

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 741 of 2008

- Ravi Kumar, S/o Late L. Suryavanshi, aged about 25 years, R/o Village - Uchhbhatti, P.S.-Seepat, Distt. Bilaspur (CG)

---- Appellant

In Jail

Versus

- State Of Chhattisgarh, Through Officer-in-charge, Police Station Seepat, Distt. Bilaspur (CG)

---- Respondent

And

CRA No. 760 Of 2008

- Sanat Kumar, S/o Late Suryavanshi, aged about 20 years, R/o Village - Uchhbhatti, P.S.-Seepat, Distt. Bilaspur (CG)

---- Appellant

In Jail

Vs

- State Of Chhattisgarh, through S.H.O., P.S.-Seepat, Distt. Bilaspur (CG)

---- Respondent

For appellants : Shri Vijay Deshmukh and Shri Devesh Kela, Advocates.
For Respondent/State : Shri Vaibhav Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgment on Board by Justice Pritinker Diwaker

12/10/2015

As these two appeals arise out of the judgment of conviction and order of sentence dated 31.7.2008 passed by 6th Additional Sessions Judge, Bilaspur in S.T.No. 201/2007, they are being disposed of by this

common judgment.

02. Appellant Ravi Kumar in Cr.A.No.741/2008 has been convicted under Sections 302 & 201 of IPC and sentenced to undergo imprisonment for life, pay a fine of Rs.100 and RI for five years, to pay a fine of Rs.100/- respectively with default stipulations whereas appellant Sanat Kumar in Cr.A.No.760/2008 has been convicted under Section 201 of IPC and sentenced to undergo RI for five year and pay a fine of Rs.100/- with default stipulation.

03. As per prosecution case, Kamlesh, son of deceased Sukhinbai, had hired a bicycle from Janta Cycle Stores through one Vyasnarayan, however, he did not make payment to the shopkeeper. It is said that appellant Ravi Kumar went to the house of Kamlesh for realization of the said amount where deceased Sukhinbai assured appellant Ravi that payment would be made to him, however, despite that accused/appellant Ravi inflicted several knife injuries on Sukhinbai as a result of which she died. On 16.3.2007 merg intimation (Ex.P/2) was recorded at the instance of PW-3 Dwarika Prasad and on the same day FIR (Ex.P/3) was also registered at his instance. Inquest on the body of the deceased was conducted on 16.3.2007 vide Ex.P/5 and thereafter, the body was sent for postmortem which was conducted on 17.3.2007 by Dr. Rajesh Kumar (PW-5) vide Ex.P/11 who noticed number of stab wounds on the body of the deceased and opined that the cause of death was shock and hemorrhage as a result of multiple injuries and that the death was homicidal in nature. After investigation challan was filed against the accused/appellants under Section 302, 201, 34 of IPC. However, while framing charges the learned trial Court

framed charges under Section 302 & 201 of IPC against accused/appellant Ravi Kumar and under Section 201 of IPC against accused/appellant Sanat Kumar.

04. So as to hold the accused/appellants guilty, the prosecution examined as many as 12 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellants as mentioned in para-2 of this judgment.

06. Learned counsel for the appellants submit as under:

(i) that the sole eyewitness to the incident Punitabai (PW-1) is a child witness and her statement is not reliable.

(ii) that the incident had taken place in dark, Punitabai (PW-1) has not seen any incident but has falsely implicated the accused/appellants.

(iii) that though clothes of appellant Ravi Kumar at his instance and knife at the instance of appellant Sanat Kumar were seized but in absence of FSL report, the appellants cannot be connected with the crime in question.

(iv) that in relation to appellant Sanat Kumar it is submitted that he has already remained in jail for about seven months, at the time of commission of the offence he was a young boy of 19 years, the incident had taken place eight years back, he is on bail and therefore,

no useful purpose would be served in again sending him back to jail at this stage and his sentence may be reduced to the period already undergone.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He submits that on the basis of memorandum of accused/appellant Sanat Kumar, at his instance only seizure of knife was made. Even if there is no FSL report, considering the statement of the eyewitness that the deceased was assaulted with a knife, accused/appellant Sanat has rightly been convicted and sentenced under Section 201 of IPC.

08. Heard counsel for the respective parties and perused the material on record.

09. PW-1 Punitabai, daughter of the deceased, aged about eight years, has stated that she knew the accused persons. On the date of incident she had gone along with her mother to hand-pump to fetch water, when they were returning accused/appellant Ravi, present in the Court, caused several knife injuries to her mother on her stomach, shoulder and face by saying that her son Kamlesh is not paying the money due to him. She has stated that immediately after the incident she rushed to Raju (PW-2) and then she also went to the house of village Sarpanch (PW-4 Bhagwat) and narrated the entire incident to them. She has clarified that accused/appellant Ravi was asking for Rs.1000/- from her mother by making allegation that Kamlesh had sold the said bicycle.

She has further stated that though her mother had assured accused/appellant Ravi to return the money, however, he after quarreling with her mother caused her injuries and thereby committed her murder. In cross-examination she remained very firm and clarified that at the time of incident light was on. PW-2 Raju Yadav is a person to whom the incident was narrated by PW-1 Punitabai immediately after it had taken place. While supporting the prosecution case he has stated that PW-1 came to him weeping and informed that accused/appellant Ravi had killed her mother. He has stated that thereafter he took PW-1 to the house of Sarpanch Bhagwat (PW-4) and there also PW-1 narrated the entire incident to Sarpanch. In cross-examination he remained very firm and nothing could be elicited from him by the defence to make his evidence doubtful or untrustworthy. PW-4 Bhagwat, village Sarpanch has also supported the statements of PW-1 and PW-2. He has stated that on the date of incident PWs-1 & 2 came to his house and informed him that it is the accused/appellant Ravi who had killed the deceased. He is also a witness to the inquest notice (Ex.P/4), inquest (Ex.P/5), memorandum of appellant Ravi (Ex.P/6), search panchanama of house of appellant Ravi (Ex.P/7) and seizure of clothes of appellant Ravi vide Ex.P/10. He has also supported the prosecution case.

10. PW-5 Dr. Rajesh Kumar conducted postmortem on the body of the deceased vide Ex.P/11 and noticed following injuries:

- (i) one incised wound of size 2 cm x 1 cm x .5 cm present over left eye brow region obliquely,
- (ii) one stab wound of size 1 cm x .5 cm x 2 cm deep present over

postero-medial aspect of the left arm upper $\frac{1}{4}$ region,

(iii) another one stab wound of size 2 cm x 1 cm x 1.5 cm deep over left shoulder,

(iv) another one incised wound of size 4 cm x 2.5 cm x 3 cm deep present over lower $\frac{1}{4}$ of left arm antero-lateral aspect,

(v) multiple stab (9) wounds of varying size min. 2.5 cm x .5 cm x 6 cm deep, max. 6 cm x 2.5 cm x 4 cm deep present over back,

(vi) one stab wound of size 2.5 cm x 1 cm x 3 cm deep present over left buttock,

(vii) multiple stab wounds of varying size min. 1.5 cm x .8 cm x 2 cm, max. 2 cm x 1 cm x muscle deep present over anterior aspect of chest and abdomen (four).

All the injuries suffered by the deceased could be caused by some hard and sharp edged weapon. In his opinion, the cause of death was shock and hemorrhage as a result of multiple injuries and the death was homicidal in nature. On examination of the seized knife sent to him the police he had opined that the injuries found on the body of the deceased could be caused by the said weapon vide Ex.P/17.

He had also medically examined accused/appellant Ravi Kumar on 17.3.2007 vide Ex.P/12 and noticed the following injuries on his person:

(i) one incised wound of size 1 cm x .4 cm over tip of index finger of right hand,

(ii) one incised wound of size 1.5 cm x .5 cm on the middle finger of right hand,

(iii) one incised wound of size 1.5 cm x 5. cm on ring finger of right

hand,

(iv) one incised wound of size 1.5 cm x .5 cm on the little finger of the right hand.

All the injuries were caused by hard and sharp object and were simple in nature.

11. PW-6 Budwa Das is the village Kotwar, who along with Dwarika Prasad and other villagers had gone to lodge the report. PW-7 V.S. Chandel recorded merged intimation (Ex.P/2) and FIR (Ex.P/3). PW-8 G.S. Rajput, investigating officer, has duly supported the prosecution case. PW-10 Vyasnarayan has stated that he knew the accused persons as well as the deceased. He has also proved the fact that Kamlesh had to pay some rent of bicycle to him. He has also stated that Kamlesh and his mother (deceased) had assured him that payment would be made to him. PW-11 Ghasiram Gupta is a witness to memorandum of accused/appellant Sanat (Ex.P/15) pursuant to which seizure of knife was effected at the instance of appellant Sanat vide Ex.P/16. Though he has been declared hostile but admitted his signature on the documents. PW-12 D.P. Thakur recorded memorandum of accused/appellant Sanat (Ex.P/15) and made seizure of knife (Ex.P/16). He has also supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that on 16.3.2007 as Kamlesh, son of deceased Sukhinbai, had hired a bicycle and was not paying the rent amount, accused/appellant Ravi Kumar went to the house of Kamlesh for realization of the said amount where he met deceased Sukhinbai and despite her assurance to make payment of the said amount, he caused her multiple stab wounds resulting in her

death. The incident was witnessed by PW-1 Punitabai, a girl aged about 8 years. This child witness has fully supported the prosecution case and stated as to the manner in which accused/appellant Ravi Kumar committed murder of the deceased. Throughout her examination she remained very firm and the defence has utterly failed to bring out anything on record from this witness which could suggest that she is not a reliable witness or that she has been tutored.

13. True it is that conviction on evidence of child witness without corroboration is not proper particularly when the child improves his testimony. Even if the child be the only witness of his mother being murdered - if the circumstances indicate, it is not safe to rely on him, corroboration is essential. The evidence of child witness needs corroboration when he gives two different versions. Evidence of teenage eye witnesses should be scrutinized with care and caution. There is, however, no rule of law that evidence of a child witness cannot, under any circumstance, be acted upon without corroboration. The necessity of corroboration is a rule of prudence. There may be circumstances which make it safe to dispense with the necessity of corroboration. It is not necessary that such corroboration must always be direct, it may also be circumstantial. When a child witness is capable of understanding the questions and is also capable of giving rational answer and also stands the test of cross-examination well, his evidence can be the basis of conviction.

14. In the case in hand, the evidence of the child witness (PW-1) finds due corroboration from the medical evidence, according to which number of stab wounds were found on the body of the deceased,

which could be caused by the knife seized at the instance of accused/appellant Sanat Kumar. We find no reason to disbelieve the statement of PW-1 and it inspires confidence of the Court. The medical evidence further shows that accused/appellant Ravi Kumar had also sustained knife injuries on his fingers. Though in his statement under Section 313 of Cr.P.C. appellant Ravi Kumar has stated that those injuries were suffered by him 2 days prior to the date of incident, but in the facts and circumstances of the case, the opinion of the treating doctor that the said injuries could be caused within 24 hours of the examination, the explanation of accused/appellant Ravi in this regard stands falsified. This apart, PW-2 Raju Yadav, PW-3 Dwarika Prasad and PW-4 Bhagwat Prasad have also supported the version of PW-1. In view of the above evidence, we are of the opinion that accused/appellant Ravi Kumar has rightly been convicted under Section 302 of IPC.

15. As regards conviction under Section 201 of IPC, in his memorandum Ex.P/6 accused/appellant Ravi Kumar has stated that after committing murder of the deceased he had given the said knife to his brother Sanat Kumar. PW-4 Bhagwat Prasad has duly proved the said memorandum. On the memorandum of accused/appellant Sanat Kumar (Ex.P/15), the said knife was seized (Ex.P/16). Though PW-11 Ghasiram Gupta, witness to seizure (Ex.P/16) has been declared hostile but he has admitted his signatures on the memorandum and seizure. If the statement of this witness is read as a whole, he has admitted the fact of recovery of the weapon of offence at the instance of accused/appellant Sanat Kumar. Thus, in light of the aforesaid

evidence, we are of the considered view that the prosecution has also been able to prove that the accused/appellants caused disappearance of evidence of the offence and as such, their conviction under Section 201 of IPC is also in accordance with law. However, considering the fact that the incident had taken place about 8 years back, accused/appellant Sanat Kumar has already remained in jail for 7 months, at the time of commission of offence he was a young boy of 19 years and that presently he is on bail, in our considered view, no useful purpose would be served in sending him back to jail at this stage and the ends of justice would be served if his sentence under Section 201 of IPC is reduced to the period already undergone by him and he is directed to pay compensation of Rs.5,000/- to the legal heirs of the deceased.

16. For the foregoing reasons, the appeal (Cr.A.No.741/2008) preferred by accused/appellant Ravi Kumar being devoid of substance is hereby dismissed. He is in jail, therefore, no further order is required. However, the appeal (Cr.A.No.760/08) preferred by accused/appellant Sanat Kumar is allowed in part. While maintaining his conviction under Section 201 of IPC, his sentence is reduced to the period already undergone by him. He is directed to pay a sum of Rs.5,000/- (Rupees Five Thousand Only) as compensation to the legal heirs of the deceased within six months from today, failing which he shall have to undergo additional RI for six months.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(I.S. Uboweja)
Judge