

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.819 of 2010**

1. Dujeram Banjare, aged 26 years, S/o Tiharu Ram, R/o Harethikala Jaijaipur, Distt.-Janjgir-Champa,, C.G.
2. Ashok Kumar S/o Joidha Prasad Khunte R/o Harethikala Jaijaipur, Distt.-Janjgir-Champa (CG)
3. Smt. Krishna Ratre, aged about 34 years, W/o Late Dujeram Ratre R/o I.T.I. Colony, Quarter No.H/03, P.S. Kotwali, Distt.-Korba, C.G.

---- Appellants**Versus**

- State Of Chhattisgarh through the Station House Officer, Police Station Kotwali, Outpost Rampur, District Korba (CG)

---- Respondent

For Appellants	:	Shri Anand Kesharwani, Advocate
For Respondent/State	:	Shri Ramakant Mishra, Dy.AG

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order on Board**Per Manindra Mohan Shrivastava, J.****02/11/2018**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 20-10-2010 passed by the Second Additional Sessions Judge, (FTC), Korba, in Sessions Trial No.83/2007, whereby and whereunder the **appellants-Dujeram Banjare, Ashok Kumar and Smt. Krishna Ratre** have been held guilty for commission of offence under Section 302,120-B and 460 of IPC and sentenced them, as described below-

Section-302,
120-B of IPC

Life Imprisonment and fine of Rs.100/-, in default of payment of fine, the appellants have to undergo additional Rigorous Imprisonment for three months

to each of the appellants.

Section 460 of IPC of Rigorous Imprisonment of five years and fine of Rs.100/-, in default of payment of fine, the appellants have to undergo additional Rigorous Imprisonment for three months to appellants- Dujeram Banjare and Ashok Kumar

All the sentences were ordered to run concurrently.

2. The prosecution story, as unfolded from the impugned judgment and records of the case is that Amin Kumar Ratre, PW-7, son of the deceased and appellant No.3-Smt. Krishna Ratre gave intimation regarding death of his father under Merg Intimation Ex.P-11, which was recorded by the Police Officer and on that basis, the FIR, at the instance of Amin Kumar Ratre, PW-7 was registered in Ex.P-12 on 02-08-2007 at about 07.35 AM in the morning. In the FIR, it was recorded that Dujeram Banjare was having illicit relations with appellant No.3-Smt. Krishna, wife of the deceased and mother of the FIR informant-Amin Kumar Ratre, PW-7. In the night of 01-08-2007, Amin saw that Dujeram Banjare was running away along with another person and he found that his father was lying on the cot. His mother did not allow him to enter the room and asked him not to disclose the incident. In the morning, when he went to the room of his father, he found that his father was bleeding and lying dead and he suspected that Dujeram Banjare, in connivance with his mother, murdered his father. He had earlier told his son that he has threat of his life and if any incident happens, Krishna Ratre and driver Dujeram Banjare would be responsible, which was written in his diary by his father. Inquest over the dead body was prepared and thereafter, dead body was sent for postmortem. Dr. R. K. Divya, PW-8 conducted postmortem and prepared postmortem report in Ex.P-18. The report disclosed fatal injuries caused to the deceased by sharp

object leading to his homicidal death. The police seized knife, the diary of the deceased and other articles, which were sent to the Forensic Science Laboratory for examination. Investigation was carried out and charge sheet was filed, which led to trial of the appellants by framing of charge for commission of offence under Section 302 of IPC on the allegations that Dujaram Ratre was murdered by the appellants. The trial culminated in conviction of the appellants. The trial Court mainly placed reliance upon the eye-witness account of Amin Kumar Ratre, PW-7, son of the deceased, bloodstains found in the knife proved to be seized on the memorandum statement of Dujeram Banjare, identification of Ashok Kumar by the witness-Amin Kumar Ratre, PW-7 in identification parade, proved by the prosecution and the witness of illicit relations between Smt. Krishna Ratre and Dujeram Banjare providing motive to eliminate the deceased-Dujeram Ratre. The learned Trial Court also placed reliance on the report of Forensic Science Laboratory proving that the diary seized during investigation containing recital that if anything happens to Dujeram Ratre, then Smt. Krishna and Dujeram Banjare would be responsible, proved to be written by the deceased-Dujeram Ratre.

3. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that the impugned judgment of conviction is based on unreliable and doubtful testimony of Amin Kumar Ratre, PW-7, son of appellant No.3-Smt. Krishna Ratre and the deceased Dujeram Ratre. This witness, it is contended, has given a story of Dujeram Ratre having been killed by the appellants, giving account of improbable happenings and events. The evidence of this witness not only suffers from material omissions, but also suffers from serious contradictions because initially he did not make any specific disclosure of involvement of the appellants to his own uncle but it has come only in the FIR. This witness had

also given different story in his Court statement, than what was stated by him while lodging FIR and recording his diary statement. He has been given specific suggestions that if his mother is convicted, he would be gaining compassionate appointment. Learned counsel for the appellant further argued that the forensic evidence of matching of handwriting in the diary with the leave applications of the deceased was an incriminating evidence, but not offered for explanation of the accused nor the forensic evidence of knife stained with blood. Therefore, on account of serious violation of statutory provisions contained in Section 313 Cr.P.C. and violation of principles of natural justice, these two evidence could not be taken into consideration by the learned trial Court to hold the appellants guilty of commission of offence. Learned counsel for the appellants has argued that as according to the evidence of Amin Kumar Ratre, PW-7, at the time of incident, his younger brother was also present, non-examination of the said witness, without any explanation, raises serious doubt with regard to veracity of the case of the prosecution.

4. On the other hand, learned State counsel would support the impugned judgment of conviction and order of sentence by submitting that the case of the prosecution mainly rests on the testimony of Amin Kumar Ratre, PW-7, who is son of the deceased and appellant No.3-Smt. Krishna Ratre. He would submit that there is no reason why the son would falsely implicate his own mother along with other persons. The witness, though minor, is aged 16 years, has given very truthful account in details in examination-in-chief as to what happened in the night. He has clearly stated regarding he having seen the appellant Dujeram Banjare and another person in his house in the night and the dubious conduct and criminal overt act of his mother, which proves beyond all reasonable doubt the guilt of the appellants. He would further argue that the said witness Amin Kumar Ratre, PW-7 has very emphatically stated, which

could not be impeached in his cross-examination, that his mother Smt. Krishna Ratre, the appellant No.3 and Duj Ram Banjare, appellant No.1 had developed illicit relations and there were disputes in the family and therefore, this provides a strong motive, even though, it is not necessary to prove the same. He would also submit that even though, the accused has not been offered any opportunity to explain incriminating evidence of Handwriting Expert in the form of report of handwriting or serological report in the absence of any prejudice caused, the appellants are not entitled to assail the impugned judgment of conviction and order of sentence on that ground alone.

5. We have heard learned counsel for the parties and perused the records.

6. Amin Kumar Ratre, PW-7, son of the deceased and appellant No.3- Smt. Krishna Ratre, has proved lodging of FIR at 07.30 AM in the morning, meaning thereby that the incident of murder in the midnight was promptly reported in the police station. In his evidence, he has clearly stated regarding he having lodged the report and also proved the same. Makbul Khan, PW-12, Investigating Officer has proved from his evidence that he had recorded the FIR on the basis of report given by Amin Kumar Ratre and has proved his signature. In the FIR, Ex.P-12, it has been recorded that in the night of 01-08-2007, when Amin was sleeping in one room, his mother, father and younger brother were sleeping in another room, he was awakened at about 11.30 PM in the night and asked to keep silent. Thereafter, his mother again awakened him at 12.30 AM and pretending that some one had entered the room and when he went to see from outside, he saw Dujeram Banjare and another person running away. When he came back, he had seen that his father was lying on the bed and his legs were hanging outside the bed towards wall. At this stage, his mother asked him to not to enter the room to close the lights and said that he should not inform death of his father to anybody, otherwise, his life would also be in danger. In the next

morning, he went to the room of his father, then he found that blood was oozing from his chest and neck and he was lying dead on the bed and his two legs were hanging against the wall. In the FIR itself, this witness has stated that the appellant No.1-Dujeram Banjare and his mother-appellant No.3-Smt. Krishna Ratre had murdered his father. In the FIR, it has been recorded that Late Dujeram Ratre informed that he had threat of his life and his wife Smt. Krishna Ratre and Driver Dujeram Banjare may cause such threat to life, recorded in his diary.

