

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1006 of 2008**

- Damru Singh, S/o. Hajari Singh Gond, aged about 30 years, Residence at village Baniyadand, P.S. - Marvahi, Distt. - Bilaspur (C.G.).

---- Appellant**Versus**

- The State of Chhattisgarh, Through Police Station – Marvahi, Distt. - Bilaspur (C.G.).

---- Respondent

For Appellant : Mr. Anand Kumar Gupta, Advocate
For Respondent/State : Mr. Anand Verma, Dy. Govt. Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment****19/06/2020**

- (1) The matter is heard through Video Conferencing.
- (2) When the matter is called out for hearing, none is present on behalf of the appellant/accused to prosecute the appeal. In the facts and circumstances of the case, in particular the long pendency of the appeal, this Court has no other option but to appoint the Advocate from the panel of High Court Legal Service Committee to represent the appellant/accused.
- (3) On being asked, Mr. Anand Kumar Gupta, Advocate who is one of the empanelled lawyers of High Court Legal Service Committee, is

ready and willing to argue the matter. Therefore, in the interest of justice, Mr. Anand Kumar Gupta, Advocate is appointed as counsel to represent the appellant.

(4) Registry is directed to inform the High Court Legal Services Committee in this regard for compliance and needful.

(5) This appeal arises out of the judgment of conviction and order of sentence dated 01.10.2008 passed by Additional Sessions Judge, Pendra Road, Bilaspur (C.G.) in Sessions Trial No. 23/2008, convicting the accused/appellant for the offence punishable under Section 304 (Part-1) of Indian Penal Code (henceforth "IPC") and sentencing him to undergo rigorous imprisonment for 8 years with fine of Rs. 1,000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year.

(6) Case of the prosecution, in brief, is that, on the fateful day i.e. on 02.02.2008, the present appellant/accused along with Johan (since deceased) was sitting in the *Jhala* at Baniyadand of village Larkeni, at that point of time, some quarrel took place between the appellant and the Johan, as a result thereof, the appellant/accused assaulted him by means of Axe (*Tangiya*) on his head and other parts of the body. The entire incident was witnessed by complainant - Smt. Itwariya Bai (PW1) & Subhardi Bai (PW-3), who are wife and mother of Johan (since deceased), respectively. Immediately after the incident, FIR Ex. P/10 was lodged by Itwariya Bai (PW-1). Merg intimation (Ex. P/9) lodged by Chandrabhan Singh Gond (son-in-law of deceased – Johan). Johan was sent for medical examination. Dr. Krishna Kumar Dhruv conducted

MLC vide Ex. P/6, two incised wounds were found on the body of the Johan and on account of these grievous injuries sustained by Johan in the said incident, he referred to CIMS Bilaspur for further treatment but on the way to Bilaspur he died. Thereafter, the dead body was sent for postmortem which was conducted on 3.2.2008 by Dr. Sheela Saha (PW-9) vide Ex. P-7, who noticed following injuries :-

- (i) Incised wound on right temporofrontal region to right eye brow in sized of 5"x deep to bone.
- (ii) Bleeding present from right ear.
- (iii) Incised would in glabella to below left eye in the size of 6"x deep to bone.
- (iv) Blood mixed froth coming from nostril.
- (v) Eye closed, etc.

In her opinion cause of death was excessive haemorrhage due to the injuries caused by sharp object in head. Death was estimated to have occurred 14 to 16 hours earlier, homicidal in nature. Memorandum statement of the accused/appellant was also recorded Vide Ex. P/5. From the place of occurrence, plain and blood stained soil were seized vide seizure memo (Ex. P/4). Spot map Ex. P-1 was prepared by concerned Patwari. During investigation, one Axe was seized from the accused vide Ex.P-3. After recording case diary statement of the Itwariya Bai (PW-1), Subhadri Bai (PW-3) & Samelaiya Bai (PW-2). After usual investigation, charge-sheet under Sections 307 and 302 of the Indian Penal Code was filed against the accused appellant. After filing of chargesheet, the trial Judge framed charge against the accused/appellant under Section 302 of the Indian Penal Code.

Accused/appellant denied the charge framed against him and prayed for trial.

(7) So as to hold the accused/appellant guilty, the prosecution examined as many as 13 witnesses namely- Itwaria Bai (PW-1), Sameliya @ Chenaliya Bai (PW-2), Subhadri Bai (PW-3), Yashwant Singh (PW-4), Kuldeep Singh Dahiya (PW-5), Dalluram (PW-6), Dr. Krishna Kumar Dhruv (PW-7), Chandrabhan Gond (PW-8), Dr. Sheela Saha (PW-9), Shiv Prasad Tiwari (PW-10), Hari Prasad (PW-11), Sawan Singh (PW-12) and S.S. Raj (PW-13). Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implications. However, no defence witness was examined on behalf of the accused appellant.

(8) The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in paragraph 5 of this judgment.

(9) Learned counsel appearing for the accused/appellant submits that appellant has been falsely implicated in the crime in question and he has not committed any offence. He submits that no independent witness has been examined to prove the case of the prosecution and only on the basis of statement of the family members of the deceased, who are said to be the interested witnesses to the incident, learned trial Court, by its judgment has convicted & sentenced the accused/appellant as mentioned above. He further submits that there is no motive established by the prosecution in order to commit the

murder of the deceased by the accused/appellant and even no FSL report was proved by the prosecution to connect the appellant with the crime in question. He also submits that looking to the contradiction and omission in the statements of the prosecution witnesses and the material available on record, it reveals that the prosecution has utterly failed to prove its case beyond all reasonable doubt and, therefore, the appellant is entitled to be acquitted of the charge levelled against him by setting aside the judgment of conviction and order of sentence passed by the Sessions Court.

(10) On the other hand, learned counsel for the State while supporting the case of the prosecution submits that the Sessions Court is absolutely justified in convicting and sentencing the accused/appellant as mentioned above, which does not call for any interference.

(11) I have heard learned counsel appearing for the parties and perused the material available on record.

(12) Itwariya Bai (PW01) – wife of the deceased has stated in her deposition that on the date of incident i.e. the present appellant/accused along with Johan (since deceased) was sitting in the *Jhala* at Baniyadand of village Larkeni, at that point of time, some quarrel took place between the appellant and the Johan, as a result thereof, the appellant/accused assaulted him by means of Axe (*Tangiya*) on his head and other parts of the body. Immediately after the incident, FIR Ex. P/10 was lodged by her and her husband- Johan was sent for medical examination vide Ex. P/6 where two incised

wounds were found on the body of the Johan and on account of these grievous injuries sustained by him (Johan), he referred to CIMS Bilaspur for further treatment but on the way to Bilaspur he died.

(13) Subhaddri Bai (PW03) has also stated in her statement that on the date of incident, she was also present at the place of occurrence and she also reiterated the same fact that some quarrel took place between the appellant and the Johan, as a result thereof, the appellant/accused assaulted him by means of Axe (*Tangiya*) on his head and other parts of the body.

(14) In the instant case, there are two eye witnesses to the incident i.e. Itwaria Bai (PW-1) & Subhadri Bai (PW-3), who are wife and mother of the deceased – Johan. Itwariya Bai (PW-1) has lodged the FIR (Ex.P-10) promptly against the accused/appellant i.e. within three hours of the incident and entire incident was narrated by her to the police official while making FIR. Subhadri Bai (PW-3) has reiterated the same facts in her statement as narrated by Itwariya Bai (PW-1). The evidence of the above witnesses also find supports from the injury report of the deceased vide Ex. P/6, his Postmortem report vide Ex. P/7 which have been duly proved by the medical officer- Dr. Krishna Kumar Dhruv (PW07) as well as Inquest report Ex. P/11 proved by Dr. S. S. Raj (PW13). There is no reason to disbelieve the statement of the above witnesses. In the FIR, Itwariya Bai (PW-1) has specifically narrated the name of the accused and the weapon used by the appellant while committing the aforesaid offence.

(15) The prosecution witnesses namely- Yashwant Singh (PW04),

Chandrabhan Singh Gond (PW08) & Sawan Singh (PW12) have also supported the statements of eyewitnesses Itwariya Bai (PW01) & Subhaddri Bai (PW03) and they all have stated specifically the name of accused who assaulted the Johan (since deceased) and the weapon used by him.

(16) As regards the argument of the appellant that the evidence of the eyewitnesses being interested witnesses cannot be relied upon, it is well settled principle of law the evidence of an interested witness should not be equated with that of a tainted evidence or that of an approver so as to require corroboration as a matter of necessity. All that the Courts required as a rule of prudence, not as a rule of law, was that the evidence of such witness should be scrutinized with a little care. It has to be realized that related and interested witness would be the last persons to screen the real culprits and falsely substitute innocent ones in their places. Indeed there may be circumstances where only interested evidence may be available and no other, e.g. when an occurrence takes place at midnight in the house when the only witnesses who could see the occurrence may be the family members. In such case it would not be proper to insist that the evidence of the family members should be disbelieved merely because of their interestedness. But once such witness was scrutinized with a little care and the Court was satisfied that the evidence of the interested witness have a ring of truth such evidence could be relied upon even without corroboration.

Thus, the evidence cannot be disbelieved merely on the ground

that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (**See State of U. P. Vs. Jagdeo Singh, (2003) 1 SCC 456; Bhagalool Lodh & Anr. Vs. State of U. P., (2011) 13 SCC 206; Dahari & Ors. Vs. State of U. P., (2012) 10 SCC 256; Raju @ Balachandran & Ors. Vs. State of Tamil Nadu, (2012) 12 SCC 701; Gangabhaani Vs. Rayapati Venkat Reddy & Ors., (2013) 15 SCC 298; Jodhan Vs. State of M. P., (2015) 11 SCC 52**).

(17). Thus, looking to the entire evidence of the witnesses and injuries found on the body of the deceased, it reveals that the injuries caused to the deceased may be caused by the weapon seized on the basis of memorandum of the appellant and the seizure witnesses have supported the case of the prosecution. In the considered opinion of this Court, the trial Court is absolutely justified in convicting and sentencing the accused/appellant under Section 304 part-I of the IPC, which does not call for any interference in the instant appeal.

(18). Consequently, the appeal being devoid of merit is liable to be and is hereby dismissed. Vide letter dated 18.05.2018 received from Central Jail, Bilaspur, it is reported that the appellant completed his sentence awarded to him, therefore, there is no need to pass any order with regard to his surrender.

Sd/-

**(Gautam Chourdiya)
Judge**