgment and order dated 27.12.1997 passed by Additional Sessions Judge, Bilaspur in Sessions Trial No. 363/1995 convicting the accused/appellants under Sections 147, 452 and 302/34 IPC and sentencing each of them to undergo RI for three months, RI for one year and imprisonment for life on each count respectively.

2. In the present case name of the deceased is Santosh Kumar. It is alleged that the deceased was the employee of one Amolak Singh who was the contractor of a liquor shop situated at village Hardi Kala. It is alleged that one Narendra Singh (PW-18) was also working in the said liquor shop. Further case of the prosecution is that the accused persons used to make country made liquor in their village which was objected to by the deceased and Narendra Singh. As on the date of incident also the deceased had asked the accused persons not to indulge in such

illegal activities, there was some hot talk between the deceased and acquitted accused Prahlad. It is further alleged that accused Dilip had slapped Narendra Singh and also tore his shirt. Other accused persons then went back to their houses and after some time they returned with Tabbal, Barchhi and club. After seeing them both the deceased and Narendra Singh tried to get away and on being chased by the accused persons the deceased gained an entry to the house of Or. Jai Kumar Astin (PW-8) whereas Narendra Singh took shelter in the liquor shop. Further case of the prosecution is that house of Dr. Astin was surrounded by the accused persons - 28 in number, and they started pelting stones in his house and asked him to drive he deceased out of his house. Thereafter, It is alleged that some of the accused persons went over the roof of Dr. Astin and after dismantling the roof they started throwing stones as a result of which deceased suffered some injuries. Some of the accused persons then entered the house of Dr. Astin and threw a big stone on the head of the deceased resulting in his death. FIR Ex. P-5 was lodged by Narendra Singh (PW-18) on 9.12.1992 at 10.30 p.m. followed by merg intimation Ex. P-6 recorded on the same day at 10.35 pm. Post-mortem examination on the body of the deceased was conducted on 10.12.1992 by Dr. H.K. Dua (PW-17) who gave his report Ex. P-34 opining the cause of death as shock and haemorrhage due to multiple fracture of skull bone with brain matter injury. After investigation, charge-sheet was filed against the accused persons - 28 in. number including the present appellants for the offences punishable under Sections 147, 148, 149, 452, 427 and 302 IPC. Court-below however framed the charges under sections 147, 148, 149, 452, 427, 302 and 109 in alternative 34 IPC.

3. In order to establish the guilt of the accused persons the prosecution has examined 18 witnesses. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court acquitted the other accused persons - 23 in number out of total 28 of the charges levelled against them but convicted and sentenced, the accused/appellants herein - 5 in number, as mentioned above.

Hence the present appeal.

5. This appeal was preferred by the accused/appellants - 05 in number. However, during pendency accused/appellant No.3 namely Kushal Prasad expired and therefore for the present it is with respect to accused/appellants Soushal Prasad, Jailal, Dhruv Kumar and Chhotelal only.

6. Counsel for the accused/appellants submit as under:

(i) That the FIR was lodged by Narendra Singh son of Shiva Singh but in stead of examining Narendra Singh, one Narendra Kumar Sharma son of Shiva Singh has been examined and thus the FIR itself has not been proved by the prosecution. They submit that once lodger of FIR and star witness of the prosecution has not been examined, very basis of conviction of the accused/appellants goes.

(ii) That the statements of so-called eyewitnesses namely Jai Kumar Astin (PW-8) and Shiril Kumar Astin (PW-9) are not reliable and in fact these witnesses have not seen the incident. They submit that in the Court these two witnesses have improved their version and deposed even those facts which are not the part of their case diary statements.

(iii) That the statement of Kalika Prasad (PW-13) cannot be used against the accused/appellants because this witness has been declared fully hostile. Likewise, counsel for the accused/appellants submit that statement of Narendra Singh (PW-18) is required to be ignored because neither he is the lodger of FIR nor has he any connection with the incident.

(iv) That the seizure as alleged to have been made from the accused persons cannot connect them with the commission of murder of Santosh Sahu.

7. On the other hand counsel for the respondent/State supports the judgment impugned and submits as under:

(i) That the findings of the Court below are strictly in accordance with law and there is no infirmity in the same.

(ii) That while examining Narendra Singh (PW-18) there appears to be a typographical error in the deposition sheet where his name has been mentioned as Narendra Kumar Sharma son of Shiva Singh whereas he is Narendra Sing son of Shiva Singh and in fact it is he who had lodged the FIR.

(iii) That while cross-examining Narendra Singh (PW-18) no question was put to him whether his name is Narendra Kumar Sharma or Narendra Singh. He submits that a specific question was framed by the Court while recording the statements of the accused persons under Section 313 of the Code of Criminal Procedure but none of them have raised any objection regarding the identity of Narendra Singh (PW-18).

(iv) That statements of eye-witnesses namely Jai Kumar Astin (PW-8) and Shiril Kumar Astin (PW-9) are fully reliable and conviction of the accused/appellants based on the same is strictly in accordance with law.

(v) That Kalika Prasad (PW-13) has though been declared hostile, he has partly supported the case of the prosecution.

8. Heard counsel for the parties and perused the material on record.

9. Ram Kishun (PW-1) is the witness to seizure of stone, lungi and ladder made under Ex. P-1 and P-2. Narayan Singh (PW-2) is the constable who took the body of the deceased for post-mortem examination. He is also the witness to seizure of clothes of the deceased made under Ex. P-3. Ram Khilawan (PW-3) - the witness of mob has not supported the case of the prosecution has been declared hostile. Lilaram (PW-4) is the head constable who recorded FIR Ex. P-5 and merg Ex. P-6. Ajay Kumar Soni (PW-5) is the witness to seizure of clothes of the accused persons made under Ex. P-7 to P-16. Lalan (PW-6) is the witness to seizure of articles made under Ex. P-17 to P- 24. He is also the witness of mob. This witness however has not supported the case of the prosecution and has been declared hostile. Dilip (PW-7) is the witness to seizure of roof tiles made under Ex. P-26. Though this witness has denied the seizure, he has admitted his signatures on the document of Ex. P-26. Dr. Jai Kumar Astin (PW-8) the eye-witness to the incident has stated that on the date of incident at about 7 p.m. when he was in his house

along with his family members including wife, he saw the deceased entering his house carrying battle axe in his hand and putting the same on his neck asked him to kill if he tried to open the door. Thereafter, several persons surrounded his house and started hitting at it from outside. Some of the persons are stated to have gone over the roof of the house but due to darkness he could not see them. He has stated that he identified and knew the names of the persons present in the Court. This witness has stated that when they were trying to get out of the house on account of fear, the lantern got damaged and extinguished leading to darkness all around. Some of the persons present over the roof tried to dismantle it and when some moonlight beamed inside on account of roof being damaged, he saw the deceased going into some other room. According to him, the people over the roof top started throwing big stones inside the house. Accused Dilip Adholia who happened to be his brother-in-law asked him to get out of the house along with family members by opening the door but as the door was already bolted from outside he could not do so. Meanwhile, after someone opened the door from outside, the accused persons entered his house and asked the persons present outside to bolt the door. Thereafter, the accused/appellants went to the room where the deceased was present and starting throwing stones at him and thus committed his murder and then they left his house. This witness then came out of the house along with his family members, went to the village pond and hid himself in the bushes but as it was a full moon night, he saw number of persons present there but he could not identify as to who among the persons present in the court they were. In the cross-examination, this witness has admitted that for about three days he did not disclose the incident to anyone. From the Court statement of this witness it appears that there are material improvements in the same if compared with his case diary statement. According to this witness, he did not inform the police that the accused persons had killed the deceased after entering his house and this fact was informed for the first time in the Court. There are material contradictions in paragraphs 12 to 16 of the cross-examination of this witness if compared with his case diary statement. Shiril Kumar Astin (PW-9) - son of Jai Kumar Astin (PW-8) has also been examined as eye-witness to the incident. He has stated that on the date of incident when he was in his house along with Jai Kumar Astin and other family members, deceased entered his house and bolted

the main door. Thereafter, his house was surrounded by number of persons who started hitting his house from outside with clubs and also dismantled the roof. This witness is said to have known accused persons namely Soushal, Chhotelal, Kushal and Dhruv. According to this witness, all the five accused persons came over the roof of his house and after gaining entry from the back side, they had killed the deceased by throwing stones at him and assaulting with club. Thereafter he along with his family members went near the pond and stayed there for the whole night by hiding in the bushes and then in the morning he reported the matter to the village Kotwar. In the cross-examination particularly in paragraph Nos. 5 and 6 material contradictions are there if compared with his case diary statement. Anil Kumar Sahu (PW-10) brother of the deceased is a hearsay witness. Bahoran Nai (PW-11) is the witness to seizure of weapons made from the accused persons under Exs.P-17 to P-24. Though he has denied the seizure, he has admitted his signature on these documents. Khowa Singh (PW-12) is the Patwari who prepared spot map Ex. P-25. In cross-examination, this witness has stated that there was no window in the house of Jai Kumar Astin (PW-8) i.e. the place of incident. Kalika Prasad (PW-13) though has been declared hostile, he has stated that he saw accused/appellants namely Saushal, Kushal and Jailal chasing the deceased who then had entered the house of Dr. Astin. Janakram (PW-14) - the witness to seizure made under Ex. P-27 though has not supported the seizure but has admitted his signature on the said document. Sunhar (PW-15) is the Assistant Sub-Inspector who had assisted in the investigation. Baratu (PW-16) - the witness to seizure made under Exs.P-28, P-29, P-31 and P-32 though has not supported the seizure but has admitted his signature on the said documents. H.K. Dua (PW-17) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-34 stating that he noticed number of injuries on his body and cause of death was shock and haemorrhage due to multiple fracture of skull bone with brain matter injury. Narendra Kumar Sharma (in fact Singh) (PW-18) - the lodger of the FIR Ex. P-5 and merg Ex. P-6 has stated that he was working in the liquor shop of Amolak Singh where the deceased was also working. On the date of incident he along with the deceased had gone to the betel shop where he met with the acquitted accused Prahlad, Chhotelal and Dhruv and some hot talk took place between the deceased and accused persons over

making the liquor. Thereafter, all the accused persons reached there carrying weapons in their hands and on seeing them he and the deceased ran away. Deceased gained an entry in the house of Dr. Astin (PW-8) falling, on the way whereas he ran towards the liquor shop and from some distance he saw the accused persons damaging the house of Dr. Astin. He has stated that the acquitted accused Prahlad and others assaulted the deceased with boulders and then he went to the house of Amolak Singh and informed the incident to him and it is he who lodged the report in the Civil Lines police station. According to this witness, he along with other persons and the police people of police station Civil Lines went to village Hardi Kala where body of the deceased was lying and then FIR Ex. P-5 was lodged by him in police station Chakarbhata and the said report was read over to and signed by him.

10. There is no substance in the argument that lodger of the FIR and merg intimation namely Narendra Singh has not been examined by the Court and in his place one Narendra Sharma has been examined as PW-18. It appears that in the deposition sheet surname of PW-18 is recorded as Sharma whereas it should have been Singh. Deposition sheet also shows that name of father of Narendra Singh has been recorded as Shiva Singh only. Moreover, in the evidence of this witness he has categorically stated that it is he who lodged the FIR Ex. p. 5 and merg intimation Ex. P-6 duly signed by him. If the accused persons had any doubt regarding the identity of this witness, they could have verified the same by putting necessary question in the cross-examination of this witness. Even while recording the statements of the accused persons under Section 313 of the Code of Criminal Procedure a question was put that it is PW-18 who lodged the FIR but here also the accused persons did not object in any manner.

11. Having thus made a close scrutiny of the evidence of the witnesses it becomes apparent that on 9.12.1992 there was some dispute between the deceased, Narendra Singh (PW-18) and accused persons. Evidence also reflects that one of the accused persons had slapped Narendra Singh and thereafter all the accused persons chased the deceased and Narendra Singh carrying weapons in their hands. From the statements of Kalika Prasad (PW-13) and Narendra Singh (PW-18) it appears that the deceased and Narendra Singh ran away from the place of

incident to save themselves and the deceased took shelter in the house of Dr. Astin (PW-8). Evidence goes to show that while the deceased was in the house of Dr. Astin (PW-8), accused persons went over the roof top and threw stones at the deceased leading to his death.

12. Now the question for consideration before this Court is whether the evidence adduced by the prosecution is sufficient to uphold conviction of the accused/appellants especially when on the same set of evidence other accused persons have been acquitted by the Court below by extending benefit of doubt. Dr. Jai Kumar Astin (PW-8) is the star witness of the prosecution who has stated in his Court statement that the deceased had entered his house carrying battle axe in his hand, bolted the door from inside and threatened him after putting the said battle axe on his neck. This appears to be an improvement in the Court statement of this witness because in his case diary statement he has nowhere stated anything like this. Further, according to this witness, number of persons had surrounded his house and bashed it from outside and some of them had gone over the roof but on account of there being darkness he could not see them. After naming all the accused persons - 28 in number, this witness has stated that he knew all of them. He has stated that while running away from the house the lantern had fallen down and got extinguished because of which complete darkness prevailed in the house. This witness is stated to have seen the accused persons throwing big stones in the house weighing 10-20 Kg. which hit the deceased resulting in his death. According to him, after the deceased sustained injury on his head, door of his house was opened from outside and the accused/appellants entered his house but they were not carrying any weapon in their hands. He has stated that when he came out of the house, a huge mob had gathered but he could not identify the accused persons out of it. In paragraph No.8 this witness has again made improvement in his version and stated that the accused persons had entered his house carrying club in their hands. He has admitted that he remained in the house of village Kotwar for about a week but did not disclose the incident to any villager though during this period he and his family members used to come out of the house for answering the call of nature. In paragraph No. 13 he has further admitted that at the time of recording his case diary statement he did not inform the police that it is the accused/appellants who had entered his house and killed

the deceased by hitting him with stones and this fact he disclosed for the first time in the Court. Likewise, he has stated that he did not inform the police that the accused persons had not allowed him to come out of the house as they had bolted the door from inside. This witness has stated that he disclosed this fact for the first time before the Court. He has also admitted that he did not inform the police about his coming out of the house along with his children and as it was the moonlit night he saw the entire incident. This witness has further admitted the fact that his brother-in-law Dilip Adholiya asked him to come out of the house and he would ensure his safety, was not to disclosed to the police. According to this witness he saw the entire incident from the window whereas as per the Patwari who prepared the spot map, there was no window in his house. He has admitted that he did not inform the police that some of the accused persons had gone to the roof of his house with the help of ladder and dismantled die same and because of which the moon light was beaming inside in his house and this fact was disclosed by him for the first time in the Court. Another eye-witnesses Shiril Kumar Astin (PW-9) - son of Dr. Astin (PW-8) does not name the accused/appellants in his case diary statement. However, in the Court while improving his version he has stated that the accused/appellants Soushal, Chhotelal, Kushal and Dhurv were there. According to him, all the accused persons had gone to the roof of his house and then came from the back side of the house and hit the deceased with stones and club whereas according to other eye-witness (PW-8) the accused persons came from the front door of the house and assaulted the deceased. According to this witness, when he was hiding himself near the village pond, the accused persons had threatened him whereas according to Dr. Astin (PW-8) he was threatened by them when he was in the house. He has stated that on account of fear of the accused persons he did not inform the police that the accused/appellants had killed the deceased and the same was disclosed by him for the first time in the Court. This witness also appears to have improved himself materially while making deposition before the Court.

13. Considering the evidence of these two witnesses i.e. PW-8 and PW-9 it appears that the deceased had entered the house of these witnesses but there is no conclusive and reliable evidence to show that the accused/appellants committed the murder the of deceased. Factum of commission of murder of the

deceased by the accused/appellants has been disclosed by these witnesses for the first time in the Court and considering the material improvements in their version it does not appear to be reliable and trustworthy on the basis of which their conviction could be upheld.

14. So far as the other evidence against the accused/appellants is concerned, in the FIR name of the accused/appellant No. 5 namely Chhotelal has been mentioned along with other acquitted accused persons but in the case diary statement, Dr. Astin (PW-8) has named accused/appellants Chhotelal and Dhruv Kumar. Shiril Kumar Astin (PW-9) has not named any accused persons in his case diary statement. Considering this aspect of the case it appears that though in the incident deceased was killed, there is no conclusive evidence as to who in fact has committed this act and therefore, accused/appellants are entitled for the benefit of doubt. Most important thing in this case is that relying on the same piece of evidence the other accused persons have been acquitted by the Court below and therefore, the present appellants are also entitled for the same benefit.

15. In view of the aforesaid analytical survey of the facts, circumstances and the evidence available on record, this Court is of the opinion that as the prosecution could not prove by leading cogent and reliable evidence that it is the accused/appellants only who committed the murder of the deceased, benefit of doubt has to go to them. Doing so, the findings of the Court below convicting the accused/appellants as mentioned above are hereby set aside and they are acquitted of the charges levelled against them.

16. As the accused/appellants are already on bail, their bail bonds shall continue for a period of six months from today in view of Section 437-A, Cr.P.C.

17. Appeal is thus allowed.

Appeal allowed.

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