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HIGH COURT OF CHHATTISGARH AT BILASPUR

(SB: Hon'ble Mr. T.P.SHARMA, J)

Criminal Appeal No.1083/1993

Sohan Lal Yadav

Vs.

State of M.P. (now C.G.)

Criminal Appeal No.1161/1993

Balla alias Balram

Vs.

The State of Madhya Pradesh (now Chhattisgarh)

POST FOR JUDGMENT ON 30/7/2010

Sd/-
T. P. Sharma
Judge

(93)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.1083/1993

APPELLANT

Sohan Lal Yadav S/o Radheshyam
Yadav aged about 20 years, R/o
Shriram Chowk, Tikrapara, Raipur.

Versus

RESPONDENT

State of M.P. (now C.G.)

And

Criminal Appeal No.1161/1993

APPELLANT

Balla alias Balram, aged about 20
years, son of Shri Roopsingh Thakur;
Resident of Shriram Chowk, Tikrapara,
Raipur, District Raipur, M.P. (now
C.G.)

Versus

RESPONDENT

The State of Madhya Pradesh (now
Chhattisgarh)

(APPEALS UNDER SECTION 374(2) OF THE CODE OF CRIMINAL
PROCEDURE, 1973)

(SB: Hon'ble Mr. T.P. Sharma, J.)

Present:

Mr.B.N.Pandey, counsel for the appellant in Cr.A. No.1083/1993.
Mr.Ravi Bhagat, counsel for the appellant in Cr.A.No.1161/1993.
Mr.Rakesh Kumar Jha, Dy.Govt.Advocate for the State.

JUDGMENT

(Delivered on 30th July, 2010)

1. Criminal Appeal No.1083/1993 filed by Sohan Lal Yadav & Criminal Appeal No.1161/1993 filed by Balla alias Balram are arising out of the judgment of conviction & order of sentence dated 25.9.1993 passed by the 3rd Additional Sessions Judge, Raipur in Sessions Trial No.298/91, therefore, they are being disposed of by this common judgment.
2. The aforesaid criminal appeals are directed against the judgment of conviction & order of sentence dated 25.9.1993 passed by the 3rd Additional Sessions Judge, Raipur in Sessions Trial No.298/91,

whereby & whereunder learned 3rd Additional Sessions Judge after holding appellant Sohan Lal Yadav guilty for the offence punishable under Section 307 of the Indian Penal Code and appellant Balla guilty for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code sentenced them to undergo rigorous imprisonment for five years, respectively.

3. Conviction is impugned on the ground that without there being any evidence, especially evidence of identification in case of unknown accused persons, the trial Court has convicted & sentenced the appellants as aforementioned and thereby committed illegality.
4. Case of the prosecution, in brief, is that on 4.2.91 at about 8.10 p.m. injured Shivprasad was coming to his house by luna moped along with Menghu Ram (PW-1), while they were passing near tubewell, two persons were standing, they tried to stop the complainant, when he stopped his moped, then one person caught hold his hands and pulled down him from moped and other accused was having dragger (kukri) and assaulted twice by dragger on his abdomen, they also pushed Menghu Ram, complainant Shivprasad cried for help, then their relatives came to the spot, assailants were unknown. He immediately lodged dehati nalishi vide Ex.P/1. Bloodstained clothes of the complainant were seized vide Ex.P/2. He was sent for medical examination vide Ex.P/17. He was examined by the doctor and immediately shifted to D.K.Hospital, Raipur for treatment where surgery was conducted by Dr.P.K.Pandey (PW-11) vide Ex.P/18A and found stab wound over abdomen affecting large intestine & small intestine and huge quantity of blood was found inside mesentery. Injury was fatal to life. He was also examined by Dr.Ramkumar Pandey (PW-5) vide Ex.P/14 and found stab injury and stitch wound. Finally F.I.R. was lodged vide Ex.P/19. Clothes were also examined. Test identification parade was conducted and complainant Shivprasad and witness Menghu Ram have identified the appellants vide Ex.P/3. Accused Balla made disclosure statement of betel axe vide Ex.P/9, same was recovered from Shankar Lal vide Ex.P/4. Accused Sohan made disclosure statement of dragger vide Ex.P/10, same was recovered

from Shankar vide Ex.P/5. Accused Balla also made disclosure statement of clothes vide Ex.P/11, same were recovered from him vide Ex.P/6. Accused Sohan also made disclosure statement of clothes vide Ex.P/12, same were recovered from him vide Ex.P/7. Accused Punau made disclosure statement of clothes vide Ex.P/13, same were recovered from him vide Ex.P/8.

5. Statement of the witnesses were recorded under Section 161 of the Cr.P.C. and after completion of investigation, charge sheet was filed before the Additional Chief Judicial Magistrate, Raipur, who in turn, committed the case to the Court of Sessions, Raipur, from where learned 3rd Additional Sessions Judge, Raipur received the case on transfer for trial.
6. In order to prove the guilt of the accused/appellants, the prosecution has examined as many as eleven witnesses. The accused/appellants were examined under Section 313 of the Cr.P.C. where they denied the circumstances appearing against them and pleaded innocence and false implication in the crime in question.
7. After affording opportunity of hearing to the parties, learned 3rd Additional Sessions Judge, Raipur while acquitting co-accused Punau Sahu and Shankar Lai convicted & sentenced the appellants as aforementioned.
8. I have heard Mr.B.N.Pandey, counsel for appellant Sohan Lal Yadav, Mr.Ravi Bhagat, counsel for appellant Balla alias Balaram, Mr.Rakesh Kumar Jha, Dy.Govt.Advocate for the State, perused the judgment impugned and record of the trial Court.
9. Learned counsel appearing for both the appellants vehemently argued that in the present case they are not disputing the injuries and its nature found over the body of the complainant, but in the present case, the accused were unknown to the complainant, incident took place at night, there was no opportunity to see the accused persons, the complainant has not given any description in the F.I.R. and liability has been fastened upon the appellants only on the basis of identification. As per evidence of the complainant, before conduction of such identification he

has seen the appellants in police custody which vitiates the test identification and absence of any other cogent evidence, conviction & sentence of the appellants are not sustainable under the law.

10. On the other hand, learned State counsel supported the judgment impugned and argued that alleged incident took place at about 8.10 p.m., there was ample light and opportunity to see the appellants. After stopped the complainant, they assaulted him by knife and betel axe. The complainant was having ample opportunity to see the assailants and on the basis of such opportunity, the complainant has successfully identified the appellants. Learned counsel further argued that evidence adduced on behalf of the prosecution is sufficient for definite conclusion against the appellants for the commission of the aforesaid offence and the trial Court has rightly convicted & sentenced the appellants as aforementioned.
11. In order to appreciate the arguments advanced on behalf of the prosecution, I have examined the evidence adduced on behalf of the prosecution.
12. In the present case, injuries caused to complainant Shivprasad and its nature have not been substantially disputed by the appellants, even otherwise also established by the evidence of complainant Shivprasad (PW-2), Dr.Ramkumar Pandey (PW-5), his report Ex.P/14, Dr.P.K.Pandey (PW-11) and bed-head ticket Ex.P/18. Stab injury was found over abdomen affecting and causing injury on the large intestine and small intestine and injury was dangerous to life.
13. As regards the complicity of the appellants in the crime in question, conviction is substantially based on the evidence of Shivprasad (PW-2) who has deposed in his evidence that while he was coming to his house by luna moped along with Menghu Ram (PW-1), two persons stopped him, they caught hold his hands but anyhow he proceeded further and again came back near the persons, they were three in numbers, he told to Menghu that they appears to be bad persons, then Menghu told him that he knows them, he called his relatives, at that time out of three persons, one person assaulted him by fist and other was directing to assault by betel axe, then third person assaulted him

twice by dragger. Third person again used betel axe over his moped. After hearing sound his relatives came, then the accused persons fled away from the spot. He has specifically deposed that accused Sohan has assaulted him by dragger and accused Balla has used betel axe. Their relatives took him to hospital. He has lodged the F.I.R. Ex.P/1. His clothes were seized. He has also identified the assailants vide Ex.P/3. Menghu Ram (PW-1) was present on the spot but he has not supported the case of the prosecution. The prosecution declared him hostile. He has admitted in para 3 of his cross-examination that at the time of incident, one person assaulted Shivprasad by knife.

14. Defence has cross-examined complainant Shivprasad in detail. There are some contradictions in the F.I.R. and statement relating to use of betel axe, conversation between the accused persons and description of the assailants. In para 4 of his evidence and in para 14 of his cross-examination, he has specifically deposed that the police called him in police station where so many boys were present, out of 10 to 12 boys he took out three persons who have committed the offence and assaulted him. Champalal Dewangan (PW-6), who has conducted identification, has deposed in his evidence that the complainant has identified the accused persons amongst 10 to 12 persons vide Ex.P/3 and he has conducted identification in one house. Kailash Sonkar (PW-7) has also corroborated the evidence of Champalal Dewangan (PW-6).
15. In the light of evidence of complainant Shivprasad (PW-2) relating to identification in the police station, evidentiary value of test identification loses its importance. Evidence of Shivprasad (PW-2) reveals that he has identified the assailants amongst 10 to 12 persons before some other persons who conducted identification.
16. This is not a case where the police authorities have shown the only assailants in the test identification. Evidence of test identification is not substantive piece of evidence and dock identification is the only substantive piece of evidence. In para 1 of evidence of Shivprasad, he has specifically deposed that appellant Sohan has assaulted him by dragger and other appellant Balla was having betel axe and has used

betel axe at the time of incident. Both the appellants were present and they stopped him while he was coming to his house by luna moped. His evidence relating to identification of the appellants in the Court is unambiguous.

17. Admittedly, the complainant was having sufficient opportunity to see the appellants who have committed the incident in close distance hardly distance of 1 to 2 feet and he was able to identify the persons who have caused fatal injuries and even attempted to commit his murder, although test identification, in the present case, is of no help, but dock identification of both the accused by the complainant is sufficient for drawing inference that appellant Sohan has assaulted him by dragger in sharing of common intention of another co-accused Balla.
18. After appreciating the evidence available on record, learned 3rd Additional Sessions Judge, Raipur has convicted & sentenced the appellants as aforementioned. Considering the injury and commission of offence after stopping the complainant in a way, sentence of rigorous imprisonment for five years is not excessive. I do not find any illegality in the judgment impugned.
19. For the foregoing reasons, Criminal Appeal Nos. 1083/1993 & 1161/1993 being devoid of merit are liable to be dismissed and are hereby dismissed. The appellants are on bail, they shall surrender immediately before the 3rd Additional Sessions Judge, Raipur for serving remaining part of sentence.

Sd/-
T. P. Sharma
Judge

B/-