

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 847 of 2009

1. Jagdish, S/o Bhulawan Satnami, aged about 43 years,
 2. Kamleshwar, S/o Jagdish Satnami, aged about 24 years
- Both are R/o village Garra, P.S. Bemetara, Distt. Durg (C.G.)

---- Appellants

Versus

- State of Chhattisgarh Through PS - Bemetara, Distt. Durg (C.G.)

---- Respondent

CRA No. 64 of 2010

1. Dilip, S/o Danababu Satnami, aged 30 years,
 2. Rajesh, S/o Danababu Satnami, aged 25 years,
 3. Bhangesh, S/o Danababu Satnami, aged about 22 years,
 4. Dana @ Danababu, S/o Bhulawan Das, aged 55 years,
- All resident of Village Garra, P.S. Bemetara, Distt. Durg (C.G.)

---- Appellants

Vs

- State of Chhattisgarh, Acting through Police Station Bemetara, District Durg (C.G.)

---- Respondent

And

CRA No. 892 of 2009

1. Ramesh, S/o Bhaudas Satnami, aged about 22 years,
 2. Dagan @ Ramkumar Satnami, S/o Bhulawan, aged about 38 years,
 3. Bhav @ Bhau, S/o Bhulawan Satnami, aged about 40 years,
 4. Tameshwar, S/o Bhau Satnami, aged about 21 years,
 5. Bijee @ Vinay, S/o Bhulawan Satnami, aged about 32 years,
 6. Lokesh, S/o Dagan Satnami, aged about 21 years,
- All resident of village Garra, PS Bemetara, Distt. Durg (C.G.)

---- Appellants

Vs

- State of Chhattisgarh Through – the Station House Officer, Police Station - Bemetara, Distt. Durg (C.G.)

---- Respondent

For Appellants in CRA Nos. 847 & 892 of 2009	:	Mr. Jitendra Gupta, Advocate
For Appellants in CRA No. 64/2010	:	Mr. Ashok Verma, Advocate
For Respondent/State	:	Mr. Vivek Sharma, Govt. Advocate

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

CAV JUDGMENT**Delivered on :27/04/2016****Per, I.S. Uboweja, J.**

1. As the aforesaid three appeals arise out of common judgment dated 09.10.2009 passed by the Additional Sessions Judge, Bemetara in Sessions Trial No.17/2009, they are heard together and same are being disposed of by this common judgment.
2. These appeals are directed against the judgment of conviction and order of sentence dated 09.10.2009 passed in Sessions Trial No.17/2009 by the Additional Sessions Judge, Bemetara, whereby the appellants have been convicted under Sections 302/34 and 364/34 of the Indian Penal Code (for short, 'the Code') and sentenced to undergo imprisonment for life & to pay fine of Rs.100/- each, in default thereof to undergo additional R.I. for one month and to undergo R.I. for five years & to pay fine of Rs.100/- each, in default thereof to undergo additional R.I. for one month with a direction to run both the sentences concurrently.
3. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellants as aforementioned and thereby committed illegality.
4. As per case of prosecution, on 06.01.2009 at about 4.30 p.m. the present accused / appellants had abducted deceased namely Kunwar

Singh, thereafter the deceased was assaulted by the appellants as a result of which deceased Kunwar Singh succumbed to the injuries. Dehati Merg Intimation (Ex.P-59) and Numbered Merg Intimation (Ex.P-57) were registered under Sections 364, 302, 34 of the IPC against the accused / appellants. FIR was registered vide Ex.P-49. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P-2, inquest over the dead body of the deceased was prepared vide Ex.P3. Dead body was sent for autopsy to Civil Hospital, Bemetara vide Ex.P-55A, where Dr. A.M. Shrivastava (PW-12) conducted autopsy vide Ex.P-55 and found the following injuries :-

- (i) Incised wound of 1½" x ½" upto bone deep on right trachea mid line over occipital region; over the wound hair with blood clot and mud were found; fracture of occipital bone; blood is oozing from right ear.
- (ii) Incised wound oval in shape of 1½" x ½" x ½" over right side of neck. Neck muscles vessel was cut. Both incised wounds having obliquely downward medially direction.
- (iii) Multiple abrasions seen over the lateral aspect of left upper arm sizes from ½" x ½" to 1" x 1", 07 in numbers. All the injuries are ante-mortem in nature and blood clot was found around the wounds.

Cause of death was shock and haemorrhage and death was homicidal in nature.

5. During the course of investigation bloodstained soil and plain soil were seized from the spot vide Ex.P-16. One necklace, stained with blood, was seized from the spot vide Ex.P-15. One another chain-necklace, stained with blood, was seized from the spot vide Ex.P-17. One key case containing certain keys was seized from the spot vide Ex.P-18. Accused / appellants were taken into custody and at their instance certain articles were seized as follows :

Name of accused	Memorandum	Seizure Memo	Seized Articles
Ramesh	Ex.P-4	Ex.P-19	Axe
Dagan @ Ramkumar	Ex.P-5	Ex.P-21	Motorcycle
Jagdish	Ex.P-6	Ex.P-22 Ex.P-23	Motorcycle One club
Rajesh	Ex.P-7	Ex.P-20 Ex.P-25	Motorcycle Axe
Bhav @ Bhau	Ex.P-8	Ex.P-26	Club
Tameshwar	Ex.P-9	Ex.P-27	Club
Kalesh @ Kuleshwar	Ex.P.-10	Ex.P-28	Club
Bije @ Vinay	Ex.P-11	Ex.P-29	Club
Lokesh	Ex.P-12	Ex.P-30	Club
Bhangesh	Ex.P-13	Ex.P-31	Club
Dana @ Danababu	Ex.P-14	Ex.P-32	Club

6. Seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur vide Ex.P-64 and report thereof was received vide Ex.P-65. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code') and after completion of investigation, charge-sheet under Sections 364 and 302/34 of the IPC was filed against the accused /

appellants, however the charges under Section 364 and 302/34 of the IPC were framed against the appellants by the trial Court.

7. To substantiate the charge against the accused persons, the prosecution has examined as many as twenty witnesses. When the accused persons were questioned under Section 313 of the Code about the incriminating evidence and circumstances, they denied the same and pleaded innocence and false implication and presented one defence witness P.S. Parmar (DW-1).
8. Upon consideration of evidence the trial Court convicted and sentenced the appellants as described above.
9. We have heard learned counsel for the parties and perused the judgment impugned including the record of court below.
10. Learned counsel for the accused / appellants have submitted that the memorandum and seizure are not supported by the independent witnesses and the eyewitnesses are interested witness, their evidence cannot be relied upon, there was prior animosity, therefore, they have been falsely implicated in the crime in question.
11. On the other hand, learned State counsel opposing the appeals would submit that the appellants were having common intention to kill deceased Kunwar Singh and in furtherance they have committed murder of Kunwar Singh by using deadly weapon.
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 Kunwar Singh as a result of injuries found over his body has not been substantially disputed on behalf of the appellants. On the other hand, it is also established by the evidence of Aartidas (PW-2), Govind Das (PW-10), Dehati Merg (Ex.P-59), Numbered Merg (Ex.P-57), FIR (Ex.P-49), Dr. A.M. Shrivastava (PW-12) and autopsy report (Ex.P-55) that death of deceased Kunwar Singh was homicidal in nature.
14. As regards complicity of the appellants in crime in question, conviction of the appellants is substantially based on the evidence of Premlal (PW-1), Ramesh Kumar Patre (PW-19) and Rajesh (PW-16).
15. While dealing with the question of evidentiary value of interested and relative witnesses, the Supreme Court in the matter of **Dalip Singh and others v. The State of Punjab**¹ has held that a witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted. Para 26 of the said judgment reads as under:-

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping

¹ AIR 1953 SC 364

generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

16. While dealing with same question, the Supreme Court in the matter of

Ashok Kumar Chaudhary & Ors. v. State of Bihar² has held thus,

“.....it will be erroneous to lay down as a rule of universal application that non-examination of a public witness by itself gives rise to an adverse inference against the prosecution or that the testimony of a relative of the victim, which is otherwise credit-worthy, cannot be relied upon unless corroborated by public witnesses. Insofar as the question of credit-worthiness of the evidence of relatives of the victim is concerned, it is well settled though the Court has to scrutinize such evidence with greater care and caution but such evidence cannot be discarded on the sole ground of their interest in the prosecution. The relationship *per se* does not affect the credibility of a witness. Merely because a witness happens to be a relative of the victim of the crime, he/she cannot be characterized as an “interested” witness. It is trite that the term “interested” postulates that the person concerned has some direct or indirect interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some other oblique motive.”

17. While dealing with same question, the Supreme Court in the matter of

Hari v. State of Maharashtra³ has held that relationship by itself cannot be a ground to discredit the evidence of eyewitnesses relatives of deceased, more so, when deceased was murdered by his cousin (relative). Paras 21, 22 & 23 of the said judgment read thus,

“21. It may be true that all the vital witnesses, namely, PW 1, 2 and 8 are relations of the deceased but that by itself cannot discredit their evidence. It is a fight between the relations it has come on record that the appellant is

² 2008 AIR SCW 3739

³ 2009 AIR SCW 2250

the cousin of the deceased. In such a case, the relations are likely to be the most appropriate witnesses.

22. Certain decisions have been cited at the Bar which need to be considered and explained. About appreciation of evidence of witnesses who are related to the deceased, learned counsel for the appellant relied on a decision of this Court in *Avtar Singh vs. State of Punjab*, (2006) 12 SCC 524. In that case the facts were totally different and it was opined by the learned Judges, in the peculiar facts of that case, that enmity and bad blood between the rival groups was established beyond doubt. In that case no report was lodged with the police regarding the occurrence and this Court looked into the evidence and opined that the story about making an effort to lodge a report earlier was not true. In that case the nambardar and the chowkidar who were alleged to have accompanied PW-1 to the police station were not examined and there was a categorical denial by PW6-Station House Officer about anyone reporting the incident to him before 4.12.1989. This Court found that the High Court has not at all noticed the facts. In the background of those facts, this Court held that proper caution was not exercised by the High Court in appreciating the highly partisan evidence adduced by the prosecution.

23. But in the instant case, the factual scenario is totally different. Here the occurrence took place within the house at the instance of the close relatives and in such a situation only relatives would be the witnesses. Of course, in the present case also there was some enmity in view of the land dispute but that by itself is not a ground to discard the evidence of the witnesses, who are relatives when their evidence is cogent and credible. Factually, the decision of this Court in *Avtar Singh (supra)* stands on a completely different footing.”

18. In the matter of **Mohabbat and Ors. v. State of M.P.**⁴ the Supreme Court has held that relationship is not ground to affect credibility of witness, foundation has to be laid if plea of false implication is raised.

Para 7 of the said judgment reads thus,

“7. Merely because the eye-witnesses are family members their evidence cannot per se be discarded.

⁴ 2009 AIR SCW 1486

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.”

19. While dealing with the question of evidentiary value of interested witnesses and need of deep scrutiny, the Supreme Court in the matter of **Ramanand Yadav v. Prabhu Nath Jha and others**⁵ has observed in para 15 that “But at the same time if the relatives or interested witnesses are examined, the Court has a duty to analyze the evidence with deeper scrutiny and then come to a conclusion as to whether it has a ring of truth or there is reason for holding that the evidence was biased. Whenever a plea is taken that the witness is partisan or had any hostility towards the accused foundation for the same has to be laid. If the materials show that there is partisan approach, as indicated above the Court has to analyze the evidence with care and caution.”
20. While dealing with same question in the light of relationship, the Supreme Court in the matter of **Mst. Dalbir Kaur and others v. State of Punjab**⁶ has held in para 13 that “A close relative, who is a very

⁵AIR 2004 SC 1053

⁶AIR 1977 SC 472

natural witness in the circumstances of a case, cannot be regarded as an 'interested witness'. The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because had some animus with the accused or for some other reason."

21. In the matter of **Sandeep v. State of Haryana**⁷ the Supreme Court has held that in case where victim and accused are known to witness, his evidence would be material and cannot be criticized on ground that as witness was knowing the father of the accused, he is interested witness.
22. Statements of relative witnesses cannot be discarded only on the ground of their relationship. In case of interested or relative witnesses the Court is required to scrutinize their evidence with great care and caution.
23. In the light of aforesaid dicta of the Supreme Court, close examination of the evidence Premlal (PW-1), Ramesh Kumar Patre (PW-19) and Rajesh (PW-16) are doing by us.
24. Premlal (PW-1) is the father-in-law of deceased Kunwar Singh, he deposed that he knew accused Dilip and Dagan by face and name whereas other accused persons were known by face not by name on the day of incident. On 06.01.2009, his grandson Deepak informed his daughter-in-law Binabai through mobile phone that they fled from house because Dagan and Top came to their house and were beating

⁷AIR 2001 SC 1103

them and at present they were in village Gangpur. Binabai conveyed that message to him, thereafter, he along with Ramesh (PW-19) proceeded to village Gangpur. While they were passing near the Dhaba at Kawardha road, they saw accused Dagan and Dilip along with 10 to 12 persons assaulting deceased Kunwar Singh with the help of club and axe, thereafter, they reached village Gangpur, where he narrated the incident to Deepak, Kunwar Satnami and other family members. He further deposed that he tried for lodging the report, but police did not support him, later on, he came to know about the death of deceased. He was cross examined by the defence at length, in his cross-examination he has categorically stated that that when he reached near Dhaba about 4 to 5 pm, he saw accused Dagan and Dilip along with other accused assaulting the deceased Kunwar Singh, but prosecution has not conducted the Test Identification Parade. Statement of this witness cannot be relied to the extent that he has identified the other accused since on the date of incident he knew them by face and not by their names, therefore, his statement cannot be reliable against the other accused persons, except accused Dagan and Dilip. In his detailed cross-examination, this witness has remained firm in his evidence, nothing material could be brought out based on which either his testimony may be discarded or it may be said that he was falsely implicating the accused persons in the said incident.

25. Ramesh Kumar Patre (PW-19) was a companion of Premlal (PW-1), he also supported the statement of Premlal and deposed that he was a companion of Premlal and saw that 12 to 15 persons were assaulting deceased Kunwar Singh near the Dhaba, thereafter, they reached village Gangpur and informed Udayram and police about the incident. He was cross-examined at length, but nothing material could be elicited based on which either his testimony may be discarded or it may be said that he was falsely implicating the accused persons in the said incident. By his evidence, it is clear that 10 to 12 persons had assaulted the deceased as the result of which he died in later stage. Prosecution has failed to establish that he knew the accused persons by name and face at the time of incident. No TIP was conducted by the prosecution. This witness has admitted in his cross-examination that on the date of incident he saw the accused persons for the first time, therefore, identity of accused persons is not established by this witness, but incident was proved by his evidence.
26. Rajesh (PW-16), younger brother of deceased Kunwar Singh, has deposed that at the time of incident he was in the company of deceased. He has deposed two incidents. First incident was happened a day before i.e. on 05.01.2009 at about 9.00 p.m., one Topsingh came to his house, assaulted and threatened his brother and him, they reported the incident at police station, next day i.e., 06.01.2009 he saw that accused Dagan, Top and their family

members namely Shailendra, Rajesh, Bhagesh, Dilip, Dana, Jagdish, Narendra, Chukun, Tameshwar and Ramesh armed with weapons came to their *badi*, they fled away from there and reached Khalsa Dhaba, accused persons followed them and caught hold the deceased and assaulted him by axe and club, he became unconscious, thereafter, accused persons had taken him away by motorcycle towards Kawardha road. In his cross-examination, he admitted that he cannot explain as to which accused was assaulting by which weapon & on which part of the body. He has cleared the name of accused Dagan and Rajesh that they had taken the deceased away in a motorcycle and ran away from the spot. He has also cleared the name of two accused persons Dagan and Rajesh who were present on the spot, he has not cleared the other accused by name.

27. Aartidas (PW-2) is a witness of recovery pachnama (Ex.P-1), he supported the prosecution case and deposed that dead body of a person was recovered from the culvert of village Lolesara. He is also a witness of memorandums (Exs.P-4 to P-14) & seizure memos (Exs.P-15 to P-32), but he did not support the prosecution on those documents, he was declared hostile and cross-examined at length. He has only admitted that on those documents his signatures are present.
28. Shivraj (PW-3) is a witness of memorandums (Exs.P-5 to P-14) and seizure memos (Exs.P-15 to P-32), but he has not supported the

prosecution, he was declared hostile, prosecution could not elicit anything which may help them. He has admitted his signatures on those documents.

29. Smt. Sulekhabai (PW-4) is the wife of deceased Kunwar Singh. She has deposed about two incidents, first was happened on 5th of January, 2009 and second was happened on 06th of January, 2009 at about 1.00 p.m. at their barn site. She is not the witness of incident, which took place at Dhabha in Kawardha road, therefore, her evidence cannot help the prosecution in relation to the later incident.
30. Kalyan Singh (PW-5) was declared hostile, he has not supported the case of prosecution.
31. Shrawan Kumar (PW-6) is the witness of vehicle, he deposed that his motorcycle was taken by accused Dagan and Jagdish. He was declared hostile, but did not support the prosecution story.
32. Durgaswami (PW-7) was declared hostile, he has not supported the prosecution case.
33. Bhagbali (PW-8) was also declared hostile, he is the witness of memorandum and seizure, he only admits his signatures on memorandum (Ex.P-50), FIR (Ex.P-49) and maps (Exs.P-51 & P-52).
34. Patwari Mehttar Ram Sahu (PW-9) has deposed that he prepared a map of place of incident vide Ex.P-54.
35. Kotwar Govind Das (PW-10) is a witness of memorandum and seizure, he was declared hostile and cross-examined, but did not

support the prosecution, he only admits the signatures on memorandum (Ex.P-4), seizure memos (Exs.P-15 to P-19), spot map (Ex.P-54) and arrest memos (Exs.P-36 & P-37).

36. Patwari Bhagbali (PW-11) has deposed that he has prepared the spot map (Ex.P-52).
37. Dr. A.M. Shrivastava (PW-12) deposed and proved the postmortem report (Ex.P-55) and also examined seized weapon, which was sent by the police, he has given query report (Ex.P-56) and proved it.
38. Kheduram (PW-13) is the head constable, he has registered numbered merg vide Ex.P-57.
39. Chandu Verma (PW-14) and Santram Sahu (PW-15) are the witnesses of recovery panchnama (Ex.P-5), they have deposed that one dead body was recovered from the culvert of the village.
40. Uderam Satnami (PW-17) is the witness of barn site incident, which took place prior to the incident occurred at Dhabha, therefore, his evidence is not useful and helpful for the prosecution.
41. Lukkey Saluja (PW-18) is the owner of Khalsa Dhabha, nearby which incident was taken place, he was declared hostile and was cross-examined at length, but prosecution could not elicit anything which may help them.
42. Investigation Officer, K.B. Divedi (PW-20) has proved the investigation part.

43. Evidence led by the prosecution is sufficient for establishing the clear presence of accused/appellants Dagan, Dilip and Rajesh. It is also clear that accused Dagan and Dilip were identified as the assailants and evidence also shows that some other persons were also present and they have also participated in the crime, but their identity was not disclosed by the prosecution evidence. In the evidence it also came that accused Rajesh has helped for kidnapping and has played active role in kidnapping the deceased by motorcycle and thereafter dead body of deceased was found and recovered from culvert of the village.
44. On close scrutiny of the prosecution evidence, it is clear that accused Dagan, Dilip and Rajesh were present on the spot with weapons and accused Dagan and Dilip have assaulted the deceased and accused Rajesh has helped them in kidnapping the deceased by motorcycle, thereafter, dead body of the deceased was recovered by the police, there is no doubt that time gap was very short in between the incident and recovery of dead body. Thus, it is clear by the evidence that accused/appellants Dagan, Dilip and Rajesh are the authors of crime, there is no possibility that any other person may come and murder the deceased as they have been lastly seen with the deceased and thereafter, his dead body was recovered.
45. On the basis of above facts and circumstances of the case, the identification of being assailants and kidnappers was clearly established beyond all reasonable doubt against the accused/

appellants Dagan, Dilip and Rajesh so as to hold them guilty of the offences punishable under Sections 364/34 and 302/34 of the IPC, therefore, their conviction is upheld.

46. Prosecution has failed to prove its case against other accused / appellants that they were present on the spot and have participated in the crime in question, therefore, they cannot be held guilty of the offences under Sections 364/34 and 302/34 of the IPC.
47. For the foregoing reasons, we allow the appeals filed on behalf of accused/appellants Jagdish, Kamleshwar, Bhangesh, Dana @ Danababu, Ramesh, Bhav @ Bhau, Tameshwar, Bijje @ Vinay and Lokesh. They are acquitted from the charges framed against them under Sections 364/34 and 302/34 of the IPC. They shall be released forthwith, if not required in any other case.
48. So far as the appeals filed on behalf of accused/appellants Dagan @ Ramkumar, Dilip and Rajesh are concerned, they are liable to be dismissed and are hereby dismissed. Their conviction and sentences for both the offences punishable under Sections 364/34 and 302/34 are maintained.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(I.S. Uboweja)
JUDGE