

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Appeal No. 3267 of 1999

1. Nathuram S/o Mahesh Ram, aged about 30 years.
 2. Mureet Ram S/o Mahesh Ram Gond, aged 32 years.
- Both R/o Sirlee Police Station Pali, Tehsil Katbora, District Bilaspur,
Madhya Pradesh (Now Chhattisgarh)

---- Appellants

Versus

State of Madhya Pradesh (Now Chhattisgarh)

--- Respondent

For Appellants	: Smt. Ranjana Jaiswal, Advocate
For Respondent/State	: Shri UKS Chandel, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board

Per Navin Sinha, Chief Justice

31/03/2016

1. The Appellants stand convicted under Section 302/34 to life imprisonment and under Section 201 IPC to five years rigorous imprisonment with fine alongwith default stipulation as ordered on 29.10.1999 by the 8th Additional Sessions Judge, Bilaspur, in Sessions Trial No. 38 of 1999.
2. According to the prosecution allegations based on circumstantial evidence, the Appellants are stated to have assaulted the deceased-Gulab Singh near the village pond and then dragged his body away and buried it in the sand. The FIR (Exhibit P-17) was lodged by PW-1, Milap Singh, brother of the deceased naming the Appellants as accused. The Informant stated that Appellant-Nathu Ram had come to the house of the deceased on 13.3.1998 at about 9:00 pm and the deceased left home with him never to return. His dead body was found the

next day. The informant suspected the Appellant-Nathu Ram to be the assailant due to past enmity.

3. The body of the deceased was found on 14.3.1998 and the postmortem was done on 16.3.1998 by PW-12, Dr. P. Bhalerao. The postmortem report, Exhibit P-15 found a large number of injuries on the body including depressed fracture of left temporal bone, fracture of right maxilla, fracture of linear right frontal bone and fracture of 4th, 5th and 6th ribs of the left side, opining that death was due to head injury and injury to vital organs.

4. Learned Counsel for the Appellants submitted that if the deceased left home with Appellant-Nathu Ram in the evening and his dead body was found abandoned the next afternoon, the time gap is sufficient not to rule out intervening possibilities of the Appellants and the deceased having parted ways. It was next submitted that the occurrence is at night. No witness has stated seeing the Appellants and the deceased together. Identification by voice is not possible and if it is, it is a very weak evidence. While some of the witnesses speak of having heard Appellant-Nathu Ram, none of the others have spoken of specifically having heard Appellant-Mureet Ram. The enmity alleged because the deceased was not teaching driving to Appellant-Mureet Ram was based on an incident two-three years earlier as deposed by PW-1, Milap Singh too distant in time to be a factor. The recovery of the axe alleged to have been used for assault with blood or any blood stained clothes are inconsequential as there was no forensic report available with regard to presence of blood on them. The brother and mother of the deceased have deposed that they were on visiting terms with the Appellants and hence there was no occasion for the Appellants to assault the deceased. Reliance was placed on (2010) 3 SCC 675 (Jiten Besra v. State of West Bengal) and (2011) 12 SCC 258 (Sunil Rai @ Pauya v. Union Territory, Chandigarh).

5. Learned Counsel for the State opposing the appeal submitted that the

deceased was called from his house by Appellant-Nathu Ram. The second Appellant-Mureet Ram was his own brother and were residing together in the same house. PW-8, Manishankar has stated of having heard the two Appellants and the deceased quarreling in the evening near the house of Appellant-Nathu Ram. PW-3, Ramayan Singh has also clearly stated having heard voice of the deceased and Appellant-Nathu Ram quarreling near the pond. PW-4, Savitri Bai, wife of the deceased has also confirmed that the deceased left home when Appellant-Nathu Ram came calling in the evening. The postmortem report dated 16.3.1998 at 8:30 am states that death had occurred within 36-72 hours which takes within its ambit the time period when the deceased left home with Appellant-Nathu Ram. No evidence has been led to discredit PW-8, Manishankar for applying the last seen theory when Appellant-Mureet Ram may have parted company with the deceased and Appellant-Nathu Ram. Since they were all villagers well known to each other, identification by voice is a distinct possibility in view of their close affinity of being on visiting terms also.

6. We have considered the submissions on behalf of parties and perused the evidence on record.

7. FIR was lodged by PW-1, Milap Singh, brother of the deceased naming the Appellants on suspicion due to past enmity. The evidence of PW-1, Milap Singh, PW-2, Safri Bai and PW-4, Savitri Bai who are the brother, mother and wife of the deceased establishes it beyond any doubt that late in the evening Appellant-Nathu Ram came to the house of the deceased and took him away alongwith him. Thereafter the three of them were seen quarreling near the house of the Appellants, who were brothers residing together as deposed by PW-8, Manishanker. The fact that PW-3, Ramayan Singh may have said that he was accompanied by PW-8, Manishanker but spoke of identification by voice is not considered so material as to discredit the evidence because in either event, whether it is ocular or phonetic evidence, in both circumstances, identity of the

Appellants stand established.

8. Identification by voice has been recognized in criminal jurisprudence by village folk and there is no absolute proposition that there could not be identification by voice in a dark night. Voice identification becomes very crucial and reliable when the parties are known to each other since earlier as observed in (2004) 12 SCC 546 (State of Rajasthan v. Dhool Singh) as follows:

“13.....Here again we cannot agree with the finding of the High Court. The number of injuries is irrelevant. It is not always the determining factor in ascertaining the intention. It is the nature of injury, the part of body where it is caused, the weapon used in causing such injury which are the indicators of the fact whether the respondent caused the death of the deceased with an intention of causing death or not. In the instant case it is true that the respondent had dealt one single blow with a sword which is a sharp edged weapon measuring about 3 ft in length on a vital part of the body, namely, the neck. This act of the respondent though solitary in number had severed sternocleidal muscle, external jugular vein, internal jugular vein and common carotid artery completely leading to almost instantaneous death. Any reasonable person with any stretch of imagination can come to the conclusion that such injury on such a vital part of the body with a sharp edged weapon would cause death. Such an injury in our opinion not only exhibits the intention of the attacker in causing the death of the victim but also the knowledge of the attacker as to the likely consequence of such attack which could be none other than causing the death of the victim.....”

9. In AIR 1999 SC 1481 (Kedar Singh & Others v. State of Bihar) it was observed that even in a dark night identification was possible inter alia by voice too.

10. In (2004) 11 SCC 567 (Kishnia & Others v. State of Rajasthan) conviction was sustained on identification by voice at night due to previous acquaintance between the witness and the accused.

11. In (2008) 14 SCC 495 (Inspector of Police, Tamil Nadu v. Palanisamy @ Selvan) it was again observed that in cases of previous acquaintance identification by voice at night was a distinct possibility.

12. In (2008) 11 SCC 425 (Dalbir Singh v. State of Haryana) it was again observed that even an ocular identification at night was difficult but if the person was acquainted and related to another, identification inter alia by voice was sustainable.

13. If the deceased left home accompanied by Appellant-Nathu Ram and they went to the latter's house where Appellant-Mureet Ram also resided and they were all together when they were identified by their voice, there had to be some basic minimum iota of evidence with regard to the deceased having parted company at any time with the Appellant-Mureet Ram. Even if we discount the motive as being old and stale, it cannot lead to an inescapable conclusion that because of lack of proper proof of motive, the Appellants were not the assailants.

14. Motive is but one of the several factors to be considered. Singularly, it can neither be sufficient for conviction or acquittal. Motive, however assumes significance in a case of circumstantial evidence. But again it has to be considered in conjunction with all other surrounding circumstances. The Court cannot read too much into the absence of motive to disbelieve other credible evidence available for holding that the prosecution has failed to prove its case.

15. Another incriminating factor against the Appellants is the statement of PW-1, Milap Singh that because the deceased had left home with Appellant-Nathu Ram, he went to his house looking for the deceased but no body was to be found in their own house which in our opinion takes within its ambit Mureet Ram also. This conduct of the Appellants in absconding from home after the occurrence is an incriminating factor against them. At this stage, it is crucial to also notice that the third accused Teej Ram, brother of the two Appellants absconded and his trial came to be separated.

16. In view of the above discussion, absence of a forensic report with regard to seized items is not considered very relevant and cannot be of any advantage to

the Appellants as it becomes an irrelevant factor.

17. In Jiten Besra (supra) the accused was on visiting terms with the deceased and in the FIR lodged immediately after the assault, the allegation was against an unknown person. The accused was also present in the house of the informant at the time of recording of FIR. It was in those circumstances that the Court held that enmity does not appear to have been so severe as to provide a motive. In the nature of evidence, the Court came to the conclusion that there existed no motive except for what can be described as strained relationship only. This coupled with the fact for absence of any forensic report, conviction was set aside. It did not relate to a case for identification by voice of the accused who were also named in the FIR on basis of suspicion.

18. In Sunil Rai (supra), considering the nature of evidence available, it was held that it may raise suspicion but it cannot replace proof specially in a case of circumstantial evidence.

19. We therefore find no reason to interfere with the conviction of the Appellants. The bail bonds of the Appellants are cancelled. They are directed to surrender forthwith and/or taken into custody for serving out the remaining period of sentence.

20. The appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE