

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 774 of 2015

- Chirru Agariya S/o Dharam Singh Agariya, Caste Lohar, Aged About 50 Years, Occupation – Labouring, R/o Village Bakaruma, Police Chowki Rairumakhurd, Police Station And Teh. Dharamjaigarh, Civil And Rev. Distt. Raigarh Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Police Of Police Station Dharamjaigarh, District Raigarh Chhattisgarh.

---- Respondent

For Appellant	:	Shri Govind Dewangan, Advocate.
For Respondent/State	:	Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice P. Sam Koshy

Judgment On Board By Justice Pritinker Diwaker

25/11/2017

This appeal arises out of the judgment of conviction and order of sentence dated 24.3.2015 passed by the Sessions Judge, Raigarh in ST No.156/2014 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.5000/- with default stipulation.

02. In the present case, name of the deceased is Thandaram Agariya, father-in-law of the accused/appellant. It is said that the appellant married the daughter of deceased namely Bhagwati Aghariya (PW-4) however, after some time she left the appellant and started living with someone else. Son of the appellant born out of his relationship with Bhagwati (PW-4), used to live with the deceased Thandaram. On 10.5.2014 at about 10 am the appellant committed murder of Thandaram by causing several injuries on his head by a big

hammer. The incident occurred at Dharamjaigarh, Distt. Raigarh from where Thandaram was first taken to Patthalgaon and thereafter to hospital at District – Ambikapur where he died during treatment. As the incident occurred at Dharamjaigarh, at the instance of PW-5 Setram unnumbered FIR (Ex.P/6) and numbered FIR (Ex.P/16) were registered on 11.5.2014 under Section 307 of IPC. However, after death of Thandaram, merg intimation Ex.P/11 was recorded at Ambikapur at the instance of Ward Boy. Inquest over the dead body was prepared vide Ex.P/13 on 11.5.2014. The dead body was thereafter sent for postmortem which was conducted on the same day by PW-7 Dr. Sanjay Singh vide Ex.P/10. He noticed lacerated wounds over left face below left eye, over left parietal region, near nose and upper lip of mouth. On internal examination, the doctor found fracture of left parietal bone, blood clots in the left parietal region, fracture of both maxilla bones and fracture of 5th, 6th & 7th ribs. In his opinion, the cause of death was head injury and mode of death was coma. On 12.5.2014 memorandum of the appellant was recorded vide Ex.P/2, seizure of hammer and his wearing apparels was effected. However, there is no FSL report. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 10 witnesses in all. Statement of the accused 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.

04. The trial Court after hearing counsel for the respective parties and

considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits that there is no eyewitness account to the incident and the appellant has been convicted solely on the basis of evidence of PW-1 Nirasobai, wife of the deceased, who merely saw the appellant running away from her house carrying hammer in his hand. He submits that on the memorandum of the appellant (Ex.P/2), though hammer and clothes are alleged to have been seized but the witnesses to the memorandum and seizure have turned hostile and furthermore, in absence of any FSL report, the same is of no consequence.

06. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court. He submits that PW-1 has categorically stated that immediately after the incident when she reached her house, she saw the appellant running away from there carrying hammer in his hand and on entering her house she found her husband lying on the floor with injury on his head. He submits that in view of Sections 6 & 8 of the Evidence Act, the statement of PW-1 is conclusive and the appellant has rightly been convicted by the trial Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Nirasobai, wife of the deceased, has stated that after consuming liquor the appellant, her son-in-law, used to quarrel with her

husband/deceased Thandaram by saying that when his wife has married someone else as to why they are keeping his son with them. On the date of incident her husband was all alone in the house and when she returned to her house at around 9-10 am, she saw the appellant running away towards kitchen garden carrying hammer in his hand and when she entered her house, she found her husband lying in the verandah with injury on his head. Thereafter, her husband was first taken to Patthalgaon for treatment and from there he was taken to Ambikapur where he succumbed to his injuries during treatment. In cross-examination also she has admitted the fact that there used to be quarrel between her husband and the appellant and that she saw the appellant running away from her house on the date of incident.

09. PW-2 Manmohan Rathia and PW-3 Jagjivan Rathia, witnesses to memorandum and seizure, have though admitted their signatures on the documents but not supported the contents thereof, and therefore, have been declared hostile. PW-4 Bhagwati Aghariya, daughter of the deceased and ex-wife of the appellant, has stated that as the appellant used to frequently quarrel with her after consuming liquor, she having taken divorce from him performed marriage with one Kalinder and started residing there and her son was living at her parental home. She has stated that the appellant used to quarrel with her parents. She states that having come to know about injury being caused to her father by the appellant, she came to her village and saw dead body of her father. PW-5 Setram Rathia, lodger of FIR, has turned hostile. PW-6 Dr. Anita Minj medically examined injured Thandaram at Patthalgaon and noticed lacerated wounds on his face below left eye, lacerated wound over left parietal region, lacerated wound on right side

of nose and lacerated wound on the upper lip. According to her, all the injuries were caused by hard and blunt object and were grievous in nature and therefore, she referred the victim for further treatment to District Hospital, Ambikapur vide Ex.P/9. She had also examined the hammer seized from the appellant and in her opinion, the injuries suffered by the deceased could be caused by the said weapon vide Ex.P/11.

10. PW-7 Dr. Sanjay Singh conducted postmortem on the body of the deceased vide Ex.P/10 on 11.5.2014 and noticed lacerated wounds over left face below left eye, over left parietal region, near nose and upper lip of mouth. On internal examination, the doctor found fracture of left parietal bone, blood clots in the left parietal region, fracture of both maxilla bones as well as 5th, 6th & 7th ribs. In his opinion, the cause of death was head injury and mode of death was coma and that the injuries suffered by the deceased could be caused by some hard and blunt object. PW-8 Samrendra Singh, ASI, assisted in the investigation. PW-9 KD Singh, investigating officer, has duly supported the prosecution case. PW-10 Vijay Kumar Ekka, ASI, assisted in the investigation.

11. Admittedly, there is no direct evidence in this case showing involvement of the appellant in the crime in question and his conviction rests upon circumstantial evidence main being the evidence of PW-1 Nirasobai, recovery of weapon of offence from the appellant, the motive as well as his conduct.

12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of

guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

(Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210)

13. From the unrebutted evidence of PW-1 Nirasobai, wife of the deceased, and PW-4 Bhagwati, daughter of the deceased and ex-wife of the appellant, it is clear that the appellant used to quarrel with the deceased on the ground that when his wife (PW-4) has left him and married someone else as to why the deceased was keeping his son with him. As per PW-1 Nirasobai, on the date of incident her husband was all alone in the house and she had gone out to collect tendu leaves. When she returned to her house at around 9-10 am, she saw the appellant going towards kitchen garden carrying hammer in his hand and seeing her, he ran away from there. When she entered her house, she saw her husband/deceased lying in the verandah with injuries on his head. The evidence of PW-1 remains unchallenged in her cross-examination. As such, by virtue of Sections 6 & 8 of the Evidence Act, the fact of strained relationship between the appellant and the deceased appears to be relevant one and serves as a strong

motive with the appellant to commit the offence, particularly considering his conduct subsequent to the incident coupled with his non-explanation to the same in his statement under Section 313 of CrPC except making bald denial of it.

14. This apart, on the memorandum of the appellant, the weapon of offence hammer was also seized, though the witnesses to memorandum and seizure have turned hostile but have admitted their signatures on the documents. The investigating officer PW-9 KD Singh has duly supported the prosecution case and has stated that on the memorandum of the appellant, bloodstained hammer and clothes were seized. He remained very firm in his cross-examination and nothing could be elicited from him to make his evidence doubtful or untrustworthy.

15. It cannot be stated as a rule of law that a police officer can or cannot be a sole eyewitness in a criminal case which will always depend upon facts of a given case. If testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer and may have some interest in success of the case. Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies as much in favour of a police officer as in respect of other persons and it is not proper to distrust and suspect him without there being good grounds therefor.

16. Ordinarily, the public at large show their disinclination to come

forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. [AIR 2013 Supreme Court 3344 between [Pramod Kumar v. State \(GNCT\) of Delhi](#).]

17. In the present case, the investigating officer (PW-9 KD Singh) has categorically stated that he recorded the memorandum of the appellant and effected seizure of certain articles pursuant thereto. All the adverse suggestions put to him by the defence have been denied by him. We find no reason to doubt the credibility of this witness and his evidence inspires confidence of the Court. Medical evidence also lends due support to the evidence of the investigating officer. According to PW-6 Dr. Anita Minj who first examined deceased Thandaram at Paththalgaon found lacerated wounds over his face, left parietal region, nose and upper lip and opined that these injuries were caused by hard and blunt object. She also examined the hammer seized at the instance of the appellant and opined that the injuries suffered by the deceased could be caused by the said weapon. PW-7 Dr. Sanjay Singh, who conducted postmortem on the body of the deceased has also noticed the above lacerated wounds and opined that such injuries could be caused by hard and blunt object like hammer and that the cause of death was head injury.

18. Furthermore, no explanation has been offered by the appellant in his statement under Section 313 of CrPC with regard to the proved incriminating circumstances except making bald denial of all such circumstances.

19. Thus, considering the overall facts and circumstances of the case, the motive attributed to the appellant, recovery of weapon of offence at his instance, his conduct subsequent to the incident as has come in the unrebutted evidence of PW-1, the consistent medical evidence as also failure of the appellant to explain the proved incriminating circumstances appearing against him in his statement under Section 313 of CrPC, we are of the opinion that the prosecution has successfully proved guilt of the appellant based on the adduced by it. As such, the findings recording by the trial Court convicting the appellant under Section 302 of IPC cannot be faulted with and need to be affirmed.

20. In the result, the appeal fails and is, accordingly, dismissed. The appellant is reported to be in jail, therefore, no further order is required to be passed in respect of his arrest etc.

**Sd/
(Pritinker Diwaker)
Judge**

**Sd/
(P. Sam Koshy)
Judge**