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HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 478 of 2010****Judgment reserved on 7-3-2018****Judgment delivered on 20 - 4-2018**

- Mahavir Prasad Rathore aged 43 years S/o late Rangi Lal Rathore, R/o Village Songuraha, P.S.-Baradwar, Tahsil-Sakti, Distt.-Janjgir-Champa, C.G.

---- Appellant.**Versus**

1. Lachchhi Ram Patel s/o. Anandram Patele, aged about 60 years.
2. Ghanshyam Patel S/o Anandram Patel s/o. Anandram Patel, aged about 29 years.
3. Geeta Prasad Patel S/o Lachchhi Ram Patel, aged about 26years.

All are R/o Village Songudha, P.S. Baradwar, Tahsil-Sakti, Distt.-Janjgir- Champa, C.G.

4. State of C.G. Through S.H.O., P.S. Baradwar, Distt.-Janjgir-Champa, C.G.

---- Respondents

For Appellant Mr. Gautam Khetrapal, Advocate.

For respondents : Mr. Gurudev I Sharan, Advocate.

No. 1 to 3.

For respondent : Mr. Wasim Miyan, Panel Lawyer.

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

CAV Judgment**Per Ram Prasanna Sharma, J**

1. This acquittal appeal is preferred against the judgment dated 30-6-2010 passed by the Additional Sessions Judge, Sakti, (for short, "the trial Court") Sessions Division Janjgir-Champa in Sessions Case No. 191 of 2009 wherein the trial Court acquitted the respondents No. 1 to 3 for charges under Section 302 read with Section 34 of the Indian Penal Code, 1860 for committing murder of one Rangilal Rathore on 5-7-2009 at about 7.00 a.m near canal of village Songuraha, Police Station Baradwar, District Janjgir-Champa (CG).
2. In the present case, name of the deceased is Rangilal Rathore. As per version of prosecution, deceased did not agree to give his land for cultivation to respondents No. 1 to 3 on crop share basis, therefore, there was some dispute. On 5-7-2009 at about 6.30 a.m. deceased went to supervise his land on motor-cycle with his nephew namely Basant Kumar Rathore (PW/12), at the same time respondent No.3 Geeta Prasad Patel armed with axe (Tangi), respondent No.1 Lachchi Ram Patel and respondent No.2 Ghanshyam Patel armed with clubs reached to the field of deceased and assaulted him mercilessly and caused instantaneous death. Basant Kumar Rathore (PW/12), who is sole eye-witness of the incident, anyhow managed to escape from the field and informed about the incident to Mahavir Prasad Rathore (PW/11) who is son of the deceased. The matter was reported to Police Station Baradwar by Mahavir Prasad Rathore

(PW/11) just after the incident naming all three respondents No.1 to 3 as culprits. After completion of investigation charge-sheet was filed against the respondents No. 1 to 3. Respondents did not plead guilty, therefore, trial was conducted. After examination of prosecution witnesses, statements of respondents No. 1 to 3 under Section 313 of Cr.P.C., were recorded and after hearing both the parties, the trial Court acquitted all the respondents No. 1 to 3 as mentioned above.

3. Learned counsel for the appellant submits as under:

- i) The trial Court wrongly disbelieved the statement of Basant Kumar Rathore (PW/12) who is eye-witness of the incident whose version is supported by promptly lodged first information report (Ex.P/27) and other corroborative piece of evidence.
- ii) Version of Mahavir Prasad Rathore (PW/11), Leeladhar Rathore (PW/2) and Kanhaiyalal (PW/1) is corroborative piece of evidence and all these witnesses are stable since the date of incident, but the trial Court recorded finding against the settled principles of law.
- iii) The finding of the trial Court is perverse and the same is liable to be set aside.

4. On the other hand, learned counsel for the respondents No. 1 to 3 would submit that the finding arrived at by the trial Court is based on proper marshaling of the evidence which is not liable to

be interfered while invoking jurisdiction of the appeal. In support of his arguments, he has placed reliance on the decision of Hon'ble Supreme Court in the matter of **State of UP vs. Ram Sajivan and others**¹.

5. We have heard learned counsel for the parties and perused the material available on record.
6. To substantiate the charge, prosecution has examined as many as 15 witnesses.
7. Dr. P. Singh (PW/8) conducted autopsy of deceased Rangilal Rathore on 5-7-2009 at about 4.00 pm and noticed the following injuries.
 - i) Fracture of right shaft in multiple pieces.
 - ii) Lacerated wound over right cheek including right side of ears and parietal region in the size of 4"x3"x2"
 - iii) Brain matter came out.
 - iv) Right side of mandible fracture with same size of teeth missing.
 - v) Blood clot present on right mandible.
 - vi) Missing teeth No.5 and abdomen distended and whole body looking pale.
 - vii) Contusion present on anterior chest wall.
 - viii) Fracture of right parietal bone and brain matter palapsi out;
 - ix) Fracture of 3rd, 4th, 5th and 6th ribs on the

¹ AIR 2010 SC 1738

right side;

- x) Fracture of 3rd, 5th, 6th and 7th ribs on the left side.

He opined that cause of death is head injury and excessive hemorrhage due to ruptured vital organ. He further opined that death is caused within 12 hours of the incident and nature of death is homicidal. Version of this witness is unshaken during cross examination and there is no other expert's opinion contrary to the opinion of this expert. Looking to the injuries on vital part including multiple fractures on ribs and head resulting in instantaneous death, it is established by the prosecution that deceased was brutally murdered.

8. Case of the prosecution is based on eye-witness account to the incident. Basant Kumar Rathore (PW/12) is sole eye-witness of the incident. As per version of this witness deceased was his real maternal uncle and he stayed in his house on 4-7-2009 since 7.30 pm. As per version of this witness, in the next morning he accompanied the deceased for supervision of his field and travelled with him on a motor-cycle and reached to the field of the deceased. He clearly stated that the house of the respondent Lachchhi Ram Patel is adjoining to the field of deceased and at the time of incident respondent Geeta Prasad Patel armed with axe (Tangi) and respondents Lachchiram Patel and Ghanshyam Patel armed with clubs assaulted the deceased. He further deposed that he tried to rescue the deceased and cried for help,

but his efforts went in vain. He further deposed that anyhow he managed to escape from the field and informed about the incident to Mahavir Prasad Rathore who is son of the deceased. Version of this witness is unrebutted during incisive and searching cross examination and his version is supported by the version of Mahavir Prasad Rathore (PW/11). Mahavir Prasad Rathore (PW/11) is a person who lodged first information report in Police Station Baradwar just after the incident as per Ex.P/27 naming all the three respondents as offenders. In the first information report, it is clearly mentioned that Basant Kumar Rathore (PW/12) is eye-witness of the incident and as per his information, this witness has recorded the FIR. Version of Mahavir Prasad Rathore (PW/11) is supported by the version of Leeladhar Rahore (PW/2) to whom Mahavir Prasad Rathore (PW/11) informed about the incident. Version of Leedhar Rahore (PW/2) is supported by the version of Kanhaiyalal (PW/1) to whom Lededhar Rahtore informed about the incident.

9. It is crystal clear from the record that Basant Kumar Rathore (PW/12) returned from the place of incident and informed about the incident to Mahavir Prasad Rathore and then Mahavir Prasad Rathore lodged the first information report. Mahavir Prasad Rathore informed the incident to Leeladhar Rahore (PW/2) and Leeladhar Rathore informed the incident to Kanhailal (PW/1). FIR is recorded just after the incident with vivid details of the incident

inspiring confidence of this Court.

10. The first ground recorded by the trial Court to discard the evidence of Basant Kumar Rathore (PW/12) is that he took rest for one hour in the house of the deceased after returning from the spot and then showed concern for recording FIR. Now the point for consideration is whether the evidence of this eye-witness can be discarded by referring to his subsequent conduct. Hon'ble the Apex Court in the matter of **State of Maharashtra vs. Manglya Dhavu Kongil**² has held as under:

“When courts purport to disbelieve an eye witness by reference to his subsequent conduct they have to be careful not to substitute their own norms of behavior in a given situation for the norms of behavior of that witness. Secondly, people react to situations not always in a uniform way. A city dweller, a villager or an Adivasi will react differently according to the degree of their sophistication. Moreover, even in the case of individuals of the same class the reaction would vary with the physical courage, mental equipment and social awareness of the individual. What is to be seen is whether the subsequent conduct to the witness is so incongruous with his evidence that it is impossible to believe that what he says is true. Therefore, subsequent conduct cannot be the sole test of the reliability of a witness”.

11. Hon'ble the Apex Court in the matter of **Rammi alias**

² (1972) 3 SCC 46

Rameshwar vs. State of MP³ has held as under:

“Such a remark on the conduct of a person who witnessed the murderous attack is least justified in the realm of appreciation of evidence. This Court has said time and again that the post event conduct of a witness varies from person to person. It cannot be a cast-iron reaction to be followed as a model by everyone witnessing such event. Different persons would react differently on seeing any violence and their behaviour and conduct would, therefore, be different”.

12. Hon'ble the Apex Court in the matter of **Satvir vs. State of Uttar Pradesh⁴** has held as under:

“Simply because the eyewitnesses did not make any attempt to save the life of the deceased from the clutches of the accused persons, their abnormal conduct by itself cannot be taken as a ground to disbelieve and discard their testimony in regard to the genesis of the occurrence and the part played by the appellant and the other convicted persons in the commission of the offence”.

13. Hon'ble the Apex Court in the matter of **State of UP vs. Devendra Singh⁵** has held as under:

“To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and

3 (1999) 8 SCC 649

4 (2009) 4 SCC 289

5 (2004) 10 SCC 616

unimaginative way. There is no set rule of natural reaction. Human behavior varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Some may remain tightlipped overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon variety of circumstances”.

14. The above views expressed by Hon'ble Supreme Court in plethora of judgments make it no longer *res integra* that the evidence of eye-witness cannot be discarded on the ground that he has not acted or re-acted in a particular way.
15. In the present case, staying for one hour in the house of the deceased after the incident cannot be termed as unnatural behaviour in the context of the facts and circumstances of the case. In our considered view, the trial Court went wrong in

discarding the evidence on this count.

16. The trial Court discarded the evidence of prosecution that motive of the evidence is not proved. Hon'ble the Apex Court in the matter of **State of UP vs. Kishanpal and others**⁶ has held as under:

“The motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime. The motive may be considered as circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eye-witnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eye-witnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of eye-witnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction”.

17. Again Hon'ble the Apex Court in the matter of **Ranganayaki vs.**

6 2008 AiR SCW 6322

State by Inspector of Police⁷ has held as under:

“Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Champbell struck a note of caution in *Red v. Palmer* (Shorthand Report at page 308 May, 1856) thus: "But if there be any motive which can be assigned. I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties". Though, it is a sound presumption that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailants. In *Alley v. State of U.P.*, AIR (1955)

7 2004 AIR SCW 6613

SC 807, it was held "that is true, and where there is clear proof of motive for the crime, that lands additional support to the finding of the Court that the accused was guilty, but absence of clear proof of motive does not necessarily lead to the contrary conclusion". In some cases it may be difficult to establish motive through direct evidence, while in some other cases inferences from circumstances may help in discerning the mental propensity of the person concerned. There may also be cases in which it is not possible to disinter the mental transaction of the accused which would have impelled him to act. No proof can be expected in all cases as to how the mind of the accused worked in a particular situation. Sometimes it may appear that the motive established is a weak one. That by itself is insufficient to lead to an inference adverse to the prosecution. Absence of motive, even if it is accepted, does not come to aid of the accused. These principles have to be tested on the background of factual scenario".

18. In the present case, direct evidence of clinching nature is available on record, therefore, the prosecution is not required to prove motive of the offence and motive is insignificant for the decision of the case in hand.

19. The trial Court opined that the eye-witness Basant Kumar Rathore (PW/12) was earlier charged for criminal cases, therefore, he is not reliable. In our view, any evidence cannot be

disbelieved on the ground that he is having criminal antecedents. However, his version should be appreciated with caution and should be scrutinized very closely.

20. On close scrutiny of the evidence, we have no doubt that Basant Kumar Rathore (PW/12) accompanied the deceased upto the place of incident and just after the incident he informed about the incident to Mahavir Prasad Rathore (PW/11) and upon his information other witnesses also reached to the spot and found dead body of the deceased. The matter was reported to Police Station after 2 hours and 30 minutes and the place of incident is at a distance of 15 kms from the Police Station. Looking to the distance of Police Station and timing of recording of first information report, the story put-forth by the eye-witness cannot be doubted.

21. We are always slow in reversing the order of acquittal, particularly in cases where the other view is possible or plausible. We are fully conscious of bounden obligation and duty that we are dealing with the appeal against acquittal. In the instant case, on proper analysis of oral, documentary and medical evidence and in view of the law laid down by Honorable the Apex court in the aforesaid case laws, no other view is possible and the view taken by the trial Court is perverse and unsustainable in law.

22. Considering all the facts and circumstances of the case, we are of the considered opinion that the case law cited by the defence side is distinguishable from the facts and circumstances of the present case.
23. Consequently, the appeal is allowed. The impugned judgment of the trial Court is set aside and all the three respondents namely Lachchhi Ram Patel, Ghanshyam Patel and Geeta Prasad Patel are convicted for committing murder of Rangilal Rathore under Section 302 read with Section 34 of the IPC, 1860 and each of them is sentenced to undergo RI for life and fine of Rs.500/-. The fine amount shall be recovered as per proviso to Section 421 of the Cr.P.C. The trial Court is directed to prepare supersession warrant and issue non-bailable warrant against the respondents No. 1 to 3 and after their arrest they be sent to jail for serving out the remaining part of the jail sentence. The trial Court shall submit the progress of the compliance by 30th May 2018.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)

Raju