

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 823 of 2011

- Chiman Yadav, S/o Tilak Ram Yadav, aged 34 years, R/o Roharakhurd, Thana- Mungeli, District Bilaspur, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Mungeli, District Bilaspur.

---- Respondent

And

CRA No. 138 Of 2012

- Karan Yadav S/o Alkhu Yadav, R/o Village Rohra Khurd, P.S. Mungeli, The Then Distt. Bilaspur C.G.

---- Appellant

Vs

- State Of Chhattisgarh, through Police Station Mungeli, the then District Bilaspur.

---- Respondent

And

CRA No. 355 Of 2012

- Sadhu Singh Thakur, S/o Bhondu Singh @ Bhondu Singh, aged about 52 years, R/o village Roharakhurd, Police Station Mungeli, District Bilaspur (CG)

---- Appellant

Vs

- State Of Chhattisgarh Through - P.S. Mungeli, Distt. Bilaspur C.G.

---- Respondent

Criminal Appeal No.823/2011

For Appellants : Mr. Saurabh Dangi & Miss Aditi Singhvi,
Advocates

For Respondent : Mr. Avinash K Mishra, Panel Lawyer.

Criminal Appeal No.138/2012

For Appellants : Mr. K.K. Singh, Advocate.

For Respondent : Mr. Avinash K Mishra, Panel Lawyer.

Criminal Appeal No.355/2012

For Appellants : Mr. Dheerendra Pandey, Advocate

For Respondent : Mr. Avinash K Mishra, Panel Lawyer.

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

Judgement

P. Diwaker, J

22/09/2017

1. Since the above appeals have been filed against the judgment dated 3.9.2011 passed by the Sessions Judge, Bilaspur in S.T. No.27/10, they are being disposed of by this common judgment.
2. By the impugned judgment the appellants in above criminal appeals have been convicted under Section 302/34 of IPC and sentenced to undergo RI for life and fine of Rs.1000/-, in default to undergo additional RI for 6 months.
3. As per prosecution case, deceased Adalat Singh Bansal was running a betel shop apart from selling liquor. The deceased refused to give the items to the accused/appellants on credit basis and therefore on 21.4.2010 at about 10.00 p.m. the accused/appellants armed with club and battleaxe came to the shop of deceased, abused him in the name of his caste and threatened him to kill. When the deceased asked them not

to hurl abuses, all the accused/appellants with intention to cause death of deceased attacked on him. Accused/appellant Sadhu Singh caused battleaxe injury on the neck of deceased, whereas accused/appellants Chiman & Karan caused club injuries on the leg, hand & waist of said Adalat Singh. Incident was witnessed by PW-2 Rajkumar, brother of deceased, Sangeeta @ Savita (PW-3), wife of deceased, and PW-6 Budhwa Bansal, father of deceased. At the instance of Rajkumar (PW-2), FIR (Ex.P-3) was registered against accused/appellants under Sections 307, 294, 506 Part II read with Section 34 of the IPC read with Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989'). Said Adalat Singh was immediately taken to the hospital where his MLC was done by Dr. Suresh Ratre (PW-8) vide Ex.P-13 and he noticed following injuries;

- incised wound on the left side of neck (back side) of 10 x1cm x muscle deep
- incised wound on the mid frontal region of 2x1cm x muscle deep.

4. Said Adalat Singh died in the hospital on 24.4.2010 while undergoing treatment. On receipt of intimation regarding death of deceased, un-numbered merg (Ex.P-24) was recorded and thereafter numbered merg was recorded vide Ex.P-29. Inquest on the body was conducted vide Ex.P-16. Body of deceased was sent for post-mortem examination which was conducted by Dr. Ullhas Gonnade (PW-15) and he noticed following injuries:-

- 13 cm stitched wound with muscle cut, oblique cut at lower part of cervical vertebra.
- 5cm x 3cm abrasion at the left side of forehead.

- 3cm x 1cm abrasion at left side of chest
- 3cm x 2.5cm abrasion at forehead below Injury No.3.

On the basis of memorandum (Ex.P-7) of accused/appellant Sadhu Singh, one battle axe was seized vide Ex.P-8. Accused/appellant Chiman & Karan also made disclosure statements (Ex.P-5 & Ex.P-9) of having committed murder of the deceased and got recovered clubs vide seizure memos of Ex.P-6 & P-10 respectively. On query being put by the investigating officer, the doctor (PW-8) has opined vide Ex.P-14 that the injuries sustained by the deceased could have been caused by the battleaxe seized from the possession of accused/appellant Sadhu Singh.

5. After completion of investigation, charge sheet was filed against the accused/appellants under Sections 294, 506B, 302, 34 of the IPC and Section 3 (2) (v) of the Act of 1989 and accordingly the charges were framed by the trial Court against them.
6. So as to hold the accused/appellants guilty, the prosecution examined as many as 15 witnesses. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. They have examined one witness in their defence.
7. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellants as described above.
8. Learned counsel for accused/appellants submits that:
 - the trial Court has mis-appreciated the evidence and erred in recording the finding of guilty of the appellants.

- Rajkumar (PW-2), Sangeeta (PW-3) and Budhwa Bansal (PW-6) are brother, wife and father of the deceased respectively and being in close relations of the deceased, their evidence are not reliable and sufficient to convict the appellants.
- There are material contradictions and discrepancies in the statements of PW-2 & PW-3 which make their evidence unreliable.
- Independent eyewitness i.e. Suraj (PW-4) cited by the prosecution did not support the prosecution and turned hostile.
- So far as appellant Chiman & Karan is concerned, these appellants were allegedly carrying clubs but no injury on the body of deceased caused by a club was noticed either by treating doctor or autopsy surgeon.
- lastly it has been argued on behalf of appellant Sadhu Singh that since the incident occurred suddenly upon a sudden quarrel, his conviction under Section 302 of IPC was not justified and at best, he can be convicted under Section 304 Part I or II of the IPC.

9. On the other hand, counsel for the respondent-State supports the impugned judgment and submits that there is no illegality or infirmity in the impugned judgment warranting interference by this Court in exercise of its appellate jurisdiction. He further submits that evidence of the eyewitnesses i.e. PW-2, PW-3 & PW-6 were reliable and it stood corroborated from the evidence of other eyewitness, though declared hostile for not supporting the prosecution case wholly. He further submits that minor contradictions, inconsistencies, embellishments or improvements in relation to trivial matters, which do no effect the core of the case of prosecution, must not be made a ground for rejection of the

evidence in its entirety. In the instant case also, the eyewitnesses gave consistent and truthful version of the incident, except some minor discrepancies, which do not render their evidence unbelievable. He further submits that looking to the manner in which the deceased was done to death, accused/appellant Sadhu Singh is not entitled for any leniency and the sentence imposed on him by the trial Court is not on the higher side.

10. Sudhir Behra (PW-1) is the person who gave mere intimation (Ex.P-1) in the police station.

11. Rajkumar Bansal (PW-2), brother of the deceased and an eyewitness of the incident. He has stated that on the date of incident the deceased and his father (PW-6) were at the betel shop situated near the electricity office. At that time, he was in his house. At about 10.30 p.m. he heard the voice of his brother crying "save-save". Hearing this voice, he came near the shop and saw that accused Chiman & Karan were assaulting his brother by club. Accused Sadhu Ram abused his brother (deceased) in vulgar language and thereafter assaulted him by battleaxe. His brother received battleaxe injury on his neck and club injuries on hands & legs. He fell down on account of these assaults. Meanwhile, his sister-in-law Sangeeta alias Savita (PW-3) and Suraj had also come on the spot. The accused after inflicting the injuries left the scene of occurrence after threatening that they would not spare anyone who deposed against them. He has further stated that he went to the police station and lodged the report of incident vide Ex.P-3. In the cross-examination, when this witness was confronted with his diary statement, he has stated that he had disclosed all the facts to the police and if the same are not mentioned in his diary statement, he could not tell reasons.

12. Sangeeta alias Savita (PW-3), wife of deceased and another eyewitness

of the incident. This witness has stated that at the relevant point of time she along with her husband was in the betel shop. Accused persons came there and demanded items on credit basis. They were carrying clubs and battleaxe in their hands. On refusal by her husband, accused Chiman & Karan started assaulting her husband by stick as a result of which he fell down and then accused Sadhu Singh assaulted on his neck. After inflicting injuries, the accused persons fled away from the spot. She has further stated that at the time of incident, her brother-in-law & father-in-law were also present on the spot.

13. Suraj (PW-4) has also been examined as an eyewitness but he did not support the prosecution case and turned hostile. He has not stated anything against the accused/appellants.
14. Sadhelal (PW-5) is the witness of memorandum statements of accused/appellants i.e Ex.P-5, Ex.P-7 & Ex.P-9 respectively and of recoveries vide seizure memos Ex.P-6, Ex.P-8 & Ex.P-10 made pursuant to their disclosure statements.
15. Budhwa Bansal (PW-6), father of deceased and another eyewitness of the incident. This witness has stated that on the date of incident he along with his son (deceased) was at his shop. Accused persons were also present at the shop. They were carrying battleaxe and clubs. He has further stated that at that time his another son Rajkumar (PW-2) and daughter-in-law (PW-3) were at home. He has further stated that when his son (deceased) demanded money from accused Sadhu, which was due on him on account of articles being purchased by him on credit, he started assaulting him with battleaxe. He has further stated that accused Chiman and Karan had also assaulted the deceased with club. He has further stated that hearing his voice, his son Rajkumar and daughter-in-law came

on the spot. After the incident, the accused person fled away from the spot.

16. Laxmikant Tiwari (PW-7) did not support the prosecution case and turned hostile.
17. Dr. Suresh Ratre (PW-8) is the doctor who first treated the deceased at Community Health Centre, Mungeli and noticed the injuries as described above. According to this witness, both the injuries present on the body of deceased were grievous in nature and looking to the critical condition of the deceased, he had referred him to the CIMS, Bilaspur for further treatment. To a specific query put to this witness by the police, he opined vide Ex.P-14 that both the injuries found on the body of deceased could not have been caused by clubs.
18. Labho Bansal (PW9) & Neelu Ram Diwan (PW-10) are the witnesses of inquest (Ex.P-16). Bodhan Singh (PW-11) is the Assistant Sub Inspector who sent the body for post-mortem examination to the Community Health Centre, Mungeli vide Ex.P-13A. Ramesh Pandey (PW-12) is Sub Divisional Officer (Police) who conducted investigation in the matter and has duly supported the prosecution case. Jugal Kishore Urvasha (PW-13) is the Tahsildar who issued the caste certificate in favour of the deceased. Mohan Marawi (PW-14) is the police person who recorded numbered merg intimation (Ex.P-29) on the basis of un-numbered merg intimation.
19. Dr. Ullhaas Gonnade (PW-15) is the doctor who conducted post-mortem examination over the body of deceased and noticed the injuries as described above. In the cross examination this witness has stated that Injury No.3 & 5 found on the body of deceased may come on account fall on hard and rough surface.

20. Merat Singh Rajput (DW-1) has stated that the deceased had been running a betel shop near the electricity department and he was also engaged in sale of liquor. In the cross-examination he has stated that all the accused persons used to come to the shop of deceased to have liquor.
21. Close scrutiny of the evidence makes it clear that on 21.4.2010 at 10 in the night the accused/appellants came to the betel shop of the deceased, demanded articles on credit which was denied by the deceased and therefore appellant Sadhu Singh had caused fatal injury on the vital part i.e. neck, of the body of deceased by battleaxe. The deceased was immediately taken to the hospital where he was examined by Dr. Suresh Ratre (PW-8) who noticed two incised wounds, as described above, and opined in categorical terms that the injuries found on the body of deceased were grievous in nature and caused by sharp edged weapon. Said Adalat Singh died in the hospital on 24.04.2010 while undergoing treatment and the doctor conducting post-mortem examination has categorically opined that cause of death of the deceased was the injuries to head & neck caused by sharp edged weapon.

Incident was witnessed by Rajkumar (PW-2) & Budhwa Bansal (PW-6). According to Budhwa Bansal (PW-6), who was also present at the shop along with deceased, it is accused/appellant Sadhu who attacked and assaulted the deceased with battleaxe. It is pertinent to note that one battleaxe was recovered by the police pursuant to a confessional statement given by accused/appellant Sadhu Singh, in the presence of the witnesses, who have duly supported the prosecution case. Medical evidence adduced by the prosecution also corroborates the testimony of this witness, according to which, the injuries inflicted on the deceased by sharp edged weapon were the cause for his death. Statement of Budhwa

Bansal (PW-6) further gets corroboration from the evidence of Rajkumar (PW-2), who reached on the spot after hearing the voice of deceased. This witness has categorically deposed that it is accused/appellant Sadhu Singh who attacked on the deceased with battleaxe. An attempt has been made by the defence to impeach the credibility of Budhwa Bansal (PW-6) by putting a suggestion to him that at the relevant point of time he was not present on the spot and had gone to fetch water. But, this witness emphatically denied the suggestion that at the relevant point of time he had gone to fetch water. Thus, it leaves no doubt that it is accused/appellant Sadhu Singh who gave fatal blow to the deceased which led to his death in the hospital while undergoing treatment. Hence, the complicity of accused/appellant Sadhu Singh in the crime in question is established beyond doubt.

22. Argument of the learned counsel for the accused/appellant regarding reliability of statements of Rajkumar (PW-2) & Budhwa Bansal (PW-6) being the 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. 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

1 2009 AIR SCW 1486

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.”

23. Next question for consideration is whether the act of appellant Sadhu Singh Thakur would constitute murder punishable under Section 302 of the IPC? and if not, whether it would constitute an offence under Section 304 Part-I or II of IPC?
24. From the evidence available on record, though it may not be possible to attribute to appellant Sadhu Singh, the necessary intention to cause death of the deceased so as to hold him guilty of an offence of murder under Section 302 IPC, since it has not come in the medical evidence that the injuries inflicted by him were sufficient in the ordinary course of nature to cause death of deceased, but looking to the weapon with which he was armed and the nature of injuries inflicted by him on the vital part of deceased i.e. neck, he can certainly be attributed with the knowledge that he had intention to cause such bodily injuries to the deceased as was likely to cause his death and, therefore, he can be clothed with the liability of causing culpable homicide not amounting to murder. This being the position, the case of appellant Sadhu Singh would fall under Exception-4 of Section 300 of IPC i.e. culpable homicide not amounting to murder.
25. As far as the complicity of accused/appellants Chiman & Karan is concerned, it has come in the evidence of Rajkumar (PW-2) & Budhwa Bansal (PW-6) that these appellants have inflicted club injuries on the hands & legs of the deceased i.e. on non-vital part of the body. According to the autopsy surgeon, the cause of death of the deceased was cardio respiratory failure as a result of injuries to head and neck caused by sharp

edged weapon, which were attributed to accused/appellant Sadhu Singh. Evidence available on record also go to show that the quarrel erupted on a trivial issue of not giving items on credit to the accused person by the deceased. The fight took place suddenly on account of refusal by deceased to give items to accused persons on credit and in a sudden quarrel, injury on the neck of the deceased was inflicted by accused Sadhu Singh, which was the fatal injury. There is not an iota of evidence on record, much less cogent, even to suggest remotely that there was meeting of mind between these appellants and accused Sadhu Singh or that they had prior intention or pre-planning to inflict injuries to the deceased. In that eventuality, sharing of common intention by them to cause injuries to the deceased by accused/appellant Sadhu Singh did not arise at all. Under such circumstances, they could be convicted only under Section 325/34 of IPC and not under Section 302/34 of IPC as has been done by the trial Court.

26. In the result;

- Criminal Appeal No.823/2011 filed by appellant Chiman Yadav is partly allowed. Conviction and sentence awarded to him under Section 302/34 IPC are set aside. Instead, he is convicted under Section 325 of IPC and sentenced to the period already undergone by him.
- Criminal Appeal No.138/2012 filed by appellant Karan Yadav is partly allowed. Conviction and sentence awarded to him under Section 302/34 IPC are set aside. Instead, he is convicted under Section 325 of IPC and sentenced to the period already undergone by him. .
- Criminal Appeal No.355/12 filed by appellant Sadhu Singh Thakur is partly allowed. His conviction under Section 302/34 IPC is

converted into one under Section 304 Part-I of IPC and he is sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.5,000/-, in addition to the fine already imposed by the trial Court vide impugned judgment, and in default of payment of fine to further undergo RI for 1 year. Fine amount, if deposited, by accused Sadhu Singh Thakur shall be paid to Sangeeta alias Savita (PW-3), widow of deceased, as compensation under Section 357 of CrPC, by the trial Court after due verification.

- Sadhu Singh Thakur is on bail. He be taken into custody to undergo the remaining part of his sentence.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RP Sharma)
Judge

roshan/-