

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 356 of 2009

- Jaikey Rajpoot, S/o. Kamal Rajpoot, aged about 25 years, R/o. Gabharapara P.S.Tikarapara, Raipur district Raipur (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through Its District Magistrate, Raipur (Cg)

---- Respondent

CRA No. 830 of 2017

- Ganga Rajput, S/o. Kamal Rajput, aged about 23 years, R/o. Gabharapara P.S.Tikarapara, Raipur district Raipur (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Tikarapara, Raipur district Raipur (CG)

Respondent

For Appellant In Cr.A. No. 356/2009 : Shri Prateek Sinha, Advocate
For Appellant in Cr.A. No. 830/2017 : Shri Sudhir Bajpai, Advocate
For Respondent /State : Shri Ravindra Agrawal, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgement on Board by Pritinker Diwaker, J.

23/09/2017

As both these appeals arise out of a common judgment dated 14.01.09 passed by the Seventh Additional Sessions Judge, Raipur,

District Raipur in S.T. No. 44/2008, whereby convicting the accused/appellants under Section 302/34 IPC and sentencing each of them to undergo imprisonment for life and to pay fine of Rs. 500/- plus default stipulations, they are being disposed of by this common judgments.

2. As per prosecution case, on 29.10.07, at about 12.30 midnight. accused/appellants at first abused the deceased Sile Yadav and Dinesh Yadav, thereafter they entered their house and caused number of injuries to them with knife and wooden bat. On account of the injuries sustained by Sile Yadav he died on the spot itself whereas Dinesh Yadav was taken to hospital. Bed head ticket of Dinesh Yadav is Ex.P-6. Immediately after half an hour of the incident merg intimation Ex.P-3 was recorded in respect of death of Sile Yadav at the instance of Bisouha Ram (PW-7) . On 29.10.07 itself FIR Ex.P-8 was lodged at 1.10 a.m. by PW-7 Bisouha Ram against the appellants under Section 302, 307 and 34 IPC. Inquest on the dead body of the deceased Sile Yadav was prepared vide Ex.P-2 and body was sent for postmortem examination which was conducted by Dr. Shivnarayan Manjhi vide Ex.P-21 and according to him cause of death was due to hemorrhage and shock as a result of stab injury to chest and abdomen and death was homicidal in nature. On 29.10.07 itself memorandum of accused/appellants were recorded vide Ex.P-10 and P-9 based on which knife and lower of Jaikey was seized vide Ex.P-11 & P-12 whereas wooden bat and broken pieces of knife vide Ex.P-13 & 19 was seized from Ganga. During treatment Dinesh Yadav succumbed to his injuries on 27.11.07 at Government Medical College Raipur and information was sent to the police based on which merg intimation Ex.D-2 and D-1 were recorded. Inquest on the body of Dinesh Yadav

was prepared vide Ex.P-4 on 27.08.07 and body was sent for postmortem examination which was conducted by Dr. Vikas Dhruv (PW-5) vide Ex.P-7 and according to him cause of death was due to cardio respiratory failure as a result of stab injuries to the body and its complications and death was homicidal in nature. After filing of charge sheet, the trial judge has framed charge against the appellants under Sections 302/34 IPC on two counts.

3. In order to establish the guilt of the accused/appellants, prosecution has examined 14 witnesses. Statement of the accused/appellants were 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 accused/appellants as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Counsel for the appellants submits as under:

i) that the eyewitnesses Kumari Triveni (PW-1), Jyoti Yadav (PW-11) and Shanti Bai (Pw-12) are not reliable and their statements are contradictory.

ii) that all the eyewitnesses are close relatives of the deceased Sile Yadav and being interested witnesses they have falsely implicated the accused/appellants.

iii) that as per the prosecution case deceased persons were subjected to injuries with knife and a wooden bat however no injury of wooden bat on the body of the deceased has been noticed by the autopsy surgeon.

iv) Lastly it has been argued that the incident occurred in a spur of moment, appellants are in jail since last about 10 years, therefore after converting their conviction under Section 304 Part I IPC they be set free forthwith.

6. On the other hand, State counsel while supporting the judgment impugned has submitted that the findings recorded by the Court below convicting the accused/appellant under Section 302 are strictly in accordance with law and there is no infirmity in the same. He submits that all the three eyewitnesses i.e. Kumari Triveni (PW-1), Jyoti Yadav (PW-11) and Shanti Bai (PW-12) were present at the time of occurrence of the incident and they have duly supported the prosecution case. It has been argued that when the incident had taken place in the house naturally all the relatives of the deceased would remain present and no outsider would be inside the house at 12.30 in the midnight. He submits that from the nature of injury it cannot be said that no injury was caused by wooden bat. The trial court was justified in convicting the appellants under Section 302 IPC and considering the nature of injuries caused by the accused persons it is apparent that the incident was a brutal one and thus the appellants cannot drive any benefit under Exception 4 of Section 300.

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

8. Kumari Triveni (PW-1) has stated that the accused persons were residing opposite to her house whereas she was residing with her mother Shanti Bai. She has stated that name of her elder sister is Jyoti (PW-11) who was residing along with her husband Sile Yadav adjacent to her house. On the date of incident, after consuming liquor

accused/appellants came to her house, hit on the door about 5-6 times and as the door was hit she opened the door and saw that deceased persons were assaulted by the accused/appellants with knife. She has stated that her brother-in-law died on the spot itself whereas Dinesh Yadav sustained injuries and was taken to hospital where he succumbed to his injuries. In cross-examination she remained firm. Jyoti Yadav (PW-11) is yet another eyewitness to the incident who too has supported the prosecution case. She is the wife of deceased Sile Yadav who has categorically deposed that on the date of incident accused/appellants came to her house and were hitting on the door and then gained entry, dragged her husband outside and assaulted him with wooden bat as a result of which he died and then they ran towards Dinesh Yadav to assault him. She has stated that she went to call her brother-in-law Bisouha Yadav and saw that the accused persons had caused injuries to Dinesh Yadav who was lying injured on the doorsteps of one Raju Musalman. Shanti Bai (PW-12) is yet another eyewitness who too has supported the prosecution case. Dr. Shivnarayan Manjhi (PW-13) conducted postmortem examination on the body of deceased Sile Yadav vide Ex.P-21 and according to him, cause of death was due to hemorrhage and shock as a result of stab injury to chest and abdomen and death was homicidal in nature. Dr. Vikas Dhruv (PW-5) conducted postmortem examination on the body of deceased Dinesh Yadav vide Ex.P-7 and according to him cause of death was due to cardio respiratory failure as a result of stab injuries to the body and its complications and death was homicidal in nature. On the memorandum of accused Jaikay Ex.P-10, seizure of knife, wooden bat and lower vide Ex.P-11 was made whereas on the memorandum of accused Ganga Singh Ex.P-9 seizure of wooden bat vide Ex.P-13 was made. Kadir

Khan (PW-14) is the Investigating Officer who has duly supported the prosecution case.

9. Close scrutiny of the evidence makes it clear that on 29.10.07 accused/appellants forcibly entered the house of deceased Sile Yadav and committed his murder and also caused several injuries to Dinesh Yadav who later succumbed to his injuries on 27.11.07. The incident has been witnessed by Kumari Triveni (PW-1), Jyoti Yadav (PW-11) and Shanti Bai (PW-12) and all these three eyewitnesses have duly supported the prosecution case. We have no reason to disbelieve the statement of these three eyewitnesses. This apart postmortem of the deceased persons also supports the prosecution case wherein number of injuries have been found on the body of the deceased. We find no force in the arguments of the appellants that Kumari Triveni (PW-1), Jyoti Yadav (PW-11) and Shanti Bai (PW-12) are relatives therefore they have falsely implicated the appellants. Arguments of counsel for the appellants regarding reliability of the statements of Kumari Triveni (PW-1), Jyoti Yadav (PW-11) and Shanti Bai (PW-12) being the interested witnesses does not convince the conscience of this Court because it is a settled legal position that relationship *per se* does not affect the credibility of witness; merely they being relatives of the victim of crime. The eyewitnesses are natural witnesses and they inspire confidence of the court and appears to be trustworthy. Fortifying this position, it has been categorically held by the Hon'ble Apex Court in the matter of ***Mohabbat and Ors. Vs. State of M.P.*** reported in **2009 AIR SCW 1486** which reads as under:

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

10. We further find no reason that the appellants are liable to be convicted under Section 304 Part I IPC. The manner in which the incident had taken place and the deceased persons were brutally killed by the accused persons makes it clear that they had every intention to commit the murder of the deceased persons. Thus on the basis of the aforesaid discussion, there is no reason to interfere in the judgment of conviction and sentence passed by the learned Additional Sessions Judge. Hence, the appeals filed by the appellants cannot be accepted. Consequently, the appeals are hereby dismissed by maintaining the conviction as well as the sentence directed by the trial Court against the appellants. Appellants are in jail and therefore no further order is required.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Chandra Bhushan Bajpai)
Judge