

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 110 of 2012**

- Yogeshwar S/o Late Sumant Chaubey, aged 38 years, R/o village - Pali, P.S. Hirri, District Bilaspur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : The District Magistrate, Bilaspur (C.G.).

---- Respondent**And****CRA No. 133 of 2012**

- Shatruhan Sharma S/o Ramratan Sharma, aged about 30 years, R/o village Pali, P.S. Hirri, District Bilaspur (C.G.)

---- Appellant**Vs**

- State of Chhattisgarh Through - P.S. Hirri, District Bilaspur (C.G.)

---- Respondent

For Appellant in CRA No.110/2012 :	Shri J.K. Shastri, Advocate.
For Appellant in CRA No.133/2012 :	Shri S.K. Mishra, Advocate.
For Respondent/State :	Shri Vaibhav Goverdhan, P.L.

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

Judgment On Board**Pritinker Diwaker, J****11/04/2018**

As these two appeals arise out of the common judgment dated 20.12.2011 passed by III Additional Sessions Judge,

Bilaspur (C.G.), in S.T. No.162/2010 convicting the accused/appellants under Section 302/34 IPC and sentencing them to undergo rigorous imprisonment for life with fine of Rs.100/- each, plus default stipulation, they are being disposed of by this common judgment.

02. In the present case, name of the deceased is Makhanlal Chaturvedi. It is alleged that on account of political rivalry, on 21.06.2010 at about 8.00 AM, when deceased Makhanlal Chaturvedi had gone to village pond to take bath, the accused/appellants reached there carrying sword in gunny bag, and caused number of sword injuries to the deceased which resulted in his instantaneous death. The incident was witnessed by Ashok Shukla (PW/10) and Gaurav Chaturvedi (PW/11), son of the deceased. On the same day at 9.30 AM, FIR (Ex.P/15) was lodged by Gaurav (PW/11) against the accused/appellants under Section 302/34 IPC. Soon thereafter at 9.35 AM, merg intimation (Ex.P/14) was also recorded at the instance of Gaurav (PW/11). Inquest on the body of deceased was conducted on 21.06.2010 vide Ex.P/4 and dead body was sent for postmortem examination to Community Health Center, Belha which was conducted by Dr. Devesh Pradhan (PW/1), who gave his report Ex.P/2 noticing following injuries:-

- (i) Multiple cut injuries over neck region from chin to supra sternal notch and deep up to cervical spine. All structure in the neck region were destroyed due to multiple cut injuries.

- (ii) Incised wound in the size of 3" x 1 cm & 2.5" x 1 cm on right shoulder.
- (iii) Incised wound in the size of 8" x 8" x 1" on right side of chest.
- (iv) Incised wound in the size of 9"x3"x2" over right hypochondrium.
- (v) Incised wound in the size of 5.5" x 3" x 2" over left side of chest.
- (vi) Incised wound in the size of 4" x 3.5" over left shoulder.
- (vii) Left side wrist joint was cut and only skin was present.
- (viii) Left side palm was cut in the size of 4".
- (ix) Incised wound of 2 x 2" over left lateral side cutting of ulna bone.

The autopsy surgeon opined the cause of death of deceased to be hemorrhagic shock due to multiple incised cuts and death was homicidal in nature.

03. On 22.06.2010 memorandum of accused/appellant Shatruhan Sharma in Cr.A.No.133/2012 and Yogeshwar in Cr.A.No.110/2012 were recorded vide Ex.P/5 and P/6, based on which, swords were seized from their possession vide Ex.P/7 and P/8 respectively. Seized article were subjected to chemical examination and as per unexhibited FSL report, presence of blood on sword seized from the possession of accused/appellant Yogeshwar was confirmed. After filing of the charge sheet, the trial Court framed the charge against the accused/appellant under Section 302/34 IPC.

04. So as to hold the accused/appellants guilty, the prosecution examined as many as 14 witnesses. Statements

of the accused/appellants 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellants as mentioned in para 1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellants submits as under:-

- That the prosecution has examined only two interested witnesses, whereas normally in the morning hour near village pond, independent persons are also available.
- That there is inordinate delay in recording diary statement of Ashok Shukla (PW/10), which has been recorded on 08.07.2010 i.e. after 17 days of the incident.
- That there are material discrepancies in the statements of two prosecution witnesses. According to one, the deceased was assaulted when he was taking bath, whereas according to another he was assaulted when he was outside the pond.
- That as per postmortem report (Ex.P/2) [page No.80 of the paper book], it was conducted on 21.06.2010 at 1.30 AM which means that prior to the death of the deceased his postmortem report was already there.
- That as per the statement of autopsy surgeon (PW/1),

deceased died approximately six hours prior to postmortem report examination meaning thereby that the deceased must have died before 7.30 AM, whereas according to the prosecution, the incident occurred at 8.00 AM.

- That on the sword seized from the possession of accused/appellant Shatruhan in Cr.A.No.133/2012, no blood has been found.
- That witnesses to memorandum and seizure have not supported the prosecution case.
- That considering the doubt in the prosecution story, the accused/appellants are entitled to be acquitted.

07. On the other hand supporting the impugned judgment it has been argued by the State counsel as under:-

- That Ashok Shukla (PW/10) and Gaurav (PW/11), two eye-witnesses to the incident, remained firm in the Court.
- That minor contradiction in the statements of eye-witnesses are required to be ignored considering the fact that they are rustic villager.
- That in the postmortem report (Ex.P/2) at page 80 of the paper book, time '1.30 AM' appears to be mistaken entry because on the next page [81 of the paper book], it has been specifically mentioned as '1.30 PM'. He submits that no question was put to the Doctor in this respect and postmortem could not have been conducted prior to death

of the deceased.

- That as per FSL report, blood has been found on the sword seized from accused/appellant - Yogeshwar in Cr.A.No.110/2012.
- That though Navin (PW/3), witness to memorandum of the accused/appellants and seizure, has not supported the memorandum but has duly supported the seizure. Learned counsel submits that even otherwise this witness has admitted his signature on all the documents.
- That prompt FIR was lodged naming the accused/appellants to be the perpetrator of the crime and in the FIR, Gaurav (PW/11) has categorically stated that Ashok Shukla (PW/10) was along with him, who too had seen the incident.
- That immediately after the incident PW/11 called Kanhaiyalal Sharma (PW/5) who has stated that he saw the accused persons fleeing from the spot.
- That autopsy surgeon (PW/1) has given approximate time of the death of the deceased and few hours here and there will not make any difference.

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

09. Dr. Devesh Pradhan (PW/1) conducted postmortem examination on the body of deceased and gave his report (Ex.P/2) opining the cause of death to be hemorrhagic shock

due to multiple incised cuts and death was homicidal in nature. This witness, in para 11 of his cross-examination, has clearly stated that in the postmortem report by mistake he has mentioned time as '1.30 AM', instead of it is '1.30 PM'.

10. Ramnath Sharma (PW/2) is witness to inquest made under Ex.P/4.

11. Navin (PW/3) is witness to memorandum of the accused/appellants (Ex.P/5 & P/6) and seizure of sword made under Ex.P/7 and P/8. This witness, in respect of memorandum Ex.P/5 and P/6, has not supported the prosecution case but so far as seizure made under Ex.P/7 and P/8 are concerned, he has duly supported the prosecution case. It is relevant to note here that though in respect of memorandum (Ex.P/5 and P/6) he has not supported the prosecution case but has admitted his signature thereon.

12. Mahendra Jaiswal (PW/4) and Sanjay Shrivastava (PW/9) - Constable, assisted in the investigation.

13. Kanhaiyalal Jaiswal (PW/5) is younger brother of the deceased. He has stated that on the date of incident at about 8.00 AM, Gaurav (PW/11) came to him and informed about the attack on the deceased. On being asked as to where and who were beating the deceased, PW/11 stated that near Purenha pond accused/appellant Yogeshwar and Shatruhan were beating the deceased. Immediately thereafter, he along with other persons went towards the pond, saw the deceased lying on the

ground and that the accused/appellants were fleeing from the spot carrying sword in their hands.

14. Gyaneshwari Chaturvedi (PW/6) is wife of the deceased. She has stated that she received information about the incident over telephone. She has also stated that her husband had contested Sarpanch's election in which he defeated appellant Yogeshwar's brother and he was keeping grudge thereof.

15. Shitla Chaturvedi (PW/7) and Jitendra Chaturvedi (PW/8), sister and brother of the deceased respectively, reached the place of occurrence after the incident. Shitla Chaturvedi (PW/7) has stated that she was informed by Gaurav (PW/11) that the accused/appellants are assaulting his father Makhanlal, thereafter, she went towards the pond and saw the accused/appellants fleeing from the spot carrying sword in their hand.

16. Ashok Shukla (PW/10) - eye-witness to the incident, while supporting the prosecution case has stated that on the date of incident he was at village Pali and had gone to village pond along with Gaurav (PW/11) for bath. While deceased Makhanlal was about to climb bund after taking bath, accused/appellant Shatruhan in Cr.A.No.133/2012 first caused sword injury to him and at that time accused/appellant Yogeshwar in Cr.A.No.110/2012 was holding him from back. He has further stated that thereafter deceased Makhanlal tried to escape but he was chased by the accused persons carrying sword in their

hands and both the accused persons caused injuries by the sword. He has also stated that after hearing the cries of deceased, his son Gaurav (PW/11) also reached there, however, he too was chased as a result of which PW/11 went to village and narrated the incident to villagers. Thereafter, villagers also reached the place of occurrence and saw the accused persons fleeing from the spot. In lengthy cross-examination, but for minor variation this witness remained firm and intact.

17. Gaurav Chaturvedi (PW/11) is son of the deceased and eye-witness to the incident. He too has categorically stated that on the date of incident he had gone to village pond along with PW/10 and both of them saw the accused persons assaulting the deceased by sword. He has further stated that after seeing the assaults when he tried to intervene, he too was chased, therefore, he ran towards village and informed villagers about the incident who immediately reached the place of occurrence and saw the accused persons fleeing from the spot carrying sword in their hand. In lengthy cross-examination, this witness also remained firm and nothing could be elicited by the defence to discredit his testimony.

18. Ankit Sharma (PW/12), witness to memorandum of the accused/appellants (Ex.P/5 and P/6) & seizure of sword made under Ex.P/7 and P/8, has admitted his signature on all these documents.

19. Ram Prasad (PW/13) is formal witness.

20. Ajay Shankar Tripathi (PW/14) - Investigating Officer has duly supported the prosecution case.

21. Close scrutiny of the evidence makes it clear that on 21.06.2010 at 7.30 AM, on account of old land dispute and political rivalry, accused/appellants committed murder of the deceased by deadly weapon sword near the village pond. The incident was witnessed by Ashok Shukla (PW/10) and Gaurav Chaturvedi (PW/11)-son of the deceased. Both these witnesses have duly supported the prosecution case. 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 on the point that the accused/appellants have not killed the deceased. True it is that the conviction of accused persons cannot be recorded on the basis of evidence of relative and interested witness unless being corroborated by the substantive piece of evidence.

22. 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. Further,

¹ (2008) 16 SCC 65

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 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.

23. Here in this case, PW/11 is the son of deceased and his evidence is well corroborated by the evidence of PW/10, who was present at the time of incident, PW/5 - younger brother, PW/7- sister of the deceased, who after being informed by PW/11, reached the place of occurrence and saw the accused

² AIR 2018 SC 1372

³ AIR 2018 SC 1635

persons fleeing from the spot carrying sword in their hand, promptly lodge FIR (Ex.P/15) naming the accused/appellants to be the perpetrator of crime and medical report (Ex.P/2). Thus, we have no reason to disbelieve the statement of this (PW/11) witness.

24. Though there is delay of about 17 days in recording diary statement of PW/10 but it is not a case where PW/10 has been planted by the prosecution. From the mere intimation (Ex.P/14) and FIR (Ex.P/15), which has been lodged within one and half hours of the incident, name of PW/10 is there and most importantly no relevant question has been put to Investigating Officer regarding delay in recording 161 Cr.P.C. statement of PW/10. Even otherwise, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question. Most importantly, when soon after the occurrence the FIR is lodged at the police station, false story being cooked-up and/or false implication of accused stands ruled out.

25. Learned counsel for the appellant has pointed out that two different stories are there. In one story, the deceased was assaulted while he was taking bath and in second story the deceased was assaulted when he was outside of pond. Careful reading of evidence of PW/10 and PW/11 goes to show that when the deceased was about to climb bund of the pond he

was assaulted by the deceased and thereafter he was dragged into pond and again assault was made. Only simple inference can be drawn that the deceased was first assaulted when he was climbing bund of pond and while assault was being made he was dragged in to pond.

26. We find no substance in the argument of counsel for the appellants that there is discrepancy in mentioning the time of conduction of postmortem examination. True it is that in one page the time of postmortem examination has been mentioned as '1.30 AM' whereas in the next page it is '1.30 PM'. Contents of inquest (Ex.P/4), merg (Ex.P/14) and FIR (Ex.P/15) demonstrate the date of incident as 21.06.2010 at 8.00 AM and Autopsy Surgeon (PW/1), in para 11 of his cross-examination, has categorically stated that by mistake he has written the time of postmortem as '1.30 AM' rectifying the same in the next page as '1.30 PM'. Thus, this discrepancy as pointed out by counsel for the appellants is nothing but a *lapsus-calami*. We further find no substance in the argument of counsel for the appellant that as per postmortem report, death of the deceased occurred about 6 hours prior to the postmortem examination and, therefore, the incident must have been occurred before 7.30 AM. In this regard, the opinion given by the Doctor is "approximately" and not "exactly". Even otherwise no exact time can be given by the autopsy surgeon regarding time of death of the deceased.

27. That apart, memorandum of accused/appellants Shatruhan and Yogeshwar were recorded vide Ex.P/5 and Ex.P/6, based on which two swords were seized under Ex.P/7 and Ex.P/7 respectively, and as per unexhibited FSL report, blood was found on the sword seized from appellant Yogeshwar in Cr.A.No.110/2012 but there is no explanation on the part of accused/appellants as to how the said weapon contained blood. The questions in this regard were put to the accused/appellants during their statements under Section 313 Cr.P.C., but except vague denial, they said nothing more.

28. We find no substance in the argument of learned counsel for the appellants that no blood has been found on the sword seized from appellant Shatruhan in Cr.A.No.133/2012 and witnesses to seizure have not supported the prosecution case. As per the evidence of PW/3 and PW/5, though turned hostile, have admitted their signatures on memorandum of the accused/appellants (Ex.P/5 and P/6) and consequent seizure of sword made under Ex.P/7 and P/8. As per FSL report, blood was found on the sword seized from the possession of accused/appellant Yogeshwar, however, there is no serological report confirming the origin of it. In the case of conviction based on testimony of eye-witness, this could be an additional link to point towards the guilt of the accused.

29. Taking the cumulative effect of the evidence adduced on behalf of prosecution, we are of the view that appellants have

rightly been convicted by the Court below.

30. Thus, considering the evidence collected by the prosecution, this Court is of the opinion that the trial Court while convicting and sentencing the appellants has not committed any error of law. Consequently, the appeals preferred by the appellants are bereft of any substance, the same are liable to be and are hereby dismissed. Appellants are reported to be in jail and therefore no further order regarding their arrest etc. is required.

31. Appeals are thus dismissed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Sanjay Agrawal)
JUDGE