

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 387 of 2015**

1. Anil Kumar, aged about 30 years, son of Shri Laxman Ekka, Occupation - Agriculturist.
2. Rajeshwar, aged about 30 years, son of Shri Dalveer Ekka, occupation - Agriculturist.

Both are resident of village - Cheedapara, Amapara, P.S. Seepatpur,
District Surguja (C.G.)

---- Appellants**Versus**

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

---- Respondent

For Appellants.	:	Shri Vivek Bhakta, Advocate.
For Respondent.	:	Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board**Per Pritinker Diwaker, J****14/08/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 29.01.2015 passed by the Sessions Judge, Surguja (Ambikapur), in S.T. No.38/2014 convicting accused/appellant - Anil Kumar (A-1) under Section 302 IPC and accused/appellant - Rajeshwar (A-2) under Section 302/34 & sentencing them to undergo imprisonment for life with fine of Rs.1,000/- with default stipulation.

02. As per the prosecution case, on 12.03.2014 the accused persons apprehended deceased Amit Ekka, young boy aged about 18 years, and made allegation against him about the commission of theft of paddy. The said fact was unequivocally denied by deceased Amit

Ekka saying that he is carrying his own paddy. Further case of the prosecution is that the accused/appellants broke glass bottle in the courtyard of the deceased which was not liked by him. The deceased followed them asking to clean up the place where glass was broken. In retaliation, the accused/appellants throttled the neck of the deceased and committed his murder. The incident was witnessed by Ankit Ekka (PW/2), brother and Tej Kumar Ekka (PW/3), neighbour of the deceased. Ankit Ekka (PW/2) with the help of one Deepak Ekka (not examined) brought the body of deceased to his house. Next day i.e. on 13.03.2014 at 9.30 AM, FIR (Ex.P/2) was lodged by Jahar Sai (PW/1), father of the deceased against the accused/appellants under Section 302/34 IPC followed by merger intimation (Ex.P/1). On the same day, 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. A.K. Jaiswal (PW/8) and gave his report (Ex.P/7-A) noticing following injuries:-

- (i) Rigor mortis developed on both upper and lower limbs, eyes were closed and mouth was semi opened.
- (ii) Abrasion mark was present on cubital fossa of both hands.
- (ii) Abrasion mark was present on neck.

Autopsy surgeon opined the cause of death to be asphyxia and death was homicidal in nature. The autopsy surgeon in his query report (Ex.P/14-A) further opined that the deceased died of throttling.

03. After filing of the charge sheet, the trial Judge has framed the charges against accused/appellants under Sections 302/34 IPC.

04. So as to hold the accused persons guilty, the prosecution examined as many as 08 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. In defence, Sibla Ram (DW/1) was also examined to substantiate its case.

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 the impugned judgment. Hence, this appeal.

06. Learned counsel for the appellants submits :

(i) That the accused/appellants had no intention to cause death of the deceased and even if the entire prosecution case is taken as it is, it appears that the accused/appellants were simply pushing the deceased and while doing so he unfortunately died. Learned counsel submits that even wind pipe of the deceased was found intact and no injury has been noticed on the other part of the body of deceased.

(ii) That two eye witnesses to the incident Ankit Ekka (PW/2) and Tej Kumari (PW/3), being interested witnesses, are not reliable and they have falsely implicated the accused/appellants in the crime in question.

(iii) That considering the aforesaid fact, at best the accused/appellants can be convicted under Section 304 Part-II IPC and not under Section 302/34 IPC.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that there was no assault or

aggression on the part of the deceased, he was unnecessarily apprehended, false allegation has been levelled against him and to create nuisance the accused/appellant broke the glass bottle in the courtyard of the deceased. Learned counsel further argued that the deceased legitimately asked the accused/appellants to clean up those broken pieces of glass but unfortunately, he has been killed by the accused/appellants by throttling. State counsel also argued that the case of the accused/appellants would not fall under any Exception to Section 300 IPC. It is cold blooded murder and, therefore, the conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same.

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

09. Ankit Ekka (PW/2) is a child witness aged 12 years. He is also brother of the deceased. The trial Court after satisfying itself that the child witness is able to answer the question put to him rationally, has examined him. He has stated that his brother was killed by the accused/appellant. On the fateful evening, when the deceased was going to village shop to sell paddy, the accused/appellants apprehended him opposite to his house and made allegation of theft of paddy against him. In reply, the deceased informed them that he is carrying his own paddy, and upon hearing the same the accused persons started abusing him, broke the glass bottle in his courtyard and when his brother asked them to clean it, they pressed his neck and killed him. He has further stated that when he tried to intervene the matter, he too was chased by the accused persons but he somehow managed to escape from the

clutches of the accused/appellants. In cross-examination, this witness remained firm and nothing could be elicited by the defence to discredit his testimony.

10. Tej Kumari (PW/3) is neighbour and distantly related to the deceased's family. While supporting the prosecution case she has stated that the accused/appellants apprehended the deceased, made allegation of theft against him and when it was replied by the deceased that he is carrying his own paddy, they broke the glass bottle in the courtyard. When they were asked to clean broken pieces of bottle, the accused/appellants pressed the neck of the deceased and killed him. She has further stated that immediately after the incident the deceased was offered water but he could not drink the same and expired. In cross-examination, this witness has also remained firm and nothing could be elicited by the defence to discredit her testimony.

11. Jahar Sai (PW/1) is father of the deceased who lodged the merg (Ex.P/1) and FIR (Ex.P/2).

12. Thakur Ekka (PW/4) is the witness to inquest made under Ex.P/5.

13. Vinod Khande (PW/5) - Assistant Sub Inspector, did major part of investigation.

14. Shivraj Ram (PW/6) is the Patwari who prepared spot map vide Ex.P/12.

15. R.C. Nishad (PW/7) is the Investigating Officer who has duly supported the prosecution case.

16. Dr. A.K. Jaiswal (PW/8) conducted postmortem examination on the body of deceased and gave his report (Ex.P/7-A) opining the cause of death to be asphyxia and death was homicidal in nature.

17. Sibala Ram (DW/1) has merely stated that Ankit Ekka (PW/2) and one Deepak (not examined) brought the deceased to his (PW/2) house and when he inquired about his condition, it was told by them that Amit had consumed liquor. He has further stated that on the next morning Amit has expired.

18. Close scrutiny of the evidence makes it clear that on 12.03.2014 the accused persons intercepted the deceased and made allegation against him about the commission of theft of paddy. The said fact was unequivocally denied by the deceased saying that he is carrying his own paddy. On this, the accused/appellants broke glass bottle in the courtyard of the deceased, thereafter, the deceased followed accused persons asking them to clean up the place. In retaliation, the accused/appellants throttled the neck of the deceased and committed his murder. The entire incident has been witnessed by Ankit Ekka (PW/2), brother and Tej Kumar Ekka (PW/3), neighbour of the deceased, 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. A.K. Jaiswal (PW/08), postmortem report (Ex.P/7-A) and query report (Ex.P/14-A) wherein abrasion marks were found on cubital fossa of both hands, on neck and Autopsy Surgeon opined the cause of death to be asphyxia, deceased died of throttling and death was homicidal in nature. The evidence of these witnesses is sufficient to infer that it is accused/appellants 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. As regards the evidence of DW/1, though he has stated that being asked PW/1 and one Deepak informed him that the deceased had consumed liquor, but no such evidence either in the statements of eye-witnesses and autopsy surgeon or in the postmortem report has come.

19. We find no substance in the argument of counsel for the appellant that eye-witnesses are the relatives and interested witnesses, their statements cannot be relied upon and the accused/appellants are liable to be convicted for lesser offence.

20. 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.

21. 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

1 (2008) 16 SCC 65

2 AIR 2018 SC 1372

3 AIR 2018 SC 1635

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.

22. In the case in hand, the evidence of eye-witnesses find corroboration from each other more particularly by the evidence of autopsy surgeon, postmortem report and query 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.

23. 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.

24. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellants are reported to be in jail and therefore no further order regarding their arrest etc. is required.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Gautam Chourdiya)
JUDGE