

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 818 of 2008

- Kartik @ Kalika, S/o. Purshottam Uraon, Aged about 28 years, Occupation Driver, R/o. Village Tengni, Police Station Baikunthpur, District Koriya (CG)

---- Appellant

Versus

- State Of Chhattisgarh, through district Magistrate, Baikunthpur, District Koriya (CG)

---- Respondent

For Appellant	:	Shri Shaktiraj Sinha, Advocate
For Respondent/Stare	:	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

Per Pritinker Diwaker, J.

28/08/2017

This appeal arises out of judgment and order dated 11.08.2008 passed by the Sessions Judge, Baikunthpur, district Koriya in S.T. No. 02/2008 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life with fine of Rs.1,000/- plus default stipulation.

2. As per prosecution case, on 31.08.07, at about 4.30 p.m. accused/appellant Kartik Ram, deceased accused Shriram and the deceased Gulab Singh consumed liquor in the house of Shriram and there Kartik Ram and Shriram committed murder of the deceased by causing as many as 15 injuries with knife and spade. On the same day,

merg intimation Ex.P-5 was lodged at 8.05 p.m. by Ramji (PW-5) and immediately thereafter FIR Ex.P-6 was registered under Section 302 IPC against the appellant and deceased accused Shriram. Inquest Ex.P-8 was prepared and body was sent for postmortem examination vide Ex.P-24 by Dr. G.D.Baghel (PW-17) and according to him, cause of death is coma due to injury on skull and neck vertebra and death was homicidal in nature. On 01.09.07, as per memorandum (Ex.P-16) of the deceased accused Shriram, seizure Ex.P-19 was effected and one blood stained pant and two glasses were recovered; on the memorandum Ex.P-17 of accused/appellant, seizure Ex.P-20 was effected and a knife was recovered. However there is no FSL report. While framing the charge, trial judge has framed charge against the accused persons under Section 302 in alternate 302/34 IPC.

3. In order to establish the guilt of the accused persons prosecution has examined 26 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the present appellant as mentioned in paragraph 1 of the judgment. Co-accused Shriram preferred Cr.A. No. 833/2008 which has been dismissed as abated on account of his death. Hence the present appeal on behalf of appellant Kartik Ram @ Kalika.

5. Contention of counsel for the appellant is that

i) the accused/appellant has been convicted mainly on the basis of statements of Sukul Singh (PW-6) son of the deceased, Kusum

(PW-9) daughter-in-law of the deceased and Rania (PW-13) wife of the deceased. It has been argued that all these witnesses are the interested witnesses and they have improved while deposing in the court.

ii) in fact the incident was not seen by any of the so called eyewitnesses however they have falsely implicated the appellant on account of old land dispute.

iii) though on the memorandum of accused/appellant and the deceased/accused certain seizures have been made however the same are of no consequence because there is no FSL report.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is in accordance with law and there is no infirmity in the same. She further submits that even assuming that Sukul Singh (PW-6), Kusum Kumari (PW-9) and Rania (PW-13) have improved a bit in the court statement, it will be of no help to the accused/appellant because all the witnesses are firm so far as presence of the accused/appellant near the body of deceased carrying weapon in his hand. It has further been argued that the dead body has been found in the house of deceased/accused Sriram in whose house the appellant and deceased had consumed liquor.

7. Heard counsel for the parties and perused the material on record.

8. Sukul Singh (PW-6) son of the deceased and eyewitness to the incident while supporting the prosecution case has stated that at the time of incident he was in his house and upon hearing the cries of his father when he ran towards the house of Shriram, on the way he met

Rampyare, he asked him about the noises, he told him that his father is being assaulted by Sriram and Kartik, then he ran towards the house of Sriram and saw accused Kartik Ram was assaulting his father with spade whereas Sriram was assaulting with knife. He has further stated that the incident occurred on account of old land dispute between the deceased/accused and his father. In cross-examination of this witness it appears that there is some improvement in the court statement but in material particular he remained firm and reiterated as to the manner in which his father was done to death by the accused/appellants. Kusum Kumari (PW-9) daughter-in-law of the deceased though in her diary statement has stated that upon coming to know that the deceased was beaten by the accused persons when she and her husband reached the place of incident, they found the accused persons assaulting the deceased and when they scolded them as to why they were assaulting him, then ran away from the spot. She has stated that her father-in-law was lying in the verandah in a pool of blood and was dead. While deposing in the court she has improved a bit and has stated that she saw the accused persons assaulting the deceased however if the entire examination-in-chief and cross-examination is seen, presence of this witness on the place of occurrence of the incident cannot be disputed and she saw the deceased in a pool of blood, the accused persons were also standing carrying the weapons in their hand. Smt. Rania (PW-13) wife of deceased has also improved a bit while deposing in the court. As per her dairy statement, after committing the murder of the deceased, accused/appellant was brandishing the knife by saying that he had killed the deceased and had also threatened her to kill. However, in the court she has stated that she saw the accused persons committing the murder of the deceased in the house of

deceased/accused Sriram. As already stated that though this witness has also improved in her court statement but if her entire examination-in-chief and cross-examination is seen, it is apparent that immediately after the occurrence she reached the place and saw the accused persons carrying weapon in their hand and that deceased was lying in a pool of blood. Ramjeet (PW-5) is a nephew of the deceased and the appellant. Immediately after coming to know of the incident he reached the house of accused/deceased Sriram where the dead body of deceased was lying in a pool of blood. He has further stated that there was an old land dispute between the appellant and the deceased and the matter was also pending in the court of SDM. He has stated that he lodged the merger intimation Ex.P-5. He is also a witness to inquest (Ex.P-7). Dr.G.D.Baghel (PW-17) conducted postmortem examination on the body of deceased and according to him following injuries were found :

