

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 816 of 2015**

1. Andharu Chouhan S/o Mangal Ram Aged About 35 Years Caste- Chikuwa, R/o Kundeva (Ghoghrapara), Police Station- Udaypur, Chowki-Kedma, District- Surajpur, Chhattisgarh
2. Khijju @ Dayaram S/o Sonesar Aged About 40 Years Caste- Bargah, R/o Kundeva (Ghoghrapara), Police Station- Udaypur, Chowki- Kedma, District- Surajpur, Chhattisgarh

---- Appellants**Versus**

- The State Of Chhattisgarh Through Station House Officer, Police Station- Udaypur, Chowki- Kedma, District- Surajpur, Chhattisgarh

---- Respondent

For Appellant/s	:	Mr. D.N. Prajapati, Advocate.
For State	:	Mr. Lalit Jangde, Dy. G.A.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment On Board****Per Manindra Mohan Shrivastava, J.****05/07/2021**

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 22.05.2015 passed by the learned First Additional Sessions Judge, Ambikapur, District-Surguja, C.G. in Sessions Trial No.61 of 2011, by which, the appellants have been held guilty of commission of offence and sentenced as described below:-

Conviction	Sentence
Under Section 302/34 of IPC	Life imprisonment and fine amount of Rs.200/-, and in default of payment of fine amount, further R.I. for 2 months (to both appellants).

2. An incident of assault happened in village Kundeva on 18.05.2010 at

about 3 o'clock in the afternoon, in which, one Ramjan Bargah sustained injury and died. The wife of the deceased, Sampati Bai (PW-9) informed this fact at the spot at about 20:45 hours on the same day at Kundeva, which led to recording of spot morgue intimation. The information was also taken down by way of spot FIR in Ex.P-18 and thereafter morgue intimation and FIR in the records of the police station were also entered, in which, Sampati Bai (PW-9), the wife of the deceased reported that her husband was assaulted by the appellants, due to which, he died. The postmortem revealed homicidal death due to multiple assault on the head and other parts of the body and according to doctor, it appeared to be homicidal in nature. The appellants/accused were taken into custody and according to case of the prosecution, the weapon, namely club as well as a trident (trishul) was also seized, which were sent for postmortem report and trident was found stained with blood. After completion of detailed investigation, charge sheet was also filed. The appellants, on the basis of material contained in charge sheet were charged of having committed offence of murder of Ramjan Bargah which the appellants abjured and therefore put on trial. The prosecution, in order to prove its case, examined as many as 10 witnesses, thereafter, accused persons were examined under Section 313 Cr.P.C. in respect of the incriminating evidence and circumstances appearing in the evidence led by the prosecution. The appellants denied having committed offence. They stated that they are innocent. No defence witness was examined.

3. The learned trial Court relying upon the evidence of prosecution particularly the evidence of eyewitness Sampati Bai (PW-9) held the appellants guilty of commission of offence of murder of Ramjan Bargah.
4. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellants would argue that the prosecution has failed to prove its case beyond reasonable doubt. An argument raised is that as far as eyewitness Sampati Bai (PW-9) is concerned, firstly she is relative and therefore her evidence ought not to be relied upon without corroboration. It is next submitted that what has been elicited in the cross-examination shows that the entire genesis of dispute, as stated in the case diary statement, has not at all been stated by this witness in the Court's statement therefore, it smacks of false implication. He would further submit that even according to Sampati Bai (PW-9), at the time of

incident, her daughter Tulsi was also there but she has not been examined. This witness has also stated that the incident was witnessed by many other persons but no other independent witness has been examined. Next submission is that the evidence of the prosecution witnesses including Sampati Bai (PW-9) nowhere prove that there was any previous enmity or dispute between the appellants and the deceased. Thus, the prosecution story of the appellants suddenly assaulting the deceased without any motive further renders the case of the prosecution highly doubtful. Learned counsel for the appellants further argue that as far as witnesses of memorandum and seizure Kesho (PW-2) and Parasnath (PW-3) are concerned, they have not supported the prosecution story and their evidence renders doubtful, recovery of weapons on their disclosure statement because the weapons were found lying at the spot near the dead body. It is also submitted that the FSL report though proves blood on 'Trishul', the origin and group of blood has not been stated, therefore, the prosecution case becomes highly doubtful and the appellants ought to be acquitted by giving benefit of doubt. In support of the submission, learned counsel for the appellants relied upon number of judgments in the cases of **Hanuman Divedi and Others Vs. State of C.G., (2011) 4 CGLJ 170**, **Saraswati Vs. State of C.G., (2016) 1 CGLJ 527** and **Balwan Singh Vs. State of CG. and Another, (2019) 7 SCC 781**.

5. On the other hand, learned State Counsel submits that the conviction of the appellants is based on truthful and reliable statement of Sampati Bai (PW-9), the wife of the deceased, who had witnessed the incident of assault. It is further argued that nothing could be elicited in the cross-examination to discredit and render doubtful whatever has been stated by her in her examination-in-chief and merely because story of genesis of dispute as spelt out in the case diary statement was not stated by witness in the Court, does not render the prosecution story doubtful. It is next submitted that the evidence of Sampati Bai (PW-9) finds corroboration from the evidence of Amar Sai (PW-1) who clearly states regarding appellants having declared in his presence that they have committed murder which is the evidence of extra-judicial confession. Learned State Counsel would also submit that even if it is accepted that the weapons were found lying near the dead body, presence of blood coupled with the oral evidence of appellants holding club and the rod fully supports the entire case of the prosecution.

6. We have heard learned counsel for the parties and perused the records as also the impugned judgment.
7. Conviction of the appellants is founded mainly on the eyewitness account of Sampati Bai (PW-9), the wife of the deceased. This witness is a natural witness being the wife of the deceased and the place of the incident being in front of the house of the deceased. She has deposed in her evidence that on the date of incident, when she and her husband, the deceased, were taking rest after lunch, the appellants arrived at the spot in state of intoxication, Andharu went ahead but Khijju halted and assaulted her husband, due to which, her husband fell down and then he started assaulting with the help of club and at that time, Andharu also came in and he also assaulted her husband with the help of club. She further deposes that even though, she and her daughter requested the appellants not to assault, they were pushed aside and when she was trying to provide water to her husband, Khijju came with 'Trishul' and assaulted on the head of her husband and thereafter, he chased them also to assault. Thereafter, they ran away. Thereafter, she had gone to Kedma Chauki to report the matter. This witness, in the cross-examination, has admitted that there was no previous enmity of the appellants with her husband or her son. She has further deposed that day before the incident, about 40 to 50 persons were present there, but when scuffle started, all of them ran away though they had seen the incident.

The second part of cross-examination deals more with certain statements said to be recorded in the case diary statement of this witness which related to the genesis of the dispute but the witness said that she had not made any such statement to the police. The effect of the statement would be that the prosecution has not come out with any genesis of the dispute or the motive of assault by the appellants on the deceased.

8. The argument of learned counsel for the appellants that the evidence of this witness should be disbelieved is mainly founded on the submission that so-called eyewitness is wife of the deceased, other witnesses have not been examined and that the genesis of dispute has not been stated nor the motive has come out.
9. As far as first objection is concerned, it is well settled legal position that

merely because the witness happens to be relative of the deceased, the evidence does not become doubtful. Such witnesses are not interested witnesses but natural witnesses.

10. The evidence of such witnesses are required to be scrutinised with due care and caution. There is no rule of thumb also that where the prosecution case is founded on the evidence of relative, in all cases it is necessary to look for corroboration. The Courts may look for corroboration only when the evidence of relative does not inspire confidence and it is found to be unsafe to rely without any other corroborative evidence.
11. The evidence of Sampati Bai (PW-9), the wife of the deceased, is very natural because the incident happened not elsewhere but in the house of the deceased only where he resided with his wife. In the cross-examination, nothing has come out why Sampati Bai (PW-9) would falsely implicate the appellants. A suggestion has been given which has been denied that because of land dispute, witnesses are falsely implicating the appellants. As the suggestion was emphatically denied, in the absence of any evidence led by the defence side regarding existence of land dispute between the appellants and deceased, it cannot be said that this witness Sampati Bai (PW-9) had any motive to falsely implicate because of any land dispute.

True it is that in this case, no other eyewitness have been examined, not even the daughter of the witness Sampati Bai (PW-9), though Sampati Bai (PW-9) states that at the time of incident, her daughter Tulsi and many other persons were present who have seen the incident but ran away.

Certainly, if we would have found that the evidence of Sampati Bai (PW-9) was somewhere doubtful, as a matter of caution, this Court would have certainly looked for corroboration. But then, in the evidence of the witness, nothing has come out to disbelieve her evidence as natural witness of the incident. There is no reason which has come forth as to why Sampati Bai (PW-9) would falsely implicate the appellants and exonerate the real culprit who killed her husband.

12. Even though, no corroboration is required, the evidence of Amar Sai (PW-1) and Sampati Bai (PW-9) is corroborated from the extra-judicial

confession as stated by Amar Sai (PW-1). This witness is an independent witness. He has stated that on the date of incident at about 5:30, Andharu and Khijju, the appellants had come in the intoxicated condition and at that time they declared that they have committed murder near the banks of red river. This particular evidence of the witness has remained uncontroverted in his cross-examination. Nothing has come out in the cross-examination as to why he would falsely implicate the appellants. Therefore, in addition to eyewitness account, there is evidence of extra-judicial confession also.

13. After going through the evidence of Kesho (PW-2) and Parasnath (PW-3), who are the witnesses of memorandum and seizure, we find that though in their presence, the appellants disclosed regarding the weapons by which they had assaulted the deceased, it is also clear that the weapon was found lying near the dead body and it cannot be said that it was recovered from a place which was in exclusive possession of the appellants. But then, presence of blood as per the FSL report connects the weapon with the incident. The evidence on record is that weapons were found at the spot and it is not that the weapons were found at such a long distance or in some other village or house. Moreover, weapons are those which are stated to be used for giving assault on the deceased, as clearly stated by Sampati Bai (PW-9), the wife of the deceased, in her evidence. Not only this, the evidence of Dr. B.M. Kamre (PW-7) is also clear that when these weapons were brought for query before him, after having examined them, he opined that injury could be caused by these weapons.
14. The evidence of Dr. B.M. Kamre (PW-7) and contents of postmortem report, which have been proved shows that the deceased died because of the multiple injury which were caused by the weapon used by the appellant Khijju. Both the appellants repeatedly assaulted the deceased. Even after he fell down, he was assaulted. When the wife of the deceased Sampati Bai (PW-9) and her daughter tried to rescue, they were also pushed aside and the assault continued.
15. True it is, from the evidence of prosecution witnesses, no specific motive has come out but as is well settled legal position where the evidence of eyewitnesses is reliable, proof of motive is not necessary and absence of motive could not be made a basis to disbelieve otherwise reliable testimony of

eyewitness. The intention of the appellants to kill the deceased was manifest because of the repeated injury caused on the head of the deceased with the help of weapons like 'Trishul'. Learned counsel for the appellants has relied upon number of judgments. Reliance in the case of **Hanuman Divedi (supra)** is misplaced because that was not a case of eyewitness and there the Court found that even recoveries and report of FSL were not clear, the conviction could not be sustained. The other decision in the case of **Saraswati (supra)** is also not applicable because there, the eyewitness was disbelieved because of inherent improbability in her statement and omission from case diary statement. On facts, the Court came to the conclusion that her evidence did not inspire confidence and FSL report was not produced. This was the reason why the Court doubted the story of the prosecution. The judgment is, therefore, clearly distinguishable. The third judgment in the case of **Balwan Singh (supra)** is again a case of circumstantial evidence and there was no witness. While examining the circumstantial evidence, the Court found that the group and origin of the blood could not be proved and therefore, it rendered the case of the prosecution, founded only on circumstantial evidence, doubtful. Present is a case founded on evidence of an eyewitness. Present is a case where the prosecution rests on reliable testimony of eyewitness Sampati Bai (PW-9). In her statement, she has stated that assault was given by club and 'Trishul', which have been seized from the spot. The FSL report states presence of blood on 'Trishul'. Therefore, this evidence fully established the prosecution case by making evidence of Sampati Bai (PW-9) completely reliable.

16. In the result, we do not find any merit in the appeal and appeal therefore fails and hereby dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge