

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 124 of 2011

Chunna @ Dilip Sharma

-Vs-

The State of West Bengal

For the Appellant : Ms. Nahid Ahmed
(Amicus Curiae)

For the State : Mr. Avishek Sinha

Heard on : 27.02.2024, 30.04.2024

Judgment on : 15.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against a judgment and order dated 16.07.2010 passed by the Learned Judge, Special Court (E.C. Act)-cum-Additional Sessions Judge, Hooghly, in Sessions Case No.107 of 2004 corresponding to Sessions Trial No.18 of 2005 whereby the Learned Additional Sessions Judge was pleased to convict the appellant for the offence punishable under Section 341 and 304 Part-II of the Indian Penal Code and sentenced the appellant to suffer simple imprisonment for one month with a fine of Rs.100/-, in default, further simple imprisonment for 15 days for the offence under Section 341 of the Indian Penal Code and to suffer rigorous

imprisonment for 6 (six) years and to pay a fine of Rs.1,000/-, in default, further rigorous imprisonment for six months for the offence under Section 304 Part-II of the Indian Penal Code.

2. On 29.08.2002 a written complaint was lodged at Mogra Police Station, inter alia, stating that on 26.08.2002 in the evening at about 7:30 P.M., the elder brother of the complainant was returning to his house from market after purchasing meat. On the way the appellant and another accused namely Manoj Kumar Sharma wrongfully restrained the victim and assaulted him with bamboo stick and iron rod. On hearing the clamour, the complainant rushed to the place of occurrence but the miscreants fled and he found his elder brother with grievous injuries on his head with profuse bleeding from his nose and mouth. The complainant lifted his brother on a rickshaw and removed him to Mogra Hospital with the help of his tenants. Subsequently, he was refused admission at Chinsurah Sadar Hospital and at the precarious condition, he was referred to Kolkata for better treatment and he was admitted in Life Line Nursing Home, Kolkata and subsequently he succumbed to his injuries. It had also been alleged that the miscreants had snatched away the HMT watch and cash from his elder brother.
3. Based on the said complaint, Mogra P.S. Case No.101 of 2002 dated 29.08.2002 was registered under Section 341/325/326/307/379 of the Indian Penal Code against the appellant and another accused and after the death of the victim Anil Mahato, the penal provision under Section 304 of the Indian Penal Code was added.

4. On completion of investigation, charge-sheet bearing No.25 of 2003 dated 28.02.2003 was submitted against the appellant and Manoj Kumar Sharma under Sections 341/325/326/307/304 of the Indian Penal Code.
5. In course of the trial, the prosecution examined as many as 16 (sixteen) witnesses and exhibited certain documents.
6. Learned Amicus Curiae submitted as follows:-
 - i. The allegation made by the de facto complainant herein and/or PW-1, being the brother of the deceased herein, was false on the face of it and on perusal of the deposition of PW-1 along with comparative analysis of the written complaint, it would be evident that the instant written complaint was nothing but a mere anger upon the appellant arising out of mental agony of losing his brother and an instant repercussion of the same on the appellant and his brother. In the written complaint PW-1 stated upon hearing hue and cry of his deceased brother, he reached the place of occurrence but in his deposition PW-1 stated that he was with the deceased while the deceased was assaulted by the appellant and PW-1 was also assaulted by the appellant, contrary to the statement in the written complaint.
 - ii. In the deposition PW-1 stated that the dispute between the deceased and the appellant was because the appellant tried to snatch away meat from the deceased but in the written complaint, it was stated that there was previous animosity between the appellant and the deceased. In his deposition PW-1 claimed to be

an eye-witness which was contrary to the sequence of events stated in the written complaint.

- iii. The deposition of PW-7 was contrary to the events stated in the written complaint as in his deposition PW-7 said that the appellant tried to assault the complainant too but PW-7 refrained him from doing so.
- iv. In her cross-examination of PW-16, the Officer clearly stated that he did not seize the wearing apparels of the victim and that he did not find any blood stain at the place of occurrence whereas PW-5 the wife of the victim stated that there was blood at the place of occurrence when she visited.
- v. No inquest examination was done by the investigating agency which could ascertain the cause of death or the description of the wounds sustained by the deceased and to assess of how the injury marks seemed to have been inflicted and there was no reference of the U.D. Case was reflected from the prosecution papers.
- vi. Further the prosecution story could not even establish the mens rea and/or motive of any crime, alleged to have been committed by the appellant.
- vii. Only interested witnesses who were family members of the deceased or formal witnesses had been examined. There were contradictions in the evidence of the eye witnesses. The appeal deserves to be allowed.

7. Learned Advocate for the State submitted that the evidence of PW-1, PW-7 and PW-9 corroborated the prosecution case whereby it was deposed that the victim was assaulted by the appellant who subsequently fell down sustaining injuries through bamboo blows. The date, time and manner of the incident was vividly initiated through a quarrel culminating into an assault. The ocular evidence was aptly corroborated by the medical report of hospitalization and the evidence of PW-13. The prosecution was successful in establishing its case and the appeal shall be dismissed.
8. A circumspection of evidence of the prosecution witnesses revealed as follows:-
 - i. PW-1 had been the eye witness to the incident of assault by the appellant. The appellant witnessed to have inflicted bamboo blows on the head of the victim (since deceased) who eventually lost his consciousness and was admitted at Life Line Nursing Home at Calcutta.
 - ii. PW-13 corroborated the fact of hospitalization at the said nursing home. PW-13 further recounted the deceased Anil Mahato to have succumbed to head injury which might be the result of a hit by a bamboo causing his death. The death certificate was marked as Exhibit-5 and the admission sheet was marked as Exhibit-6.
 - iii. Prior to the admission of the victim at the Life Line Nursing Home, he was treated by a medical officer, i.e. PW-12 who detected the victim to suffer from head injury and nausea. The head injury was treated and owing to the severe condition, the victim was referred

to Imambara Sadar Hospital. The treatment sheet of the victim was marked as Exhibit-4. According to PW-12, the injury noticed on the person of the victim might have been caused by hit by a bamboo stick.

- iv. PW-15 had conducted the post mortem report at P.G. Hospital and identified his signature on the post mortem report marked as Exhibit-8/1. The post mortem report denoted the following injuries:-

- a) *"One bruise 2" x 1" over upper lid of left eye.*
- b) *One stitched up wound 1" in length with 4 stitches over left side of occipital region 2" left to external occipital protuberance, on removal of stitches it was scalp deep and lacerated in nature.*
- c) *One stitched up wound ½" in length with stitches over left parietal region just left side of midline end 5" above from left eyebrow, on removal of stitches it was scalp deep and lacerated in nature.*
- d) *One stitched up wound ½" in length with stitches over tragus of left ear, on removal of stitches it was muscle deep and lacerated in nature.*
- e) *One abrasion 4" x ½" over postero medial aspect of left forearm, 4" below from left elbow joint.*
- f) *One abrasion ½" x ½" over left scapular region of posterior chest wall, on dissection.*

- g) *One deep bruise 3" x 1" in the muscle just below the left clavicle.*
- h) *One scalp hematoma 10" x 8" over right and left parietal, right and left temporal, right and left side of occipital region.*
- i) *One depressed communitated fracture 3" x 2" x both tables over left temporal, left parietal and left side of occipital bones with a fissured fracture 2.5" in length involving both tables extending from exterior end of depressed communitated fracture across the left parietal and left side of frontal bones upto 1.5" behind to left frontal eminence with one fissured fracture 1.5" in length over left side of frontal bone branching out from fissured fracture at a point 1" in front of left limb of coronal suture involving both tables; another fissured fracture 7" in length over occipital and squamous part of right temporal bone 2" below from the right parietal eminence, placed transversely 1" below the external occipital protuberance involving both tables.*
- j) *Diffuse subdural haemorrhage over both cerebral hemisphere and underneath.*
- k) *One lacerated wound 1 x 1 x brain substance over temporal lobe of right cerebral hemisphere.*
- l) *One lacerated wound 2" x 1.5" x brain substance over frontal lobe of right cerebral hemisphere.*

m) One fissured fracture 4" in length over bones forming left side of middle cranial fossa.

All injuries showed evidence of vital reaction; all abrasions were scabbed and blackish red in colour; haematoma was yellowish red in colour. No other injuries except those described either revealed or concealed could be detected even after careful dissection and examination under a hand lens."

9. The nature of the injuries as noted above could not be the result of a person's fall on the ground if not battered mercilessly. The evidence of PW-2, PW-3, PW-4, PW-5, PW-6 and PW-8 is based on hearsay. PW-7 and PW-9 had witnessed the appellant to assault the victim and his subsequent hospitalization.
10. In the case of **Anwar Ali v. State of U.P.**¹, the following was held by the Hon'ble Supreme Court:-

"8. It is a settled principle of law that merely because the witness is a relative or friend of the deceased, it would not be a sufficient ground to discard his statement. Once the prosecution has been able to prove its case by leading admissible and cogent evidence with reference to statement of the witnesses, the investigation conducted by the police officer and documentary evidence, then the statements of the eyewitnesses which are corroborating the prosecution case cannot be brushed aside only because they are relatives of the deceased. These statements even otherwise are reliable and trustworthy. This is further supported by the medical evidence of Dr

¹(2011) 15 SCC 360

D.P. Mishra who had performed the post-mortem upon the body of the deceased, he noticed as many as 29 injuries upon the body of the deceased including injuries caused by knife, lacerated wounds, punctured wounds and it was clearly stated by the doctor that the death was caused due to shock and haemorrhage as a result of ante-mortem injuries caused upon the body of the deceased.”

11. The following was held by the Hon’ble Supreme Court in **Rajesh Yadav v.**

State of U.P² :-

“Related and interested witness

31. A related witness cannot be termed as an interested witness per se. One has to see the place of occurrence along with other circumstances. A related witness can also be a natural witness. If an offence is committed within the precincts of the deceased, the presence of his family members cannot be ruled out, as they assume the position of natural witnesses. When their evidence is clear, cogent and withstood the rigour of cross-examination, it becomes sterling, not requiring further corroboration. A related witness would become an interested witness, only when he is desirous of implicating the accused in rendering a conviction, on purpose.

32. When the court is convinced with the quality of the evidence produced, notwithstanding the classification as quoted above, it becomes the best evidence. Such testimony being natural, adding to the degree of probability, the court has to make reliance upon it in proving a fact. The aforesaid position of law has been well laid down in Bhaskarrao v. State of Maharashtra [Bhaskarrao v. State of Maharashtra, (2018) 6 SCC 591 : (2018) 3 SCC (Cri) 374] : (SCC pp. 603-604, paras 32-36)

“32. Coming back to the appreciation of the evidence at hand, at the outset, our attention is drawn to the fact that the witnesses were

²(2022) 12 SCC 200

interrelated, and this Court should be cautious in accepting their statements. It would be beneficial to recapitulate the law concerning the appreciation of evidence of related witness. In Dalip Singh v. State of Punjab [Dalip Singh v. State of Punjab, (1953) 2 SCC 36 : 1954 SCR 145 : AIR 1953 SC 364] , Vivian Bose, J. for the Bench observed the law as under : (AIR p. 366, para 26)

‘26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.’

33. In Masalti v. State of U.P. [Masalti v. State of U.P., (1964) 8 SCR 133 : AIR 1965 SC 202] , a five-Judge Bench of this Court has categorically observed as under : (AIR pp. 209-210, para 14)

‘14. ... There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable

to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.'

34. In *Darya Singh v. State of Punjab* [*Darya Singh v. State of Punjab*, (1964) 3 SCR 397 : AIR 1965 SC 328] , this Court held that evidence of an eyewitness who is a near relative of the victim, should be closely scrutinised but no corroboration is necessary for acceptance of his evidence. In *Harbans Kaur v. State of Haryana* [*Harbans Kaur v. State of Haryana*, (2005) 9 SCC 195 : 2005 SCC (Cri) 1213] , this Court observed that : (*Harbans Kaur case* [*Harbans Kaur v. State of Haryana*, (2005) 9 SCC 195 : 2005 SCC (Cri) 1213] , SCC p. 198, para 7)

'7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused.'

35. The last case we need to concern ourselves is *Namdeo v. State of Maharashtra* [*Namdeo v. State of Maharashtra*, (2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773] , wherein this Court after observing previous precedents has summarised the law in the following manner : (SCC p. 164, para 38)

'38. ... it is clear that a close relative cannot be characterised as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his

evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.’

36. From the study of the aforesaid precedents of this Court, we may note that whoever has been a witness before the court of law, having a strong interest in result, if allowed to be weighed in the same scales with those who do not have any interest in the result, would be to open the doors of the court for perverted truth. This sound rule which remains the bulwark of this system, and which determines the value of evidence derived from such sources, needs to be cautiously and carefully observed and enforced. There is no dispute about the fact that the interest of the witness must affect his testimony is a universal truth. Moreover, under the influence of bias, a man may not be in a position to judge correctly, even if they earnestly desire to do so. Similarly, he may not be in a position to provide evidence in an impartial manner, when it involves his interest. Under such influences, man will, even though not consciously, suppress some facts, soften or modify others, and provide favourable colour. These are most controlling considerations in respect to the credibility of human testimony, and should never be overlooked in applying the rules of evidence and determining its weight in the scale of truth under the facts and circumstances of each case.”

(emphasis in original and supplied)

33. Once again, we reiterate with a word of caution, the trial court is the best court to decide on the aforesaid aspect as no mathematical calculation or straitjacket formula can be made on the assessment of a witness, as the journey towards the truth can be seen better through the eyes of the trial Judge. In fact, this is the real objective

behind the enactment itself which extends the maximum discretion to the court.

xxx

On facts

37. There are three eyewitnesses examined by the prosecution. We find PWs 1 and 2 have not contradicted between themselves being the eyewitnesses. Merely because they are related witnesses, in the absence of any material to hold that they are interested, their testimonies cannot be rejected....”

12. In ***Namdeo v. State of Maharashtra***³, the Hon’ble Supreme Court held the following:-

“29. It was then contended that the only eyewitness, PW 6 Sopan was none other than the son of the deceased. He was, therefore, “highly interested” witness and his deposition should, therefore, be discarded as it has not been corroborated in material particulars by other witnesses. We are unable to uphold the contention. In our judgment, a witness who is a relative of the deceased or victim of a crime cannot be characterised as “interested”. The term “interested” postulates that the witness has some direct or indirect “interest” in having the accused somehow or the other convicted due to animus or for some other oblique motive.

30. Before more than half a century, in Dalip Singh v. State of Punjab [(1953) 2 SCC 36 : AIR 1953 SC 364 : 1954 SCR 145] a similar question came up for consideration before this Court. In that case, the High Court observed that testimony of two eyewitnesses required corroboration since they were closely related to the deceased. Commenting on the approach of the High Court, this Court held that it was “unable to concur” with the said view. Referring to an earlier decision in Rameshwar Kalyan Singh v. State of Rajasthan [1951 SCC 1213 : AIR 1952 SC 54 : 1952 SCR 377] Their

³(2007) 14 SCC 150

Lordships observed that it was a fallacy common to many criminal cases and in spite of endeavours to dispel, "it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel" (Dalip Singh case [(1953) 2 SCC 36 : AIR 1953 SC 364 : 1954 SCR 145] , AIR p. 366, para 25).

31. *Speaking for the Court, Vivian Bose, J. stated: (AIR p. 366, para 26)*

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

(emphasis supplied)

The Court, no doubt, uttered a word of caution: (AIR p. 366, para 26)

"However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

(emphasis supplied)

32. *In Darya Singh v. State of Punjab [AIR 1965 SC 328 : (1964) 3 SCR 397 : (1965) 1 Cri LJ 350] this Court held that evidence of an eyewitness who is a near relative of the victim, should be closely scrutinised but no corroboration is necessary for acceptance of his evidence.*

33. *Speaking for the Court, Gajendragadkar, J. (as His Lordship then was) stated: (AIR p. 331, para 6)*

“6. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. If the offence has taken place, as in the present case, in front of the house of the victim, the fact that on hearing his shouts, his relations rushed out of the house cannot be ruled out as being improbable, and so, the presence of the three eyewitnesses cannot be properly characterised as unlikely. If the criminal court is satisfied that the witness who is related to the victim was not a chance witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised. In doing so, it may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would

unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars.”

(emphasis supplied)

34. *In Dalbir Kaur v. State of Punjab [(1976) 4 SCC 158 : 1976 SCC (Cri) 527 : AIR 1977 SC 472] the accused killed his own father and real brother over a property dispute. Eyewitnesses to the “gruesome, brutal and unprovoked” double murder were near relatives of the deceased. It was, therefore, contended that they were “interested” witnesses and their evidence should not be accepted for holding the appellants guilty.*

35. *Negating the contention, upholding the order of conviction, and referring to Dalip Singh [(1953) 2 SCC 36 : AIR 1953 SC 364 : 1954 SCR 145] this Court stated: (SCC pp. 167-68, para 11)*

“There can be no doubt that having regard to the fact that the incident took place at midnight inside the house of Ajaib Singh, the only natural witnesses who could be present to see the assault would be Jaswant Kaur and her mother Shiv Kaur. No outsider can be expected to have come at that time because the attack by the appellants was sudden. Moreover a close relative who is a very natural witness cannot be regarded as an interested witness. The term ‘interested’ postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the

accused or for some other reason. Such is not the case here. In the instant case there is absolutely no evidence to indicate that either Jaswant Kaur or Shiv Kaur bore any animus against the accused.”

