**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 88 of 2012**

- Bishesar Dadu Ram Nishad , R/o Village Kapsada , P.S. Dharsiwa , Tashil & Distt. Raipur C.G.

**---- Appellant (In Jail)**

**Versus**

- State Of Chhattisgarh, through the District Magistrate, Raipur, District Raipur.

**---- Respondent**

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For Appellant : Shri Sunil Sahu, Advocate
For Respondent : Shri Rahul Tamaskar, Panel Lawyer.

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**Hon'ble Shri Justice Pritinker Diwaker**
**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Judgement**

**Per P. Diwaker, J**

**17/05/2017**

1. This appeal arises out of the judgment of conviction and order of sentence dated 25.11.2006 passed by the Sessions Judge, Raipur in S.T. No.303/2006 convicting the accused/appellant under Sections 450 & 302/34 of the Indian Penal Code, 1860 (for short 'IPC') and sentencing him to undergo imprisonment for 05 years and fine of Rs.500/- and RI for life and fine of Rs.500/-, with usual default clause, respectively.

2. As per prosecution case, deceased accused Shiv Prasad Sahu was having one side affair with one Chunnibai whose marriage was solemnized somewhere else. On 2.5.2006 at about 9.15 a.m. deceased accused Shiv Prasad not only committed murder of said Chunnibai but

also murdered Hemlata alias Amrotin & Savitri Bai. However, present case relates to murder of Hemlata alias Amrotin & Savitri Bai only. Un-numbered FIR (Ex.P-2) was registered on 2.5.2006 by PW-1 and thereafter Dehati Merg in respect of death of deceased Savitri Bai & Hemlata were recorded vide Ex.P-1 & Ex.P-15 respectively. Numbered FIR (Ex.P-19) was registered on 2.5.2006 against the accused persons for commission of offence punishable under Sections 302/34 & 450 IPC. Inquest over the bodies of deceased Hemlata & Savirtri were prepared vide Ex.P-5 & P-6 respectively. Body of deceased Hemlata was sent for post-mortem examination which was conducted by the doctor (PW-13) who noticed following injuries;-

- Contused lacerated wound just behind left ear, two in numbers, one above the other. Upper one is of 5.5 x 1cm x bone deep and just lower to it is 6x1cm x bone deep. Scalp echymosed against injuries
- Depressed fracture present underneath the scalp injury of 5.5 x 5cm size.
- Subdural haemorrhage present all over. Brain matter is contused.
- lacerated wound of 2 x 1.5 cm x 2cm.
- Patches of contusion present at the base of brain.

The cause of death assigned by the doctor was due to haemorrhage and shock as a result of head injury and the death was homicidal in nature. Body of deceased Savitri was also sent for post-mortem examination which was conducted by the doctor (PW-15) and he noticed following injuries;-

- lacerated wound on forehead 4cm above the upper orbital margin of the size 5 x 1.5cm. Oblique sagital margins irregular red and surrounding area contused. Red clotted blood present at margins

and its surroundings. Underneath scalp red colour echymosis present.

- Lacerated wound on forehead at mid line 4.5 cm above glabella of 1.8 x 0.5 cm size.
- Contusion on left cheek of 8x6cm in size. Underneath red colour echymosis present.
- Lower jaw fractured at left lateral incisor region, surrounding soft tissue red colour ecchymosed.
- Lacerated wound on forehead just right to mid line at upper orbital region of 1.8 x 0.5 cm.
- Lacerated wound on left temporal parietal region 6x1.5 cm
- Lacerated wound on left occipital region laterally just behind the ear of 8x2 cm in size.
- Underneath Injury No.6 & & skull left tempo parietal & occipital bone having depressed fracture in an area of 10x9 cm. Bone having multiple fracture. There was radiating fracture starting medial part of mid of main fracture going to parietal bone for a lenght of 6cm.
- Scalp right parieto occipital region red colour ecchymosed 7x4cm.

As per opinion of the doctor, the cause of death was due to shock and haemorrhage and death was homicidal in nature. The doctor has further opined that the injuries were caused by hard and blunt object and were sufficient to cause death in the ordinary course of nature.

3. After completion of investigation, charge sheet was filed against the

accused persons under Sections 450 & 302/34 IPC and accordingly the charges were framed framed against them. The prosecution in order to substantiate its stand, examined 15 witnesses and exhibited a number of documents. Statements of accused persons 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 in the crime in question.

4. After hearing counsel for the parties the trial Court by the impugned judgment convicted & sentenced the accused persons in the manner as described above.

5. Learned counsel for the appellant submits that;

   - the appellant has been falsely implicated in the crime in question and it is the deceased accused who had committed the murders.

   - testimonies of PW-3 & PW-6 are not reliable as they are interested witnesses and therefore the conviction of the appellant is bad in law.

   - the appellant is in jail for the last more than eleven years and therefore he may be set free.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He has further submits that there is no reason to disbelieve the statements of PW-3 & PW-6 who are eyewitnesses of the incident and have duly supported the prosecution case.

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

8. Amrika Bai (PW-2) is the sister of deceased accused Shivprasad. She has stated on the date of incident at about 8-9 a.m. while she along with her sister Amrit (PW-3) and Chunnibai was returning home after fetching water, on the way accused Shiv Prasad & Bishesar started assaulting Chunni Bai by crowbar as a result of which she received injury on the back side of her head. She has further stated that when she tried to intervene, both the accused dashed her. She has further stated that while she was going to the house of her father to call him, the accused persons went inside the house of Amroutin and assaulted her also. She has further stated that the accused persons had also assaulted Savitri and thereafter they left in their vehicle for the police station. In the cross-examination this witness remained firm and nothing could be elicited which makes her testimony unreliable or untrustworthy.

9. Amrit Bai (PW-3) is the another eyewitnesses of the incident. While supporting the prosecution case, this witness has stated that on the fateful day she along with Amrika Bai & deceased Chunnibai was returning home after fetching water. She heard the sound of fall of water pot from behind and on turning back saw that accused Shiv Prasad had started assaulting Chunnibai. She has further stated that when Amrika Bai tried to rescue her but the accused persons dashed her. She has stated that she had seen only accused Shiv Prasad on the spot.

10. Teerath Ram (PW-4), husband of deceased Savitri, has stated that he came to know from the people of vicinity that his wife had been murdered. Chhabiram (PW-5) is the witness of seizure memos Ex.P-9 & P-10.

11. Dhanesh (PW-6) is another eyewitness of the incident. He has stated that hvaing been informed by his sister Amrika Bai (PW-2) that the accused persons are assaulting Chhunni, he rushed in that direction and saw that

the accused/appellant and accused Shivprasad (deceased) were assaulting Savitri, mother of Amrotin. In the cross-examination this witness remained firm and nothing could be elicited in his evidence which makes his testimony unreliable and unbelievable.

12. Tarun Kumar Sahu (PW-8) & Kailash alias Ramkailash (PW-9) have stated that on the fateful day they saw both the accused persons going on a motorcycle and at that time accused Shiv Prasad was shouting that he has killed three persons.

13. P.S. Chouhan (PW-10) is the Jailer who was posted in the Central Jail, Raipur at the relevant point of time when accused Shiv Prasad had committed suicide by jumping from the Clock tower. Suresh Chandra Mandal (PW-11) is the Head Constable who recorded the roznamcha sanha of Ex.P-11. Govind Singh (PW-12) is the police person who seized certain articles vide seizure memo of Ex.P-12. Dr. Rajkumar Singh (PW-13) is the person who conducted post-mortem on the body of deceased Hemlata and noticed injuries as described above. Dr. Vikas Kumar Dhruw (PW-15) is the person who conducted post-mortem on the body of decesaed Savitri and noticed the injuries as described above. Vishwas Chandrakar (PW-16) is the investigation officer who has duly supported the prosecution case.

14. Close scrutiny of the evidence available on record makes it is clear that it is the accused/appellant who along with deceased accused Shiv Prasad had committed the crime in question which resulted in loss of two human life namely deceased Hemlata @ Amroutin and Savitri. Incident was witnessed by Amrit Bai (PW-2), Amrika Bai (PW-3) & Dhanesh (PW-6). According to PW-3, when she along with deceased Chunnibai was coming back after fetching water, present accused/ appellant along with deceased

accused Shiv Prasad attacked and assaulted deceased Chunnibai by crowbar and thereafter caused injuries to Hemlata & Savitri also by crowbar. She has further stated that when she tried to intervene, both the accused persons dashed her. Dhanesh (PW-6) has also stated that having been informed by Amrika Bai (PW-3) that accused persons were assaulting Chunnibai, he rushed to the spot and saw that deceased accused Shiv Prasad and Bishesar (accused/appellant) were assaulting the mother of Amroutin. Statements of the aforesaid witnesses have been duly supported by the doctors (PW-13 & PW-15), who have performed autopsy and noticed the injuries as described in Ex.P-12 & Ex.P-14. True it is that the eyewitnesses are the relatives of deceased persons, but by now it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relative of the deceased is an interested witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. In the present case, these witnesses were cross-examined at length by the defence but nothing favourable to the accused/appellant could come on record and therefore there is no evidence whatsoever before this Court to doubt the version given by the aforesaid witnesses.

Though it has come in the evidence of Amrit Bai (PW-2) that she only saw deceased accused Shiv Prasad on the spot, but in view of consistent and cogent eyewitness accounts of other two eyewitness i.e. Amrika Bai (PW-3) & Dhanesh (PW-6), we have absolutely no doubt in our mind about the involvement and active participation of accused/appellant

in the crime in question.

15. That apart, there is nothing on record to show that present accused/appellant either prevented or caused any act to dissuade or discourage deceased accused Shiv Prasad from causing injuries to the deceased persons rather helped him to do the said act, as it has come in the evidence of Amrika Bai (PW-3) that when she tried to intervene, both the accused persons dashed her. This itself is sufficient to draw the conclusion that this appellant had also shared the common intention of deceased accused Shiv Prasad. It has also come in the evidence that after committing the crime, the accused/appellant left the place of incident with deceased accused which also indicates the existence of a common intention. In these circumstances, we are of the considered opinion that the trial Court has rightly held him guilty under Section 302 IPC with the aid of Section 34 IPC.

16. Thus, on the basis of the documentary and ocular evidence, we are fully satisfied that the prosecution has been able to prove its case beyond reasonable doubt and has brought home the guilt of accused/appellant under Sections 450 & 302/34 IPC.

17. For the reasons afore-stated, we do not find any infirmity in the judgment of conviction recorded by the trial Court, which warranted our interference. This appeal is, accordingly, dismissed. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

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