

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 498 of 2011

- Chhattu Ram Uraon S/o Baldu Ram Uraon, aged about 36 years, R/o Village Dhawaibhata, Tilkeja, Police Chouki Urga, P.S. Korba, Distt.-Korba, C.G.

---- Appellant

Versus

- State Of C.G. Through: Police Chouki-Urga, P.S. Korba, Distt.-Korba, C.G.

---- Respondent

For Appellant	:	Shri Yogeshwar Sharma, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board By Justice Pritinker Diwaker

22/05/2017

This appeal arises out of the judgment of conviction and order of sentence dated 15.4.2011 passed by the Sessions Judge, Korba, Distt. Korba in ST No.129/2009 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and pay a fine of Rs.1000/- with default stipulation.

02. As per the prosecution case, in the night intervening 26/27.8.2009 the accused/appellant twice entered the house of deceased Sahasram and demanded liquor and then committed his murder by causing several injuries on his neck by a carpenter axe. Unnumbered merger intimation Ex.P/1 was lodged on 27.8.2009 at 3.30 am by PW-2

Krishna Kumar, son of the deceased, at Police Outpost – Uрга, P.S. City Kotwali, Korba. Thereafter, at 3.40 am unnumbered FIR (Ex.P/2) was registered against the appellant at the instance of PW-2. Numbered FIR (Ex.P/13) was registered against the appellant on 27.8.2009 under Section 302 of IPC. Inquest on the dead body was conducted on 27.8.2009 vide Ex.P/7 and thereafter the body was sent for postmortem which was conducted on the same day by PW-3 Dr. GS Kanwar vide Ex.P/4 wherein the doctor noticed lacerated wound on the neck caused by sharp edged weapon. In his opinion, the cause of death was excessive hemorrhage due to cut injuries on neck and that the death was homicidal in nature. After filing of charge sheet, the trial Court framed charge under Section 302 of IPC against the accused/appellant.

03. So as to hold the accused guilty, the prosecution examined 13 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 as under:

(i) that the appellant has been convicted solely on the basis of evidence of PW-1 Sukhanibai, PW-2 Krishna Kumar and PW-8 Vishnu Prasad, who being wife and sons of the deceased, are interested

witnesses and further considering the material contradictions in their statements, no reliance can be placed thereon.

(ii) that though carpenter axe is alleged to have been seized from the spot, however, there is no FSL report to connect the same with the crime in question.

(iii) lastly it has been argued that as the appellant at the time of crime had consumed liquor, his act would not make him liable for conviction under Section 302 of IPC and in the facts and circumstances of the case, he can, at best, be convicted under Section 304 Part-I or II of IPC.

(iv) that the appellant has already remained in jail since 28.8.2009 and therefore, after conversion of his conviction into one under Section 304 Part-I or II, he may be sentenced to the period already suffered by him.

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 scope for any interference by this Court. He submits that there is no reason for this Court to disbelieve the statements of three eyewitnesses (PW Nos. 1, 2 & 8). He further submits that the appellant was detained by the villagers at the spot itself and he was tied with the rope till arrival of the police.

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

08. PW-1 Sukhnibai, wife of the deceased, has stated that on the date

of incident her husband Sahasram was sleeping in the verandah, the accused/appellant and Johan came to her house and demanded liquor from her husband. When the same was not given to them, they went back and at about 2 in the night the accused/appellant again came back and caused injury on his neck by carpenter axe. At the time of incident, her son was also there. When she tried to intervene, she too was chased by the appellant. After hearing the cries, the villagers gathered there and caught hold of the appellant. The carpenter axe carried by the appellant was snatched away by one Jairam from him. In cross-examination, but for minor contradictions she remained firm and reiterated as to the manner in which her husband Sahasram was done to death by the appellant.

09. PW-2 Krishna Kumar, son of the deceased and another eyewitness to the incident, has duly supported the prosecution case. He has stated that when he woke up in the night to ease himself he saw the appellant assaulting his father Sahasram by carpenter axe on his neck as a result of which he died on the spot. Hearing the commotion, the villagers reached there and caught hold of the appellant and one Jairam snatched away the carpenter axe from the appellant. The appellant was tied with rope near the borewell and then information was given to the police. He has proved lodging of merger intimation (Ex.P/1), FIR (Ex.P/2) and spot map Ex.P/3. In cross-examination, this witness also remained firm and nothing could be elicited from him by the defence to render his evidence untrustworthy or doubtful.

10. PW-8 Vishnu Prasad, another son of the deceased and

eyewitness to the incident while supporting the prosecution case has stated that his father Sahasram was done to death by the appellant by assaulting him with carpenter axe on his neck. He has made almost similar statement as has been made by PW-1 & PW-2. Nothing could be brought out in his cross-examination to the advantage of the defence.