36. *In Kartik Malhar v. State of Bihar [(1996) 1 SCC 614 : 1996 SCC (Cri) 188] this Court considered several leading cases on the point and said: (SCC pp. 619-20, para 7)*

“7. On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in Vadivelu Thevar case [AIR 1957 SC 614 : 1957 SCR 981 : 1957 Cri LJ 1000] and, therefore, conviction can be recorded on the basis of the statement of a single eyewitness provided his credibility is not shaken by any adverse circumstance appearing on the record against him and the court, at the same time, is convinced that he is a truthful witness. The court will not then insist on corroboration by any other eyewitness particularly as the incident might have occurred at a time or place when there was no possibility of any other eyewitness being present. Indeed, the courts insist on the quality, and, not on the quantity of evidence.”

(emphasis supplied)

37. *Recently, in Harbans Kaur v. State of Haryana [(2005) 9 SCC 195 : 2005 SCC (Cri) 1213] the conviction of the accused was challenged in this Court, inter alia, on the ground that the prosecution version was based on testimony of relatives and hence it did not inspire confidence. Negating the contention this Court said: (SCC p. 198, para 7)*

“7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused.”

38. *From the above case law, it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on*

such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

13. The Hon’ble Supreme Court in the case of **Gurjit Singh v. State of Haryana⁴**, held the following:-

“17. In appeal, the High Court reassessed the entire evidence and came to the conclusion that it cannot be said to be the duty of the prosecution in the circumstances to explain injuries on the person of the accused, Gurdial Singh, particularly, since Gurdial neither offered himself for radiological examination nor had he disclosed the history of his injuries to the doctor. The High Court opined that the non-explanation of injuries is insufficient to discard the case of the prosecution, if it otherwise inspires confidence and is worthy of credence. The High Court disagreed with the trial court and held that there is no reason to disbelieve the statement of Mander Singh, the brother of the deceased and Sukhwinder Kaur, the widow, only because they were near relations of the deceased. It is settled law, that the statement of a relative of the deceased cannot be discarded merely on the ground that he or she is an interested party. In Anwar Ali v. State of U.P. [(2011) 15 SCC 360] (SCC pp. 362-63, para 8) this Court rightly observed that once the prosecution has been able to prove its case by leading admissible and cogent evidence with reference to statements of the witnesses, the same cannot be brushed aside merely on the ground that the witnesses are relatives of the deceased. In Kartik Malhar v. State of Bihar [(1996) 1 SCC

⁴(2015) 4 SCC 380

614 : 1996 SCC (Cri) 188 : 1995 Supp (5) SCR 239] , this Court held that even

“a close relative who is a natural witness cannot be regarded as an interested witness. The term ‘interested’ postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason”. (SCC p. 621, para 15)

More recently, this principle was upheld in Ashok Rai v. State of U.P. [(2014) 5 SCC 713 : (2014) 2 SCC (Cri) 681] (SCC p. 720, para 12) whereby this Court clearly stated that the evidence of interested witnesses is not infirm. The High Court has also disagreed with the trial court that the fight took place at the spur of the moment and the accused had not conspired with each other to commit the crime, since there was no evidence to that effect.”

14. The Hon’ble Supreme Court in **Ganapathi v. State of T.N.**,⁵ held the following:-

“14. *“Related” is not equivalent to “interested”. A 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. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be “interested” [See: State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752 : 1981 SCC (Cri) 593]].*

15. *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. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation*

⁵(2018) 2 SCC (Cri) 793

would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made [See: Maranadu v. State [Maranadu v. State, (2008) 16 SCC 529 : (2010) 3 SCC (Cri) 338]].

16. Here in the case, PWs 1 and 2, though father and brother of the deceased, are natural witnesses and there is no bar in law in examining family members or any other person as witnesses. Their testimonies provided clear picture of the attack carried on by the accused over the deceased. We find from the record that the evidence of PWs 1 & 2 is consistent and inspires confidence in the mind of the Court. The courts below have also properly scrutinised their evidence before taking them into account and there is nothing unusual in believing their testimonies. Apart from that, the prosecution has examined the independent witnesses PWs 5 and 6 who turned hostile. The prosecution has taken all possible steps to bring home the guilt of the accused. Hence conviction based on the evidence of PWs 1 and 2 is not fatal to the case of the prosecution.

17. Similarly, the evidence of Sakunthala (PW 3) clearly depicted the circumstance and narrated the way in which the deceased Poomari was attacked by the accused explaining the role played by each of the Accused 2, 3 and 4. Her evidence has credibility and it clearly corroborated with that of the medical evidence. The post-mortem report of the deceased Poomari (Ext. P-16) shows that there were about 10 cut injuries besides three stab injuries on the body of the deceased. According to PW 12 Dr Danraj, the cut injuries were possible by sickle and the stab injuries were possibly caused by knife. Among all those injuries, Injuries 1, 10, 11, 12 and 13 are grave and capable of causing death instantaneously.”

15. The Hon'ble Supreme Court in **Laltu Ghosh v. State of W.B.**⁶ held the following:-

“12. As regards the contention that the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between “interested” and “related” witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752 : 1981 SCC (Cri) 593] ; Amit v. State of U.P. [Amit v. State of U.P., (2012) 4 SCC 107 : (2012) 2 SCC (Cri) 590] and Gangabhavani v. Rayapati Venkat Reddy [Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298 : (2014) 6 SCC (Cri) 182]).

13. Recently, this difference was reiterated in Ganapathi v. State of T.N. [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793] , in the following terms, by referring to the three-Judge Bench decision in State of Rajasthan v. Kalki [State of Rajasthan v. Kalki, (1981) 2 SCC 752 : 1981 SCC (Cri) 593] : (Ganapathi case [Ganapathi v. State of T.N., (2018) 5 SCC 549 : (2018) 2 SCC (Cri) 793] , SCC p. 555, para 14)

“14. “Related” is not equivalent to “interested”. A 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. A witness who is a natural one and is the

⁶(2019) 15 SCC 344

only possible eyewitness in the circumstances of a case cannot be said to be “interested”....”

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in *Dalip Singh v. State of Punjab* [*Dalip Singh v. State of Punjab*, (1953) 2 SCC 36 : 1954 SCR 145 : AIR 1953 SC 364 : 1953 Cri LJ 1465], wherein this Court observed: (AIR p. 366, para 26)

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person.”

15. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in *Jayabalan v. State (UT of Pondicherry)* [*Jayabalan v. State (UT of Pondicherry)*, (2010) 1 SCC 199 : (2010) 2 SCC (Cri) 966] : (SCC p. 213, para 23)

“23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely

because it comes from the mouth of a person who is closely related to the victim.”

16. *In the instant matter, as already discussed above, we find the testimony of the eyewitnesses to be consistent and reliable, and therefore reject the contention of the appellants that the testimony of the eyewitnesses must be disbelieved because they are close relatives of the deceased and hence interested witnesses.”*

16. The ocular evidence of PW-1, PW-7 and PW-9 corroborated with the medical report and the evidence of the doctors. The defence plea of the injury to have been sustained by a fall on the ground of the victim is not acceptable. The victim had been beaten up severally inflicting repeated blows to have caused the injuries at various places of his body which practically could not have resulted by the fall of the victim on the ground. Accordingly, such plea on the part of the defence is obliterated. The nature of the incident triggered out of a brawl attaining a broader dimension whereby the culpability of the appellant is conspicuous. The nature of the injuries inflicted on the vital organ/part of the body of the victim endorsed the intention of the appellant to kill or murder the victim. The appellant could not be oblivious of the fact that the assault on the head of the victim with a bamboo will not result in his death.
17. Lapses on the part of the investigating agency for non-seizure of wearing apparels and blood stained earth, as well as failure to conduct the inquest and subsequent preparation of inquest report will not affect the prosecution case since the corroborative ocular evidence and medical evidence

sufficiently proved the involvement and active role of the appellant in commission of the offence with criminal intent to attain its objectivity.

18. The evidence of PW-1, PW-7 and PW-9 to be the eye witnesses despite minor contradictions could not destabilize the prosecution case. The evidence of the eye witnesses was not challenged on the ground of biasedness, enmity or self-gratification. Moreover, the medical report emboldened the version of the aforesaid eye witnesses and their evidence is trustworthy and credible.
19. Under the facts and circumstances of the case and the decisions cited above, the instant criminal appeal being CRA 124 of 2011 is dismissed.
20. I record my appreciation for the able assistance rendered by the Learned Advocate Ms. Nahid Ahmed as Amicus Curiae in disposing of this appeal.
21. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
22. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)