

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 254 of 2014**

1. Tiharu Jangde S/o Kheduram Jangde, aged about 39 years.
2. Surajbhanu @ Suraj Satnami, S/o Khedu, aged about 42 years.
3. Jethuram @ Chirpoti Satnami, S/o Kaleshwar, aged about 66 years.

All R/o village Telipali, Police Station Pusaur, District - Raigarh
(Chhattisgarh)

---- Appellants**Versus**

- State of Chhattisgarh Through – District Magistrate, Raigarh,
District Raigarh (C.G.)

---- Respondent**AND****CRA No. 255 of 2014**

1. Laxmin Jangde W/o Tiharu Jangde, aged about 34 years.
2. Budhiyari Jangde W/o Surajbhanu Jangde, aged about 39 years.
3. Dhaneshwari Jangde W/o Chandrabhanu Jangde, aged about 42 years.
4. Chandrabhanu Satnami @ Lulla S/o Kheduram Satnami, aged about 45 years.

All R/o village Telipali Police Station Pusaur, District Raigarh
(C.G.)

---- Appellants**Versus**

- State of Chhattisgarh Through – District Magistrate, Raigarh,
District Raigarh (C.G.)

---- Respondent

For Appellants	:	Shri Dheerendra Pandey, Advocate.
For Respondent/State	:	Shri Anil Pillai, Dy. A.G.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt Justice Rajani Dubey

Judgment On Board

By Pritinker Diwaker, J

28/08/2018

As these two appeals arise out of the common judgment dated 17.02.2014 passed by the Additional Sessions Judge (FTC), Raigarh, in S.T. No.25/2013 convicting the accused/appellants under Sections 147, 148 and 302/149 IPC and sentencing each of them to undergo R.I. for one year with fine of Rs.1,000/-, R.I. for two years with fine of Rs.2,000/- and imprisonment for life with fine of Rs. 5,000/-, plus default stipulation respectively, they are being disposed of by this common judgment.

02. As per the prosecution case, accused/appellants were in the trade of making and selling country made liquor and deceased Lalaram also used to consume liquor in their premises. It is said that few days prior to the incident, Krishna Kumar, brother of the deceased, while grazing cattle entered the field of the accused persons where they had kept 'Mahuwa' for making liquor. As some quantity of 'Mahuwa' was damaged by the cattle, the accused persons were annoyed with the brother of the deceased and his family members. Incidentally, Excise Department conducted raid at the premises of the accused persons resulting further annoyance to the accused persons and had suspicion that it is the deceased and his family members, at whose instance, the said raid was conducted by the Excise Department. The family

members of the deceased were threatened by accused/appellant Laxmin Jangde (in Cr.A.No.255/2014) that the accused persons or their family members would implicate them in a rape case. Further case of the prosecution is that family members of the deceased were apprehensive of any such case and scared. On 19.12.2012 at about 8.00 PM, deceased Lalaram went to the house of accused persons to consume liquor on credit basis. Accused/appellant Laxmin Jangde refused him to give liquor on credit, abused and asked him to go away from the premises. Deceased Lalaram also left the premises of accused persons abusing appellant Laxmin Jangde and went to Raigarh. Thereafter, all the accused persons armed with weapon reached the house of deceased, called him by name and started using filthy language. Sahodra Bai (PW/4), mother of the deceased, saw all the accused persons standing there. At about 11.00 PM, the deceased along with his friend returned from Raigarh and as soon as he got down from the auto rickshaw, the accused/appellants abused him and caused several injuries by club and axe. The deceased, with a view to save himself, ran away from the spot, however, he was caught hold near Durga Chowk and there he was beaten by the accused/appellants as a result of which he fell down on the road. Further case of the prosecution is that accused/appellant Suraj Bhanu (in Cr.A.No.254/2014) gave number of axe blows to the deceased resulting in his death. After the incident, at the instance of Sahodra Bai (PW/4), merg intimation (Ex.P/20) and FIR (Ex.P/19) were registered against the accused/appellants on 19.12.2012 at 10.00 PM under Sections 147, 148, 149 and 302 IPC. Inquest on the dead body was

conducted on 20.12.2012 vide Ex.P/15 and dead body was sent for postmortem examination which was conducted on the same day by Dr. G.K. Patel (PW/6) who gave his report (Ex.P/18) noticing following injuries:-

- (i) Lacerated wound of 6 x 1 cm over forehead.
- (ii) Lacerated wound of 4 x 2 cm over left temporal region with fracture of temporal bone and brain matter was coming from it.
- (iii) Abrasion of 2 x 0.5 cm over extensor aspect of palm.

The autopsy surgeon opined the cause of death of deceased to be cardio respiratory arrest and excessive hemorrhage due to head injury and death of deceased was homicidal in nature.

03. From the spot, bloodstained bitumen was seized vide Ex.P/23. One pick-axe and axe were seized from the possession of accused/appellant Tiharu and Suraj Bhanu in Cr.A.No.254/2014 vide Ex.P/24 and P/25 respectively. After filing of charge sheet, the trial Court framed the charges against the accused/appellants under Sections 147, 148 and 302/149 IPC.

04. So as to hold the accused persons guilty, the prosecution examined as many as 07 witnesses. Statements of the accused persons 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, these appeals.

06. Learned counsel for the appellants submits as under:

- (i) That statement of eye witness Sahodra Bai (PW/4), mother of the deceased, is not reliable being interested witness, there are material contradictions in her statement and the accused/appellants have been falsely implicated in the crime in question.
- (ii) It has come in the statement of PW/4 that the deceased was beaten by one Brij Bhanu, whereas no such Brij Bhanu has been arrayed as accused.
- (iii) That eye-witness (PW/4) has exaggerated her version and according to her, number of injuries have been caused to the deceased by the accused persons, whereas, as per the postmortem report, only two injuries were noticed on his body.
- (iv) That present appears to be a case where one or two accused might have caused some injuries to the deceased but there is no specific allegation against any of the accused persons.
- (v) That there is no evidence as to which of the accused caused which injury to the deceased and, thus, all the accused persons cannot be convicted.
- (vi) Even if the entire prosecution case is taken as it is, the offence under Section 302 IPC is not made out against accused persons as it appears that they wanted to teach lesson to the deceased and unfortunately while causing certain injuries to the deceased, he succumbed to his injuries. According to learned counsel, at best, they are liable to be convicted under Section 304 Part-II or Part-I IPC.

(vii) That accused/appellant Laxmin Jangde, Budhiyari Jangde and Dhaneshwari Jangde in Cr.A.No.255/2014 are ladies and they have been falsely implicated in the crime in question.

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

(i) That prompt FIR (within two hours of the incident) was lodged by PW/4 naming the accused/appellants to be the assailant. Likewise, in the merg intimation also, all the accused persons have been named by PW/4.

(ii) That once the accused/appellants have been convicted with the aid of Section 149 IPC, role of each appellant is not required to be explained by the witnesses especially when according to PW/4, all the accused persons were duly armed with weapon, they have participated in the incident and have caused injuries to the deceased.

(iii) That the prosecution is not required to prove as to which of the accused caused which injury to the deceased. Learned counsel also submits that in a case where maarpeet has been done by the accused persons, it would be very difficult for the eye-witness to give vivid description of each of the accused.

(iv) That enmity has been duly proved by the prosecution which ultimately turned out to be common object for unlawful assembly to commit the crime. Learned State counsel further submits that PW/4, in para 5, has mentioned the name of Brij Bhanu, but it appears to be a clerical or typographical mistake, and if the same is seen in the light of sequence, it is apparent that the allegation is against accused/appellant

Suraj Bhanu. He also submits that no such question has been put forth by the defence to clarify the mistake of PW/4 as mentioned in para 5 of her statement.

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

09. Sahodra Bai (PW/4), mother of the deceased and sole eye-witness to the incident, has duly supported the prosecution case. She has stated that she knew all the accused persons present in the Court, who were in the trade of making liquor. Before the incident, the accused persons made allegation against her son that while grazing cattle her son caused damage to their 'Mahuwa' and started abusing in the name of mother and sister, which was objected by her saying that she would compensate the same. Upon hearing her request, she was threatened by accused/appellant Tiharu in Cr.A.No.254/2014 and Laxmin in Cr.A.No.255/2014 that they will not accept the compensation and would eliminate her son. She has further stated that accused/appellant Tiharu and Laxmin also threatened her for implicating her son in a false rape case. She has also stated that accused/appellant Suraj Bhanu in Cr.A.No.254/2014 came to her house in search of deceased carrying axe in his hand, thereafter, they decided to lodge report in police station. She has also stated that at night the police had come to the house of accused persons for raid in connection with liquor and detained accused/appellant Tiharu resulting further annoyance to the appellants that some complaint must have been made by her or her family members. This witness has also stated that deceased Lalaram used to go to the house of accused persons for consuming liquor despite her

warning. She has further stated that on the date of incident also the deceased had gone to the house of accused persons where accused/appellant Laxmin refused to give him liquor on credit and that the deceased was ousted and abused, thereafter, the deceased went to Raigarh. The accused persons stayed in her house and as soon as the deceased came to her (this witness) house, all the accused persons assaulted the deceased by club. Accused/appellant Chandra Bhanu assaulted the deceased on his waist by club. Thereafter, deceased ran away towards Durga Chowk where accused/appellant Brij Bhanu also assaulted the deceased on his head, back side of head and temporal region. The accused persons, after making group, assaulted the deceased. This witness has clarified as to the manner in which her son was assaulted by the accused persons. This witness has also stated that on account of fear nobody could help her son and after the incident, she lodged the FIR. True it is that in paragraph 5 she has named one Brij Bhanu but the same appears to be a typographical error and if the sequence of event is seen, it appears that the deceased was assaulted by accused/appellant Suraj Bhanu. Furthermore, in cross-examination, no such question was put to this witness by the defence to clarify as to how the name of Brij Bhanu finds figure in paragraph 5 of the statement. That apart, in 161 Cr.P.C statement of PW/4, the allegations are against accused/appellant Suraj Bhanu and there is no mention of Brij Bhanu either in the FIR, diary statement of PW/4 or even in the merg. In lengthy cross-examination, but for minor contradiction, this witness remained firmed and has reiterated as to the manner in which her son was done to death by the accused persons.

10. Dr. G.K. Patel (PW/6) conducted postmortem examination on the body of deceased and gave his report (Ex.P/18) opining the cause of death to be cardio respiratory arrest due to head injury and excessive hemorrhage and nature of death was homicidal. This witness has stated that weapon of offence i.e axe and lathi were brought to him for examination, and as per query report (Ex.P/19), the injuries found on the body of the deceased could have been caused by the said weapons.

11. Chhotu Das Mahant (PW/1) and Brijesh Bharti (PW/2) turned hostile. Prem Das (PW/3), witness to seizure (Ex.P/4, P/5, P/6 and P/7), turned hostile but has admitted his signature thereon. B.R. Nag (PW/7) - Investigating Officer, has duly supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that there was previous enmity between the accused persons and the family members of the deceased. Mahuwa, which is being used for preparation of country made liquor, appears to have been damaged upto some extent by cattle of the brother of the deceased as a result of which the accused/appellants were annoyed with him and his family members. The accused/appellant have also threatened the deceased and his family members for dire consequences. On the fateful day also when the deceased had gone to the appellant's house demanding country made liquor on credit basis, the same was not only refused but the deceased was also abused and literally thrown out by the accused persons. Not being satisfied with this, the accused/appellants again went to his house, inquired about his whereabouts in abusive language and when they came to know that the deceased is not there, they waited for him and after his arrival, they caused number of injuries to him by axe

and club. When the deceased was running for his life, he was chased and assaulted by the accused persons resulting in his death. As per the evidence of Sahodra Bai (PW/4), all the accused persons were carrying weapon in their hands and their participation in all three incidents i.e. (i) abusing the deceased, (ii) going to his house and (iii) assaulting & chasing him, have been duly proved by PW/4. Furthermore, the accused persons had suspicion in their mind that the excise raid was made in their premises at the instance of the deceased and his family members. The incident took place on 19.12.2012 at 8.00 PM and within two hours FIR (Ex.P/19) was lodged by PW/4 naming and assigning the role of all the accused persons, thus, possibility of false implication of any of the accused becomes remote. In the FIR, role of individual has been assigned in detailed by PW/4 and likewise in her 161 Cr.P.C. statement. In the Court also, PW/4 has described the entire incident and even in the lengthy cross-examination, she remained firm. True it is that PW/4, in para 5, has named one Brij Bhanu as one of the assailant, but it appears that the same is nothing but a typographical mistake. If the sequence of event, FIR and 161 Cr.P.C. statement are seen, PW/4 has specifically alleged that it is accused/appellant Suraj Bhanu in Cr.A.No.254/2014 who repeatedly made assault. That apart, no question was put to this witness by the defence clarifying this aspect. According to postmortem report (Ex.P/18), two lacerated wounds on forehead and temporal region, one abrasion on extensor aspect of right palm and fracture of left temporal bone were noticed & cause of death was cardio respiratory arrest due to head injury and excessive hemorrhage and death was homicidal in nature. Considering the given

facts and circumstances of the case, in particular the un rebutted evidence of eye-witness PW/4, the complicity of accused/appellants in crime in question stand proved beyond reasonable doubt.

13. We find no force in the argument of counsel for the appellants that individual role has not been assigned by eye-witness PW/4 for the reason that the conviction of the accused/appellants is with the aid of Section 149 IPC and in order to attract this Section, it is not necessary to prove that each of the accused has assaulted the deceased and what is required is that they acted in furtherance of common object of the unlawful assembly. From the un rebutted evidence of PW/4 it stands proved beyond all reasonable doubt that the accused/appellants had a common object of assaulting the deceased and they acted in furtherance thereof.

14. We are also not in agreement with the argument of counsel for the appellants that eye-witness PW/4, being mother of the deceased, is interested witness and her statement cannot be relied upon for basing the conviction of the accused/appellants.

15. 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.

16. Further, the Supreme Court in the matter of **Sudhakar V. State**²

¹ (2008) 16 SCC 65

² AIR 2018 SC 1372

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.

17. In the case in hand, the evidence of eye-witness find corroboration by the evidence of autopsy surgeon PW/6, postmortem report (Ex.P/18) and query report (Ex.P/19). 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 inculpate an

3 AIR 2018 SC 1635

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/she 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.

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 appeals thus have no substance and are liable to be dismissed. Dismissal recorded accordingly. Appellant Budhiyari Jangde and Dhaneshwari Jangde in Cr.A.No.255/2014 are reported to be on bail. They be taken into custody forthwith. Rest of the appellants being already inside, no order in respect of arrest etc. of the accused is required.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Rajani Dubey)
Judge