11. PW-3 Dr. GS Kanwar conducted postmortem on the body of the deceased on 27.8.2009 vide Ex.P/4 and noticed lacerated wound on the neck which was caused by some sharp edged weapon as a result of which trachea, thyroid cartilage and other soft tissues were cut. In his opinion, the cause of death was excessive hemorrhage due to cut injuries on neck and that the death was homicidal in nature. PW-4 Jai Singh Paikra, Patwari, prepared the spot map Ex.P/3. PW-5 Jagesar, brother of the deceased, reached the place after the incident had taken place. He is a witness to inquest Ex.P/7. However, this witness has been declared hostile. PW-6 Shobharam reached the spot after the incident was over and saw the deceased lying dead with injuries on his neck and that the appellant was detained by the villagers by tying him with rope. PW-7 Sudharam has turned hostile. PW-10 Chheduram is a witness to inquest Ex.P/7. PW-11 Lallan Singh, investigating officer, has duly supported the prosecution case .

12. Close scrutiny of the evidence makes it clear that it is the accused/appellant who entered the house of the deceased in the night intervening 26/27.8.2009 and killed him by causing injuries with carpenter axe on his neck. Eyewitnesses to the incident PW-1 Sukhanibai, PW-2 Krishna Kumar and PW-8 Vishnu Prasad, have duly

supported the case and stated as to the manner in which the deceased was done to death by the appellant. In cross-examination, except some minor contradictions, these witnesses remained firm. Further, medical evidence also lends due support to the prosecution case according to which corresponding injuries were noticed on the neck of the deceased and the cause of death was excessive hemorrhage due to injuries on neck and that the death was homicidal in nature. The evidence of the eyewitnesses further stands corroborated from the evidence of PW-5 Jagesar and PW-6 Shobharam who reached the spot after the incident had taken place and found that the appellant was detained by the villagers by tying him with a rope. In view of above ocular and medical evidence, minor contradictions in the statements of the eyewitness cannot be said to be fatal to the prosecution case.

13. As regards the argument of the appellant that the evidence of the eyewitnesses being interest witnesses cannot be relied upon, it is well settled principle of law the evidence of an interested witness should not be equated with that of a tainted evidence or that of an approver so as to require corroboration as a matter of necessity. All that the Courts required as a rule of prudence, not as a rule of law, was that the evidence of such witness should be scrutinized with a little care. It has to be realized that related and interested witness would be the last persons to screen the real culprits and falsely substitute innocent ones in their places. Indeed there may be circumstances where only interested evidence may be available and no other, e.g. when an occurrence takes place at midnight in the house when the only witnesses who could see the occurrence may be the family members.

In such cases it would not be proper to insist that the evidence of the family members should be disbelieved merely because of their interestedness. But once such witness was scrutinized with a little care and the Court was satisfied that the evidence of the interested witness have a ring of truth such evidence could be relied upon even without corroboration.

Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (***See Anil Rai Vs. State of Bihar, (2001) 7 SCC 318; State of U.P. Vs. Jagdeo Singh, (2003) 1 SCC 456; Bhagalool Lodh & Anr. Vs. State of U.P., (2011) 13 SCC 206; Dahari & Ors. Vs. State of U. P., (2012) 10 SCC 256; Raju @ Balachandran & Ors. Vs. State of Tamil Nadu, (2012) 12 SCC 701; Gangabhavani Vs. Rayapati Venkat Reddy & Ors., (2013) 15 SCC 298; Jodhan Vs. State of M.P., (2015) 11 SCC 52.***)

14. In the present case, the eyewitnesses are wife and sons of the deceased and the incident took place in the dead of night at about 2 o'clock when only these witnesses could be available at the spot. The defence has also failed to establish as to why they would falsely implicate the appellant and screen the real offender. Being so, merely on account of these witnesses being interested witnesses, their testimony, which is otherwise cogent and reliable and finds due corroboration from other evidence, cannot be disbelieved.

15. We further find no substance in the argument of the appellant that in the facts and circumstances of the case, the appellant, at the

most, is liable to be convicted under Section 304 Part-I or II of IPC. The appellant entered the house of the deceased with a deadly weapon carpenter axe and assaulted the deceased with it on his vital part neck with such a force that it led to his instantaneous death. In these circumstances, it can safely be inferred that the appellant while assaulting the deceased was not only having intention to cause his death but also had the knowledge that by causing such bodily injury, the deceased would succumb to the same. As such, his conviction under Section 302 of IPC cannot be faulted with.

16. For the reasons stated above, we are of the opinion that the prosecution has successfully proved guilty of the appellant beyond all reasonable doubt on the basis of evidence adduced by it and the trial Court has rightly convicted and sentenced the appellant under Section 302 of IPC by just and proper appreciation of the evidence so adduced.

17. In the result, the appeal being bereft of any substance meets the fate of dismissal. Ordered accordingly. Appellant is reported to be in jail, therefore, no order regarding his arrest etc. is required.

Sd/
(Pritinker Diwaker)
Vacation Judge

Sd/
(Sanjay K. Agrawal)
Vacation Judge