

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 623 of 2011

- Bhagtu Ram Kamar S/o Gandhi Ram Kamar, aged about 27 years, R/o Village Kodo Hardi, Kamar Para (Bahra Para), P.S. Gariyaband, Distt.-Raipur, C.G.

---- Appellant (In jail)

Versus

- State Of Chhattisgarh, through the Police Station Gariyabandh, District Raipur.

---- Respondent

For Appellant	:	Shri K.K. Singh, Advocate
For Respondent	:	Shri Vaibhav Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement

Per P. Diwaker, J

19/06/2017

1. This appeal arises out of the judgment of conviction and order of sentence dated 30.6.2011 passed by the Additional Sessions Judge, Gariyabandh in S.T. No.3/2011 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 and fine of Rs.500/-, in default to undergo Simple Imprisonment of 1 month.
2. Brief facts of the case are that on 2.12.2010 at about 6-7 p.m. the accused/appellant killed his elder brother Bhagatram by causing three grievous injuries on his chest & stomach by knife (which is being used for cutting bamboo) resulting in his instantaneous death. Dehati Nalishi (Ex.P-2) was recorded at 12.30 a.m. in the night on 3.12.2010 at the

instance of Veer Singh (PW-2). Immediately thereafter Dehati Merg (Ex.P-1) was recorded at 12.40 a.m. in the night. Inquest was prepared on the body vide Ex.P-6. Body was sent for post-mortem examination vide Ex.P-14 which was conducted by Dr. H.K. Chouhan (PW-7) who noticed following injuries;-

- Stab wound on the chest with inverted margin and smooth surface.
- Incised wound over right forearm of 4x1cm in size.
- Stab wound on the upper part of left lungs.

The cause of death assigned by the autopsy surgeon was due to cardiorespiratory arrest as a result of haemorrhagic shock due to rupture of vital organ of chest & abdomen and the death was homicidal in nature. On 3.12.2011 itself memorandum of accused/appellant was recorded vide Ex.P-8 and based on which a knife and clothing of accused/appellant were seized at his instance vide seizure memo Ex.P-9. Seized articles were sent for chemical examination to the Forensic Science Laboratory and as per report of FSL, blood was found on the knife and undergarments of the accused. Statements of witnesses were recorded in the course of investigation.

3. After investigation, charge sheet against the accused was filed under Section 302 IPC and accordingly the charge was framed against him by the trial Court. The prosecution in order to bring home the charge levelled against the accused examined 09 witnesses in all. Statement of accused was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.
4. After hearing counsel for the parties and considering the material available on record, the trial Court 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-5 is wife of the deceased, therefore, she is related and interested witness and as such, her 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 300 of IPC. According to learned counsel, looking to the facts of entire incident, the injuries sustained by the deceased and the fact that the relations between the accused and the deceased were cordial, the case of the appellant would fall under one of the exceptions of Section 300 of IPC.
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-witness 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 knife was made vide Ex.P-9 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. Navtaram Kamar (PW-1) is the lodger of FIR (Ex.P-21), Dehati Merg (Ex.P-1) and Dehati Nalishi (PW-2). This witness did not support the prosecution case and turned hostile, however, he has admitted his signature in the aforesaid documents.

9. Veer Singh (PW-2) & Ram Singh (PW-3) are the witnesses of inquest (Ex.P-6), memorandum (Ex.P-8) & seizure memo (Ex.P-9), but these witnesses have also not supported the prosecution case and turned hostile. However, they have admitted their signatures in the aforesaid documents.
10. Malikram (PW-4) is the another witness of inquest (Ex.P-6) and seizure memos Ex.P-4 & P-5 but he too has not supported the prosecution case and as such declared hostile. However, this witness has also admitted his signatures in the aforesaid documents.
11. Dropati Bai (PW-5) is the wife of deceased and an eye-witness to the incident. She has stated that on the date of incident she along with her mother-in-law was in her house and after hearing the sound of quarrel, she came out from the house and saw that the accused/appellant after giving knife blow on the chest of her husband had ran away. On account of injuries caused by the appellant, her husband fell down on the ground and thereafter she raised alarm for help and on arrival of the persons of vicinity, she had narrated the incident to them. In the cross-examination this witness remained very firm and nothing incriminating could be elicited by the defence which makes her testimony untrustworthy or unreliable.
12. Budhyarin Bai (PW-6), mother of deceased and accused/appellant, did not support the prosecution case and turned hostile. However, she has admitted in her cross-examination by the Additional Government Pleader that on the fateful day the accused/appellant and the deceased were quarrelling. She has further admitted that the deceased used to quarrel with the people after consuming liquor. She has further stated that there was no property dispute between accused/appellant and deceased.
13. Dr. H.K. Chouhan (PW-7) is the doctor who conducted post mortem examination on the body of deceased and noticed the injuries as

described above. This witness has opined that cause of death was due to cardio respiratory arrest as a result of haemorrhagic shock due to rupture of vital organ of chest and the death was homicidal in nature.

14. Lambodar Patel (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 committed murder of the deceased by causing grievous injuries on vital parts of his body i.e. chest & stomach, resulting in his death on the spot itself. Incident was witnessed by Dropati Bai (PW-5) whose presence on the spot cannot be doubted as the incident took place in the street situated in front of her house. She has categorically stated that hearing the sound of quarrel when she came out from her house, she saw that after giving knife blow on the chest of the deceased, the accused/appellant fled from there. Evidence of this witness not only finds corroboration from the promptly lodged FIR (Ex.P-21) but also from the medical evidence, according to which, the cause of death was due to rupture of vital organ of chest & abdomen. Evidence of this witness further gets corroboration from the statement of hostile witness Budhyarin Bai (PW-6), who has categorically stated that on the fateful day the accused/appellant and the deceased were quarrelling with each other. It is now well settled that even evidence of hostile witness also to the extent it corroborates the prosecution version can be relied upon. This apart, on the basis of disclosure statement (Ex.P-8) made by accused/appellant, one knife and clothing of accused/appellant were recovered vide seizure memo of Ex.P-9 and FSL report (Ex.P-24) proves presence of blood on the weapon and clothes of the accused/appellant. There was no explanation by the accused/appellant of the circumstances in which the bloodstains had appeared on his undergarments and knife seized at his

instance. Therefore, the above fact of recovery of the weapon of offence etc. 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 Dropati (PW-5) 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 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-5 to show that this witness had any interest in

1 2009 AIR SCW 1486

falsely implicating the accused or she had any axe to grind against the accused/appellant. Therefore, we have no hesitation in saying that evidence of this witness is convincing and beyond reproach. Thus, on the basis of evidence adduced by the prosecution, complicity of accused/appellants in commission of offence stands proved beyond all reasonable doubts

18. So far as the submission of counsel for the accused/appellant that the act of the appellant comes within the ambit of Section 304 Part-I of IPC is concerned, from the nature of injuries caused to the deceased, it is clear that they are so grave and caused to such vital parts of the body i.e. chest and abdomen, that there can be no doubt that the intention of the appellant was atleast to cause such injuries on the body of the deceased that would be in all likelihood cause his death. Therefore, the argument that there was no intention on the part of the accused/appellant to commit murder or that the offence is one that does not fall under Section 302 IPC for conviction cannot be accepted.

19. For the foregoing reasons, this Court is of the considered opinion that the findings recorded by the trial Court convicting the accused/appellant under Section 302 IPC are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge