

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 70 of 2012**(Arising out of judgment/order dated 10.10.2011 in S.T. No.83/2010
of the learned Sessions Judge, Rajnandgaon)Judgment reserved on : 07/09/2017Judgment delivered on :08/11/2017

- Bharat Goand S/o Patiram Goand, aged about 35 years, Resident of village - Ahoda, Police Station - Ambagarh Chowki, District - Rajnandgaon (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through : The Police Station - Ambagarh Chowki, District - Rajnandgaon (C.G.)

---- Respondent

For Appellant.	:	Shri Anurag Jha, Advocate.
For Respondent.	:	Shri Vivek Sharma, Govt. Advocate.

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

CAV Judgment**Pritinker Diwaker, J****08/11/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 10.10.2011 passed by the Sessions Judge, Rajnandgaon, in S.T. No.83/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs.3000/-, in default of payment of fine amount to further undergo R.I. for one year.

02. As per the prosecution case, on 22.10.2010 the accused/appellant and the deceased had gone to the house of one

Gopal to attend the ritual. There they had some quarrel and at about 11.00 pm when the deceased was returning, on the way the accused/appellant assaulted the deceased by axe and caused three injuries on his head as a result of which the deceased died instantaneously. The incident was witnessed by Sanku Ram (Pw/1), Ishulal (Pw/2) and Parmeshwar (PW/4) and at the instance of Sanku Ram (PW/1), merg intimation (Ex.P/1) was recorded on 23.10.2010 at 1.00 pm and immediately thereafter FIR (Ex.P/2) was registered against the accused/appellant under Section 302 IPC. On the same day, inquest on the body of deceased was prepared vide Ex.P/3 and dead body was sent for postmortem to Community Health Center, Ambagarh Chowki where postmortem examination on the body of deceased was conducted on 24.10.2010 by Dr. R.R. Dhurve (PW/10) who gave his report Ex.P/10-A and found following injuries:-

- i. Incised wound of 7" x 3" x deep upto bone over left ear to mouth angle with fracture of upper jaw and maxilla bones. Blood vessels were cut.
- ii. Incised wound of 3" x 2" x deep up to bone and brain over right side of forehead. Fracture of frontal temporal bone. Laceration of 3cm x 2cm x 1cm over brain matter with clotted blood.
- iii. Incised wound of 3" x 2" x deep up to vertebra bone over right side of neck, fracture of cervical, 4th and 5th vertebra, great vessels of neck were cut.
- iv. Injury No.1 to 3 were caused by sharp and cutting hard object.

The autopsy surgeon opined the cause of death to be shock due to head injuries with massive hemorrhage and multiple injuries specially over neck and head and death was homicidal in nature.

03. After investigation, charge sheet was filed against the accused/appellant under Section 302 IPC and accordingly charge was framed against him by the trial Court.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. This apart, Bharat (DW/1) has also been examined by the defence in support of its case.

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

06. Learned counsel for the appellant submits :

(i) That the trial Court erred in convicting the appellant on the basis of statements of Sanku Ram (PW/1), Ishulal (PW/2) and Parmeshwar (PW/4) who being the relative of deceased were interested witnesses and therefore no reliance could be placed on their testimonies.

(ii) That apart from the eye-witnesses other independent persons were also present but none of them have been examined by the prosecution.

(iii) That though as per the FSL report (Ex.P/20), blood has been found on the seized article axe but there is no serological report confirming the human blood and origin of blood group.

(iv) That the incident occurred at night and thus question of seeing the

incident by the eye-witnesses does not arise.

(v) That the report was lodged after holding the meeting and it is thus apparent that the report is nothing but an afterthought document.

(vi) That even if the entire prosecution case is taken as it is, at best the accused/appellant can be convicted under Section 304 Part-II IPC.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same. He submits that Sanku Ram (PW/1), Ishulal (PW/2) and Parmeshwar (PW/4) are the natural witnesses, who had seen the incident and this Court has no reason to disbelieve the statement of these witnesses. He further submits that even if no serological report is there on record but the FSL report confirms the presence of blood on the seized weapon, and in case of conviction based on the evidence of eye-witness the seizure may not be of that value. He also submits that the case of the appellant would not fall under any Exception to Section 300 IPC and, therefore, conversion of the same does not arise.

