

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 823 of 2010

- Sandeep Khare, S/o Ramkishun Khare, aged about 20 years, R/o. Torwa Basti, Police Station Torwa, Tahsil & District Bilaspur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through the S.H.O. Police Station - Torwa, District – Bilaspur (C.G.)

---- Respondent

For Appellant	:	Mr. Janak Ram Verma, Advocate.
For Respondent	:	Mr. Ashish Shukla, Govt. Advocate.

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

CAV JUDGMENT

Delivered on 28-08-2015

Per I.S. Uboweja, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 06.10.2010 passed by the First Additional Sessions Judge, Bilaspur in Sessions Trial No.165/2009, whereby and whereunder, the trial Court, after holding the appellant guilty for causing homicidal death amounting to murder of deceased Ku. Poonam, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 3 months.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.

3. The case of the prosecution, in brief, is that on 02.06.2009 at about 6.00 a.m. accused / appellant called deceased Ku. Poonam at Torwa water tank. Allegation is that love affair was going on between them and marriage of deceased was fixed for 12.06.2009 with one Sushil, resident of village Birkona, due to which the accused / appellant got annoyed and caused 13 stab injuries by means of knife to the deceased. This incident was witnessed by D.K. Ravishankar Rao (PW-5) and Mukesh Khare (PW-10).
4. Kishan Lal Khare (PW/6), father of the deceased went to Police Station, Torwa and lodged report about the incident. Merg intimation (Ex.P-8) and First Information report(Ex.P-9) were recorded. Investigating Officer D.S. Dehari (PW-11) rushed to the place of incident and saw the dead body lying near the water tank. After summoning the witnesses vide Exs.P-10 & P-10A, inquest over the dead body of the deceased was prepared vide Ex.P-15. Spot map was prepared vide Ex.P-19. Dead body of the deceased was sent for autopsy to District Hospital, Bilaspur vide Ex.P-17, where Dr. C.S. Uikey (PW-7) conducted autopsy vide Ex.P-11 and found following injuries and symptoms :-
 - (i) Rigor mortis present in all 4 limbs;
 - (ii) Multiple stab wound (around 13) on various parts of the body visible.
 - (iii) Stab wound on right hand below right shoulder 4 x 1.5 cm;

- (iv) Stab wound between right shoulder & right elbow 4½ x 2 cm;
- (v) Below right elbow multiple stab wounds of 3x2 cm, 6x3 cm, 4x1 cm, 3x2 cm;
- (vi) Stab wound on right palm 3 x 1 cm;
- (vii) On palpation right 4th & 5th ribs are fractured;
- (viii) Incised wound on both sides of the chest around right breast and below left breast and around umbilicus.

Cause of death was injuries upon vital organ and excessive bleeding. Death was homicidal in nature.

5. Patwari prepared spot map vide Ex.P-16. During the course of investigation, the appellant was taken into custody and his statement under Section 27 of the Indian Evidence Act was recorded vide Ex.P-1. At the instance of the appellant, bloodstained knife was seized from the spot vide Ex.P-13. Bloodstained clothes of the accused were seized vide Ex.P-2. Plain soil and bloodstained soil were seized from the spot vide Ex.P-14. Sealed clothes of the deceased were seized vide Ex.P-20. Seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur vide Ex.P-5 and a report thereof has been received vide Ex.P-23 affirming the presence of blood in all the seized articles.
6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed before the

Court of Chief Judicial Magistrate, Bilaspur, who in turn committed the case to the Court of Sessions, Bilaspur, from where learned First Additional Sessions Judge, Bilaspur received the case on transfer for trial.

7. In order to prove the guilt of the accused/appellant, the prosecution examined as many as eleven witnesses. Accused was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question.
8. After providing opportunity of hearing to the parties, learned First Additional Sessions Judge, Bilaspur has convicted and sentenced the appellant as aforementioned.
9. We have heard learned counsel for both the parties and perused the judgment impugned including the record of trial Court.
10. Learned counsel appearing for the appellant has not disputed the death of the deceased that it was due to fatal injuries and homicidal in nature. He submitted that conviction of the accused / appellant is substantially based on the evidence of D.K. Ravishankar Rao (PW-5) and Mukesh Khare (PW-10), but their evidence is not reliable because D.K. Ravishankar (PW-5) is not a resident of that locality and statement of other eyewitness Mukesh Khare (PW-10) was recorded after 26 days of the incident. Memorandum is also useless because used knife was seized

from the spot prior to the memorandum. He further submitted that both witnesses are concocted witnesses, their evidence is not trustworthy, cogent and reliable. Spot of incident is also disputed that is not proved by the prosecution. He also submitted that there are material contradictions and omissions in the statements of the eyewitnesses. In support of his argument, learned counsel for the appellant placed reliance on the following case laws :-

S.No.	Case Laws
1.	2014 SCC (14) 609 Vijay Thakur vs. State of Himachal Pradesh Under Section 302, 392 of the IPC. Section 27 (Memorandum) Evidence Act, A. Jacket cloth shirt (wearing) seen prior to seizure memorandum has not legal value. B. Suspicion however strong it cannot take character of proof.
2.	2011 SCC (14) 678 State of Punjab vs. Jagtar Singh and others S. 300 exception (1) 304 Part-I IPC. Eye witnesses conduct of witness not to go inform to police no neighbour, unreliable - Rightly disbelieved the eye witness on other facts circumstances not premeditation
3.	2014 SCC (12) 312 Sudarshan and another v. State of Maharashtra Sec. 302/34 of the IPC. Conduct of witness not approaching report to police station but to advocate 15 km. away nor stating to neighbour being abnormal behavior conduct. Benefit of doubt given double murder case.
4.	2010 SCC (15) 665 State of M.P. vs. Bhagirath and others. Section 302, 149 of the IPC. Eyewitness testimony not credible Recovery of weapon doubtful
5.	2014 SCC (10) 699 Narendra Singh and another vs. State of M.P. 302/34 of the IPC. P.W. Examined – 17 (seventeen) witnesses suspicion however strong cannot take place of proof presumption of innocence is a human right.
6.	2012 SCC (12) 231 Mohanlal vs. State of Hariyana. 304 Part-I and 449 of the IPC. 302 of the IPC alteration of sentence 5 years R.I. imposed.
7.	2006 SCC (11) 64 State of Rajasthan vs. Khuma. 302 of the IPC. It is improbable to appear before police wearing

	the bloodstained shirt pant cloths when called for his statement and investigation. Under section 302 of the IPC. Blood on article (human blood and blood group not availed)
8.	2009 (11-12) Supreme Bound Reports (S.B.R.) page No.138 Md. Ankoos and others vs. Public Prosecutor A.P. 5 (five) murder case under Section 302 of the IPC. - case diary cannot be used as evidence. It can only be used for the police office for refreshing his memory and for the Court for contradictions.
9.	2005 (9) SCC 94 State of Punjab vs. Ajaib Singh and others 5 (five) death murder in the night 2 (two) eyewitnesses (presence in as relative) the same house of incident doubtful) testimony of each eyewitness and investigating officer contrary and doubtful F.I.R. name witnesses nor in court not some of them listed in charge sheet suspicious
10.	Supreme Court of India ANJ 2014 (1) 135 State of Madhya Pradesh vs. Kriparam under Section 302/34 of the IPC. 2 (two) eyewitnesses P.W.-1 and P.W.-3 not reliable. Bloodstains on cloth and Axe – origin of blood not proved human blood group not proved. Recovery of article not proved at the instance of accused.
11.	2004 (10) SCC 709 State of Rajasthan vs. Bhanwar Singh and others under Section 302/109 of the IPC. 5 (five) eyewitnesses not reliable by police delayed 22 (twenty two) days delay in examination on eyewitnesses.
12.	2003 (7) S.B.R. 498 Supreme Court of India Supreme Bound Reports State of Punjab vs. Harbansh Singh and another under Section 302 IPC. 2 eye witness disbelieved as not reliabel, 2 murders occurred incidence before door house of Sarpanch in his presence and other eye witness alleged partition witness – Independent other witnesses available but not examined and listed by police.
13.	2004 (2) Supreme Bound report 367 State of H.P. vs. Sukhvinder Singh 3 (three) years eye witness victim sustained several incised wound by knife before hose contradiction, omission on serious nature casting doubt in prosecution case.
14.	2003 (7) SBR 498 SCC State of Punjab vs. Harbans Singh and Anr. Discrepancy in oral and medical evidence as to injuries.

11. On the other hand, learned State counsel opposed the appeal and submitted that evidence of eyewitnesses D.K.Ravishankar

(PW-5) and Mukesh Khare (PW-10) are sufficient to prove the guilt of the appellant that he has knowingly and intentionally caused aforesaid injuries resulting into instantaneous death of the deceased. It is also proved by the evidence that deadly weapon was used by the appellant and blood was found on the used weapon, clothes of the appellant and deceased. There is incriminating evidence to connect the appellant with the crime in question, therefore, the appellant is not entitled to be acquitted from the charges framed against him.

12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
13. In the present case, homicidal death of deceased Ku. Poonam as a result of injuries found over her body has not been substantially disputed on behalf of the appellant, even otherwise, it is also established by the evidence of D.K. Ravishankar (PW-5), Mukesh Khare (PW-10), Kishanlal (PW-6), father of the deceased, Merg Intimation (Ex.P-8), FIR (Ex.P-9), statement of Dr. C.S. Uikey (PW-7), autopsy report (Ex.P-11) that death of deceased Ku. Poonam was homicidal in nature.
14. As regards complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of D.K. Ravishankar (PW-5) and Mukesh Khare (PW-10) and also

circumstance of the case. As per evidence of D.K. Ravishankar (PW-5), he was living nearby water tank and at the time of incident he knew the accused / appellant. According to him, on the date of incident at about 5.00 a.m., he heard sound of a girl, he saw that accused /appellant murdered a girl by using knife, he asked him, then accused climbed the water tank and after some time he stepped down and at that moment he saw accused hand, shirt and pant which were stained with blood. The girl whom accused assaulted, died in pool of blood. When public gathered, he came to know the name of the deceased as Ku. Poonam. Other star witness of prosecution Mukesh Khare (PW-10) has stated in examination-in-chief that he knew the accused and deceased because both were his relatives and he is also a member of that locality. He further stated that on the date of incident, at about 5.00 a.m., when he was passing nearby the water tank to answer the call of nature, he heard sound of girl, she was shouting for help and was calling "*bachao bachao*", he went near the place of incident and saw the accused / appellant throwing knife below the stairs and climbed the stairs of water tank. After sometime he stepped down and fled away from the spot. People gathered on the spot, he narrated to one Chandrashekhar and Rajesh Singh that accused has killed Ku. Poonam and fled away. Both witnesses have also identified the

appellant inside the Court during dock identification and they also identified him at the place of incident.

15. Defence has cross-examined these witnesses at length, but has not been able to elicit anything in their cross-examinations to discredit their testimonies. Evidence of these witnesses clearly reveals, on seeing the incident in part-part by them, that the appellant was a person who has assaulted the deceased by knife as a result of which after walking some steps from the place of incident, she fell down near the spot and finally died. It also reveals that accused voluntarily caused injuries to Ku. Poonam, he committed offence with pre-meditation and extreme brutality because he caused 13 stab injuries over the body of Ku. Poonam. These witnesses have categorically stated the same thing, what they have seen at the time of incident. Their evidence clearly shows that accused / appellant took out and used the knife, where crime took place. It is also clear that he had cleverly preplanned and committed offence in cruel, brutal and diabolical manner. Causing multiple injuries on vital part of the body by deadly weapon like knife and causing instantaneous death of the deceased by itself is sufficient to prove the fact that the appellant has caused homicidal death amounting to murder of deceased Ku. Poonam.
16. As regards the question of motive, in case of direct evidence motive loses its importance, even otherwise, motive only aids in

criminality and can be inferred on the basis of nature of injury, kind of weapon used, part of the body effected and other similar circumstances. Motive is a state of mind of person at the time of commission of offence and only person concerned would be in a position to explain that what was his intention or motive behind commission of any act.

17. In the statements of D.K. Ravishankar (PW-5) and Mukesh Khare (PW-10) some minor omissions and contradictions were seen, but merely for that, their entire testimonies cannot be discarded, which were otherwise clear, cogent and trustworthy, where the eye witnesses had seen the accused / appellant assaulting deceased with knife and throwing the same. Their statements inspired confidence and were corroborated by medical evidence. Eyewitnesses, though related to deceased are natural witnesses and their presence at the scene of occurrence was well explained by them. These witnesses are independent witnesses and it is also clearly established by their evidence and prosecution documents i.e. Police map (Ex.P-19) and Patwari map (Ex.P-16) which were proved by the witnesses D.S. Dehari (PW-11) and Patwari Chaitlal Kashyap (PW-09), they have been cross-examined for preparation of map and residence of these witnesses, they were intact in their statements.
18. So far as defence witness Purtidhar (DW-1) is concerned, he is not reliable on the point that he was a counsellor of Municipal

Corporation at Bilaspur and he knew that at the time of incident, no one has allotted the room to anybody. Defence has not submitted any document about his counsellor-ship and he has not clearly stated that he has not seen Ravishankar (PW-5) in the room of water tank. No doubt memorandum (Ex.P-1) is useless because before disclosure statement of accused/ appellant knife used for commission of offence was seized from spot by the Investigating Officer. But, this seized article, seized clothes of deceased and accused / appellant, plain soil and bloodstained soil were sent to FSL, Raipur for chemical examination. FSL report (Ex.P-23) clearly shows that except plain soil, all the other articles contained blood which was automatically established by the evidence of eyewitnesses, medical evidence and circumstances that human blood were present on those articles and it is also clearly proved by prosecution that accused used the knife, which was seized from the spot for commission of said offence.

19. After appreciating the evidence available on record, learned First Additional Sessions Judge, Bilaspur has rightly convicted and sentenced the appellant as aforementioned.
20. Taking into consideration all the facts and circumstances of the case and on minute scrutiny of the evidence, we are of the considered opinion that there is no illegality or infirmity in the judgment of conviction and order of sentence impugned. The

facts of the case laws cited by learned counsel for the appellant are distinguishable from the facts of the present case.

21. Consequently, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE