

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.544 of 2012

1. Firan Kerketta S/o Ghasiya Kerketta, aged about 31 years, by caste-Uraon, R/o BTI Chowk, Badapara, Pathalgaon.
2. Firnu Kerketta S/o Ghasiya Kerketta, aged about 30 years, by caste-Uraon, R/o BTI Chowk, Badapara, Pathalgaon.
3. Charan Kerketta S/o Ghasiya Kerketta, aged about 37 years, R/o BTI Chowk, Badapara, Pathalgaon.
4. Ramiya Kerketta W/o Ghasiya Kerketta, aged about 55 years, R/o BTI Chowk, Badapara, Pathalgaon, Distt. Jashpur (CG)

---- Appellants

Versus

1. State Of C.G. Through: Station House Officer, Police Station-Pathalgaon, Distt. Jashpur C.G.

---- Respondent

For Appellants	:	Shri Anil Gulati & Shri Somkant Verma, Advocates.
For Respondent/State	:	Shri Anil Pillai, Addl. A.G.

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

Judgment On Board By Justice Pritinker Diwaker

09/04/2018

This appeal arises out of the judgment of conviction and order of sentence dated 31.5.2012 passed by the Additional Sessions Judge, Jashpur, Distt. Jashpur in ST No.38/2010 convicting each of the appellants under Sections 341, 148, 302/149 of IPC and sentencing them to undergo SI for one month, RI for one year, life imprisonment with fine of Rs.2000/- plus default stipulation respectively.

02. In the present case, name of the deceased is Suresh Ekka. It is said that there was previous dispute between Suresh Ekka and the accused persons and prior to the incident on 10.1.2010 the accused persons had beaten the deceased for which a report was lodged and case was pending before the trial Court. It is said that in the night intervening 13/14th February, 2010 when deceased Suresh Ekka was leaving his house by carrying drum in his bicycle, the accused/appellants and the deceased accused Ghasiya apprehended him and caused him several injuries by club, axe and pieces of tiles resulting in his death on the spot itself. The incident is said to have been witnessed by PW-3 Smt. Dahni (mother of the deceased), PW-4 Smt. Nirmala (wife of the deceased), PW-5 Bansai (father of the deceased) and PW-13 Smt. Raimuni (aunt of the deceased). On 14.2.2010 itself at 2.30 am FIR (Ex.P/17) was lodged by PW-3 against the accused persons under Sections 341, 147, 148, 149 & 302 of IPC. Soon thereafter at 2.35 am merg intimation Ex.P/18 was recorded. Inquest on the dead body was conducted on 14.2.2010 vide Ex.P/1 and thereafter the body was sent for postmortem which was conducted on the same day by PW-12 Dr. Jems Minj vide Ex.P/15. The autopsy surgeon noticed incised wounds over left clavicle region, left side of forehead, on left parietal region, below left eye; lacerated wounds over right parietal region, right frontal of scalp, left frontal of scalp, below left eye and fracture of left parietal bone. In his opinion, the cause of death was hemorrhagic shock due to head injury and injuries to vital organ brain and that it was homicidal in nature. On 15.2.2010 memorandum of accused No.1 Firan (Ex.P/7) was recorded and pursuant to which one axe, sando baniyan and one lungi were seized vide Ex.P/8.

Memorandum of accused No.2 Firnu Kerketta (Ex.P/5) led to recovery of a club and T-shirt vide Ex.P/6; based on the memorandum of accused No.3 Charan Kerketta (Ex.P/3), one club and a shirt were seized vide Ex.P/4 and likewise on the memorandum of accused No.4 Ramiya Kerketta (Ex.P/9), pieces of tiles were seized vide Ex.P/10. However, there is no FSL report on record. After filing of charge sheet, the trial Court framed charges under Sections 341, 148, 302/149 of IPC against the accused persons. However, during trial one of the accused namely Ghasiya Kerketta expired on 11.1.2012.

03. So as to hold the accused/appellants guilty, the prosecution examined 14 witnesses in all. Statements of the accused were also 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.

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 appellants as mentioned above.

05. Counsel for the appellants submits as under:

- (i) that the appellants have been convicted solely on the basis of evidence of PW-3 Smt. Dahni, PW-4 Smt. Nirmal, PW-5 Bansai and PW-13 Smt. Raimuni, who being mother, wife, father and aunt of the deceased are interested witnesses and further considering the material contradictions in their statements, no reliance can be placed thereon.
- (ii) that the incident occurred in the midnight and therefore, the question of witnessing the incident at such a time does not arise.

(iii) that it appears that deceased Suresh Ekka had damaged the shop of the accused persons on account of which there may be some quarrel between them but the same would not attract the offence under Section 302/149 of IPC.

(iv) that all the four eyewitnesses have improved a lot while deposing in the Court and their statements do not tally with the medical evidence.

(v) though certain seizures are said to have been effected on the memorandums of the appellants, but in absence of FSL report, the same are of no consequence.

06. On the other hand, State counsel supporting the impugned judgment has submitted as under:

(i) that the incident occurred near the house of the deceased at 0.30 am and therefore, the question of availability of independent witnesses at that time does not arise.

(ii) that immediately after hearing cries of the deceased, all the eyewitnesses rushed to the spot and saw the appellants brutally beating the deceased.

(iii) that minor contradictions in the statements of the eyewitnesses are required to be ignored considering the fact that they are rustic villagers.

(iv) that the eyewitnesses to the incident have remained firm on material particulars while deposing in the Court and their evidence also finds due corroboration from the medical evidence.

(v) that motive has also been duly proved by the prosecution where

earlier the deceased was beaten by the accused persons for which a case was pending before the trial Court and it appears that to eliminate the deceased, all the accused persons with premeditated mind assaulted him and thus committed his murder.

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

08. PW-3 Smt. Dahni, mother of the deceased and the informant, has stated on the date of incident deceased left his house with a drum for beating the same in a wedding ceremony. On the way he was apprehended by the accused persons who caused him injuries by axe and club as a result of which he died on the spot and immediately thereafter, she lodged a report in the police station. In cross-examination, but for minor contradictions she remained firm and reiterated as to the manner in which the deceased was done to death by the accused persons.

09. PW-4 Smt. Nirmala, wife of the deceased, is also an eyewitness to the incident. While supporting the prosecution case she has stated that at midnight her husband was going to a wedding ceremony, however, on the way he was surrounded by the accused persons and was caused injuries by them with club, axe and tiles resulting in his on-the-spot death. Though in the court she states that for the first time she is narrating the incident in the Court but from the record it is apparent that her diary statement was also recorded which has not been confronted by the defence.

10. PW-5 Bansai, father of the deceased and PW-13 Smt. Raimuni,

aunt of the deceased, who are also eyewitnesses to the incident while supporting the prosecution case have stated in the same line and described as to the manner in which the incident occurred and the deceased was brutally beaten to death by the accused persons.

11. PW-12 Dr. James Minj conducted postmortem on the body of the deceased on 14.2.2010 vide Ex.P/15 and noticed incised wounds over left clavicle region, left side of forehead, on left parietal region, below left eye; lacerated wounds over right parietal region, right frontal of scalp, left frontal of scalp, below left eye and fracture of left parietal bone. In his opinion, the cause of death was hemorrhagic shock due to head injury and injuries to vital organ brain and that it was homicidal in nature. He had also examined the seized axe and opined that the injuries suffered by the deceased could be caused by the said weapon vide Ex.P/16. PW-14 JR Sahare, investigating officer, has duly supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that on 14.2.2010 at 0.30 am while the deceased was going to a wedding ceremony for beating drum, the accused/appellants on account of previous enmity with the deceased intercepted him near his house and started brutally assaulting him with axe, club and tiles to such an extent which led to his instantaneous death. The incident has been witnessed by PW-3 Smt. Dahni, PW-4 Smt. Nirmal, PW-5 Bansai and PW-13 Smt. Raimuni, who are mother, wife, father and aunt of the deceased. They have categorically stated in the Court as to the manner in which the deceased was assaulted by the accused/appellants. Though there are some variations in their statements but considering the fact that they

are rustic villagers, such discrepancies in their depositions are required to be ignored, particularly when their statements find due corroboration from the medical evidence according to which corresponding injuries were noticed by the autopsy surgeon on the person of the deceased.

13. As regards the argument of the appellants that the evidence of the eyewitnesses being interested witnesses cannot be relied upon, it is well settled principle of law that 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. 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 due 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 mother, wife, father and aunt of the deceased and the incident took place at around 0.30 hours in the night 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 appellants 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. True it is the pursuant to memorandums of the appellants, seizure of certain articles i.e. club, axe, pieces of tiles and clothes of the accused/appellants has been effected but there is no FSL report in respect thereof. However, present is a case of eyewitness account where the eyewitnesses have specifically stated about the act of the appellants as to how they committed murder of the deceased. Their testimony further gets support from the medical evidence as also the motive attributed to the appellants. Thus, in the case in hand, non-availability of FSL report in respect of the seized articles cannot be said to be fatal to the prosecution case and as such, the argument advanced on this point is of no help to the appellants.

16. For the reasons stated above, we are of the opinion that the prosecution has successfully proved guilt of the appellants beyond all

reasonable doubt on the basis of evidence adduced by it and the trial Court has rightly convicted and sentenced them under Sections 341, 148 and 302/149 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. Appellants No. 1 to 3 are reported to be already in jail whereas appellant No.4 is on bail. Therefore, bail bonds executed by appellant No.4 are cancelled and he is directed to be taken into custody forthwith to serve out the remaining part of his sentence.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(Sanjay Agrawal)
Judge