

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 984 of 2012

- Mehattar Das @ Ganga Mahant S/o Shankar Das, Aged About 48 Years R/o Premnagar, PS Chakradhar Nagar, Distt. - Raigarh C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through : In-Charge SHO, Thana - AJAK, Raigarh, Distt. Raigarh C.G.

---- Respondent

For Appellant	:	Shri RK Pali, Advocate.
For Respondent/State	:	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

01/09/2017

This appeal arises out of the judgment of conviction and order of sentence dated 28.9.2012 passed by the II Additional Sessions Judge, Raigarh in ST No.01/2012 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.2000/- with default stipulation.

02. As per prosecution case, deceased Sadauwa Sarthi had damaged the tire of handcart of the appellant as a result of which the appellant was annoyed and in the night intervening 3/4th June, 2011

he went to the house of the deceased and started hurling abuses at him. It is said that when the deceased came out from his house, the appellant assaulted on his head by a club resulting in his instantaneous death. The incident was witnessed by PW-1 Padum Sarthi, PW-5 Sulochana Bai, and PW-6 Padma Bai who are son, wife and daughter of the deceased respectively. In the same night at about 1.05 am merger intimation (Ex.P/1) was lodged by PW-1 and immediately thereafter FIR (Ex.P/2) was lodged by PW-1 against the appellant under Section 302 of IPC and Section 3(1)(x) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Inquest over the dead body was conducted vide Ex.P/5 on 4.6.2011 and thereafter postmortem was conducted on the body on the same day by PW-4 Dr. Iqbal Singh vide Ex.P/12 who noticed deep lacerated wounds on right side of face, right ear, right fronto-temporo-parietal area of varying size, underlying bones right mandible, right maxilla, right side of frontal, right parietal, right temporal bones were fractured, oral cavity found crushed and brain matter had come out of the skull. In his opinion, the cause of death was extensive injury to brain and head and that the death was homicidal in nature. Memorandum of the appellant was recorded on 4.6.2011 vide Ex.P/7 and pursuant thereto, a bloodstained club was seized vide Ex.P/8 and it also led to seizure of one wrist watch, shirt and pant of the appellant, all having blood like stains, vide Ex.P/9. However, there is no FSL report on record. 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 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 at the time of incident the so-called eyewitnesses were sleeping inside the house and therefore, the question of seeing the incident by them does not arise.

(ii) that the important eyewitness i.e. PW-1 Padum Sarthi, PW-5 Sulochana Bai & PW-6 Padma Bai are close relatives of the deceased and out of previous animosity they have falsely implicated the appellant in the crime in question.

(iii) though on the memorandum of the appellant certain incriminating articles have been seized but in absence of any FSL or serological report confirming the presence of blood and that too, its origin and group, the same cannot be taken against the appellant.

(iv) that the accused/appellant caused injury on the head of the deceased by a club only and thus it is apparent that he had no intention to commit murder of the deceased. Even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 304 Part-I or II of IPC and further considering

his detention period which comes to more than six years, after conversion of his conviction into one under Section 304 Part-I or II, he may be sentenced to the period already undergone.

06. On the other hand, State counsel supporting the impugned judgment has submitted that PW-1, PW-3, PW-5, PW-6 & PW-7 have duly supported the prosecution case. Son, wife and daughter of the deceased are natural witnesses who were present in the house and their credibility cannot be doubted only because they happen to be relatives of the deceased. She further submits that conviction of the appellant under Section 302 of IPC is strictly in accordance with law considering the nature and extent of injuries caused by him. The doctor noticed multiple fractures, bones of the head were crushed and even the brain matter had come out. In these circumstances, there is no scope for interference in the well reasoned judgment of the trial Court.

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

08. PW-1 Padum Sarthi, son of the deceased, who lodged merger intimation and FIR, has stated that at about 11 pm the appellant came to his house and started hurling abuses, his father who was sleeping outside the house objected to the same, on which the appellant pushed him and then caused injury on his head by a club. In cross-examination this witness has reiterated as to the manner in which his father was assaulted by the appellant. PW-2 Triyugi Pal Prasad witness of memorandum, inquest and seizure has been declared hostile, however, he has admitted his signature on the documents. PW-3

Ramlal Bharti, neighbour of the deceased, has though been declared hostile but has stated that after hearing the sound of quarrel between the appellant and the deceased when he came out he saw the appellant causing injury on the head of the deceased. He is also a witness to inquest and memorandum of the appellant. PW-4 Dr. Iqbal Singh conducted postmortem on the body of the deceased on 4.6.2011 vide Ex.P/12 and noticed deep lacerated wounds on right side of face, right ear, right fronto-temporo-parietal area of varying size, underlying bones right mandible, right maxilla, right side of frontal, right parietal, right temporal bones were fractured, oral cavity found crushed and brain matter had come out of the skull. In his opinion, the cause of death was extensive injury to brain and head and that the death was homicidal in nature.

09. PW-5 Sulochana Bai, wife of the deceased and eyewitness to the incident, has stated that the deceased was sleeping in the courtyard, when she came out she saw the appellant assaulting the deceased on his head. In lengthy cross-examination she remained firm and nothing could be elicited from her by the defence which could render her evidence untrustworthy or doubtful. PW-6 Padma Bai, daughter of the deceased and eyewitness to the incident has also duly supported the prosecution case. She has stated that it is the accused/appellant who on the date of incident first hurled abuses and when it was objected by her father/deceased, the appellant assaulted him on his head by a club. PW-7 Bhaiyyalal Pal is also an eyewitness to the incident. He has stated that at about 12-1 in the night the appellant gave a blow by club on the head of the deceased as a result

of which he died. PW-12 Ashok Wadegaonkar, Police Inspector, helped in the investigation. PW-13 Uneja Khatun, investigating officer, has duly supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that on account of there being previous enmity between the appellant and the deceased, in the night intervening 3/4th June, 2011 the appellant went to the house of the deceased, started hurling abuses at him and on being objected to the same by the deceased, he caused club injuries on his head which led to his instantaneous death. The aforesaid incident was witnessed by PW-1 Padum Sarthi, PW-3 Ramlal Bharti, PW-5 Sulochana Bai, PW-6 Padma Bai and PW-7 Bhaiyyalal Pal. Though PW-3 Ramlal Bharti has been declared hostile but he has been declared hostile on the point of seizure whereas his credibility as an eyewitness to the incident remains unchallenged. Likewise, PW-7 Bhaiyyalal Pal has also supported the prosecution case and his credibility as an eyewitness to the incident remains intact in his cross-examination. Though there are some omissions in their Court statements as compared to their diary statements, however, considering the fact that they are rustic villagers, not aware of the niceties of law, in the facts and circumstances of the case, such omission or contradiction in their statements are required to be ignored.

PW-1 Padum Sarthi, PW-5 Sulochana Bai and PW-6 Padma Bai, who are son, wife and daughter of the deceased respectively and eyewitnesses to the incident while supporting the prosecution case have categorically stated that it is the accused/appellant who assaulted

the deceased on his head by a club leading to his instantaneous death. In their lengthy cross-examination, the defence could not elicit anything from them to its advantage. The evidence of the eyewitnesses further stand corroborated from the medical evidence according to which corresponding injuries were noticed on the head of the deceased which proved to be his cause of death.

11. As regards the argument of the appellant that the evidence of the eyewitnesses (PW-1, PW-5 & PW-6) being interested 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 witnesses 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.***)

12. In the present case, apart from independent eyewitnesses, son, wife and daughter of the deceased are also the eyewitnesses and the incident took place in the night intervening 3/4th June, 2011 when these related eyewitnesses were sleeping in their house and as such, their presence on the spot was natural. 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, ocular and medical, cannot be disbelieved.

13. So far as evidence regarding memorandum and seizure of the appellant is concerned, true it is that witnesses to the memorandum and seizure have not fully supported the prosecution case and there is also no FSL report on record, but the fact remains that the present is a case where eyewitnesses, as discussed above, have categorically stated that it is the appellant who killed the deceased and in such a case, even if the memorandum and seizure have not been proved, the

same is not fatal to the prosecution case.

14. 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. Considering the manner in which the appellant assaulted the deceased on his vital part head repeatedly by club as a result of which multiple bones of head got fractured, brain matter came out of the skull, he died on the spot and the cause of death was extensive injury to brain and head, it cannot be said that the appellant had the only intention of causing bodily injury to the deceased which were likely to result in his death or only had the knowledge that such bodily injury would result in his death. The manner in which assault was made on the deceased with such a force on his vital organ which led to his death on the spot itself speaks volumes about the intention and knowledge of the appellant. In other words, while inflicting such injuries on the deceased, the appellant had not only intention to cause his death by such bodily injuries but also had the knowledge that such injuries would result in his death. As such, his conviction under Section 302 of IPC cannot be faulted with.

15. For the reasons stated above, we are of the opinion that the prosecution has successfully proved guilt of the appellant beyond all reasonable doubt on the basis of evidence, ocular and medical, 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.

16. 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)
Judge

Sd/

(R.P. Sharma)
Judge