

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 13 of 2010

1. Devanand Kurrey, S/o Late Dasheram Kurrey, aged about 29 years
2. Suraj Kurrey S/o Late Daheram Kurrey , aged about 19 years.
3. Smt. Narmada Devi Kurrey W/o Late Dasheram Kurrey, aged about 45 years.
4. Ku. Jyoti Kurrey D/o Late Dasheram Kurrey, aged about 20 years.

All residents of Qr. No.112/A, Type Sector-5, Balco Nagar, Korba (CG)

---- Appellants

Versus

1. The State Of Chhattisgarh, Police Station Balco Nagar, Dist. Korba.

---- Respondent

For Appellants:
For Respondent:

Shri Aman Kesharwani, Advocate
Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgement

Per Pritinker Diwaker J;

01/12/2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 7.12.2009 passed by the 2nd Additional Sessions Judge, FTC, Korba in S.T. No.76/2007 convicting & sentencing the accused/appellants as under;-

Accused/Appellant No.1-Devanand Kurrey;

U/s 302 of IPC	: RI for life & to pay fine of Rs.5,000/-, in default to undergo R.I. for 5 months.
U/s 302 of IPC	: RI for life & to pay fine of Rs.5,000/-, in default to undergo R.I. for 5 months.
U/s 449 of IPC	: RI for 10 years & to pay fine of Rs.2,000/-, in default to undergo R.I. for 2 months.
U/s 452 of IPC	: RI for 3 years & to pay fine of Rs.2,000/-, in default to undergo R.I. for 2 months.

Accused/Appellant No.2- Suraj Kurrey;

- U/s 302 of IPC : RI for life & to pay fine of Rs.5,000/-, in default to undergo R.I. for 5 months
- U/s 302 of IPC : RI for life & to pay fine of Rs.5,000/-, in default to undergo R.I. for 5 months
- U/s 449 of IPC : RI for 10 years & to pay fine of Rs.2,000/-, in default to undergo R.I. for 2 months.

Accused/Appellant No.3-Smt. Narmada Devi ;

- U/s 324 of IPC : RI for 1 year & fine of Rs.3,000/-, in default to undergo RI for 3 months.
- U/s 451 of IPC : RI for 6 months & to pay fine of Rs.2,000/-, in default to undergo R.I. for 2 months.

Appellant No.4- Kum. Jyoti Kurre

- U/s 324 of IPC : RI for 1 year & fine of Rs.3,000/-, in default to undergo RI for 3 months.
- U/s 451 of IPC : RI for 6 months & to pay fine of Rs.2,000/-, in default to undergo R.I. for 2 months.

2. The prosecution story, in short, is that accused/appellants No.1 & 2 are sons of deceased Dasheram, appellant No.3 is his first wife and appellant No.4 is daughter of deceased Dasheram. Smt. Rajni Kurre (PW-11) is the second wife of deceased Dasheram with whom she had performed chudi marriage. On 30.7.2007 Dasheram, Smt. Rajni Kurrey, second wife of Dasheram, & Geetaram, father of Smt. Rajni Kurre, were sitting in the courtyard of the house. At that time, accused/appellants armed with weapons i.e. axe, knife, hammer & wooden plank, came there and accused/appellants No.1 & 2 have caused several injuries to Dasheram by axe & knife as a result of which he died instantaneously. When Geetaram tried to intervene, he too was done to death by accused/appellants No.1 & 2. It is further case of the prosecution that accused/appellants No.3 & 4, who were carrying hammer & wooden plank, have also caused injuries to Dasheram & Geetaram. At the instance of Smt. Rajni Kurrey, an eyewitness to the incident, merg intimations (Ex.P-32 & Ex.P-33) and FIR (Ex.34) were registered against the

accused/appellants for the offence under Sections 450, 302, 34 of the IPC. The Investigating Officer left for the scene of occurrence and after summoning the witnesses vide notices (Ex.P-12 & P-13), prepared inquest on the dead bodies of deceased Geetaram & Dasheram vide Ex.P-14 & P-15 respectively. Dead bodies were sent for post-mortem examination to the Government Hospital, Korba. Dr. Antosh Kumar (PW-1) conducted post-mortem examination on the body of deceased Geetaram vide Ex.P-1 and deceased Dasheram vide Ex.P-2. The doctor had noticed following injuries:-

Deceased Geetaram:

- Incised stab wound just below the right costal margin at the level of right mid clavicular line of $3\frac{1}{2} \times 1\frac{1}{2}$ cm.
- Incised stab wound at the site of anterior abdominal wall between the epigastric and umbilical region of $3\frac{1}{2} \times 1$ cm in size.
- Incised stab wound at the ribcage in the posterior axillary line fold of $3\frac{1}{2} \times 1$ cm.
- Superficial incised wound 2cm long at base of little finger palmar aspect.
- Incised wound at the tip of right index finger of $\frac{1}{2} \times \frac{1}{2} \times \frac{1}{2}$ cm on palmar aspect.
- Superficial incised wound $1\frac{1}{2}$ cm long at the base of left ring finger.
- Superficial incised wound, 3 in nos., over left palm of $2 \times 1\frac{1}{2} \times 2\frac{1}{2}$ cm in size.
- Incised wound, 2 in nos., over middle part of forehead

Deceased Dasheram:

1. Incised wound over back of chest, transverse in direction, of $21 \times \frac{1}{2} \times \frac{1}{2}$ cm.
2. Incised wound, vertical in direction, of $7 \times 1 \times \frac{1}{2}$ cm over lateral part of left shoulder at the deltoid region.

3. Incised stab wound of 3 ½ x ½ x 7cm, deep at the posterior part of left deltoid region, vertically placed.
4. Incised stab wound horizontally placed of 3 ½ x 1cm x deep up to right lung anterior part.
5. Incised wound horizontally placed over right costal margin between 8-9 rib.
6. Superficial incised wound 2 ½ cm long over posterior part of 1/3r upper part of left forearm.

The doctor opined that cause of death of deceased Geetaram was haemorrhagic shock as a result of multiple incised stab wounds present over the body and death was homicidal in nature. According to doctor's opinion, cause of death of deceased Dasheram was haemorrhagic shock as a result of incised stab wound of right side of chest & associated other injuries and death was homicidal in nature. Smt. Rajni Kurre (PW-11) was also medically examined vide Ex.P-31 and the doctor examining her noticed one linear abrasion over left side of her abdomen. During investigation, the accused/appellants were taken into custody vide Ex.P-25 to P-28. Articles seized were sent for chemical examination to the Forensic Science Laboratory from where report of Ex.P-57 was received. After completion of investigation, charge sheet under Sections 450, 302, 34 of the IPC was filed against the accused/appellants. However, the trial Court framed charges under Sections 302, 302, 449, 452 of IPC against the accused/ appellants.

3. In order to prove the complicity of accused/appellants in the crime in question, the prosecution has examined 18 witnesses. Statements of the accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied their guilt and pleaded innocence & false implication in the case.
4. After hearing the parties, the trial Court while acquitting accused/appellant No.2 of the charge under Section 452 of IPC; accused/appellants No.3 & 4 of all the charges, by the impugned judgment has convicted and sentenced

all the accused/appellants as described above.

5. Counsel for the accused/appellants submits that;

- the prosecution case rests entirely on the deposition of Smt. Rajni Kurrey (PW-11) who is wife of deceased Dasheram & daughter of deceased Geetaram and could not be said to be an independent witness. Thus the statement of Smt. Rajni Kurrey (PW-11) being the interested witnesses, cannot be relied upon for convicting the appellants.
- On the same set of evidence, since the accused/appellants No.3 & 4 have been acquitted of the charge under Sections 302 of the IPC, the accused/appellants No.1 & 2 should have also been acquitted of the charge under Section 302 of the IPC by the trial Court.
- Even if the prosecution case against accused/appellants No.3 & 4 is accepted in toto, considering the fact they are women, remained in jail for about four months and are on bail during appeal, no useful purpose would be served in again sending them to jail and sentences imposed on them may be reduced to the period already undergone by them.

6. On the other hand, counsel for the respondent/State supports the impugned judgment and submits that statement of Smt. Rajni Kurrey (PW-11), an eyewitness to the incident, cannot be discarded only on the ground that she is relative of the deceased persons and thus interested witnesses. He further submits that the trial Court has already taken lenient view by acquitting accused/appellants No.3 & 4 from the charges under Sections 302, 449, & 452 of the IPC. In totality, the State Counsel lends full support to the judgment impugned being just, proper and based on correct appreciation of the material on record.

7. We have heard learned counsel for the parties and perused the evidence available on record.

8. Dr. Antosh Kumar (PW-1) is the witness who conducted post-mortem examination on the body of deceased persons and gave his reports Ex.P-1 &

- P-2. According to this witness, cause of death of deceased Geetaram was haemorrhagic shock as a result of multiple incised stab wounds present over the body and death was homicidal in nature. Cause of death of deceased Dasheram was haemorrhagic shock as a result of incised stab wound of right side of chest and associated other injuries. He has further stated that apart from various articles, a knife was produced before him for examination and vide Ex.P-8 he has opined that injuries sustained by deceased persons could have been caused by this knife. Likewise, an axe was also produced before him for examination and vide Ex.P-9 he has opined that injuries sustained by the deceased persons could have been caused by this axe.
9. Sevakram Pandey (PW-2) is the Patwari who prepared spot map (Ex.P-10).
 10. Smt. Premlata (PW-3) is the wife of landlord of the house where deceased Deshram was residing as tenant and with whom Rajni Kurre (PW-11) had gone to the police to lodge report. However, this witness has not supported the prosecution case and has been declared hostile.
 11. Tarachand (PW-7) is the landlord of deceased Dasheram. This witness has not supported the prosecution case and has been declared hostile.
 12. Vinay Prabha (PW-8) is the neighbourer of deceased Dasheram and she too has not supported the prosecution case and turned hostile.
 13. B.R. Pradhan (PW-4) is the friend of deceased Deshram and witness to the inquest (Ex.P-14 & P-15) and seizure memos (Ex.P-16 to P-18).
 14. Dr. R.K. Divya (PW-9) is the doctor who examined Rajni Kurre (PW-11) vide Ex.P-31 and noticed one abrasion on the left side of her stomach.
 15. Kiran Masih (PW-10) is another neighbourer of deceased Dasheram. This witness has also been declared hostile by the prosecution case.
 16. Smt. Rajni Kurrey (PW-11) is an eyewitness to the incident. While supporting the prosecution case, she has stated that on the date of incident at about 9.00 a.m., the accused persons came to her house and started quarrelling with her husband deceased Dasheram by saying as to why he has

performed chudi marriage with her. Thereafter accused/appellant No.1-Devanand assaulted deceased Dasheram twice by knife on his stomach & beside the stomach. Accused/appellant No.3-Narmada assaulted her husband by wooden plank and accused/appellant No.4-Jyoti assaulted on his head by hammer. Thereafter accused/appellant No.2-Suraj assaulted on the head of her husband by axe. On account of aforesaid injuries, her husband died spontaneously. Her father Geetaram was also present on the spot and when he tried to intervene, accused/appellant No.1-Devanand assaulted him twice by knife on his stomach. Accused/appellant No.2-Suraj assaulted her father with axe on the right side of his back. Accused/appellant No.3-Narmada and accused/appellant No.4-Jyoti caused injuries on various parts of her father's body by wooden plank & hammer. After half-an hour of the incident, her father Geetaram also succumbed to the injuries caused to him by the accused persons. She has further stated that thereafter she along with the wife of her landlord went to the police station and lodged the report of incident based on which Merg Intimations (Ex.P-32 & P-33) were recorded. In the lengthy cross-examination but for minor contradictions, she remained very firm and nothing could be elicited from her which may render her evidence untrustworthy or doubtful.

17.Jagdish Sahu (PW-12) is the witness of memorandum of accused persons and seizure memos, but he has not supported the prosecution case and turned hostile. However, this witness has admitted his signature over the aforesaid documents. D.L. Kare (PW-13) is the witness of notice (Ex.P-13), inquest (Ex.P-14 & P-15), seizure memos (Ex.P-16 to P-18) but he too has not supported the prosecution case and turned hostile. However, this witness has admitted his signature over the aforesaid documents.

18.A.S.I. Kedarnath (PW-14) has helped in the investigation of the matter.

19.Mohammed Muslim Ansari (PW-15) is the witness of memorandum and seizure memos (Ex.P-35 to P-37), but he has not supported the prosecution

case and turned hostile. However, this witness has admitted his signature over the aforesaid documents.

20. Bharatlal Tiwari (PW-16) is the witness of Ex.P-20 to 24 and arrest memos (Ex.P-25 to P-28).

21. A.S. Paikra (PW-17) is the Investigating Officer and has duly proved the prosecution case.

22. Ramswaroop (PW-18) is the Constable who had sent the articles for chemical examination to the Forensic Science Laboratory.

23. It is accepted position that conviction of accused/appellants is completely based on the testimony of solitary eyewitness Smt. Rajni Kurre (PW-11), wife of deceased Dasheram & daughter of deceased Geetaram.

24. It is far from truth that in murder case conviction can never stand on the evidence of solitary eye-witness. If the testimony of such witness is found by the Court to be entirely reliable there is no legal impediment to the conviction of accused person on such proof. At the same time, it is also true that if a witness, who is the only witness against the accused to prove a serious charge of murder, can modulate his evidence to suit a particular prosecution theory for the deliberate purpose of securing a conviction, such witness cannot be considered as reliable person and no conviction can be based on his sole testimony.

25. Close scrutiny of the evidence makes it clear that on 30.7.2007 the accused/appellants armed with deadly weapons came to the house of deceased Dasheram Kurre, quarrelled with him for performing second marriage and thereafter accused/appellants caused several injuries to him by deadly weapons resulting into his instantaneous death. On intervention by deceased Geetaram, he too was done to death by them. The incident was witnessed by Rajni Kurre (PW-11) who has categorically stated that it is the accused/appellants who assaulted the deceased persons with deadly weapons. Her evidence finds due support from the medical evidence as the

doctor has opined the cause of death of deceased Geetaram & Dasheram as haemorrhagic shock due to multiple incised stab wounds. Query raised by the prosecution as to whether the injuries present on the body of both the deceased could be caused by the axe & knife seized from the accused/appellants, was also answered by the doctor in affirmative. Her evidence also finds corroboration from the facts stated in the promptly lodged FIR (Ex.P-34). True it is that in the statement under Section 313 of Cr.P.C. the accused/appellants have taken the plea of false implication by Rajni Kurre (PW-11), but the defence has not been able to substantiate the said allegation by explaining as to why they would be falsely implicated in this case.

26. Argument of the learned counsel for the accused/appellants regarding reliability of statement of Rajni Kurre (PW-11) being interested witnesses does not convince the conscience of this Court because it is settled legal position that relationship *per se* does not affect credibility of witness; merely their being relatives of the victim of crime. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. Fortifying this position, it has been categorically held by the Hon'ble Apex Court in the matter of **Mohabbat and Ors.v. State of M.P.**¹ as under;-

“7. Merely because the eye-witnesses are family members their evidence cannot *per se* be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person.

Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.”

Since there is nothing in cross-examination of Rajni Kurre (PW-11) that could be said to have adversely affected credibility of this witness nor is there anything to suggest that apart from her being a relative of deceased she had any other reason to falsely implicate the accused persons, this Court has no hesitation in saying that testimony of solitary eyewitness Rajni Kurre (PW-11) was consistent, cogent and trustworthy. Thus, on the basis of evidence adduced by the prosecution, complicity of accused/appellants in commission of offence stands proved beyond all reasonable doubts.

Looking to the quality of evidence of eyewitness to the incident, the fact that FSL report confirms presence of blood on the articles seized at the instance of accused/appellants and that there is no explanation on behalf of accused/appellants as to how blood stains are there, it cannot be said that non-production of serological report is fatal to the prosecution.

27. As regards the conviction of accused/appellant No.1 under Sections 449 & 452 of IPC, the trial Court has gone wrong in convicting him under Sections 449 & 452 of IPC, both relating to house trespass. When it has been established in this case that accused/appellant No.1 armed with deadly weapon had entered the house of Smt. Rajni Kurrey (PW-11) and killed two persons, he need not be convicted separately under Section 452 of the IPC which relates to house trespass after preparation for hurt, assault or wrongful restraint. Being so, while maintaining conviction of accused/appellant No.1 under Section 449 of IPC, his conviction under Section 452 of the IPC deserves to be set aside.
28. Now the question arises for consideration before this Court is as to what would be the proper sentence for accused/appellants No.3 & 4 under Sections 324 & 451 of the IPC?

29. Considering the fact that accused/appellants No.3 & 4 are women, they have remained in jail for about 04 months and during pendency of this appeal they are on bail, this Court is of the opinion that no useful purpose would be served in again sending them to jail and it would be in the interest of justice if the sentences imposed upon them are reduced to the period already undergone by them.

30. In the result;

➔ Conviction of accused/appellants No.1 & 2 under Sections 302, 302 & 449 of the IPC and sentences imposed thereunder are hereby maintained. However, conviction & sentence of accused/appellant No.1 under Section 452 of the IPC are hereby set aside and he is acquitted of that charge. Since the accused/appellants No.1 & 2 are already in custody, no further order is required.

➔ Conviction of accused/appellants No.3 & 4 under Sections 324 & 451 of the IPC are hereby maintained, however, the sentences imposed on them thereunder are hereby reduced to the period already undergone by them. They are on bail, therefore, their bail bonds shall continue for a period of six months from today in view of Section 437 of Cr.P.C.

31. The appeal is allowed to the extent indicated above.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge

roshan/-