

# SUPREME COURT OF INDIA

Shyam Sunder

Vs.

State of Chattisgarh

Crl.A.No.597 of 2001

(R. C. Lahoti and Brijesh Kumar JJ.)

16.09.2002

## JUDGEMENT

### **R. C. Lahoti, J.**

1. The accused has been held guilty of an offence punishable under Section 302, IPC and sentenced to undergo imprisonment for life by the Court of Sessions Judge, Bilaspur. An appeal preferred by him was dismissed by the High Court. This appeal has been filed by special leave.

2. Nathu Lal (PW-1) and Ram Ratan are two real brothers. Baldau Ram (PW-2), Kamta (PW-4) and Radhey Shyam - the deceased (who died in the incident) are all sons of Nathu Lal, the elder of the two brothers. Ram Ratan, the younger brother, had six sons of whom one had died earlier. Shyam Sunder, the accused-appellant, is the third one out of the five surviving sons of Ram Ratan. At one point of time Nathu Lal and Ram Ratan were living together, also having joint cultivation. Long before the incident, Nathu Lal and Ram Ratan had separated by effecting a partition of their residential house as also of the agricultural land. They are living separately in adjoining houses and their agricultural lands are also situated adjoining to each other. However, the partition had resulted into the feelings between the two brothers and their respective family members being strained so much so that at about 4-5 years prior to the date of this incident, there was another incident, which had resulted in proceedings under Section 107, Cr. P.C. being drawn up against both the parties. Baldau Ram (PW-2), Kamta (P-4), Radhey Shyam - the deceased and their one more brother Jai Lal, in all the four brothers, were also facing prosecution under Section 325, IPC for causing injuries to Shyam Sunder - the accused-appellant and his mother Ram Kali. A few days before the death of Radhey Shyam there was yet another incident in which the accused-appellant and a few others on his side were accused of throwing stones on the house of the deceased and hurling abuses on the inmates of the house.

3. On 21-7-1985, at about 5.30 a.m. Baldau Ram (PW-2) had gone to his field for grazing cattle. Sowing operation was going on. There were a few labourers on his field. He was returning at about 7.30 a.m. through a path passing by the side of the field of the accused-

appellant. There Baldau Ram saw the appellant standing armed with a 'Tabbal' and his father armed with an axe. On seeing Baldau Ram, the appellant tried to come close to him. Baldau Ram was scared by the menacing attitude of the appellant and apprehending some danger, he returned back to his field. By this time his brother Kamta (PW-4) had also reached the field to take work from the labourers. Baldau Ram narrated what had happened with him to his brother Kamta (PW-4). Kamta advised Baldau Ram not to go to the village by the path which passes by the side of the field of the appellant and instead choose a different path. It appears that there is not much of distance between the two paths which are available to be used for reaching the village from the field of Baldau Ram. It also appears that the path which leads to the field of Baldau Ram from the village and passes by the side of the field of the accused is crossed by a nala (culvert) before the path reaches the field of the accused. Baldau Ram while going from his field of the village, through the different route which he had chosen saw the appellant Shyam Sunder jumping into the nala. He also saw his brother Radhey Shyam coming out of the nala. At this point of time the appellant-Shyam Sunder dealt blows by 'Tabbal' on the person of Radhey Shyam. The first blow landed at the upper region of right ear of Radhey Shyam whereupon he fell down. The appellant dealt two further blows landing on the shoulder and throat of Radhey Shyam.

4. Having dealt three blows on the person of Radhey Shyam, the appellant ran towards Baldau Ram. Baldau Ram ran for his life and entered the house of Kartik Mochi situated nearby. Baldau Ram hid himself inside the house of Kartik Mochi. Kartik Mochi who was present there closed the door of the house and bolted the door from outside. The appellant then turned his back, returned to the place of the incident and ran away. This Baldau Ram could see from inside the house of Kartik Mochi. On the appellant having escaped from the scene of the crime Baldau Ram requested Kartik Mochi to open the door. He came out and reached near his brother Radhey Shyam only to find him dead. He raised an alarm whereupon a few villagers collected from the fields situated nearby including Punni Bai (PW-6). Punni Bai (PW-6) told that she had also seen the assault from her own field situated close to the place of the occurrence.

5. The assault on Radhey Shyam had taken place at about 8.00 a.m. First Information Report of the incident was lodged at 10.30 a.m. on the same day at P.S. Ratanpur situated at a distance of about 10 kilometers from the place of the incident. An offence under Section 302, IPC was registered and investigation commenced. The dead body of Radhey Shyam was sent to Civil Hospital, Bilaspur where autopsy was performed by Dr. A.N. Bajpai, Assistant Surgeon. The dead body was smeared with mud, water and blood at several places. The following external injuries were found on the person of Radhey Shyam:

“(1) An incised wound on right face extending from lateral angle of right eye 4 c.m. downward and laterally placed transversely 11 x 1 x 6 c.m. Right external ear was cut at the level of triages throughout, underlying muscles and bone cut and fractured. Wound was curved downward blow the right external ear.

(2) Incised wound on left side of the cervical region extending from thyroid cartilage from front to the back of neck and also extending to right side of back of neck 25 x 13

x 8 c.m. in diameter. There was a big gap between skin flaps. All the structures including muscles, blood vessels, nerves, trachea, esophagus and cervical vertebrae were cut and torn badly. Back end of the wound was 9 c.m. downward and backward from right pinna.

(3) On the front and on the back just above the wound No.2 there was an incised wound of the size of 5 x 0.5 x 05 c.m. and another 4 x 05 x 1 c.m. respectively.”

6. All the injuries were anti-mortem. On internal examination Dr. Bajpai found that cervical vertebrae, underlying bone on right face was cut and fractured. Spinal cord was cut in cervical region. Esophagus was cut. Larynx and trachea were cut. The cause of death in the opinion of Dr. Bajpai was shock and cutting of spinal cord, cervical vertebrae and all major and minor blood vessels and nerves on left side and right side in the cervical region. Injuries Nos. 1 and 2 were individually sufficient in the ordinary course of nature to cause death.

7. The appellant was arrested on the same day. On this information contained in a statement, admissible in evidence under Section 27 of the Evidence Act, a 'Tabbal' was recovered from a place near the nala where he had hidden it. The 'Tabbal' was seized and kept sealed. It was forwarded to Forensic Science Laboratory, Sagar. In the opinion of the Assistant Chemical Examiner, the 'Tabbal' was found stained with blood. The Assistant Serologist and Chemical Examiner later opined that the blood found on the 'Tabbal' was human blood.

8. The conviction rests on the ocular evidence of Baldau Ram (PW-2) and Punni Bai (PW-6). We have, in the light of the submissions made by the learned Amicus Curiae, carefully examined the testimony of Baldau Ram. It is true that the relationship between this witness and his family members on the one hand and the deceased and his family members on the other was strained and criminal litigation was also pending between the two. The testimony, therefore, needs to be subjected to careful scrutiny. Having done so, we are satisfied to hold that Baldau Ram (PW-2) is a witness of truth. The factum of his having gone to his field for performing agricultural operations and engaging labour is something natural to do as he had gone to his field from early morning, at about 5.30 a.m., accompanied by his cattle to be left for grazing in or near the field. At about 7.30 a.m., on the arrival of Kamta (PW-4) on the field he was returning to his home. Having been intercepted by the appellant he returned back to his field and told his brother Kamta (PW-4) of what had happened with him. Kamta (PW-4) supports this part of the version. The subsequent part of the story of his having seen the assault on his brother Radhey Shyam and thereafter, that is, his having reached the house of Kartik Ram to save himself from a likely assault by the appellant on him finds support from the testimony of Kartik Ram (PW-3). The fact that Punni Bai (PW-6) has also her field close to the place of the incident has not been disputed by the defence by making any suggestion to the contrary during her cross-examination. She could have seen the assault on Radhey Shyam by Shyam Sunder from her field situated near the place of occurrence. On alarm being raised by Baldau Ram (PW-2), she reached near the place of the incident.

8A. The testimony of Baldau Ram also finds corroboration from a promptly lodged FIR. The statements of both the eye witnesses find support from the medical

evidence. The learned Sessions Judge has carefully scrutinized the evidence of both the eye witnesses and found it worthy of reliance. The High Court too has though in a very brief judgment observed that the guilt of the accused was proved beyond reasonable doubt by overwhelming evidence adduced by the prosecution, and in particular there was no reason to doubt the ocular evidence of Baldau Ram (PW-2) and Kamta (PW-4). In our opinion the conviction of the accused-appellant is well founded and cannot be interfered with. It is true that during the cross-examination of Baldau Ram (PW-2) and Punni Bai (PW-6) the attention of the witnesses was invited to certain portions of the FIR and their police statements in an effort to demonstrate that there were inconsistencies. We have cautiously examined all such contradictions and inconsistencies and we find none of them to be material. When an incident is narrated by the same person to different persons on different occasions some difference. In the mode of narrating the incident is bound to arise. However, such differences do not militate against the trustworthiness of the narration unless the variations can be held to be so abnormal or unnatural as would not occur if the witness would have really witnessed what it was narrating.

9. For the abovesaid reasons the appeal does not have any merit and is liable to be dismissed. It is dismissed accordingly. The conviction of the accused-appellant along with the sentence passed thereon as recorded by the trial Court and upheld by the High Court are maintained.

10. Before parting we place on record our appreciation of the assistance rendered by Ms. Neeru Vaid, the learned Amicus Curiae at the time of hearing.

Appeal dismissed.