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

09. Sanku Ram (PW/1), eye-witness to the incident while supporting the prosecution case has stated that on the date of incident he, Ishu (PW/2), Naresh, Lakhan, Santram, Parmeshwar (PW/4) and others had gone to the house of Gopal for cooking food. The accused/appellant is brother of said Gopal. In the house of Gopal, some quarrel took place between the appellant and the deceased and both of them beaten each

other. Thereafter, both of them were made to understand. He has further stated that at about 11.00 pm all of them were returning along with the deceased and when they reached near Chilhati Road, the accused/appellant came there carrying axe in his hand and caused two injuries on the neck of deceased. He has also stated that on account of fear nobody intervened and ran away from the spot. This witness has also stated that he lodged the merg intimation (Ex.P/1) and FIR (Ex.P/2). He is also witness to inquest (Ex.P/3). In cross-examination, he remained firm and nothing could be elicited from him.

10. Ishulal (PW/2), another eye-witness to the incident, has made almost similar statement as has been made by PW/1. He too has categorically stated that he saw the accused/appellant causing injuries to the deceased.

11. Parmeshwar (PW/4) is yet another eye-witness to the incident and his statement is also identical to that of PW/1 and PW/2. He has stated that it is the accused/appellant who caused injuries to the deceased by axe on his shoulder and neck. Ghana Ram (PW/3) has been declared hostile. Santi Bai (PW/5) and Sukhbati (PW/7) are wife and mother of the deceased respectively, who reached the place of occurrence after the incident had occurred. Suresh Kumar (PW/8), witness to memorandum (Ex.P/7) and seizure of axe vide Ex.P/8, has turned hostile. Dr. R.R. Dhurve (PW/10) conducted the postmortem on the body of deceased and gave his report Ex.P/10 opining the cause to deceased to be shock due to head injuries with massive hemorrhage and multiple injuries specially on neck and head and death was homicidal in nature. B.S. Nishad (PW/11) is Investigating Officer who has duly supported the

prosecution case.

12. Accused/appellant has examined himself as defence witness (DW/1) and stated that he has not committed murder of the deceased and has been falsely implicated in the crime in question. In the statement recorded under Section 313 of Cr.P.C., the accused/appellant has taken a specific defence that the deceased was of criminal tendency, naxali supporter and he might have been killed by some other person.

13. Close scrutiny of the evidence makes it clear that on 22.10.2010 it is the accused/appellant who killed the deceased by causing injuries on his neck by axe. Sanku Ram (PW/1), Ishulal (PW/2) and Parmeshwar (PW/4), eye-witnesses to the incident, have categorically stated that on the date of incident at about 11.00 pm, when they were returning after cooking food from the house of Gopal and reached near Chilhati Road, the accused/appellant came out of his house and caused two injuries to the deceased on his shoulder and neck by axe as a result of which deceased died on the spot. The version of these witnesses is well corroborated by the evidence Dr. R.R. Dhurve (PW/10) and postmortem report Ex.10-A wherein three incised wounds were noticed on left cheek, left ear to mouth, right side of forehead and right side of neck and opined the cause of death to be shock due to head injuries with massive hemorrhage and multiple injuries on neck and head. The evidence of these witnesses is sufficient to infer that it is the accused/appellant 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/appellant has not committed murder of deceased. The defence taken by the appellant in his statement recorded under Section 313 of Cr.P.C. that the deceased was of criminal tendency, supporter of naxalite and some other person might have killed him has no force at all as no evidence to that effect had been adduced by the prosecution and not a single word has been uttered by the prosecution witnesses too in this regard.

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

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

16. 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 interested evidence 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

1 (2008) 16 SCC 65

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.

17. True, it is that as per FSL report, blood has been found on the seized weapon axe but there is no serological report on record to prove its origin and group, but in the case of conviction based on evidence of eye-witness, this could be an additional link to point towards the guilt of the accused.

18. We also do not find any force in the argument of counsel for the appellant that in the given facts and circumstances of the case, the accused/appellant cannot be convicted under Section 302 IPC. The evidence on record makes it abundantly clear that the appellant while assaulting the deceased on his vital part head and neck with an axe was not only having intention to kill him but also had the knowledge that such bodily injury would certainly result in his death. Being so, his conviction under Section 302 of IPC cannot be faulted with.

19. For the reasons set out above, this Court is of the considered

opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.

20. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellant is reported to be in jail and therefore no further order regarding his arrest etc. is required.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE