

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr. Appeal No.163/2011

Ramcharan @ Hardiha, S/o Itwari Yadav, aged about 40 years, R/o village Sarkho, Police Station Janjgir, Distt. Janjgir-Champa (C.G.)

APPELLANT
(In Jail)

Vs

State of Chhattisgarh, through Station House Officer, Scheduled Caste and Scheduled Tribes, Janjgir, District Magistrate, Janjgir-Champa (CG)

RESPONDENT

For the appellant:	Shri N.K. Chatterjee, Advocate.
For the respondent:	Shri Rahul Tamaskar, Panel Lawyer.

DB: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice I.S. Uboweja

Judgment on Board by P. Diwaker, J

08.07.2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 18.02.2011 passed by the Special Judge, Janjgir-Champa (CG) in S.T. No.62/10 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for Life & fine of Rs.2,000/-, in default to undergo additional RI for 03 months.
2. As per prosecution case, on 14.2.2010 at about 9.00 p.m. the accused/appellant came near to the house of Potram (since deceased) and started abusing him by filthy language and thereafter he assaulted him with a club causing several injuries on his head and other parts of the body. Incident was witnessed by Kumari Bai (PW-1), wife of deceased, and Ravi Kumar Suryavanshi (PW-3), son of deceased. Dehati Nalishi (Ex.P-1) was recorded immediately after the incident on the basis of information given by Kumari Bai (PW-1). The injured was immediately taken to the District Hospital, Janjgir where he was examined by Dr. K.B. Singh (PW-7) vide Ex.P-6 who noticed following

injuries;

- Multiple lacerated wounds on parietal region of head at the left side. Three Injuries of following size situated from frontal region to back side;
 - a. Injury No.1 is of 5x4.5cm size
 - b. Injury No.2 is of 8x5cm size and on examination it appears that there is fracture of skull bone.
 - c. Injury No.3 is of 4.5cm x 3 cm size.
- Lacerated wound on the occipital region of head of 4.5x 0.5cm size
- Lacerated wound on Index finger of left hand of 3.5cm x 0.5cm size.

On 15.2.2010 FIR (Ex.P-16) was registered against the accused/appellant under Section 307 of the IPC. Potram died on 22.02.2010 while undergoing treatment. Dehati Merg was recorded vide Ex.P-8 and later on, the offence under Section 302 of the IPC was registered against the accused/appellant. Post-mortem on the body of deceased was conducted on 22.02.2010 by Dr. R.K. Singh (PW-12) and as per post-mortem report, cause of death was cardio respiratory failure as a result of head injury and its complication and the death was homicidal in nature. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 of the IPC and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and accordingly the charges were framed against the accused/appellant.

3. So as to hold the accused/appellant guilty, the prosecution examined as many as 17 witnesses. Statement of the accused/appellant was

recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. The accused/appellant has examined Jhaduram Sidar (DW-1) in his defence.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, while acquitting the accused/appellant from the charge under Section 3 (ii) (v) of the Act, 1989, convicted & sentenced him as mentioned in para-1 of this judgment.
5. Learned counsel for the accused/appellant submits as under:
 - (i) that the statements of Kumari Bai (PW-1) & Ravi (PW-3), being the interested witnesses, cannot be relied upon by the Court.
 - (ii) that the incident had taken place in the night at about 9.00 p.m. and no evidence has been led by the prosecution that there was any light at the place of occurrence.
 - (iii) that, considering the inconsistencies in the statements of Kumari Bai (PW-1) & Ravi (PW-3), the appellant deserves to be acquitted.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that eyewitnesses have categorically stated that when the accused/appellant was hurling abuses, Kumari Bai (PW-1) came out from the house carrying earthen lamp (चिमनी) in her hand and thus it cannot be argued that there was no light at the place of occurrence. He further submits that the accused/appellant was neighbourer and the deceased used to suspect that the accused/appellant is having some relation with his wife.

The accused/appellant came there hurling abuses and therefore even if it is accepted that it was dark, as the accused/appellant was known to the eyewitnesses, they have identified him. He further submits that statements of the eyewitnesses cannot be discarded only on the ground that they are relatives of the deceased and thus interested witnesses.

7. We have heard learned counsel for the parties and perused the material available on record.
8. Kumari Bai (PW-1), wife of the deceased, has stated that she knew the accused/appellant. On the date of incident at about 9.00 p.m. after taking dinner when the deceased went out for walk, the accused/appellant reached there, abused her husband filthily and thereafter assaulted him by club causing several injuries on his head and other parts of the body. She has further stated that after hearing cries of her husband, she and her son Ravi (PW-3) came on the spot. She has further stated that even in their presence the accused/appellant had assaulted her husband. She has clarified that when she came out from the house after hearing the cries, she was having earthen lamp (चिमनी) in her hand. In the cross-examination she remained very firm and nothing could be elicited from her which may render her evidence untrustworthy or doubtful.
9. Jotram Suryavanshi (PW-2), brother of the deceased, reached at the place of occurrence when he was informed about the incident by Ravi Kumar Suryavanshi (PW-3). He has stated that when he reached to the place of occurrence, he found the deceased lying in injured condition and thereafter with the help of villagers the deceased was taken to the hospital. He has further stated that the incident was witnessed by Kumari Bai (PW-1) & Ravi Kumar Suryavanshi (PW-3) and they had informed

him about the incident.

10. Ravi Kumar Suryavanshi (PW-3), son of the deceased & Kumari Bai (PW-1), while supporting the prosecution case has stated that on the date of incident at about 9.00 to 9.30 p.m. he and his mother was in the house and his father went out for walk. When the accused/appellant hurled abuses, he and his mother came out from the house and saw that the accused/appellant was assaulting his father by club and had caused injuries on his head & other parts of the body, whereupon he called his uncle Jotram Suryavanshi (PW-2) and narrated the incident to him. His father was taken to the hospital and during the course of treatment at Raipur, his father died. He is also the witness of spot map (Ex.P-3) & seizure memo (Ex.P-4) by which bloodstained soil & plain soil was recovered from the spot. In the cross-examination this witness remained very firm and nothing could be elicited from her which may render her evidence untrustworthy or doubtful.
11. Chhotu @ Gauri Shankar Sahu (PW-4) reached to the place of occurrence after it had taken place, he saw the deceased lying there in injured condition and on being asked, Kumari Bai (PW-1) informed him that it is the accused/appellant who had caused injuries to deceased Potram. Patwari Kishore Kumar (PW-5) has prepared the spot map (Ex.P-5).
12. Dr. K.B. Singh (PW-7) examined the deceased vide Ex.P-6 when he was brought to the hospital in injured condition and he has stated that the injuries found on the body of deceased were sufficient to cause death in ordinary course of nature.
13. Krishna Kumar Dwivedi (PW-8), Assistant Sub Inspector, recorded numbered merg (Ex.P-9). Vidyasagar Pandey (PW-10) is the witness of

memorandum of arrest of accused/appellant (Ex.P-12) and seizure memo of Ex.P-13 by which a club was seized. This witness has supported the prosecution case.

14. Dr. Rajkumar Singh (PW-12) conducted post-mortem on the body of the deceased and noticed following injuries on the vital parts of the body of deceased:-

- Stitched wound over left index finger of 3x1xbone deep, obliquely transverse. Underneath bone fractured.
- Surgically stitched wound over left parietal region just anterior to parietal eminence in 4 x 3.5 cm area with healing effect.
- Surgically stitched wound present on right parietal-occipital region in 3x2.5cm area with healing effect.

15. J.R. Sidar (PW-13) is the Assistant Sub Inspector who had recorded FIR and conducted initial part of investigation. Satish Dubey (PW-14) is the Investigating Officer and has duly supported the prosecution case. Jugal Kishore Sen (PW-17), Assistant Sub-Inspector, helped in the initial investigation. Defence witness Jhaduram Sidar (DW-1) has not stated anything which may help the accused/appellant.

16. Close scrutiny of the evidence makes it clear that on 14.2.2010 the accused / appellant reached near the house of the deceased, started hurling abuses by using filthy language and thereafter caused several injuries on body of deceased by a club including depressed fracture on the parietal region. The deceased was immediately taken to the hospital where he was examined by Dr. K.B. Singh (PW-7) who noticed five injuries on the body of deceased Potram and has categorically opined that the injuries found on the body of deceased were sufficient to cause his death in the ordinary course of nature. The deceased died in the

hospital at Raipur on 22.02.2010 while undergoing treatment and the doctor conducting post-mortem has also categorically opined that injuries found on the body of the deceased were sufficient to cause death in the ordinary course of nature.

17. Argument of the learned counsel for the accused/appellant regarding reliability of statements of Kumari Bai (PW-1) & Ravi (PW-3) being the 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. 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.”

18. Further, this Court does not find any substance in the argument of the learned counsel for the accused/appellant that at the relevant time there was no light at the place of occurrence because Kumari Bai (PW-1) has categorically stated in her statement that upon hearing abuses of the accused/appellant, she came out from the house holding earthen lamp in her hand and saw the accused/appellant assaulting her husband with the club. This apart, the defence has utterly failed to bring on record anything contrary.

¹ 2009 AIR SCW 1486

19. In view of the above factual and legal position, this Court is of the considered view that the findings recorded by the Court below are based on the material available on record and there is no flaw in the same. Accordingly, the judgment of the trial Court is hereby affirmed.
20. In the result, the appeal has no substance and it is dismissed as such.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge

roshan/-