

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 516 of 2019**

- Raban @ Ruban Sai Manjwar, S/o Loya @ Dilsai Manjwar, Aged About 45 Years, R/o Salka P. S. Kapu District Raigarh, Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh, Through The Station House Officer, Police Station Kapu, District Raigarh, Chhattisgarh

---- Respondent

For Appellant

Shri M. K. Jaiswal, Advocate

For Respondent

Shri Rajesh Singh, Dy. GA

Hon'ble Justice Mr. Prashant Kumar Mishra

Hon'ble Justice Smt. Rajani Dubey

Order On Board by Prashant Kumar Mishra J.

08/07/2019

1. The appeal is posted for hearing on IA No.2/2019, application for suspension of sentence and grant of bail. However, with the consent of learned counsel for the parties, we have heard the appeal on merits.
2. Challenge in this appeal is to the judgment of conviction and sentence rendered by the Trial Court in Sessions Trial No.4/2018 convicting the appellant for committing offence under Section 302 of IPC.

3. The incident happened at about 7 am on 23.12.2017 when the appellant entered the house of the deceased and inflicted repeated axe blows over his neck and head in the presence of witnesses PW-1 Dhaneshwari Bai and PW-3 Prakash Das. The FIR (Ex-P-2) was lodged by PW-2 Ajardas Mahant at about 10:15 am on the date of incident itself. Soon thereafter dead body inquest was conducted vide Ex-P-3 and the dead body was sent for postmortem, which was conducted by PW-7 Dr. Sarju Prasad Rathiya, who submitted his report (Ex-P-10) opining that the death has occurred due to hypo volumic shock (blood loss) with injury to trachea, esophagus, major blood vessels of neck and spinal cord due to violent blow by heavy and hard sharp edged object (e.g. axe). Memorandum statement of appellant was recorded vide Ex-P-8 on 27.12.2017, consequent to which the axe was recovered from the agricultural field vide Ex-P-9.
4. In course of trial, the prosecution examined as many as 11 witnesses namely, PW-1 Dhaneshwari Bai, PW-2 Ajardas, PW-3 Prakash Das, PW-4 Basant Kumar, PW-5 Shivlal Gupta, PW-6 Jaynandanram, PW-7 Dr. Sarju Prasad Rathiya, PW-8 Rajkumar Rathiya, PW-9 Kuldeep Minj, PW-10 J. Lakra and PW-11 Krishna Chand Bharti. The Trial Court has convicted the appellant mainly on the basis of statement of eye witnesses.
5. It is argued that the eye witnesses are close relatives, therefore, their statement is not trustworthy. It is further put forth that there being no independent witness to support the prosecution case, the appellant deserves to be acquitted.

6. Learned State counsel would support the impugned conviction.
7. It is now a well settled proposition of law that statement of a relative of the deceased need not be thrown out of consideration nor it can be disbelieved only for the reason that the witness is related to the deceased. A relative is as good a witness like any other witness if his/her statement is found trustworthy and believable having found due corroboration.
8. The testimony of an eyewitness, if found truthful, cannot be discarded merely because the eyewitness was a relative of the deceased. Where the witness is wholly unreliable, the Court may discard the statement of such witness, but where the witness is wholly reliable or neither wholly reliable nor wholly unreliable (if his statement is fully corroborated and supported by other ocular and documentary evidence), the Court may base its judgment on the statement of such witness. Of course, in the latter category of witnesses, the Court has to be more cautious and see if the statement of the witness is corroborated. **Kuriya and another Vs. State of Rajasthan¹, Sunil Kumar Vs. State (Govt. of NCT of Delhi)², Brathi Vs. State of Punjab³, Alagupandi Vs. State of T.N.⁴**
9. In **Gali Venkataiah Vs. State of Andhra Pradesh⁵**, it has been held that relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal

1 (2012) 10 SCC 433

2 (2003) 11 SCC 367

3 (1991) 1 SCC 519

4 (2012) 10 SCC 451

5 AIR 2008 SC 462

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 analyse evidence to find out whether it is cogent and credible.

10. PW-1 Dhaneshwari Bai and PW-3 Prakash Das are the widow and nephew, respectively of the deceased Nohar Das Mahant. Their presence in the house at about 7 am in the morning is very natural, therefore, both of them cannot be treated to be chance witnesses. Statement of PW-1 Dhaneshwari Bai clearly implicates the appellant as the person who entered her house in the morning of the date of incident and gave repeated axe blows on the person of the deceased without any provocation or altercation. Similar is the statement of PW-3 Prakash Das. The appellant straightway started assaulting the deceased soon after entering his house, therefore, the appellant appears to have entered the house in a pre-meditated state of mind. There is evidence in the statement of PW-1 Dhaneshwari Bai that her deceased husband was handicapped person and used to move on a cycle designed for a handicapped person. She also says that there was monetary transaction between her husband and the accused at the time of demonetization. The defence has not been able to elicit any such statement during the cross examination of both these witnesses, which would dent or discredit their version in their examination-in-chief. The other witnesses examined by the prosecution are witnesses to the dead body inquest, memorandum, seizure etc. and all of them

have supported the prosecution. PW-7 Dr. Sarju Prasad Rathiya, who has conducted the postmortem, has proved the injuries sustained by the deceased, which were all incised wound over different parts of the neck and head. Because of the injuries, the esophagus, trachea and cervical vertebrae were cut causing loss of blood and consequent death of the deceased, which was homicidal in nature.

11. Having scrutinized the evidence, we are satisfied that the judgment rendered by the Trial Court convicting the appellant on the basis of eye witness account rendered by PW-1 Dhaneshwari Bai and PW-3 Prakash Das does not appear to be perverse or illegal.
12. There is no substance in this appeal. It deserves to be and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Rajani Dubey
Judge