
(2013) 08 CHH CK 0024
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 895 of 2007

Horilal Beersingh Yadav

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 12-08-2013

Acts Referred:

Citation : (2014) CriLJ 271

Hon'ble Judges : Satish K. Agnihotri, J; Radhe Shyam Sharma, J

Bench : Division Bench

Advocate : C.R. Sahu, for the Appellant; Adil Minhaj and Neeraj Mehta, Panel Lawyers, for the Respondent

Final Decision : Dismissed

Judgement

Radhe Shyam Sharma, J.—This appeal is directed against judgment dated 4-8-2007 passed by Additional Sessions Judge, Khairagarh, District Rajnandgaon in Sessions Trial No. 9/2007. By the impugned judgment, accused Horilal has been convicted under Sec. 302, IPC and sentenced with imprisonment for life and to pay fine of Rs. 1000/-, in default of payment of fine, to further undergo rigorous imprisonment for 6 months. Case of the prosecution, in brief, is as under:--

The appellant had given a sum of Rs. 10/- to deceased Jankar for consuming liquor. The appellant went to the shop of the deceased for refund of the above amount from the deceased. A quarrel took place between them and thereafter the appellant returned his house. On 15-11-2006, at about 5.00 a.m. the appellant again went to the shop of deceased Jankar and assaulted him with a Tangiya. The deceased sustained injuries on his head. Wife of the deceased Rambai lodged First Information Report (Ex. P-1) in Police Station Salhewara. The deceased was taken to Primary Health Centre, Salhewara for treatment. Dr. G.S. Thakur (P.W. 9) examined him and gave his report (Ex. P-12), in which he found:--

- (i) multiple burn injuries were present on left side of the left arm.
- (ii) lacerated wound was present on the middle of the occipital scalp, occipital bone was depressed, size 4 cms.
- (iii) lacerated wound about 5 cms. was on right occipital temporal region, temporal bone comminuted in which bleeding came out.
- (iv) upper right ear pinna was torn about 2 cms.
- (v) 5 cms. below the injury No. (iv) pinna of ear was cut about 1 cm.

The deceased died during the treatment. Doctor G.S. Thakur (P.W. 9) sent information to the concerned Police Station. Merg intimidation (Ex. P/11) was recorded in the Police Station Salhewara. The Investigating Officer reached PHC, Salhewara, gave notice (Ex.-P/16) to Panchas and prepared inquest (Ex.-P/17) on the dead body of the deceased. The dead body of the deceased was sent to PHC, Salhewara for post-mortem examination vide Ex.-P/8. Doctor G. S. Thakur (P.W. 9) conducted post-mortem on the dead body of the deceased and gave his report (Ex.-P/13), in which he found:--

- (i) lacerated wound was present on the middle of the occipital scalp, occipital bone was depressed about 4 cms.;
- (ii) lacerated wound about 5 cm. was on right occipital temporal region, temporal bone comminuted in which bleeding came out.

He opined that the cause of death was cardio respiratory arrest caused by excessive internal hemorrhage and injuries on vital part and head.

In further investigation, spot map (Ex.-P/2) was prepared by Sub-Inspector S.R. Thakur (P.W. 10) and another spot map (Ex.-P/3) was prepared by Patwari. Memorandum statement (Ex.-P/5) of the appellant was recorded u/s 27 of the Evidence Act and at his instance an Axe was seized vide Ex.-P/6. Shirt of the appellant was also seized vide Ex.-P/7. Blood stained soil and plain soil were seized from the place of occurrence vide Ex.-P/18. Shirt and baniyan of the deceased were seized vide Ex.-P/19. The appellant was arrested vide Ex.-P/20. The seized articles were sent to Forensic Science Laboratory (FSL), Raipur for chemical examination vide Ex.-P/22 and a report (Ex.-P/25) was received therefrom.

After completion of the investigation, charge-sheet was filed in the Court of Additional Chief Judicial Magistrate, Khairagarh, who, in turn, committed the case to the Court of Session, Rajnandgaon, from where it was received on transfer by the Additional Sessions Judge, Khairagarh who conducted the trial and convicted and sentenced the appellant as mentioned above.

2. Shri C.R. Sahu, learned counsel for the appellant argued that there is no independent witness. Rambai (P.W. 1) is widow of the deceased. She is a relative and highly interested witness. There are material contradictions in the First

Information Report Ex.-P/1) lodged by Rambai (P.W. 1) and her evidence before the Court. Solitary evidence of Rambai (P.W. 1) is not cogent and reliable and, therefore, cannot form the basis for conviction of the appellant.

3. On the contrary, Shri Adil Minhaj and Shri Neeraj Mehta, learned Panel Lawyers appearing for the State/respondent, supporting the impugned judgment, submitted that the conviction and sentence awarded by the learned Additional Sessions Judge do not warrant any interference by this Court.

4. We have heard learned counsel for the parties at length and have also perused the impugned judgment as also the record of Session Case. The conviction of the appellant u/s 302, IPC is based on the solitary evidence of Rambai (P.W. 1). It is not disputed that Rambai (P.W. 1) is wife of deceased Jankar.

5. In *Brahm Swaroop and Another Vs. State of U.P.*, the Hon''ble Supreme Court held as follows:

21. Merely because the witnesses were closely related to the deceased persons, their testimonies cannot be discarded. Their relationship to one of the parties is not a factor that effects the credibility of a witness, moreso, a relation would not conceal the actual culprit and make allegations against an innocent person. A party has to lay down a factual foundation and prove by leading impeccable evidence in respect of its false implication. However, in such cases, the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible evidence.

6. In *Waman and Others Vs. State of Maharashtra*, , the Hon''ble Supreme Court held as follows:

17. In *Balraje @ Trimbak Vs. State of Maharashtra*, this Court held that the mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. It was further held that when the eye-witnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically and the Court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused...

19...29...The evidence of a witness cannot be discarded solely on the ground of his relationship with the victim of the offence. The plea relating to relatives'' evidence remains without any substance in case the evidence has credence and it can be relied upon. In such a case the defence has to lay foundation if plea of false implication is made and the Court has to analyse the evidence of related witnesses carefully to find out whether it is cogent and credible. (Vide *Jarnail Singh and Others Vs. State of Punjab*, *Vishnu v. State of Rajasthan*, (2009) 10 SCC 477: (AIR 2009 SC (Supp) 2374) and *Balraje @ Trimbak Vs. State of Maharashtra*,

7. In Dharnidhar Vs. State of U.P. and Others, the Hon''ble Supreme Court held as follows:

12. There is no hard-and-fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In Jayabalan Vs. U.T. of Pondicherry,) this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under: (SCC p.213, paras 23-24)

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.

13. Similar view was taken by this Court in Ram Bharosey Vs. State of U.P., where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown overboard, but has to be examined carefully before accepting the same.

8. In the instant case, Rambai (P.W. 1) deposed that on 14-11-2006, at about 6.00 p.m. the appellant came to her shop for demanding a sum of Rs. 10/- and demanded the money from her husband (deceased). Her husband told him that he would return his money on the next morning. Then the appellant told the deceased that he would come next morning at about 10.00 a.m. then he should give his money and thereafter he would not come to his house. The appellant went away from his shop, afterwards, on the next morning i.e. 15-11-2006 at about 5.00 a.m. the appellant came to her shop and at that time making preparation for aalugunda and appellant sat near her husband. After sometime the appellant assaulted her husband (deceased) by tangiya (axe). She further deposed the deceased sustained injuries on his head. She further deposed that having heard noise, Kanwal Singh (P.W. 4), Girishkumar (P.W. 5), Kotwar Hulasdas, Janghel and other villagers gathered at her shop.

9. Dulourinbai (P.W. 2), deposed that at about 5.30 a.m., when she woke up she

heard noise of her mother Rambai (P.W. 1), she came out and saw that the appellant after assaulting her father (deceased) was running from the place of occurrence. Girishkumar (P.W. 5) deposed that Rambai (P.W. 1) came to him and told him that the appellant killed her husband by tangiya (axe).

10. Rambai (P.W. 1), Dulourinbai (P.W. 2), Girishkumar (P.W. 5) deposed that they took the deceased in Salhewara hospital. Rambai (P.W. 1) deposed that she lodged First Information Report (Ex. P/1) in Police Station Salhewara. Doctor G. S. Thakur (P.W. 9) deposed that on 15-11-2006, Jankar (deceased) brought to PHC, Salhewara, at that time he was alive. He examined him and gave his report (Ex.-P/12), in which he found:

- (i) multiple burn present on left side of the left arm;
- (ii) lacerated wound present on the middle of the occipital scalp occipital bone depressed size 4 cm.;
- (iii) lacerated wound about 5 cm. on right occipital temporal region, temporal bone comminuted in which bleeding came out;
- (iv) upper right ear pinna torn about 2 cm.;
- (v) 5 cm. below the injury No. (iv) pinna of ear was cut about 1 cm.

11. Doctor G.S. Thakur (P.W. 9) deposed that during the treatment the deceased died and he sent information to Police Station, Salhewara regarding the death of the deceased vide Ex.-P/10. He further deposed that he conducted autopsy on the dead body of the deceased and gave his report vide Ex.-P/13 in which he opined that the cause of death of the deceased was cardio respiratory arrest caused by excessive internal hemorrhage on the vital part of head.

12. Rambai (P.W. 1) lodged First Information Report (Ex.-P/1) on 15-11-2006 at 6.15 a.m. The incident took place on 15-11-2006 at about 5.00 a.m. the distance of Police Station is 5 kms. from her house. The First Information Report (Ex.-P/1) was lodged within 11/4 hours of the incident. In the First Information Report (Ex.-P/1), it is mentioned that the appellant came in her shop and assaulted the deceased with tangiya (axe). The First Information Report (Ex.-P/1) was lodged promptly and it contains name of the appellant/accused as assailant, therefore, the evidence of Rambai (P.W. 1) is supported by the First Information Report (Ex.-P/1).

13. Doctor G.S. Thakur (P.W. 9) deposed that in post-mortem examination of the deceased he found 5 injuries. The evidence of Rambai (P.W. 1) is supported by medical evidence also. We have perused the evidence of Rambai (P.W. 1) with utmost circumspection. Her evidence is cogent, clinching, trustworthy and corroborated by the First Information Report (Ex.-P/1) and the medical evidence. The death of the deceased was homicidal in nature and the incident took place in the shop of Rambai (P.W. 1), therefore, her presence at the place of occurrence cannot be doubted. It was early morning occurrence and her presence near the

place of occurrence was natural.

14. For the foregoing reasons, we do not find any infirmity in the finding recorded by the learned Additional Sessions Judge that it was none else the appellant who inflicted injuries on the skull of the deceased with tangiya (axe) and the deceased succumbed to the injuries caused by him. Consequently, the judgment under appeal, being flawless, is affirmed and the appeal is dismissed.