6. Homicidal death of Dujeram Ratre is not substantially in dispute, in view of the Postmortem Report, Ex.P-18 and the evidence of Dr. R. K. Divya, PW-8, who, in his Court examination, has proved the postmortem conducted by him and has also proved following external/internal injuries found on the body of the deceased:-

“पोस्टमार्टम लिवीडिटी छाती के पीछे एवं सिर के पीछे भाग पर मौजूद था, पेट फूला हुआ था, दो कटा हुआ घाव गला के सामने भाग पर थाईराईड कार्टिलेज के उपर मौजूद था जो कि एक दूसरे के समानान्तर थे एवं क्षैतिज स्थिति में था जिसकी आकृति 2 सेमी0 X $\frac{1}{2}$ सेमी0 एवं चमड़ी के गहराई तक थी। 2 सेमी0 X $\frac{1}{2}$ सेमी0 एवं चमड़ी के गहराई तक थी जिस पर खून का थक्का मौजूद था। एक गहरा घाव छाती के अग्र भाग पर तीसरा इंटरकास्टल जगह पर मौजूद था जिसकी आकृति 5 सेमी0 X 10 सेमी0 पल्मोनरीआरट्री एवं उक्त आरट्री के उपर भाग को काट दिया था चोट का डायरेक्शन तिरछा था।“

Dr. R. K. Divya, PW-8 has opined, as below:-

अभिमत— मेरे मतानुसार मृतक दूजे राम रात्रे का मृत्यु का कारण शॉक था जो कि अत्यधिक छाती के बाये भाग पर खून भरने के कारण शॉक लगने से हुआ जो कि हृदय के पल्मोनरीआरट्री के कटने के कारण हुआ था। मृत्यु हत्यात्मक प्रकृति की थी जिसकी अवधि मेरी जांच के 16 घंटे के भीतर की थी।“

Nothing could be elicited in his cross-examination so as to doubt the evidence regarding nature of injuries and cause of death.

7. Amin Kumar Ratre, PW-7, son of the deceased has been cited as star eye-witness of the prosecution. He has given his evidence in detail and has also been subjected to extensive cross-examination. In his evidence, he has deposed that appellant No.1-Dujeram Banjare was working/employed in the house since 2003 as Driver. He has deposed that when he and his younger brother used to come back to house from school, they used to see their mother and Dujeram Banjare in the house and the door used to be opened belatedly only after being knocked. He has identified appellant Dujeram Banjare in the Court. This witness has further stated that on many occasions, he had seen his mother—Krishna Ratre in compromising and objectionable position with appellant No.1-Dujeram Banjare. Upon being asked, he has clarified that they were seen in sexual act. He has further deposed that he also informed his father about the same, which his father also noticed. This witness has also deposed that he has warned by his father to be careful because of relationship of Dujeram Banjare and Krishna Ratre and keep watching. This witness has stated that he had repeatedly seen his mother and Dujeram Banjare in objectionable position and even his father had also seen, which led to dispute between the father and the mother and father had then shunted out Dujeram Banjare. He has also deposed regarding episode of quarrel between Dujeram Banjare and his father. When his father had gone to maternal house of his mother, at that time, his mother had threatened his father that he would be killed. He deposed that on 01-08-2007, his father went to sleep early as he was tired, then he also went to sleep early. At about 11-11.30 PM in the night, his mother Smt. Krishna Ratre asked him to find out whether he had gone to sleep. His mother had advised him to go to sleep. He apprehended that something wrong would

happen, therefore, he only pretended as he was sleeping, but he was awake. He has deposed that his mother and father, along with younger son, were sleeping in another room and he was sleeping in the outside area. He then heard certain noise of scuffle and his father's voice, thereafter, he saw that the room, in which, his father was sleeping, all the appellants were present and his father was being assaulted by his mother Smt. Krishna Ratre with the help of knife on his chest and other two persons had caught hold of the legs and hands of his father. He was scared to see this incident, then instantaneously, came back and saw those two persons coming from bed room towards kitchen and then went towards courtyard. He emphatically stated that at that time, he had clearly seen the faces of all the three appellants. Thereafter, when Dujeram Banjare and another person went away, his mother came back to her room. At this stage, his mother again woke him up by stating that some one appears to have entered in the house, thereafter, he went towards the kitchen and when he attempted to go towards the bed room, his mother resisted. His mother asked him by stating if you have seen something, then don't disclose about the same to anybody and in the morning, if police personnel or newspaper reporters enquire about the incident, he would only say that there was a dispute between the mother and father and therefore, mother slept in his room in the night. He deposed that his mother also assured him that in place of his mother, he will be provided compassionate appointment. He also states that his mother had clearly stated that she has murdered his father and if he acts against her, he would also be murdered. He stated that he was scared of the whole incident. In the morning, he went to the police Station and lodged report. He had also stated that the accused were shown to him in the Test Identification Parade and he identified both of them and proved his signature on the memo of Test Identification Parade. It has also to be noted that he has also identified other

accused Ashok during trial and as far as other accused Dujeram Banjare is concerned, he is well known to him. In the cross-examination, which is also a very detailed one, this witness has stated regarding terms of engagement and he has admitted that there was some dispute between Dujeram Banjare and his father and Dujeram Banjare had demanded money. He has also stated that Rs.48,000/- was taken by his mother from father and it was given to Dujeram Banjare. He has admitted that Dujeram Banjare is distant relative of his father. With regard to what happened in the night, this witness has been subjected to detailed cross-examination, specially regarding his conduct and also regarding what happened in the room of his father. Certain omissions have been elicited in the cross-examination of this witness and it was argued by learned counsel for the appellants that the details of the incident, which have been narrated by this witness in his evidence, are not present in the FIR and the diary statements.

8. True it is that there were certain omissions with regard to minute details of the entire episode, which happened in the night, we could not lay hands on any material omissions or contradictions either with regard to the presence of the appellants at the time of incident in the night and other acts of the appellants and the conduct of the present witness, PW-7. In the FIR as also in the diary statements, he has clearly stated regarding the fact that the incident happened in the night and that the appellant-Duje Ram Banjare and another person came to his house in the night and his mother had also acted in connivance with both accused persons, his father was also assaulted and he, later on, died. Merely because, the FIR is not in great details with regard to minute details of the whole incident, which occurred in the night, the evidence of this witness cannot be thrown away. As far as emphatical statement of this witness regarding illicit relations of his mother Krishna Ratre with appellant Dujeram Banjare is concerned, nothing material could be elicited to dispute this version. This

witness is 16 years of age and fully understands the consequences. There is no reason as to why this witness would falsely implicate his own mother in the name of illicit relations with Dujeram Banjare and he would also involve her in the murder of his own father. This witness throughout remained firm on his statement. He is not only the son of the deceased, but also son of Krishna Ratre. Suggestions given in his cross-examination regarding as to why he would falsely implicate his mother, are wholly baseless. The suggestion that if his mother gets life imprisonment, then he will get compassionate appointment and all the dues of death benefits of his father leads nowhere as it cannot be expected as probable conduct of a son that only to get compassionate appointment, he would falsely implicate his own mother.

9. Identification of co-accused Ashok has also not been substantially in dispute. The identification parade was conducted by the Executive Magistrate Rajani Bhagat, PW-15 and nothing could be brought to the notice of this Court as to why the statement of this witness, who conducted identification parade and the statements of the witnesses, in whose presence, identification parade was conducted and appellant identified Ashok, could be disbelieved. In any case, the accused Ashok have been identified on the dock by this witness.

10. We find that there is a serious procedural irregularity committed by the learned trial Court in not confronting the accused during the course of examination under Section 313 Cr.P.C., with incriminating evidence collected by the prosecution. One is the report of the Handwriting Expert that the writings contained in the diary and leave application of the deceased seized vide Ex.P-2 are of one and the same person. The other one is that in the Forensic Science Laboratory Report on the knife, seized during investigation, human blood was found. We find that these reports were received by the trial Court, but even before the delivery of judgment, no question/additional question was framed by

the learned trial Court by bringing it to the notice of the accused and seeking his explanation against this incriminating evidence and circumstances, as per the mandate of Section 313 of Cr.P.C. The mandate of provisions under Section 313 of Cr.P.C. required the learned trial Court to be vigilant in framing additional questions, upon receipts of the reports of Forensic Science Laboratory mentioned above and give the accused to opportunity to offer his explanation.

11. However, once we are inclined to rely upon on the evidence given by Amin Kumar Ratre, PW-7 and the identification of accused-Ashok, corroborated by the identification parade proceedings, even if such irregularity in examination of the accused under Section 313 of Cr.P.C. is found, prosecution case is proved from the evidence of eye-witness and identification, we are inclined to uphold the conviction.

12. The aforesaid two sets of evidence, in respect of which, no explanation of the accused was obtained while examining under Section 313 Cr.P.C. are only corroborative in nature. As the evidence of Amin Kumar Ratre, PW-7 is found to be reliable, even if any such corroboration is there, in our opinion, the conviction of the appellants has to be sustained, who murdered the deceased-Dujeram Ratre.

13. In the result, the appeal fails and is accordingly dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Rajani Dubey)
Judge