

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 212 of 2012

1. Ghasiya Ram, S/o Shri Late Mehattar Ram, 47 years
 2. Narayan Ram, S/o Shri Ghasiya Ram Pandey, 22 years
- Both R/o Vill – Bhagdeva, P.S. - Kondagaon, Distt. Bastar (C.G.)

---- Appellants

Versus

- State of Chhattisgarh, Through : District Magistrate, Jagdalpur, Distt. Bastar (C.G.)

---- Respondent

For Appellant	:	Mr. Keshav Dewangan, Advocate
For Respondent / State	:	Mr. Adil Minhaz, Govt. Advocate

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

JUDGMENT

17/07/2015

Per I.S. Uboweja, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 05.11.2011 passed by the 2nd Additional Sessions Judge, Jagdalpur at Kondagaon, District - Bastar in Sessions Trial No. 205/2011, whereby & whereunder, the trial Court after holding the appellant guilty for causing homicidal death amounting to murder of deceased Budhram, in sharing common intention, convicted them under Section 302/34 of the Indian Penal Code and sentenced them to undergo life imprisonment and to pay fine of Rs.100/-, in default of payment of fine to undergo additional R.I. for three months.
2. Conviction is impugned on the ground that without there being any iota of evidence the trial Court has convicted and sentenced the appellants as aforementioned and thereby committed an illegality.

3. As per case of prosecution, on 31.10.2009 at about 8.00 p.m., Itwarin Bai, mother of appellant - Ghasiya Ram came to the house of deceased and told him that Ghasiya Ram is calling him, on which the deceased went towards the house of appellants. Prem Bai (PW-2), wife of the deceased also followed him, when she reached near the field, she found the appellants assaulting her husband by means of axe and battle axe. She came back and intimated the incident to her father-in-law, who alongwith other villagers went to the place of incident and found the deceased dead. Merg Intimation (Ex.P-14) and First Information Report (Ex.P-13) were lodged by Prem Bai (PW-2).
4. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P-16, inquest over the dead body of the deceased was prepared vide Ex.P-17. Bloodstained soil, plain soil, bloodstained four pieces of *bhutta* and bloodstained clothes of the deceased were seized from the spot vide Ex.P-10. Spot map was prepared vide Ex.P-15. Dead body of deceased Budhram was sent for autopsy to Government Hospital, Kondagaon, where Dr. S. Lonhare (PW-4) conducted autopsy vide Ex.P-3 and found following injuries :-
 - (i) Incised wound of 15 x 3 cm over left cheek;
 - (ii) Incised wound of 25 x 25 cm over neck;
 - (iii) Incised wound of 10 x 3 cm near left ear.

Mode of death was excessive haemorrhage and the death was homicidal in nature.

5. Appellants were taken into custody. Appellant Narayan Ram made disclosure statement of axe vide Ex.P-7 and the same was recovered at the instance of appellant vide Ex.P-9. Battle axe and lungi were recovered from appellant Ghasiya Ram vide Ex.P-8. Seized articles were sent to Forensic Science Laboratory, Raipur for chemical examination vide Ex.P-22.
6. Statements of the 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 Judicial Magistrate First Class, Kondagaon, who in turn, committed the case to the Court of Sessions Judge, Jagdalpur, from where learned Additional Sessions Judge received the case on transfer for trial.
7. In order to prove the guilt of the accused/appellants, the prosecution had examined as many as seven witnesses. Accused persons were examined under Section 313 of the Code, in which they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question.
8. After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellants as aforementioned.

9. We have heard learned counsel for both the parties and perused the judgment impugned and record of trial Court.
10. Learned counsel appearing for the appellants vehemently argued that conviction is substantially based on the evidence of Prem Bai (PW-2), who is wife of the deceased and interested witness, but her evidence does not inspire confidence and is not trustworthy. He further argued that as the incident took place in dark night, no possibility was there to see the incident by Prem Bai (PW-2), therefore, identity of assailants is suspicious. He further submits that the trial Court while convicting and sentencing the appellants, has not considered all the aspects of the matter and thereby committed illegality, therefore, the appellants are entitled to be acquitted from the charges.
11. *Per contra*, learned State counsel supporting the impugned judgment of the trial Court submits that evidence of Prem Bai (PW-2) is sufficient for drawing inference that the appellants caused homicidal death, amounting to murder, of deceased Budhram, therefore, by convicting and sentencing the appellants as aforementioned, trial Court has not committed any illegality.
12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of prosecution.
13. Relationship is not a factor to affect credibility of a witness. There is no proposition in law that relatives are to be treated as

untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused. A witness who is a relative of deceased or victim of the crime cannot be characterized as 'interested'. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive. A close relative cannot be characterized as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the 'sole testimony of such witness (see- Harbans Kaur and another -Vs- State of Haryana, 2005 AIR SCW 2074; Namdeo -Vs- State of Maharashtra, 2007 AIR SCW 1835; Sonelal -Vs- State of M.P., 2008 AIR SCW 7988; and Dharnidhar -Vs- State of Uttar Pradesh and Others & other connected appeals, (2010) 7 SCC 759).

14. In the present case, homicidal death as a result of fatal injuries found over the neck, cheek and ear of the deceased have not been substantially disputed on behalf of the appellants. On the other hand, it is also established by the evidence of Prem Bai (PW-2), Merg Intimation (Ex.P-14), FIR (Ex.P-13), Dr. S. Lonhare

(PW-4) and autopsy report (Ex.P-3) that the death of deceased Budhram was homicidal in nature.

15. As regards the complicity of appellants in crime in question, conviction is substantially based on the evidence of Prem Bai (PW-2). She is sole witness of the incident, she saw the appellants assaulting her husband by axe and battle axe, she has clearly stated that accused Ghasiya Ram was assaulting her husband by battle axe whereas accused Narayan Ram was assaulting him by axe. In the cross examination she has categorically stated that the incident was seen in electric light, accused persons are near relative and neighbours, therefore, the question of identity does not arise. Defence has cross-examined this witness at length, but has not been able to elicit anything in her cross-examination to discredit her testimony that the appellants have not assaulted the deceased. Her evidence clearly reveals that she was present on the spot and witnessed the incident, which is sufficient for drawing inference that the appellants have caused homicidal death amounting to murder of the deceased. Other corroborative evidence are Merg Intimation (Ex.P-14), FIR (Ex.P-13), Memorandum (Ex.P-7), seizure of weapons (Exs.P-8 & P-9), statement of Dr. S. Lohare (PW-4) and his autopsy report (Ex.P-3).
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 present case, the appellants have caused fatal injuries by battle axe and axe to the deceased, as a result of which he sustained grievous injuries and died. The appellants have not taken any defence and have failed to show that why they have caused homicidal death of the deceased. In absence of such evidence, only inference would be possible that the appellants have caused homicidal death with intent to commit murder of the deceased.
18. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellants as aforementioned.
19. On close scrutiny of the evidence, we do not find any illegality or infirmity in judgment of conviction and order of sentence.
20. Consequently, the appeal, being devoid of merit, is liable to be dismissed and is hereby dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE