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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 827 of 2013**

- Vikram Nirmalkar S/o Shankar Lal Nirmalkar, aged about 30 years, R/o Changorbhata, Shriramnagar, P.S. D.D. Nagar, Civil and Revenue District, Raipur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Police Station D.D. Nagar, Civil and Revenue District Raipur (C.G.)

---- Respondent

For Appellant. : Shri Uttam Kumar Pandey, Advocate.
For Respondent/State.: Shri Anil Pilley, Dy. A.G.

D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava & Hon'ble Smt Justice Rajani Dubey

Judgment On Board**30.10.2018****Per Rajani Dubey, J**

01. This appeal is directed against the impugned judgment of conviction and order of sentence dated 29.06.2013 passed by learned VII Additional Sessions Judge, Raipur, District Raipur (C.G.), in S.T. No.28/2011 whereby and whereunder the appellant has been held guilty for commission of offence under Section 302 IPC and sentenced to undergo rigorous life imprisonment along with fine of Rs.1,000/- and in default of payment of fine, additional R.I. for six months.

02. The prosecution case is that on 09.10.2011 at 6.45,

deceased Mayaram along with Tejram Nishad (PW/6) and Kalanath Nishad (PW/2) were talking to each other near Tejram Nirmalkar's cart, at the relevant time, appellant Vikram Nirmalkar came out of his house carrying rod in his hand and assaulted Mayaram on his head due to which he became unconscious, fell down on the ground and blood started oozing from his head. Thereafter, the incident was informed to Geeta Bai (PW/7) and Nemichand (PW/5), wife and son of the deceased respectively, who immediately came to the place of occurrence and saw Mayaram in injured condition in pool of blood. Thereafter, the injured, with the help of Tejram Nishad and Kalanath, was taken to Medishine Hospital, Raipur where he was admitted. On the same date at 7.30 PM, FIR in Ex.P/8 was registered on the information given by Tejram Nishad (PW/6) wherein, it was alleged that the appellant because of enmity, assaulted the deceased. On 18.10.2011 the deceased succumbed to his injuries during the course of treatment in Medishine Hospital, Raipur. On 18.10.2011, inquest over the body of deceased was conducted and body was sent for postmortem examination to Ambedkar Hospital, Raipur, which was conducted by Dr. R.K. Patel (PW/14) and prepared report in Ex.P/16 noticing three stitched wounds on right and left fronto parietal region and on forehead. On incision of scalp, 300 ml partial clotted blood was found with multiple fracture of right parieto temporal bone and according to him, the cause of death was cardio respiratory failure due to head

injuries and its complication. The incident is said to have been witnessed by Seema Nirmalkar (PW/1), Kalanath Nishad (PW/2) and Tejram Nishad (PW/6). Upon conclusion of usual investigation, the prosecution filed charge sheet before the concerned jurisdictional Magistrate, who in turn, committed the case for trial to the Sessions Court. On the basis of material contained in the charge sheet, learned trial Court framed charge of murder against the appellant alleging that the appellant committed murder of Mayaram. On such allegation, the appellant was charge-sheeted for commission of offence under Section 302 of IPC. Appellant abjured guilt and was, therefore, put to trial. In order to prove its case, the prosecution examined as many as 16 witnesses. The appellant was also examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him in the evidence led by the prosecution. Appellant denied having committed the offence and pleaded innocence. One defence witness namely Sukhi Ram Kanwar (DW/1) was also examined to substantiate defence version. The learned trial Court, relying upon the prosecution evidence, held the appellant guilty of commission of offence and convicted as mentioned above in para 1 of this judgment.

03. Learned counsel for the appellant would submit that three eye witnesses to the incident, namely, Seema Nirmalkar (PW/1), Kalanath Nishad (PW/2) and Tejram Nishad (PW/6),

being interested witnesses, are not reliable and they have falsely implicated the appellant in the crime in question. It has been further submitted that there is omission in the diary statement of PW/2 and PW/6 that the appellant had assaulted the deceased from behind. It has been also submitted that the opinion of autopsy surgeon is not definite. It is next submitted that the trial Court has erred in disbelieving the statement of defence witness Sukhram Kanwar (DW/1) that rod was not brought by the appellant and he has not assaulted the deceased. Lastly, it has been submitted that the incident took place on 09.10.2011 and the deceased died on 18.10.2011 i.e. after 9 days of the incident and considering all the aforesaid facts, at the most, the appellant could only be convicted under Section 304 Part-II IPC and not under Section 302 IPC and the sentence may be reduced to the period already undergone by him. Learned counsel for the appellant also placed reliance on the decision in the case of **Arjunan & anr. V. State** reported in **(1993) CCR 3176** and **Yuvraj @ Guddu V. State of Chhattisgarh** reported in **2005 CG.Cr.J.257.**

04. On the other hand, learned counsel for the State, supporting the impugned judgment of conviction and order of sentence submits that conviction of the appellant is based on eye-witness account of Sima Nirmalkar (PW/1), Kalanth Nishad (PW/2) and Tejram Nishad (PW/6) who have categorically

stated that it is the appellant who assaulted the deceased by rod. He further submits that there is minor contradiction in the statements of these witnesses and not material and is required to be ignored. The evidence of these witnesses also finds corroboration from the evidence of Dr. R.K. Patel (PW/14) who prepared postmortem report in Ex.P/16, according to which, injuries on the vital part of the head of the deceased were noticed including fracture of right fronto parietal bone. He also submits that the appellant gave repeated assault on the vital part i.e. head of the deceased resulting in his death in hospital which shows his intention to eliminate him and considering the nature and extent of injuries sustained by the deceased, the case of the appellant would not fall under Exception 1 or 4 to Section 300 IPC.

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

06. The trial Court, relying upon the evidence of eye-witness Seema Nirmalkar (PW/1), Kalanath Nishad (PW/2), Tejram Nishad (PW/6) and evidence of autopsy surgeon Dr. R.K. Patel (PW/14), held the appellant guilty for commission of offence.

07. Seema Nirmalkar (PW/1), niece of deceased Mayaram, has stated in her examination-in-chief that on the date of incident at about 7.00 PM, when she was going to her house, she saw Tejram Nishad (PW/6), Mayaram (deceased) and Kalanath Nishad (PW/2) talking to each other. At the relevant

time, appellant came out of his house carrying rod in his hand and assaulted the deceased on his head. She has further stated that she along with Tejram and Kalanath saw the appellant assaulting his uncle Mayaram. In para 9 of her cross-examination, she has denied the suggestion that the appellant had warned Tejram, Mayaram and Kalanath not to consume liquor, play cards and make noise, the deceased had used filthy language and said that who are you to restrain us from doing so and that they would sit here, consume liquor and make noise. This witness has further denied the suggestion that the deceased and the appellant entered into a quarrel and Kalanath tried to assault the appellant by rod and to save himself from the assault of Kalanath he bent on due to which Mayaram sustained injury on his head.

08. Kalanath Nishad (PW/2) has also stated in examination-in-chief that he saw the appellant assaulting the deceased by rod. This witness has also denied the suggestions as has been denied by PW/1. In para 12 of his cross-examination, he has stated that he had disclosed this fact to police that the appellant assaulted the deceased from behind but if the same is not written in his statement Ex.D/2, he could not tell the reason.

09. Tejram Nishad (PW/6) is another eye witness to the incident who has made almost similar statement as has been made by Seema Nirmalkar (PW/1) and Kalanath Nishad

(PW/2).

10. Narendra (PW/4), son-in-law of the deceased, has proved memorandum of the appellant made under Ex.P/3, based on which, one rod was seized, vide Ex.P/4. This witness has admitted his signature on seizure memo.

11. Geeta Bai (PW/7) is wife of the deceased who has stated that she was informed by Tejram Nishad (PW/6) that the appellant has assaulted her husband by rod. When she reached the place of occurrence, she saw her husband lying there and blood was oozing from his head.

12. Dr. R.K. Patel (PW/14) conducted postmortem on the body of deceased and gave his report in Ex.P/16 noticing three stitched wounds on the head of the deceased including fracture of right fronto parietal bone. The Doctor has opined the cause of death of deceased to be cardio respiratory failure due to head injuries and its complication.

13. Close scrutiny of the evidence makes it clear that on 09.10.2011 when deceased Mayaram along with Tejram Nishad (PW/6) and Kalanath Nishad (PW/2) were talking to each other near Tejram Nirmalkar's cart, appellant Vikram Nirmalkar came out of his house carrying rod in his hand and assaulted Mayaram on his head atleast 3-4 times due to which Mayaram sustained number of injuries on his head, became unconscious and on 18.1.2011, he succumbed to his injuries in the hospital during the course of treatment. The entire

incident has been witnessed by Seema Nirmalkar (PW/1), Kalanath Nishar (PW/2) and Tejram Nishad (PW/6) who have categorically stated as to the manner in which the deceased was assaulted by the appellant. The version of these witnesses is well corroborated by the evidence of Dr. R.K. Patel (PW/14) and postmortem report (Ex.P/16) wherein three stitched wounds on right fronto parietal region, left fronto parietal temporal region and on forehead, including multiple fracture of right fronto parieto temporal bone were noticed and the cause of death was opined to be head injuries and its complication. Seema Nirmalkar (PW/1), Kalanath Nishar (PW/2) and Tejram Nishad (PW/6), but for minor contradiction, remained firm and the evidence of these witnesses is sufficient to prove complicity of the appellant in the commission of crime beyond reasonable doubt and we have no reason to disbelieve the statements of these witnesses. The defence cross-examined these witnesses at length but could not elicit anything in their cross-examination to discredit their testimonies especially on the point that the appellant assaulted the deceased.

14. In so far as the evidence of Sukhi Ram Kanwar (DW/1) is concerned, though he has stated that while he was going to market with his bhelpuri cart, he saw deceased Mayaram, Tejram (PW/6) and Kalanath (PW/2) consuming liquor and abusing each other, upon which, the appellant came there and

warned them not to do this and thereafter, they entered into a quarrel with the appellant, Kalanath (PW/2) went to his house and came with rod, tried to assault the appellant by rod and to save himself from the assault of Kalanath, he bent on due to which deceased Mayaram sustained injury on his head, the evidence of defence witness is suggestive to the fact that the deceased sustained single assault on his head whereas according to autopsy surgeon, the deceased sustained as many as three injuries on his head including multiple fracture of right fronto parietal bone. That apart, the eye-witnesses PW/1, PW/2 and PW/6 have denied this suggestion and on the memorandum of the appellant (Ex.P/3), the rod used in commission of offence is said to have been seized, vide Ex.P/4 and the witness to seizure memo Narendra (PW/4) has proved the memorandum and seizure admitting his signature thereon. Thus, the evidence of defence witness does not appear to be trustworthy.

15. 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 appellant is liable to be convicted for lesser offence.

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

¹ (2008) 16 SCC 65

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, 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.

16. In the case in hand, the evidence of eye-witnesses finds

² AIR 2018 SC 1372

³ AIR 2018 SC 1635

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 relative 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 on 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 deeper scrutiny.

17. In the given facts and circumstances of the case, we are not impressed with the submission of learned counsel for the appellant that the case of the appellant would fall under Exception 4 to Section 300 of IPC because it is clear from the evidence that the accused with premeditated mind came to the

spot armed with rod, as many as three injuries were caused to the deceased on vital part i.e. head including multiple fracture of right fronto parietal bone and according to postmortem report (Ex.P/16), the cause of death was cardio respiratory failure due to head injuries and its complication. Thus, it is clear that the appellant has acted in cruel manner and being so, it is apparent that he had not only intention to cause death of the deceased but also knowledge that injuries being inflicted by him are likely to result in the death of the deceased. Hence, under no circumstance, his case would fall within the ambit of Exception 4 to Section 300 IPC. The case laws relied upon by learned counsel for the appellant in the matter of **Arjun and Yuvraj (Supra)** are of no help to him being distinguishable on facts.

18. 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.

19. The appeal thus has no substance and it is liable to be dismissed and is hereby dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge