

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 447 of 2018**

- Keshav S/o Deendayal Nishad, aged about 30 years, R/o Suraj Nagar, Labhandi, Police Station Telibandha, Raipur, District Raipur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Station House Officer, Police Station Telibandha, Raipur, District Raipur (C.G.)

---- Respondent

For Appellant.	:	Shri Akhil Mishra, Advocate.
For Respondent.	:	Shri Avinash Mishra, P.L.

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

Judgment on Board**Per Pritinker Diwaker, J****30/04/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 25.09.2012 passed by the 2nd Additional Sessions Judge, Raipur, in S.T. No.190/2011 convicting the accused/appellants under Sections 302/34, 449 IPC, Sections 25 (1-B) (b) and 27 of the Arms Act & sentencing him to undergo imprisonment for life with fine of Rs.500/- under Sections 302/34 and 449 IPC, R.I. for three years with fine of Rs.200/- with default stipulations respectively.

02. As per the prosecution case, on 09.06.2011 the accused persons entered the house of deceased Santosh Sahu and caused multiple injuries to him by knife as a result of which deceased died instantaneously. At the instance of Saraswati Bai (PW/1), eye witness to the incident, dehati nalisi (Ex.P/1) was recorded on 09.06.2011 at

11.00 pm followed by dehati merg (Ex.P/2) at 11.10 am. On the basis of dehati nalisi (Ex.P/1), F.I.R. (Ex.P/20) was registered on 10.06.2011 at 00.30 am against the accused persons under Section 302/34 of IPC. Thereafter, numbered merg (Ex.P/21) was registered on 10.06.2011 at 00.40 am. Inquest on the body of deceased was conducted vide Ex.P/5 and dead body was sent for postmortem examination which was conducted by Dr. R.K. Singh (PW/15) and gave his report (Ex.P/34) noticing following injuries:-

- (i) Incised wound on left ring finger base palmar aspect in the size of 1 x 0.5 x 0.5 cm.
- (ii) Stab wound on right scapular region vertical in the size of 3 x 1 x 6.5 cm. It has gone deep into right lung where size of wound was 1 x 0.5 x 0.5 cm. Right thoracic cavity contains about 350 ml blood.
- (iii) Stab wound on midline back slightly right to midline at T6 plane in the size of 3 x 1.2 cm x 7 cm. It has gone deep into right lung where size of wound was 1 x 0.5 x 0.5 cm.
- (iv) Incised wound on left scapular region medial border vertical in the size of 3 x 1.5 x 0.5 cm.
- (v) Incised wound on left scapular region lateral border vertical in the size of 2.8 x 1cm x 0.8cm.
- (vi) Incised wound on T9 plane just right to midline back obliquely vertical in the size of 2.5 x 1 cm x 1 cm.
- (vii) Incised wound on left forearm front middle obliquely transverse in the size of 5 x 0.5 x 0.2 cm.
- (viii) Incised wound on left upper arm front transverse in the size of 4 x 0.2 x 0.1 cm.
- (ix) Stab wound on just below left clavicle in the size of 1.5 x 0.8cm x 6.5cm deep. It is deep into lung where size of wound was 1 x 0.5 x 0.5 cm. Both sides abrasion impact in nature present transversely

medially 2 x 1.2 cm & laterally 3.5 x 1 cm irregularly.

- (x) Stab wound on just above & lateral to left nipple obliquely transverse in the size of 4 x 1.5cm x 7cm deep into lung where size of wound was 1 x 0.5cm x 0.5cm. Left thoracic cavity contains blood about 400 ml.
- (xi) 02 impact abrasions dorsum of left forearm obliquely vertical in the size of 5 x 0.8 cm & 5.5 x 0.5 cm.
- (xii) Contusion abrasion on left upper arm laterally semilunar 1 x 0.2 cm.
- (xiii) Contusion on left upper part of chest in the size of 3.5 x 1.8 cm with ecchymosis present.

The autopsy surgeon opined the cause of death to be hemorrhage and shock due to multiple injuries on his body and death was homicidal in nature.

03. While assaulting the deceased, accused/appellant Keshav also sustained injuries and was taken to District Hospital, Pandri Raipur where he was medically examined by Dr. (Smt.) Parmeshwari Lal (PW/10) vide Ex.P/19 noticing one incised wound of 1 cm x 1/4 cm over right index finger.

04. On 10.06.2011, memorandum of accused/appellant Keshav was recorded vide Ex.P/13, based on which, one knife was seized vide Ex.P/9. Vide Ex.P/8, pant, shirt and towel were seized from accused Keshav. Memorandum of accused Raj Kumar was recorded vide Ex.P/12, based on which, vest and full pant were seized vide Ex.P/10. Seized articles were sent for chemical examination and as per FSL report (Ex.P/33), blood has been found on the seized articles, however, there is no serological report on record to confirm its origin. After filing of the charge sheet, the trial Judge has framed the charges against

accused/appellant Keshav under Sections 302, 449 of IPC, 25 (1-B) (b) and 27 of the Arms Act, against accused Mohit Ram and Tikat Ram under Sections 302/34 and 449 of IPC & against accused Raj Kumar under Sections 302 and 449 of IPC.

05. So as to hold the accused persons guilty, the prosecution examined as many as 17 witnesses. Statement of the accused/appellant 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.

06. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in the impugned judgment. Hence, this appeal.

07. This appeal has been preferred by accused/appellant Keshav whereas another Criminal Appeal No.905/2012 was preferred by remaining three accused persons and the said appeal has already been dismissed by this Court vide judgment dated 16.11.2017.

08. Learned counsel for the appellant submits :

- (i) That two eye witnesses to the incident Saraswati Bai (PW/1) and Uday (PW/3) are not reliable.
- (ii) That Uday (PW/3) being a child witness cannot be relied upon and he appears to be a tutor witness.
- (iii) That accused/appellant Keshav was residing near the house of the deceased and, therefore, he has been falsely implicated in the commission of crime.
- (iv) That it can be said that main culprits are other accused persons

and appellant Keshav in the present appeal is liable to be acquitted.

(v) That PW/1 while deposing in the Court has made contrary statement to what has been made in her diary statement.

09. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same. He submits that all the four accused persons have made an attempt to enter the house of the deceased and after breaking up the window, accused/appellant Keshav entered the house, and when the door was not opened, other accused persons who were standing near the gate started shouting "*he shouldn't be left alive today*". Learned State counsel has further submitted that by the impugned judgment, apart from appellant Keshav, one Raj Kumar, Tikatram and Mohit Ram were also convicted and the criminal appeal No.905/2012 filed on their behalf has already been dismissed by this Court vide judgment dated 16.11.2017.

10. We have heard learned counsel for the parties and perused the material available on record.

11. Saraswati Bai (PW/1) is wife of the deceased. She has stated that she knew all the accused persons who are her neighbours. On the date of incident, she over heard that the accused persons were talking to each other making plan to enter her house and killing her husband. She has further stated that previously also there was some quarrel between the accused persons and her husband. After over hearing the accused persons, she went inside her house, bolted the same from inside and at that point of time her husband was sleeping on a cot with her two sons,

whereas she was watching T.V. along with her third son Uday (PW/3). She has also stated that accused persons while hurling abuse knocked the door and when she did not open the door, accused/appellant Keshav broke open the window, entered the house and when she was trying to come out of her room, she was pushed by accused Raj Kumar and then other accused persons namely Tikat Ram and Mohitram did not allow her to come out of her room and in the meanwhile accused Tikat Ram and Mohitram started abusing filthily in the name of his mother saying that "*he shouldn't be left alive today*" and then accused/appellant Keshav and accused Raj Kumar caused knife and rod injuries to her husband. Accused/appellant Keshav and accused Raj Kumar took out her husband in the veranda and there also they assaulted her husband, whereas other accused persons did not allow her to come out from her room. This witness has also stated that her husband was brutally beaten as a result of which she became unconscious. None of her neighbours had helped her and after about five minutes her brothers came who took the deceased to hospital where he was declared brought dead. In cross-examination, she remained firm but for minor contradictions and nothing could be elicited from her to discredit her testimony.

12. Uday (PW/3) is child witness aged about 7 years. While supporting the prosecution case he too has stated that as to the manner in which his father was brutally beaten and done to death by the accused/appellant Keshav and other accused persons. He has categorically stated that the accused persons, who were his neighbour, have caused injuries to the deceased. In lengthy cross-examination, he

remained firm and nothing could be elicited from him to discredit his testimony.

13. Deepak Kumar Sahu (PW/2) is brother-in-law of the deceased who reached the place of occurrence after receiving the message about the assault being made by the accused persons.

14. Aaju Ram (PW/4), father-in-law of the deceased, is witness to inquest (Ex.P/5).

15. Nomeshwar Verma (PW/5) is the Patwari who prepared spot map vide Ex.P/7.

16. Dayaram Sahu (PW/6) is hearsay witness. He is also a witness to seizure (Ex.P/8, P/9, P/10 & P/11) and memorandum (Ex.P/12 and P/13) of accused Raj Kumar and appellant Keshav respectively.

17. Dr. (Smt.) Parmeshwari Lal (PW/10) medically examined accused/appellant Keshav vide Ex.P/19 noticing one incised wound over right index finger in the size of 1 cm x 1/4 cm.

18. R.S. Giri (PW/12) - Assistant Sub Inspector, did part of investigation.

19. N.P. Upadhyay (PW/13) is Investigating Officer who has duly supported the prosecution case.

20. Ashwani Kumar Tiwari (PW/14) - Head Constable, assisted in the investigation.

21. Dr. R.K. Singh (PW/15) conducted the postmortem on the body of deceased and gave his report Ex.P/34 opining the cause of death of deceased to be hemorrhage and shock as a result of multiple injuries.

22. Manoj Kumar Singh (PW/16) - Constable, assisted in the investigation.

23. Chamanlal Sahu (PW/17) is the witness to memorandum (Ex.P/12 and P/13) & seizure Ex.P/3, P/8, P/9 P/10 and P/11.

24. Close scrutiny of the evidence makes it clear that on 09.06.2011 at about 9.15 pm, the accused persons first knocked the door of the deceased's house and when it was not opened, accused/appellant Keshav broke open the window, entered the house and thereafter accused/appellant Keshav and accused Rajkumar assaulted the deceased resulting his death. At the time of incident, other accused persons namely Tikatram and Mohitram who were standing near the gate, did not allow anyone to come out from the room and they were also hurling "*he shouldn't be left alive today*". The entire incident has been witnessed by PW/1 and PW/3, wife and son of deceased respectively, and both these witnesses have categorically stated as to the manner in which deceased was done to death. The version of these witnesses is well corroborated by the evidence of Dr. R.K. Singh (PW/15) and postmortem report (Ex.P/34) wherein 6 incised wounds over left finger base, scapular region, left forearm, 4 stab wounds over scapular region, middle back, left clavicle, left nipple and 2 contusions over left upper arm and left upper part of chest were noticed and Autopsy Surgeon opined the cause of death to be hemorrhage and shock as a result of multiple injuries. The evidence of these witnesses is sufficient to infer that it is accused/appellant Keshav and other accused person who caused death of deceased and we have no reason to disbelieve the statements of these witnesses. The defence has cross-examined these witnesses at length but has not been able to elicit anything in their cross-examination to discredit their testimonies

especially the fact that the accused/appellant has not committed murder of deceased.

25. We find no substance in the argument of counsel for the appellant that eye-witnesses are the relatives and interested witnesses and their statements cannot be relied upon.

26. The Supreme Court in the matter of **Bur Singh and Another v. State of Punjab**¹ has held that merely because the eyewitnesses 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.

27. Further, the Supreme Court in the matter of **Sudhakar V. State**² and **Ganapathi V. State of Tamil Nadu**³ relying in its earlier judgments held as under:

18. “Then, next comes the question 'what is the difference between a related witness and an interested witness?'. The plea of “interested witness”, “related witness” has been succinctly explained by this Court that “related” is not equivalent to “interested”. The witness may be called “interested” only when he or she derives some benefit from the result of a litigation in the decree in a civil case, or in seeing an accused person punished. In this case at hand PW 1 and 5 were not only related witness, but also 'interested witness' as they had pecuniary interest in getting the accused petitioner punished. [refer State of U.P. v. Kishanpal and Ors., (2008) 16 SCC 73] : (2008 AIR SCW 6322). As the prosecution has relied upon the evidence of interested

1 (2008) 16 SCC 65

2 AIR 2018 SC 1372

3 AIR 2018 SC 1635

witnesses, it would be prudent in the facts and circumstances of this case to be cautious while analyzing such evidence. It may be noted that other than these witnesses, there are no independent witnesses available to support the case of the prosecution.

28. In the case in hand, the evidence of eye-witnesses find corroboration from each other more particularly by the evidence of autopsy surgeon and postmortem report. It cannot be laid down as an invariable rule that evidence of interested witness can never form the basis of conviction unless corroborated in material particular by independent witness. Relationship is not the factor which affects credibility, the only thing is that evidence of interested witness is to be scrutinized with care and weighed in golden scale before being relied upon. More often than not a relative would not conceal the actual culprit and inculcate an innocent person. Each case must be judged on its own facts. A close relative who is a natural witness cannot be regarded as an interested witness having a direct interest in having the accused somehow or the other convicted. The relationship or the partisan nature of the evidence only puts the court on its guards to scrutinize the evidence more carefully. Interestedness of the witness has to be considered and not just that he is interested. Over insistence upon outside witnesses who might not have seen anything as compared with natural eye-witnesses may result in criminal injustice. Interestedness does not require outright rejection of evidence, only necessities the deeper scrutiny.

29. True, it is that as per FSL report, blood has been found on the seized articles but there is no serological report on record to prove its

origin and group, but in the case of conviction based on evidence of eye-witness, this could be an additional link to point towards the guilt of the accused.

30. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.

31. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellant is reported to be in jail and therefore no further order regarding his arrest etc. is required.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE