

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 823 of 2012

(Arising out of judgment/order dated 23.2.2012 in Case No.241/09 of the learned Sessions Judge, Raipur)

- Sanat Kumar Satanami S/o Mayaram Satanami, aged about 36 years, R/o Village Kesada, P.S. Simga, Distt. Raipur New Distt. Baloda Bazar C.G.

---- Appellant

Versus

- State Of Chhattisgarh S/o Through - Simga, Distt. Raipur (New Distt. Baloda Bazar) C.G.

---- Respondent

For Appellant	:	Dr. Kumaresh Tiwari, Advocate
For Respondent	:	Mr. Vaibhav Goverdhan, Panel Lawyer.

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

Judgement

P. Diwaker, J

02/01/2018

1. This criminal appeal is filed against the judgment of conviction and order of sentence dated 23.2.2012 passed by the learned Sessions Judge, Raipur in S.T. No.241/2009 whereby the trial Judge has convicted the appellant under Sections 302, 302, 323, 326 & 326 of the Indian Penal Code (for short 'the IPC') and sentenced him to undergo RI for life with fine of Rs.1000/-; RI for life with fine of Rs.1000/-; RI for 1 year with fine of Rs.500/-; RI for 5 years with fine of Rs.500/- & RI for 5 years with fine of Rs.500/-, plus default stipulations, respectively.
2. In the present case name of deceased are Aghandas & Shantibai, in-laws

of the accused.

3. As per prosecution case, deceased Aghan Das along with his wife and three children was residing in a servant quarter situated in the agricultural field. Munni (PW-2), daughter of Aghan Das, was married to the accused/appellant about two months prior to the incident and after some time of the marriage, the accused/appellant started residing with both the deceased. As the accused/appellant was unemployed and not doing any work, deceased Aghan Das used to ask him to do some work and earn livelihood, which was not liked by the accused and therefore in the night intervening 19th & 20th August, 1995 he committed murder of his in-laws i.e. Aghan Das & Shantibai, by causing several pickaxe injuries to them. Seeing the assaults on the parents, Mohardas (PW-1), Munnibai (PW-2), Mohandas (PW-3), who were sleeping in the house, objected whereupon they were also assaulted by accused/appellant with pickaxe as a result of which they also suffered injuries. Dehati Nalishi (Ex.P-1) was recorded on 20.8.1995 at 7.30 a.m. at the instance of Mohardas (PW-1). Immediately thereafter Dehati Merg (Ex.P-16 & Ex.P-7) were recorded. At the instance of PW-1, FIR (Ex.P-11) was registered against the accused/appellant under Sections 302, 307 of IPC. Inquest over dead body of both the deceased was conducted vide Ex.P-4 & Ex.P-5. On receipt of requisition from the police, Dr. D.C. Jain conducted autopsy over dead body of both the deceased and issued post-mortem report of Ex.P-21 & Ex.P-22 respectively. He noticed following injuries on the body of deceased Aghandas;-

- Incised wound of 2"x ½"x2" at the middle forehead near hairline, brain prolapsing out.
- Incised wound of 1" x½" x 1" at left forehead 2" lateral to Injury No.1.

- Incised wound of ½"x½"x½" over right temple in front of ear.
- incised wound of ½"x½"x½" over right temple 1" anterior to Injury No.1.

Following injuries were noticed on the body of deceased Shantibai:-

- Incised wound of 2"x ½"x 1½" over middle forehead, brain prolapsing out.
- Incised wound of 2"x ½"x 2" over cubital fossa, both bones & muscles cut.

He opined that cause of death of both the deceased was coma due to brain injury and mode of death was homicidal in nature. On 20.8.1995 Mohardas (PW-1) & Munnibai (PW-2) were medically examined vide Ex.P- 23 by Dr. Ram Pandey and he noticed following injuries:-

Mohardas (PW-1):-

- Lacerated wound at right eyelid of 2x ½ cm in size.
- lacerated wound over right side of face of 1x ½cm in size.
- Abrasion sign in left hand of 6x4cm in size.

Munnibai (PW-2):-

- Lacerated wound at the right side of skull over parietal region of 6x½ cm in size.

Likewise, injured Mohan (PW-3) was medically examined by Dr. Sarita Dubey (PW-10) and she noticed one lacerated wound at the right side of skull of 4x1cm in size, muscle deep.

4. On completion of investigation, charge sheet under Sections 302 (02 counts) & 307 of the IPC was filed against the accused/appellant and accordingly the charges were framed by the trial Court against him. The prosecution in order to bring home the charges levelled against the accused/appellant had examined 14 witnesses in all. Statement of

appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded innocence & false implication.

5. On consideration of oral and documentary evidence, the trial Court by the impugned judgment, convicted and sentenced the present appellant in the manner as described above.
6. Counsel for accused/appellant submits that;
 - the prosecution has miserably failed to bring home the offence against the appellant as such there is no sufficient evidence ocular or circumstantial evidence to connect the appellant in the crime in question and he has been falsely implicated. He further submits that alleged injured eyewitnesses are close relatives of both the deceased and to implicate the present appellant in the offence they have wrongly supported the prosecution case. Therefore, judgment of conviction recorded and sentences awarded are liable to be set aside and appellant is entitled to be acquitted.
 - even if the entire prosecution case is taken as it is, the appellant cannot be held guilty under Section 302 of IPC because the injuries appear to have been caused by him when he was provoked by the both the deceased.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that the injured witnesses have duly supported the prosecution and there is no reason for this Court to disbelieve their testimonies.
8. Mohardas (PW-1) is the son of both the deceased and brother-in-law of accused/appellant. He has stated that on the date of incident he along with other family members was sleeping in the house. Upon hearing

some noise, he woke-up and saw that accused/appellant was assaulting his mother & father by pickaxe. On seeing him, the accused/appellant had also caused injuries to him by pickaxe as a result of which he became unconscious. He has further stated that after regaining consciousness, he saw that his sister Munni Bai and Mohandas were also lying in injured condition and the accused/appellant had fled from there on the bicycle of his father. In the cross-examination this witness remained firm and nothing could be elicited by the defence to its advantage.

9. Munnibai (PW-2), wife of accused/appellant and daughter of deceased, is the another injured witness. According to this witness, she was residing in the house of her parents (deceased) along with accused/appellant. On the fateful night she went asleep after taking food. In the midnight, upon hearing sound of assault, she got up and saw that the accused/appellant was assaulting her mother, father & brothers. When she tried to save them, accused/appellant had assaulted on her head by pickaxe as a result of which she became unconscious. Thereafter, the accused/appellant fled from there.
10. Mohandas (PW-3), son of deceased, is another injured eyewitness. He has also stated that on hearing noise of assault, he woke up and saw that accused/appellant was assaulting his mother-father. On seeing this, he started crying. His brother Mohardas also got up. After assaulting his brother, the accused/appellant had also assaulted on his head & leg by pickaxe as a result of which he became unconscious. In cross examination, this witness remained firm to what has been stated by him in the examination-in-chief.
11. Panchram (PW-4) is the witness of inquest (Ex.P-4 & Ex.P-5) and seizure memos (Ex.P-2 & Ex.P-6). Bhuvneshwar (PW-5) is the witness of seizure memo Ex.P-8.

12. Budharu Das (PW-6) is the village Kotwar. He is witness of memo Ex.P-7 and map Ex.P-9. Dr. Abdul Wasim (PW-7) is the person who treated Mohan (PW-3) and gave his report Ex.P-10.
13. Dr. Sarita Dubey (PW-10) is the doctor who medically examined injured Mohan and opined that injuries found on the person of Mohan appear to have been caused by hard and blunt object. Her report is Ex.P-10.
14. Rajendra Chandrakar (PW-11) is the Patwari who prepared the spot map of Ex.P-9.
15. U.K. Chandravanshi (PW-12) is the investigating officer who has duly supported the prosecution case.
16. Dr. Ullhaas Gonnade (PW-13), who at the relevant point of time was posted as Demonstrator in Dr. Bhimrao Ambedkar Medical Hospital, Raipur, has deposed that Dr. D.C. Jain, who prepared the post-mortem reports (Ex.P-21 & Ex.P-22), had expired. He identified his signature on the post-mortem reports. According to this witness, Dr. Jain conducted post-mortem over both the dead bodies on 20.8.1995 and gave his reports (Ex.P-21 & Ex.P-22).
17. Dr. Rajeev Pandey (PW-14) was posted as Medical Officer at Medical College, Raipur from 1985 to 2009. He deposed that Dr. Ram Pandey, who examined injured Mohardas (PW-1) & Munnibai (PW-2) and prepared the reports of Ex.P-23 & P-24, had expired. He identified the handwriting and signature of Dr. Ram Pandey.
18. Close scrutiny of the evidence makes it clear that in the night intervening 19th & 20th August, 1995 the accused/appellant had assaulted the deceased persons with pickaxe and injuries suffered by them led to their death. Incident was witnessed by Mohardas (PW-1), Munnibai (PW-2) & Mohandas (PW-3), who have categorically stated that it is the accused/appellant who firstly assaulted both the deceased and thereafter

caused injuries to them also by pickaxe. The presence of these witnesses on the spot cannot be doubted as they were the injured in the incident. Their evidence also finds corroboration from promptly lodged FIR (Ex.P-11) and statements of doctors (PW-10 & PW-14). Since nothing has been brought on record by the defence to controvert the stand of the prosecution, this Court does not find any reason to disbelieve statements of aforesaid witnesses who have described the incident in a lucid manner.

It is true that PW-1, PW-2 & PW-3 are the children of both the deceased but that by itself, without anything more, is not sufficient to doubt their testimony which receives corroboration from medical evidence. We are, therefore, of the opinion that unless there are sound grounds to reject their evidence it would not be proper to brush aside their evidence on the specious plea that they are interested witnesses. It is settled legal position that relationship *per se* does not affect credibility of witness; merely their being relatives of the victim of crime. Fortifying this position, it has been categorically held by the Hon'ble Apex Court in the matter of **Mohabbat and Ors.v. State of M.P.**¹ as under;-

“7. Merely because the eye-witnesses 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. We shall also deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.”

1 2009 AIR SCW 1486

19. In the result, the appeal of accused/appellant has no substance. The same is, therefore, liable to be dismissed and it is hereby dismissed. Since the accused/appellant is already in custody, no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge

roshan/-