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HIGH COURT OF CHHATTISGARH, BILASPUR

CORAM: Hon'ble Shri Rajeev Gupta, C.J. &  
Hon'ble Shri Sunil Kumar Sinha, J.

Criminal Appeal No. 273 of 2001

Gadaru

Vs.

State of Chhattisgarh

JUDGMENT

For consideration

Sd/-  
SUNIL KUMAR SINHA  
Judge

HON'BLE SHRI JUSTICE RAJEEV GUPTA

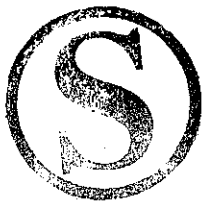
*I agree.*

Sd/-  
Chief Justice

29/04/2009

Post for Judgment 30/04/2009

Sd/-  
Sunil Kumar Sinha  
Judge



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**CORAM:** **Hon'ble Shri Rajeev Gupta, C.J. &**  
**Hon'ble Shri Sunil Kumar Sinha, J.**

**Criminal Appeal No. 273 of 2001**

**APPELLANT**

Gadaru, son of Hunga, caste Bhatra,  
aged 40 years, resident of Bodrenga,  
P.S. Mardam, District Bastar,  
Chhattisgarh

Versus

**RESPONDENT**

State of Chhattisgarh through P.S.  
Mardam, District Bastar, Chhattisgarh

**(Appeal under Section 374 (2) of The Code of Criminal Procedure)**

**Appearance:**

Mr. R.S. Patel, Counsel for the appellant.

Mr. Akhil Agrawal, Panel Lawyer for the State.

**JUDGMENT**  
**(30.04.2009)**

Following judgment of the Court was delivered by  
**Sunil Kumar Sinha, J.**

(1) Appellant Gadaru stands convicted u/s 302 IPC for commission of murder of his brother, Sarkit, and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- with default sentence of R.I. for 1 year, by the Third Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No. 47/2000 on 29.1.2001.

(2) The facts, briefly stated, are as under:-

Appellant Gadaru, deceased Sarkit and the sole eye witness Harkit (PW-1) are real brothers. They all are residents of same



village. On 10.11.99 at about 10.00 a.m., they gathered in the house of the appellant for taking a decision as to how the amount of Rs.300/-, which was lying with the forest authorities on account of payment against *tendu* leaves collection by the mother of the appellant, may be obtained by them. Since they had to prepare some documents, the proposal was to contribute Rs.40/- from each, which was not agreed between the appellant and the deceased and a quarrel begun between them. All the brothers were in drunken condition. The allegations are that in the said quarrel, the appellant gave *tangia* blows to the deceased, who sustained injuries and succumbed to those injuries.

(3) Mr. R.S. Patel, learned counsel appearing on behalf of the appellant, has not disputed the homicidal death of the deceased. Moreover, it comes in the post-mortem report (Ex.-P/8) that the deceased sustained 3 incised wounds and 4 contusions. The first incised wound was over the left side of forehead, measuring 3 cm x 0.5 cm x bone deep; the second incised wound was over right side of forehead, measuring 2 cm x 0.3 cm x bone deep and the third incised wound was over right side of chin extending above the cheek. The contusions were over the face and eyebrow etc. The Autopsy Surgeon opined that injuries No. 1 to 3 were caused by hard and sharp object, whereas, the contusions were caused by hard and blunt object. The cause of death was skull injuries leading to syncope and it was homicidal in nature. Therefore, it was established that the death of the deceased was homicidal in nature.



(4) Mr. Patel, then, argued that the testimony of sole eye witness Harkit (PW-1) should not be relied as he was an interested witness being the real brother of the deceased.

(5) We do not find any force in such argument advanced by the learned counsel for the appellant. The Apex Court held in the matter of Rizan and another -Vs- State of Chhattisgarh, through the Chief Secretary, Govt. of Chhattisgarh, Raipur, AIR 2003 S.C. 976, in para 6, that the relationship is not a factor to affect credibility of a witness. It is more often than not a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such a case, the Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

(6) In Namdeo -Vs- State of Maharashtra, 2007 AIR SCW 1835, the Apex Court held that a witness who is a relative of deceased or victim of the crime cannot be characterized as 'interested'. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive. The Apex Court also observed that a close relative cannot be characterized as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized 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. The Apex Court also referred to the decision rendered in the matter of **Harbans Kaur and another -Vs- State of Haryana, 2005 AIR SCW 2074**, in which, it was held that 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.

(7) Therefore, in view of the above, it cannot be held that the testimony of PW-1, Harkit, cannot be relied on only on the ground that he was the brother of the deceased. We are to scrutinize his evidence with due care and caution and if his evidence passes the test of credibility in appreciation by applying above principles, the conviction can well be based on his such testimony.

(8) PW-1, Harkit, is a natural witness as he is the real brother of the appellant and the deceased. The defence has not laid down any foundation regarding false implication of the appellant by this witness. He has not been shown to be inimical to the appellant, no interest has been shown on his part to falsely implicate the appellant and his presence on the scene of occurrence is also not doubtful and he has equal relation with the appellant and the deceased. In appreciation, we find that his evidence is trustworthy and his credibility cannot be doubted and the involvement of the appellant was fully established by his



evidence Showing that he gave *tangia* blows to the deceased causing above injuries to him.

(9) Mr. Patel, then argued that it is a case, in which, on a petty matter, quarrel took place between two brothers, who were in drunken condition and one of them gave *tangia* blows to the other causing above injuries, therefore, he would be punishable for some lessor offence than Section 302 IPC.

(10) This argument was opposed by the learned counsel for the State.

(11) We find force in the argument of Mr. Patel. According to the F.I.R., the three real brothers had gathered in the house of the appellant and they were discussing as to how Rs.300/-, pending with the forest authorities on account of *tendu* leaves collection by their mother may be obtained. The offer was to contribute Rs.40-40/- for preparation of some documents (perhaps the documents of succession) and the quarrel took place for this. PW-1, Harkit, has admitted that both appellant and deceased were in drunken condition at the time of offence. It is not the case of the prosecution that the appellant was armed with the weapon and he gave blows to the deceased after preparation and premeditation. On due appreciation of the evidence of PW-1 and other materials on record, it appears that on a petty matter, a quarrel begun between two brothers who were in drunken condition and in heat of passion, without preparation or premeditation, the appellant (one of them) gave *tangia* blows to the deceased causing above injuries. This shows that the



appellant was having no intention to cause death of the deceased although the evidence on record would clearly show that he was having knowledge that while causing such injuries to the deceased, it may cause his death. Therefore, we are of the considered view that the act of the appellant would not be punishable u/s 302 IPC and it would be punishable under Part-II of Section 304 IPC.

(12) In the result, the appeal is partly allowed. The conviction and sentence awarded to the appellant u/s 302 IPC are set aside. Instead thereof, the appellant is convicted u/s 304 Part-II IPC and sentenced to undergo rigorous imprisonment for 10 years. It is stated that the appellant is in jail since 11.11.99. He shall be entitled to set-off the period already undergone by him.

**Sd/-**  
**Chief Justice**

**Sd/-**  
**SUNIL KUMAR SINHA**  
**Judge**