- i) ante-mortem lacerated wound over left forehead 4 cm. x 3 cm.
- ii) ante-mortem incised wound elliptical shaped 1 cm. x 0.3 cm. x 1 cm. left face injury of ear.
- iii) ante-mortem incised wound elliptical shaped fast below the left mandible 2 cm x 0.3 cm. x 1 cm.
- iv) ante-mortem incised wound over right occipital region of skull 5 cm. x 2 cm. elliptical bone deep with fracture of underlying bone (skull)
- v) ante-mortem incised wound right side of neck along with mandible 11 cm. x 4cm. x 1.5 cm. deep and fracture of mandible bone, muscles and subcutaneous tissues incised.
- vi) ante-mortem incised wound over right neck 1" below the ear 7 cm x 1 cm. elliptical shaped.
- vii) ante-mortem incised wound over neck 4 cm. x 1.5 cm. bone deep with fracture of cervical vertebra 4th, 5th and 6th.
- viii) ante-mortem incised wound over right zygomatic region of face 1 cm. x 1cm. (elliptical) x 1 cm.
- ix) ante-mortem incised wound left chest upper part 2.5 cm. x 0.5

cm. x 0.5 cm. elliptical shaped

x) ante-mortem incised wound over Jiffy stamen of chest 3 cm. x 0.5 cm. x 1 cm. and 2.5 cm. x 0.5 cm x 0.5 cm. elliptical shaped.

xi) ante-mortem incised wound over lower part of the left chest 1.5" lateral to Jiffy stamen of chest 3 cm. x 0.5 cm. x 0.5 cm. elliptical shaped

xii) ante-mortem incised wound rigor right flank of abdomen portion auxiliary line just below costal margin 3 cm. x 1 cm. x 1.0 cm.

xiii) ante-mortem incised wound over right flank of abdomen 3" above the chest 3 cm. x 0.5 cm. x 1 cm.

xiv) ante-mortem incised wound back of abdomen over middle of bone 1 cm. x 1 cm. x 1.5 cm.

xv) ante-mortem incised wound over left elbow 1 cm. x 0.5 cm. x deep

xvi) ante-mortem incised wound on dorsal of left forearm 3 cm. x 0.5 cm x 0.5 cm. occipital over fractured sub dural matter present.

Cause of death is coma due to injury to skull and neck vertebra and death was homicidal in nature. A.K.Arya (PW-24) is the Investigating Officer who had done the investigation. Parvati (PW-1), Rampyare (PW-2), Vijay Singh (PW-3), Mankunwar (PW-4), Keshlal (PW-7), Amarsai (PW-8), Ram Bai (PW-10), Dharampal (PW-11), Hemkunwar @ Semkunwar (PW-12) and Indrakunwar @ Rambai (PW-25) have not stated anything against the appellant and have turned hostile. Mahadev Prasad Sahu (PW-14) is the witness to memorandum EX.P-16 and P-17 has not stated anything against the appellant and has turned hostile. Balmiki Mishra (PW-16) is the patwari who prepared spot map. Ram Singh (PW-18) is a witness to inquest and memorandum Ex.P-16 of deceased/accused Sriram, has supported the prosecution case. Rajeshwar Ram (PW-21), Vinod Prasad Tiwari (PW-22) and Azad Singh (PW-23) have assisted in the investigation. Dr. D.K.Chikenjuri (PW-26) examined both the accused persons vide Ex.P-33 and 34 and noticed injuries on their body. These injuries have not been explained by the accused persons in their statement under Section 313 Cr.P.C.

9. Close scrutiny of the evidence makes it clear that on account of old land dispute on 31.08.07 in the house of deceased accused Sriram the accused persons caused multiple injuries to Gulab Singh and upon hearing the cries of Gulab Singh, Sukul Singh (PW-6), Kusum Kumari (PW-9) and Rania (PW-13) immediately rushed to the spot and saw the deceased lying in the verandah in a pool of blood and the accused persons were standing nearby carrying weapons in their hand. Though Kusum Kumari (PW-9) and Rania (PW-13) have improved a bit while deposing in the Court and had gone to the extent that they saw the entire incident but Kusum Kumari (PW-9) remained firm in her court statement as eyewitness to the incident and there is every reason to believe the statement of this witness. Even if Kusum Kumari (PW-9) and Rania (PW-13) have improved a bit while deposing in the court but if their entire statement is seen, it is apparent that immediately after the incident they reached the place of occurrence, saw the accused persons standing near the dead body carrying weapons in their hand. Though there are eyewitnesses also but they have not supported the prosecution case.

10. Considering the statements of Sukul Singh (PW-6), Kusum Kumari (PW-9) and Rania (PW-13), complicity of the accused/appellant in commission of the offence by the prosecution has been duly proved. Thus, the statement made by the eyewitnesses in the Court is natural, reliable and does not suffer from any serious contradictions. Once the presence of eye-witnesses cannot be doubted and it has been established that their statement is reliable, there is no reason for this Court in not relying upon the statement of such eye witnesses. The findings recorded by the Court below are based on due appreciation of the evidence available on record. In these circumstances, we see no

reason to interfere with the finding of guilt as the well as the order of sentence. Resultantly, the appeal is dismissed.

11. As the appellant is reported to be in jail, no further order is required to be passed in respect of his arrest etc.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge