

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.3291 of 1999

Bhavanlal, S/o Milap Singh, aged about 25 years, R/o Village Harradih, Police Station Gharghoda, District Raigarh (M.P.)(Now Chhattisgarh)

---- Appellant

Versus

State of M.P. (now State of C.G.), through P.S. Gharghoda, District Raigarh, M.P. (now Chhattisgarh)

---- Respondent

For Appellants:	Mrs. Savita Tiwari, Advocate.
For State/Respondent:	Mrs. Smita Ghai, Panel Lawyer.

**Hon'ble the Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal**

Judgment (Curia Advisari Vult)

04/07/2016

The Judgment of this Court was delivered by

Sanjay K. Agrawal, J: -

1. Two accused namely Bhavanlal (A-1) and Madanlal (A-2) were tried by Sessions Judge, Raigarh in Sessions Trial No.3/1998 (State of M.P. Vs. Bhavanlal & another) and by the judgment of conviction and order of sentence dated 22-01-1999, learned Sessions Judge convicted Bhavanlal appellant (A-1) herein and acquitted Madanlal (A-2) for offence under Section 302 of the IPC and sentenced Bhavanlal (A-1) to undergo imprisonment for life.

2. Feeling aggrieved by the judgment of conviction, appellant Bhavanlal (A-1) has preferred this appeal under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as "the Code")
3. Case of prosecution in brief is as under: That on 02-11-1997, wife of deceased Milap Singh at 10.30 P.M. made a report to the Police Station Gharghoda that she is the wife of Milap Singh and her two step sons Bhavanlal (A-1) & Madanlal (A-2) at 4-00 P.M. assaulted her husband Milap Singh on head by lathi by which he has suffered grievous injuries in his head and died. She further informed that the said assault has been witnessed by Ramvilas, Bijkothin, Uttara Kumar and Atmaram etc. The said police station registered report vide Ex. P-13 (Dehati Nalshi), Merg intimation (Ex. P14), FIR (Ex. P-15) and thereafter during investigation, one lathi has been recovered vide Ex. P-3 pursuant to memorandum statement of appellant (A-1) and the dead body was sent for postmortem. Dr. M.L. Thawait (PW-7) conducted postmortem and submitted his report vide Ex. P-10 and the cloths were also seized vide Ex. P-5 and the seized articles were sent to the F.S.L., Raipur for examination and the FSL report (Ex. P-23) in which human blood was found. On due investigation, charge-sheet was filed before the jurisdictional Criminal Court against the appellants A-1 and A-2. During the course of trial, in order to bring home the offence, the prosecution has examined as many as 12 witnesses and brought on record the documents vide Ex.

P-1 to P-23. The accused persons abjured the guilt and entered into defence. They pleaded that they have been falsely implicated in this case and claimed to be innocent.

4. On behalf of the defence, no witnesses were examined and documents were brought on record. The accused persons (A-1 and A-2) in their statement recorded under Section 313 of Cr.P.C, they denied the incriminating evidence appeared against them and they pleaded to be innocent.
5. Learned Sessions Judge on appraisal of entire evidence on record held appellant No.1 Bhavanlal guilty of charges and convicted him under Section 302 of IPC and sentenced stated as above in opening paragraph. However, learned Sessions Judge acquitted Appellant No.2-Madanlal finding no evidence against him.
6. For convicting appellant herein-Bhavanlal, learned Sessions Judge relied upon the eyewitness Ratnabai (PW-10) and autopsy surgeon Dr. M.L. Thawait (PW-7) and further relied upon the fact that lathi was seized as per memorandum of appellant herein in which FSL report, in the lathi blood was noticed and held Ratnabai (PW-10) to be reliable and trustworthy witness and death of the deceased Milap Singh was homicidal in nature and murdered by appellant herein Bhavanlal. There is no evidence against Madanlal (A-2) to convict him under Section 302 read with Section 34 of the IPC.

7. Smt. Savita Tiwari, learned counsel appearing for the appellant would submit that the prosecution has failed to bring home the offence against the appellant and the evidence adduced on behalf of the prosecution is neither sufficient nor convincing to warrant conviction of the appellant herein. She would submit that the alleged witnesses except Ratnabai who is wife of deceased had turned hostile, therefore, Ratnabai (PW-10) being the wife of the deceased and the related witness and her testimony being not consistent is not reliable and as such learned Sessions Judge is absolutely unjustified in convicting the present appellant for the aforesaid offence and as such the conviction of the appellant Bhavanlal is liable to be set aside by allowing the appeal.
8. On the other hand, Mrs. Smita Ghai, learned panel lawyer appearing on behalf of the State/respondent would submit that the prosecution had led sufficient evidence to bring home the offence merely because Ratnabai (PW-10) is the wife of the deceased, her testimony cannot be discarded. She would further submit that her statement (PW-10) is fully supported by the medical evidence and the lathi has been seized at the instance of the present appellant in which blood has been found in the FSL examination and as such judgment of conviction recorded and the sentence awarded does not warrant any interference by this Court and therefore, the appeal deserves to be dismissed.

9. In order to appreciate the rival contentions of learned counsel for the parties, we have independently scrutinized the oral and documentary evidence appearing on record.
10. The question for consideration in this appeal would be firstly, whether death of the deceased Milap Singh was homicidal in nature and secondly whether appellant herein has murdered deceased Milap Singh and is guilty of the murder. Ex. P-10 is the postmortem report, autopsy has been conducted by Dr. M.L. Thawait (PW-7). On examination of the deceased Milap Singh, autopsy surgeon found that the deceased has suffered grievous injuries as the brain material was coming out from the head and the following wounds were found :
 - (1) One C shaped lacerated wound on right side of forehead, on right eye brow to middle of nose size 5" x 1" associated with fracture of frontal bone, brain material was coming out;
 - (2) Multiple fracture of left parietal & temporal bone with lacerated wound on scalp 4" x 2" brain material coming out of injury;
 - (3) Lacerated wound on top skull size 4" x 2" piece of parietal bone come out of injury with brain material;
 - (4) Lacerated wound on right side of scalp 2" side to injury No.3, size 4" x 2" with fracture of temporal & parietal bone of right side, pieces of bones were coming out of injury.
11. The perusal of the injury suffered by deceased Milap Singh

would show that there can be no doubt that the deceased was assaulted in a most brutal manner by the accused persons as would appear from number of injuries suffered by the deceased and the cause of death was coma and shock because of the injuries to the brain caused by multiple injuries on skull bones. According to Dr. M.L. Thawait (PW-7), parts of brain were out and left parietal temporal brain was fractured in pieces and the lacerated wounds were found and all the injuries were caused by lathi which was seized at the instance of the appellant herein and in the FSL report Ex.P-23 blood was found in the lathi. It has come in the evidence of Autopsy Surgeon (PW-7) who has examined the dead body and found the injuries which were caused by hard and blunt object is consistent with medical evidence. From the aforesaid injuries, it is evident that deceased Milap Singh was assaulted with an intention to kill and it is proved beyond doubt that the deceased was murdered and the death was homicidal in nature.

12. The question for consideration as to whether the present appellant has murdered the deceased?
13. Out of seven witnesses Ramsai (PW-1), Karamsingh (PW-2), Vijayram (PW-3), Mohan (PW-4), Raivilas (PW-5), Chamarsai (PW-6) and Ratnabai (PW-10), except Ratnabai all have been turned hostile and they have been declared hostile and, therefore, it has been claimed that Ratnabai (PW-10) is interested and partisan witness and her sole testimony cannot be

relied upon to convict the appellant (A-1) herein.

14. The question for consideration at this stage, would be, whether the evidence of relative(s) of the deceased is admissible and can be relied upon. The law on the subject regarding admissibility/acceptability or otherwise of the testimony of interested witnesses is very well settled by their Lordship of the Supreme Court in umpteen number of cases. Few of them may be noticed herein profitably and usefully.
15. Their Lordships of the Supreme Court recently, in the matter of **Waman and others v. State of Maharashtra**¹ taking into consideration its earlier decisions in the matters of **Sarwan Singh v. State of Punjab**², **Balraje v. State of Maharashtra**³ and other decisions in this regard have held that the evidence of such interested witnesses should be scrutinized with a little care as a rule of prudence, not as a rule of law and the fact being relative cannot by itself discredit the evidence. Their Lordships concluded in paragraph 20 of **Waman's** case (supra) as under: -

“20. It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care.”

16. In **Balraje** (supra), Their Lordships of the Supreme Court have

1 (2011) 7 SCC 295

2 (1976) 4 SCC 369

3 (2010) 6 SCC 673

held that the mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. It was further held that when the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. After saying so, Their Lordships have concluded in para 30 that : (SCC p.679, para 30)

“30. ... if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.”

17. Likewise, in **Govindaraju alias Govinda vs. State by Srirampuram Police Station and another**⁴ their Lordships have held that where there is a sole eyewitness to the incident, his evidence has to be accepted with caution and it can be accepted and held in para 25 as under:

“25. Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eyewitness, then such evidence has to be wholly

⁴ (2012) 4 SCC 722

reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty.”

18. Likewise in the matter of **Daya Ram & others vs. State of Haryana**⁵, their Lordships in para 22 have held as under:

“22. We are not inclined to reject the testimony of PW 3 on the ground that his conduct had been unusual at the place of the occurrence, he having kept himself aloof therefrom instead of attempting to save his brothers who were under murderous attack by a group of assailants. As rightly observed by the courts below that, on being confronted with such an unforeseen and sudden situation, it is quite likely that individuals would react differently and if PW 3, being petrified by such unexpected turn of events, being in the grip of fear and alarm, as a matter of reflex hid himself from the assailants, his version of the episode, in our estimate, is not liable to be discarded as a whole as the same is otherwise cogent, coherent and compact.”

19. Further in the matter of **Kamal Kant Dubey Vs. State of Uttar Pradesh and others**⁶, their Lordships have held in para 18 that conviction can well be founded on the testimony of single witness if version to be trustworthy and corroborated by record

5 (2015) 12 SCC 373

6 (2015) 11 SCC 145

on material particulars and held as under:

“18. It is settled principle that a conviction can well be founded on the testimony of a single witness if the court finds his version to be trustworthy and corroborated by record on material particulars. We find on the touchstone of these principles, the testimony of PW 1 is completely trustworthy. Out of three infirmities found by the High Court, one regarding place of occurrence is not correct at all. So far as other two infirmities are concerned, it is a well accepted principle that the first information report need not contain every single detail and every part of the case of the prosecution. However, assuming them to be improvements, in our view the basic substratum of the matter does not get affected by such improvements at all. Even after suggesting the part which appears to be introduced as improvement, the testimony of PW 1 is clear and creditworthy. The feature that there was a strong motive for the respondents to commit the murder in question is also clear from the record and the trial Court had accepted that the respondents had strong motive to commit the crime. The finding as regards motive has not even been touched by the High Court. While PW 1 narrated the facts regarding civil litigation, the fact that the respondent-accused were being tried for the murder of his father and that there was a separate case instituted against them for havingt assaulted Brahmaden, he was not countered in cross-examination. The motive therefore lends complete corroboration and assurance while appreciating the version of PW 1.”

20. Thus, the submission raised on behalf of the appellant that sole testimony of the eyewitness Ratnabai (PW-10) cannot be considered being the testimony of interested witness cannot be accepted. Ratnabai (PW-10) in her statement before the Court clearly stated that she was recently married with deceased Milap Singh in *Churi* form and Bhavanlal (A-1) and Madanlal (A-2) are son of Milap Singh with his former wife. On the date of incident, the appellant herein was celebrating 6th day ceremony of his daughter. They were taking meals and on some dispute between her and Bijkothin, altercation took place between them and appellant Bhavanlal came and tried to assault her and thereafter, altercation took place between her husband Milap Singh and the appellant herein and thereafter, Bhavanlal (A-1) abused him and assaulted her husband by lathi and on account of fear she went to the house of sarpanch and thereafter came to the Police Station and made a report. In the cross-examination she is consistent with the fact that she has seen the incident assaulting appellant herein by lathi to her husband and she has also refuted the allegation that she has falsely implicated the appellant herein on account of not having good relation with step sons of deceased. Not only this, at the instance of appellant herein as per memorandum statement Ex. P-2, lathi has been seized vide Ex.P-3 and in the FSL report blood was found and the incise wounds have been found on the examination of the

body of deceased Milap Singh. All this shows that the ocular evidence was found corroborated by the medical evidence. Therefore, testimony of the eyewitness Ratnabai (PW-10) cannot be said to be unreliable and untrustworthy. It is rather acceptable and consistent with the medical evidence available on the record. Thus, we hold that the learned Sessions Judge has not committed any illegality in accepting the testimony of Ratnabai (PW-10) while convicting the appellant herein.

21. On perusal of all the materials brought by the prosecution, we hereby affirm the judgment of conviction recorded and the sentences awarded by the trial Court. We do not find any illegality/material irregularity or valid ground to hold that the appellant has not committed any offence. We also do not find any legal ground for interference in the order of learned Sessions Judge.
22. In consequence of aforesaid discussion, the appeal filed by the appellant is hereby dismissed. Since the appellant is reported to be on bail, his bail bond is cancelled and we direct that the appellant be apprehended forthwith to suffer remaining sentence.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge