

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 845 of 2010

- Bhola Ram Sahu, S/o Mehattar Sahu, aged about 39 years, Occupation – Labourer, R/o village Sambalpur, P.S. - Arjuni, District - Dhamtari, Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh, Through Police Station – Arjuni, District – Dhamtari, Chhattisgarh

---- Respondent

For Appellant : Mr. Kalyan Kalamkar, Advocate.
For Respondent/State : Mr. Ashish Shukla, Government Advocate.

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

CAV JUDGMENT

Delivered on : 10/02/2016

Per, I.S. Uboweja, J.

1. Challenge in this appeal is to the judgement of conviction and order of sentence dated 12.10.2010 passed by the Sessions Judge, Dhamtari in Sessions Trial No. 44 of 2010, whereby and whereunder the trial Court after holding guilty for causing homicidal death amounting to murder of his *Bahu* (younger brother's wife) Smt. Chameli Sahu, W/o Neelkanth Sahu, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.10000/-, in default of payment of fine amount to further undergo R.I. for two years.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on 26.04.2010 at about 6.45 p.m., the unfortunate deceased – Chameli Sahu was doing construction work of her house at village Sambalpur and her younger sister complainant - Savitri Bai (PW-1) was also helping her. When the mason finished his work and left the construction site, both deceased and complainant were watering the soil, at that juncture accused/appellant came from behind and assaulted 3-4 blows over the head of deceased – Chameli Sahu by wooden plank and fled away from the spot, as a result of which blood started oozing from the head of the deceased and she fell down into the mud. Shavitri Sahu (PW-1) raised alarm and when villagers came there, she informed them about the incident. She also informed about the incident to husband of deceased namely Neelkanth Sahu (PW-3) on his mobile. Thereafter, Chameli Sahu was taken to Masihi Hospital, Dhamtari, where she succumbed to injuries. Incident was reported by Shavitri Sahu (PW-1) at police station, Arjuni, where FIR (Ex.P-2) was registered as Crime No. 127/2010 against the accused/appellant under Section 302 of the IPC. Merg was registered vide Ex.P-1.
4. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex. P-3, inquest over the dead body of the deceased was prepared vide Ex.P-4. Bloodstained and plain soils were seized from the spot vide Ex.P-5. Spot map was prepared vide Ex.P-6. Dead body of the deceased was sent for autopsy to District Hospital, Dhamtari, where Dr. (Smt) M. Wantchadi and Dr. C.L. Sahu

(PW-5) conducted autopsy on the dead body of the deceased vide Ex.P-12 and found following injuries and symptoms :

- (i) Lacerated wound at left parietal area of head 1.5" x 1.5" with bony deep;
- (ii) Rigor-mortis all over limbs and neck;
- (iii) Fracture over left parietal & frontal bone starts from mid frontal region oblique transverse with laterally bended in size of 7" to left parietal bone.
- (iv) Subdural and interphalangeal haemorrhage over head;

Mode of death was shock and death was homicidal in nature.

5. During the course of investigation, appellant was taken into custody, he made a disclosure statement of wooden plank vide Ex.P-7, same was recovered at his instance vide Ex.P-8. Sealed clothes and internal organs of deceased were seized vide Ex.P-9.
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 Judicial Magistrate First Class, Dhamtari who in turn committed the case to the Court of Sessions Judge, Dhamtari.
7. In order to bring home the charges of the accused/appellant, the prosecution examined as many as seven witnesses. Accused /appellant 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 Sessions Judge 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 court below.
10. Learned counsel for the appellant vehemently argued that appellant has been falsely implicated in the case and he has not committed any offence. He submits that conviction of the appellant is substantially based on the evidence of Savitri Bai (PW-1), but her evidence does not inspire confidence and is not trustworthy as she is the real sister of deceased and interested witness, therefore, only her statement is not enough for basing conviction of the appellant.
11. On the other hand, learned State counsel opposed the appeal and submits that evidence adduced on behalf of the prosecution is sufficient for proving guilt of the appellant and on the basis of evidence available on record, the trial Court has rightly convicted and sentenced the appellant.
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 ***Namdeo Vs State of Maharashtra, 2007 AIR SCW 1835***, the Supreme Court held that 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. The Supreme Court also observed that 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. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.

14. In ***Dharnidhar Vs State of Uttar Pradesh and Others & other connected appeals, (2010) 7 SCC 759***, the Supreme Court further reiterated that there is no hard-and-fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before court. The Supreme Court held that a close relative of deceased does not, *per-se*, become an interested witness. An interested witness is one who is interested in securing conviction of a person out of vengeance or enmity or due to disputes and deposes before court only with that intention and not to further cause of justice. However, version of interested witness cannot be thrown overboard, but has to be examined carefully before accepting the

same. When their statements find corroboration by other witnesses, expert evidence and circumstances of case clearly depict completion of chain of evidence pointing out guilt of accused, then statements of so-called "interested witnesses" can be relied upon by court.

15. Thus, the evidence of the relative witnesses cannot be brushed aside only on the ground that they are interested witnesses. However, their evidence is to be scrutinized with care and caution. If on such scrutiny, their evidence is found to be reliable and trustworthy, conviction based on such evidence can be held to be justified.
16. In the present case, homicidal death of the deceased as a result of fatal injuries found over the dead body of the deceased Chameli Sahu has not been substantially disputed on behalf of the appellant. Even otherwise, from the evidence of Savitri Bai (PW-1), Prabhuram (PW-2), Neelkanth Sahu (PW-3), Rupesh Netam (PW-4), FIR (Ex.P-2), Merg (Ex.P-1), Dr. C.L. Sahu (PW-5) and autopsy report (Ex.P-12) it is established that death of deceased Chameli Sahu was homicidal in nature.
17. As regards the complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of eyewitness Savitri Bai (PW-1). As per her version, upon calling by her sister deceased Chameli Sahu and her sister-in-law Neelkanth Sahu for helping to construct their home, she came to their home 6-7 days prior to the incident. On 26.04.2010 at about 5.30 p.m., when mason, after finishing his work, left the construction site, her sister

Chameli Sahu (deceased) and she herself were watering the soil, at that moment appellant came from behind and assaulted 3-4 blows by wooden plank over head of Chameli Sahu as a result of which she fell down. When she asked the appellant as to why he was assaulting, then appellant also tried to attack her, but she ran away and screamed for help. One Prabhuram (PW-2) and other villagers came there to whom she narrated about the incident, they brought Chameli Sahu to Christian Hospital, Dhamtari where she was declared dead by the Doctor. She reported the incident at police station, Arjuni by Merg (Ex.P-1) and FIR (Ex.P-2). She is also the witness of inquest (Ex.P4), seizure of bloodstained and plain soil (Ex.P-5) and spot map (Ex.P-6). The defence has cross-examined this witness at length, but has not been able to elicit anything to discredit testimony of this witness to the extent that she has not seen the incident and appellant has not assaulted her sister Chameli Sahu (deceased).

18. Prabhuram (PW-2) also supported the statement of Savitri Bai (PW-1). He stated that after hearing sound of Chameli Sahu, he went to the spot where Savitri Bai narrated him that accused/appellant assaulted Chameli by wooden plank. He saw that Chameli Sahu fell on the ground in injured condition and accused was not present there. He also witnessed the inquest (Ex.P-4), memorandum (Ex.P-7) and Seizures (Exs. P-8 & P-9). Defence has cross-examined him, his evidence was intact & firm.

19. Neelkanth Sahu (PW-3), husband of deceased Chameli Sahu deposed that on the date of incident he was not present in his village, he heard about the incident through mobile by Savitri Bai (PW-1), then he came to hospital, where he found his wife Chameli Sahu dead. He is also witness of inquest (Ex.P-4).
20. Rupesh Netam (PW-4) is the witness of spot. He stated that at about 6.30 p.m., Savitri Bai (PW-1) was weeping. On being asked her the reason, she narrated that accused/appellant assaulted her sister Chameli Sahu by wooden plank. He saw that Chameli Sahu fell near the bricks and blood was oozing from her head, with the help of villagers Chameli Sahu was brought to Christian Hospital, Dhamtari, where she was declared dead. He is also the witness of inquest (Ex.P-4).
21. S.R. Nirmalkar (PW-6), Sub-Inspector has stated that he has lodged the FIR (Ex.P-2) and Merg (Ex.P-1) on the basis of intimation received from Savitri Bai (PW-1).
22. Investigating Officer, S.K. Jain (PW-7) has stated that during the course of investigation, appellant was taken into custody, he made a disclosure statement of wooden plank vide Ex.P-7, same was recovered at his instance vide Ex.P-8. Seized article was sent to Dr. C.L. Sahu (PW-5) for examination and he opined vide Ex.P-13 that injury of Chameli Sahu may be sustained by this wooden plank.
23. We have closely seen the entire material available on record and the evidence of eyewitness Savitri Bai (PW-1) and supporting evidence of

Prabhuram (PW-2) and Rupesh Netam (PW-3), promptly lodged FIR (Ex.P-2) and Merg (Ex.P-1), statement of Dr. C.L.Sahu (PW-5) and autopsy report (Ex.P-2) are sufficient for drawing an inference that the appellant has caused homicidal death of deceased Chameli Sahu. After appreciating the evidence available on record, the Sessions Judge has rightly convicted and sentenced the appellant as aforementioned.

24. On close scrutiny of the entire evidence, we do not find any illegality and infirmity in the judgment of conviction and order of sentence passed by the trial Court.
25. Consequently, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE