

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2280 of 1998

- Prem Singh, S/o Bodhan Gond, aged about 20 years, Occupation- Agriculture, R/o Khamhar Dohar, Khargaon, Chalgali, District Surguja (MP)

---- Appellant (In Jail)

Versus

- The State of Madhya Pradesh, through Police Station Incharge, Police Station Chhalgali, District Surguja

---- Respondent

For Appellant	:	Shri R.K. Jain, Advocate.
For Respondent	:	Shri Adil Minhaj, Panel Lawyer.

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

Judgement

P. Diwaker, J

01/08/2017

1. This appeal arises out of the judgment of conviction and order of sentence dated 6.8.1998 passed by the 1st Additional Sessions Judge, Ambikapur, District Sarguja in S.T. No.318/96 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for life.
2. Brief facts of the case are that deceased Maansai was having illicit relation with the wife of acquitted accused Durjan. It is stated that on 1.6.1996 at about 9.00 p.m. deceased Maansai was resting on the cot after taking his meals. He started hurling abuses at the acquitted accused Durjan whereupon accused/appellant herein asked him not to do so else he would kill him and saying so, he left the spot. After some time,

accused/appellant and acquitted accused came back, picked up the wooden log (Geda) lying on the spot and started assaulting the deceased. On hearing commotion, Thakur (PW-6), son of deceased, came there and asked the accused persons not to beat his father (deceased), but they did not stop and committed murder of the deceased. Merg Intimation (Ex.P-12) was recorded on 2.6.1996 at 7.40 a.m. at the instance of Sanjho Bai (PW-2), wife of deceased. Immediately thereafter FIR (Ex.P-4) was recorded at 7.50 a.m. against the accused persons at the instance of Sanjho Bai (PW-2) under Section 302/34 IPC. Inquest was prepared on the body of deceased vide Ex.P-10. Body was sent for post-mortem examination vide Ex.P-6 which was conducted by Dr. S.K. Paikra (PW-4) who noticed lacerated wound on both parietal area of scalp. In the post mortem examination the cause of death of deceased could not be ascertained, hence the viscera was preserved for chemical examination. Viscera was sent for chemical analysis to the Forensic Science Laboratory from where report (Ex.P-15) was received in which it has been reported that no chemical poison was found in the contents sent for examination. On 4.6.96 memorandum statement of accused/appellant was recorded vide Ex.P-1 and based on which a wooden log was seized at his instance vide seizure memo Ex.P-2. Seized articles were sent for chemical examination to the Forensic Science Laboratory and as per report of FSL, blood was found on the wooden log seized at the instance of accused/appellant. Statements of witnesses were recorded in the course of investigation.

3. After investigation, charge sheet against the accused persons was filed under Section 302/34 IPC and accordingly the charge was framed against them by the trial Court. The prosecution in order to bring home the charge levelled against the accused examined 09 witnesses in all. Statements of

accused were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.

4. After hearing counsel for the parties and considering the material available on record, the trial Court while acquitting co-accused Durjan of the charge of murder, convicted & sentenced the accused/appellant herein by the impugned judgment in the manner as described above.
5. Counsel for the accused/appellant submits that;
 - the trial Court has not properly appreciated the evidence and material on record.
 - PW-2 & PW-6 are wife & son of the deceased respectively, therefore, they are related and interested witnesses and as such, their evidence should not have been taken into consideration by the trial Court for basing conviction of appellant, particularly when the same has not been corroborated by any independent witness.
 - looking into the nature of injuries and quarrel took place between the appellant and the deceased, the case in hand is not covered under Section 302 of IPC. According to learned counsel, looking to the peculiar facts of case, the injuries sustained by the deceased and the fact that it is the deceased who first hurled abuses at the accused/appellant, the case of the appellant would fall under one of the exceptions of Section 300 of IPC.
 - the appellant has already remained in jail for more than eight years and therefore while converting his conviction under Section 304 Part II of IPC, he may be sentenced to the period already undergone by him.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that there is direct evidence in the nature of eyewitness and medical evidence corroborates the version of eye-witnesses and therefore the case in hand squarely falls under Section 300 of IPC and the

trial Court has rightly convicted the accused/appellant under Section 302 IPC. He further submits that at the instance of accused/appellant seizure of wooden log was made vide Ex.P-2 and report of FSL confirms the presence of blood on it.

7. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.
8. Rameshwar (PW-1) is the witness of memorandum statement (Ex.P-1) of accused/appellant and seizure memos Ex.P-2 & Ex.P-3 by which the weapon of offence and soil from the spot was seized. This witness has duly supported the prosecution case.
9. Sanjho Bai (PW-2), wife of deceased, is the lodger of Merg Intimation (Ex.P-3) & FIR (Ex.P-4). She has stated that she saw accused/appellant herein beating her husband with wood thereby causing him injuries on his right temporal region, head and back. Seeing the incident she tried to rescue her husband, but in vain. She has further stated that the accused/appellant left the place after beating her husband and that her husband had died.
10. Gutur Ram (PW-3) is the person who at the relevant point of time was present with the deceased on the spot. This witness has stated that on the fateful day he was taking his meals in his house and at that time the deceased was standing outside. Hearing commotion, he went to his courtyard where he saw the accused/appellant herein assaulting the deceased by club. He assaulted him on his hand and right temporal region of the deceased by club. At this stage this witness has been declared hostile, however, in the cross-examination by the defence he has admitted that accused/appellant was carrying club in his hand.
11. Dr. S.K. Paikra (PW-4) is the doctor who conducted post mortem examination on the body of deceased and noticed the injuries as

described above. This witness has stated that cause of death could only be opined after seeing the viscera report.

12. Kanhai (PW-5) is the witness of inquest (Ex.P-10) and spot map (Ex.P-11) prepared by the Patwari.
13. Thakur (PW-6) is the son of deceased and another eyewitness of the incident. He has stated that on hearing commission, he came out of his house and saw that accused persons were assaulting his father (deceased) by club. Accused/appellant assaulted his father on his head, whereas co-accused Durjan assaulted on his legs. The accused persons fled from the spot after beating his father.
14. Modi Ram (PW-7) is the witness of seizure memo Ex.P-9. Om Narayan Singh (PW-8) is the Patwari who prepared the spot map vide Ex.P-11. P.R.K. Singh (PW-9) is the investigating officer who has duly supported the prosecution case.
15. Close scrutiny of the evidence on record makes it clear that it is the accused/appellant who killed the deceased by causing grievous injuries on vital parts of his body i.e. temporal region & skull, resulting in his death on the spot itself. Incident was witnessed by Sanjho Bai (PW-2) & Thakur (PW-6) whose presence on the spot cannot be doubted as the incident took place near the tree situated in front of their house. They have categorically stated that they saw accused/appellant herein beating the deceased with club thereby causing injuries to his right temporal region, head and back and that the accused/appellant fled from the spot after beating her husband. Evidence of these witness not only finds corroboration from the promptly lodged FIR (Ex.P-4) but also from the medical evidence, according to which, the injuries present on the body of deceased were ante mortem in nature and caused by hard and blunt object. This apart, on the basis of disclosure statement (Ex.P-1) made by

accused/appellant, one wooden log was recovered vide seizure memo of Ex.P-9 and FSL report (Ex.P-14) proves presence of blood on it. There was no explanation by the accused/appellant of the circumstance in which the bloodstains had appeared on wooden log seized at his instance. Therefore, the above fact of recovery of the weapon of offence on being pointed out by the accused is an additional link to prove his guilt.

16. Argument of the learned counsel for the accused/appellant regarding reliability of statement of Sanjho Bai (PW-2) & Thakur (PW-6) being interested witnesses does not convince the conscience of this Court because it is settled legal position that relationship *per se* does not affect credibility of witness; merely their being relatives of the victim of crime. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. Fortifying this position, it has been categorically held by the Hon'ble Apex Court in the matter of **Mohabbat and Ors.v. State of M.P.**¹ as under;-

“7. Merely because the eye-witnesses are 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. 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

1 2009 AIR SCW 1486

evidence to find out whether it is cogent and credible.”

17. In the present case also, nothing could be brought on record by way of cross- examination of PW-2 or PW-6 to show that these witnesses had any interest in falsely implicating the accused or they had any axe to grind against the accused/appellant. Therefore, we have no hesitation in saying that evidence of these witnesses are convincing and beyond reproach. Thus, on the basis of evidence adduced by the prosecution, complicity of accused/appellant in commission of offence stands proved beyond all reasonable doubts
18. So far as the submission of counsel for the accused/appellant that act of the appellant comes within the ambit of Section 304 Part-II of IPC is concerned, it appears that there was no premeditation on the part of the accused/appellant to commit the offence in question and it is only when the deceased hurled abuses at the accused/appellant, he got annoyed and assaulted him with the wooden log (गेंडा) lying on the spot causing various injuries resulting in his death. The doctor who conducted post mortem has not stated that the injuries caused were sufficient in ordinary course of nature to cause death and therefore it cannot be said that the accused/appellant have taken undue advantage of the situation and acted in a cruel or unusual manner. It is thus apparent that the accused/appellant had no intention to cause such bodily injury to the deceased as was likely to result in his death, however, the appellant can certainly be clothed with the knowledge that in all probabilities his act could cause death. Thus, this Court thinks that the act of accused/appellant can at best be termed as culpable homicide and not murder and therefore it is covered within Exception-IV to Section 300 of the IPC. That being the position, this Court is of the considered opinion that conviction of accused/appellant under Section 302 of the IPC is not

based on the correct appreciation of evidence available on record and taking into consideration all aspects of the matter, he can at best be convicted under Section 304 Part-II of the IPC.

19. As regards the sentence, the incident took place 20 years ago, the appellant remained in jail for more than eight years and he has already suffered agony of long trial/appeal for the last 20 years, therefore, we feel that the end of justice would be met if he is sentenced to the period already undergone by him.

20. In the result, the appeal is allowed in part. Conviction of the appellant under Section 302 of the IPC is altered to Section 304 Part-II of the IPC and he is sentenced to the period already undergone by him. He is reported to be on bail. His bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RP Sharma)
Judge

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