

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 522 of 2009**

- Ayodhya Singh S/o Nandkeshwar Singh, aged about 40 years, R/o village Chiniya, Police Station Ramanujganj, District Surguja (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : The Police Station - Ramanujganj, District Surguja (C.G.)

---- Respondent**And****CRA No. 566 of 2009**

1. Rameshwar Bhuihar, son of Ritu Bhuihar, aged 45 years.
2. Lalmohan, son of Jagdish, aged 35 years.
3. Bhuneshwar, son of Ritu Manjhi, aged 40 years.
4. Bandhan, son of Vishwanath, aged 35 years.
5. Gola, son of Rameshwar Bhuihar, aged 22 years.

All appellants are agriculturist by occupation and residents of village Chiniya, Police Station Ramanujganj, District Surguja.

---- Appellants**Versus**

- State of Chhattisgarh Through : The S.H.O., Police Station Ramanujganj, District Sarguja (C.G.)

---- Respondent**And****CRA No. 732 of 2009**

1. Naval Kishore Singh @ Gorakh S/o Late Nanku Singh, aged about 44 years.
2. Jhari @ Kameshwar S/o Niharo, aged about 35 years.

Both are resident of village Chiniya, Police Station Ramanujganj, District Surguja (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through : The Police Station - Ramanujganj, District Surguja (C.G.)

---- Respondent

For Appellants in : Shri V.K. Pandey and Ms. Neha Verma
Cr.A.No.522 & 732 of 2009:

For Appellants in Cr.A.No.566/2009	:	Shri Rajeev Shrivastava and Shri Malay Shrivastava, Advocates
For Respondent.	:	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

Per Pritinker Diwaker, J

29/11/2017

1. As these three appeals arise out of the common judgment dated 08.07.2009 passed by the Additional Sessions Judge (FTC), Ramanujganj, Sarguja, in S.T. No.199/2007 convicting the accused/appellants under Sections 147, 148, 323/149, 342 and sentencing each of them to undergo R.I. for six months with fine of Rs.1000/-, under Section 302/149 of IPC and sentencing them to undergo imprisonment for life with fine of Rs.500/- plus default stipulations, they are being disposed of by this common judgment.

2. In the present case, name of the deceased is Baldev, aged about 33 years and it is said that he was mentally challenged.

3. The prosecution story in brief is that deceased Baldev is alleged to have caused head injury to Rajmatia, wife of accused Rameshwar Bhuihar, and in retaliation, in the night intervening 23-24/12/2006, all the accused persons caught hold of the deceased, tied him up and caused injuries to him by hands, fists and club as a result of which he died. Further case of the prosecution is that when Lalkeshwar (PW/2), brother of the deceased, intervened, he too was beaten by the accused persons. On report being lodged by Rajmatia, entry was made in the rojnamcha sanha vide Ex.P/10-C on 24.12.2006 at 9.10 am, whereas

on the basis of report lodged by Lalkeshwar (PW/2), merg intimation (Ex.P/1) was recorded on 24.12.2006 at 9.20 am. Immediately after the merg, FIR (Ex.P/2) was lodged by Lalkeshwar (PW/2) under Sections 147, 148, 342, 323, 302 and 201 of IPC against all the accused persons. On 24.12.2006, inquest on the body of deceased was conducted and body was sent for postmortem examination to Community Health Center, Ramanujganj where Dr. S.K. Sinha (PW/9) conducted postmortem examination on the body of deceased and gave his report (Ex.P/8) noticing following injuries:-

- (i) Contusion of 4 cm x 3 cm over left side of forehead.
- (ii) Abrasion of 1 cm x 1 1/2 cm on the left side of left eye.
- (iii) Abrasion of 1 cm x 1 cm on left side of lip.
- (iv) Abrasion of 2 x 2 cm on the chin.
- (v) Abrasion of 3-3 1/2 in diameter on right side of chest at mid clavicle line.
- (vi) Abrasion of 2 -2 1/2 cm in diameter on right side of chest at mid clavicle line.
- (vii) Multiple small abrasions at and above patella.
- (viii) Abrasion of 1 1/2 cm x 1 cm over left ankle joint at left lateral side.
- (ix) Abrasion of 3 cm x 1 1/2 cm and 2 cm x 1 1/2 cm transversely on the right elbow joint.
- (x) Abrasion of 2 cm x 1 1/2 cm above right wrist joint.
- (xi) Abrasion of 2 cm x 1 cm and 1 cm x 1 cm on the posterior side of left elbow joint.
- (xii) Abrasion of 3 cm x 1 1/2 cm on the posterior side transversely above left wrist joint.

The Autopsy Surgeon opined the cause of death to be cardiac respiratory failure and death was homicidal in nature.

4. On the same day, Lalkeshwar (PW/2) was medically examined

vide un-exhibited medical report and it is said that as many as five injuries were noticed on his body. After filing of the charge sheet, the trial Court has framed the charges against the accused persons under Sections 147, 148, 325/149, 342, 302 alternatively 302/149 of IPC.

5. So as to hold the accused/appellants guilty, the prosecution examined as many as 19 witnesses. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. That apart, Ramnath (DW/1) was also examined by the defence to substantiate its case.

6. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellants as mentioned in para 1 of this judgment. Hence, this appeal.

7. Learned counsel for the appellants submits :

(i) That eye witnesses to the incident Panpati (PW/1), Lalkeshwar (PW/2), Dibu (PW/4), Shoba (PW/5) and Gulli (PW/16) are not reliable and their statements are not only self contradictory but it appears that they being interested witness have falsely implicated the accused persons.

(ii) That even if the entire prosecution case is taken as it is, it is apparent that incident occurred because deceased had caused crowbar injury on the head of Rajmatia, wife of accused Rameshwar. It has been further argued that the accused/appellants cannot be convicted for committing murder or homicidal death of the deceased and they are

liable to be convicted only under Section 323 of IPC.

8. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that it was within the knowledge of the accused persons that the deceased was mentally challenged person, they first caught hold of him, tied him up and, thereafter mercilessly assaulted him as a result of which he died homicidal death. State counsel further submits that the death of mentally challenged person itself can be defined brutal act on the part of the accused persons because it was expected from them to save such person but instead they eliminated him. It has been also argued that no leniency be shown to the appellants for such inhuman act. It has been further argued that statements of the eye-witnesses cannot be discarded merely on the ground of their being related to the deceased.

9. We have heard learned counsel for the parties and perused the material available on record.

10. Panpati (PW/1) is wife of PW/2 and sister-in-law (Bhabhi) of the deceased. She is an eye-witness to the incident. She has stated that on the date of incident, deceased had left the house to roam around in the village and for quite some time when he did not return, her husband (PW/2) had gone to search him and thereafter she also followed her husband. She has further stated that she saw the accused/appellants assaulting the deceased in the house of accused Rameshwar. They were assaulting the deceased by hands, fists and club after tying him up and then they (accused persons) took him near mango tree and threw him there. In cross-examination, there appears minor contradictions in the statement of this witness, but if her overall statement is considered, it

is apparent that she saw the accused/appellants assaulting the deceased.

11. Lalkeshwar (PW/2) is injured eye-witness to the incident and brother of the deceased. He has stated that when his brother did not return home, he had gone to search him and then he saw accused Rameshwar sitting on the chest of the deceased and after his intervention they freed him and then they caused injuries to him (this witness). Immediately thereafter, the accused persons again caught hold of the deceased, tied him up and caused severe injuries to him. He has further stated that the accused persons assaulted the deceased by hands and fists as a result of which he became unconscious and they also hit on his chest by a wood. In lengthy cross-examination of this witness also, there appears to be some contradiction but they being trivial in nature are of no significance.

12. Dibu (PW/4) is father of the deceased and another eye-witness to the incident. He too by and large has supported the prosecution case except some variation which are required to be ignored.

13. Shobha (PW/5), wife of the deceased and eye-witness to the incident, has also supported the prosecution case. Similar is the position with Gulli (PW/16), mother of the deceased, who too has supported the prosecution case.

14. Budhan (PW/3) - witness to seizure has turned hostile.

15. Budh Narayan (PW/7) though turned hostile, has stated that he saw the accused/appellants in the house of accused Rameshwar and Rameshwar had confessed before him that he tied up deceased because he has caused injury to his (accused Rameshwar's) wife.

16. Dr. S.K. Sinha (PW/9) conducted the postmortem on the body of deceased and gave his report Ex.P/8 opining the cause of death of deceased to be cardiac respiratory failure and death was homicidal in nature.
17. Akshaywar (PW/8) has turned hostile. Rupesh Kumar (PW/10) and Munna (PW/11) are witnesses to inquest Ex.P/4.
18. Shivcharan Painkra (PW/12) and Jagdev (PW/13), Constable and Head Constable respectively, assisted in the investigation.
19. Arjun Singh (PW/14) is Patwari who prepared spot map vide Ex.P/12.
20. Lalji (PW/15) saw the accused persons tying up PW/2 and the deceased.
21. S.R. Khan (PW/17) - Investigating Officer has duly supported the prosecution case.
22. Tunuram (PW/18) and Vasudev (PW/19) have turned hostile.
23. Ramnath (DW/1) has stated that the deceased sustained injuries because of falling from the mango tree.
24. Close scrutiny of the evidence makes it clear that the accused persons were annoyed with the deceased, a mentally challenged person, as he alleged to have caused some injuries to Rajmatia, wife of accused Rameshwar. Without considering the fact that the deceased was a mentally challenged, poor and helpless person, the accused/appellants caught hold of him, tied him up with rope and then caused as many as 12 injuries to him which resulted in his death. Before assaulting, the accused persons even not thought about the precarious condition of the deceased and brutally assaulted him. When

PW/2 tried to intervene, he too was assaulted by the accused persons. As per postmortem report (Ex.P/4), deceased died homicidal death. The entire incident has been witnessed by PW/1, PW/2, PW/4, PW/5 and PW/16 and all these witnesses have categorically stated as to the manner in which deceased was done to death. The version of these witnesses is well corroborated by the evidence of Dr. S.K. Sinha (PW/9) and postmortem report (Ex.P/8) wherein as many as 12 injuries on his body were noticed and Autopsy Surgeon opined the cause of death to be cardiac respiratory failure and death was homicidal in nature.

25. True it is that there are some contradictions in the statements of some eye-witnesses but if their overall evidence is taken in to consideration, only one story emerges that all the accused persons have assaulted the deceased. Minor contradictions in the statements of these witnesses are required to be ignored being rustic villagers. The evidence of these witnesses is sufficient to infer that it is the accused/appellants who caused death of deceased and we have no reason to disbelieve the statements of these witnesses. The defence has cross-examined these witnesses at length but has not been able to elicit anything in their cross-examination to discredit their testimonies especially the fact that the accused/appellants have not committed murder of deceased.

26. We find no substance in the argument of counsel for the appellant that eye-witnesses are the relatives and interested witnesses and their statements cannot be relied upon.

27. The Supreme Court in the matter of **Bur Singh and Another v. State of Punjab**¹ has held that merely because the eyewitnesses are

1 (2008) 16 SCC 65

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.

28. In the case in hand, the evidence of eye-witnesses find corroboration from each other more particularly by the evidence of autopsy surgeon and postmortem report. It cannot be laid down as an invariable rule that evidence of interested witness can never form the basis of conviction unless corroborated in material particular by independent witness. Relationship is not the factor which affects credibility, the only thing is that evidence of interested witness is to be scrutinized with care and weighed in golden scale before being relied upon. More often than not a relative would not conceal the actual culprit and inculcate an innocent person. Each case must be judged on its own facts. A close relative who is a natural witness cannot be regarded as an interested witness having a direct interest in having the accused somehow or the other convicted. The relationship or the partisan nature of the evidence only puts the court on its guards to scrutinize the evidence more carefully. Interestedness of the witness has to be considered and not just that he is interested. Over insistence upon outside witnesses who might not have seen anything as compared with natural eye-witnesses may result in criminal injustice. Interestedness does not require outright rejection of evidence, only necessities the deeper scrutiny.

29. The next question which arises for consideration whether the

accused/appellants are liable to be convicted under Sections 147, 148, 323/149, 342 and 302/149 of IPC or for some lesser offence?

30. From the evidence it appears that a quarrel took place between the deceased and the appellants when deceased had caused injury to wife of accused/appellant Rameshwar and in retaliation the accused/appellants caused injuries to the deceased by hands and fists resulting his death. Thus, considering the facts and circumstances of the case, nature of injuries and the fact that no fracture has been found on his body, we are of the opinion that though the appellants had no intention of causing death of the deceased but taking into account the nature and extent of injuries inflicted by them on the deceased, which led to his death, it can safely be inferred that the appellants had knowledge that the injuries being inflicted by them on the deceased would result in his death. Being so, their act would be covered by Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder making them liable for conviction under Section 304 Part-II IPC.

31. The other aspect that needs to be examined is whether any compensation is to be awarded in favour of the bereaved family of deceased under Section 357 of the Code of Criminal Procedure, 1973.

32. The Apex Court on the decision in the matter of **Ankush Shivaji Gaikwad Vs. State of Maharashtra**² while elaborating the issue has held that while the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by

² (2013) 6 SCC 770

recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

33. In the result, the appeal is partly allowed. Conviction of the appellant under Section 302 IPC is altered to Section 304 Part-II IPC and each of them is sentenced to undergo R.I. for five years with fine of Rs.2,000/-, in addition to the fine already imposed by the trial Court, failing which they shall have to further undergo R.I. for six months.

34. The amount so deposited by the appellants shall be paid to the mother and father of deceased Baldev as compensation in view of Section 357 of Cr.P.C., after due verification.

35. Appeals thus allowed in part.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Arvind Singh Chandel)
JUDGE