

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 61 of 2013****Judgment reserved on 22.08.2022****Judgment pronounced on 30.09.2022**

- Ramsagar Pal S/o Goverdhan Pal Aged About 29 Years R/o Village - Kardul, PS Singa, Distt. - Raipur C.G. Present Address - Village Temari (Ghudsena) PS - Nandghat, Distt. - Durg C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through SHO, PS Mungeli, Distt. Mungeli C.G.

---- Respondent

For Appellant	:	Shri Dheerendra Pandey, Advocate
For State	:	Shri Soumya Rai, Panel Lawyer

**D.B.:- Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Sachin Singh Rajput**

C A V Judgment**Sachin Singh Rajput, J.-**

1. The appellant has filed this instant appeal under Section 374 (2) of Code of Criminal Procedure (for short 'CrPC'), 1973 challenging his conviction and award of sentence in a judgment passed by the Additional Sessions Judge, Mungeli, District - Bilaspur (CG) in Sessions Trial No.29/2011 by which, the appellant has been convicted and sentenced as described below -

	Conviction	Sentence
1	U/s 302 of IPC	Life imprisonment and fine of Rs.2,000/- (in default of payment of fine amount, further R.I. of 1 year

2. The appellant was charged under Section 302, 324 and 324 of IPC that on 11/04/2011, at about 20:00 hrs, he committed murder of Melanbai with a sharp edged knife and also caused voluntary grievous hurt to Santosh Gadaria and Ramgobind with the knife in village – Sonpuri (Jagtakampa) Police Station – Mungeli.

3. Prosecution case in brief is that the complainant – Umendi Ram (PW6), on 11/04/2011 at about 8 PM was going to the betel shop of Ramnath Kewat. As soon as he reached in front of the house of Melanbai (the deceased), he heard shout of Melanbai's daughter that her brother-in-law is assaulting her mother-Melanbai. After hearing the shout, he along with other residents of the village - Ramgobind (PW8), Gangaram and Sukhram went inside the house of Melanbai. Sukhram was holding a torch and when he flashed the light of torch, he saw that the appellant was holding knife and coming out of his house. At that time, they tried to intercept the appellant near the door of the courtyard, upon which, the appellant assaulted with knife due to which, he sustained injury on the finger of the left hand and Ramgobind sustained injury on the right palm and during the course of interception, the knife fell down. By that time, many villagers came there. In the process of interception and trying to release Melanbai (the deceased) from the accused, Santoshi also sustained injuries on her left wrist, neck and right palm and blood was oozing out from it. Further case of the prosecution is that

Santoshi (PW7) told that the appellant has murdered her mother and when they entered inside, they found that the deceased – Melanbai was lying and blood was spread nearby, there was wound on her chest which was caused by knife and she was dead.

4. Dehati Merg Intimation (Ex.P/15) was recorded by Umendiram (PW6) and Dehati Nalishi was recorded in Ex.P/16. Merg intimation no.21/11 (Ex.P/20) was recorded and vide notice (Ex.P/18), inquest report (Ex.P/19) was prepared and FIR (Ex.P/21) was lodged. Vide application (Ex.P/3 A), post mortem of the dead body was conducted vide Ex.P/3. Vide Ex.P/6, sari and blouse of the deceased were seized and vide Ex.P/7, plain soil and blood stained soil were seized from the spot and vide Ex.P/8, knife used for the offence was seized. Vide Ex.P/9, footwear (*chappal*) of the appellant was seized and vide Ex.P/10, nylon rope was seized. Vide Ex.P/11, appellant's shirt was seized.

5. Vide Ex.P/24, the appellant was arrested. Vide Ex.P/12 and P/13, medical examination of injured Umendiram and Santoshi was conducted. Vide Ex.P/1, Halka Patwari prepared spot map. Vide Ex.P/23, seized articles were sent for Forensic Science Laboratory and report was received, which is Ex.P/25.

6. After due investigation, charge sheet was filed before Judicial Magistrate 1st Class, Mungeli which was registered as Criminal Case No.252/2011 and thereafter, vide committal order dated 04/07/2011, the case was committed to the Sessions Court and thereafter, on transfer, the case was received by the trial Court.

7. The appellant was charged under Section 302, 324 & 324 of IPC. He denied charges and pleaded for trial. The prosecution, in order to bring home the guilt of the appellant / accused, examined as many as 9 witnesses and exhibited 25 documents. Statement

under Section 313 CrPC of the appellant / accused was recorded, in which, he has stated that he is innocent and he has been falsely implicated. However, he did not examine any defence witness.

8. Learned Trial Court, after due appreciation of the evidence, found the appellant guilty of offence under Section 302 IPC and sentenced to undergo life imprisonment and fine of Rs.2000/- with default stipulations.

9. Shri Dheerendra Pandey, learned counsel for the appellant vehemently argued that the finding recorded by the trial Court is absolutely perverse without proper appreciation of evidence brought on record by the prosecution. He further submits that the prosecution utterly failed to prove its case beyond reasonable doubt. He further submits that though there are eye witnesses to the incident, their testimony cannot be relied upon because there are material contradictions and omissions in the testimony of the eye witnesses. They are interested witnesses. Hence, no weightage can be given to the statement of eye witnesses. He further submits that it has come on record from the statement of the eye witnesses that on the date of alleged offence, there was darkness and it is not brought on record that there was any source of light, under which, the eye witnesses have seen the incident. Therefore, the entire prosecution case comes under the clutches of doubt and the benefit of doubt should be extended to the appellant. He prays that the appeal may be allowed and the appellant may be acquitted from the offence under Section 302 IPC. In support of his submission, learned counsel for the appellant relies upon judgment of the Supreme Court in the cases of **Balwan Singh v. State of Chhattisgarh and anr. (with) Latel Ram and anr. v. State of Chhattisgarh, (2019) 7 SCC 781, M.C.Ali and anr. v. State of Kerala, (2010) 4 SCC 573, Jagir Singh v. The**

State (Delhi), (1975) 3 SCC 562, Ramesh v. State of Karnataka, (2009) 15 SCC 35 and Ashoksinh Jayendrasinh v. State of Gujarat, (2019) 6 SCC 535.

10. On the other hand, learned State counsel would submit that there are eye witnesses who have categorically stated that the appellant is the author of the crime. Even assuming that some minor contradictions and omissions were found in the statement, it would not make the entire evidence of the eye witnesses incredible. It is well settled position of law that minor contradictions and omissions are not fatal to the credibility of the eye witnesses. He further submitted that even if eye witnesses are interested witnesses and relative witnesses, looking to the statement, the same would not be a ground for disbelieving un rebutted testimony of these witnesses. He further submitted that it would be difficult to believe that the relative witness would implicate an innocent man instead of naming the real culprit of the crime. Therefore, submission of learned State counsel is that the finding recorded by the trial Court on the basis of eye witness account and other material on record is absolutely correct and proper and the same has been recorded after due appreciation of the evidence. Therefore, it does not require any interference by this Court. Hence, the appeal is liable to be dismissed and the same is prayed for.

11. We have heard learned counsel for the parties, considered their rival submissions made herein above and meticulously examined the records with utmost circumspection.

12. The first question which is required to be determined by this Court is whether death of Melanbai (the deceased) was homicidal in nature or not ?

13. Though the factum of death was not seriously disputed by the counsel for the appellant, however, we have perused the statement of Dr. Surendra Ratre (PW2) who has conducted post mortem on the dead body of Melanbai and found following injuries

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“Body was cold and supine in position. Mouth was closed. Eye was closed. Pupil dilated. Rigormortis present in both the upper and lower limb.

1. I/w on the left hand on wrist joint cant size 3 cm x ½ cm x upto muscle deep. Blood clot present.

2. I/w on the left hand on elbow region size 4 cm x 2 cm x upto muscle deep. Blood clot present.

3. I/w on the left hand on arm 11 cm above the elbow size 3 cm x 1 cm x upto muscle deep. Blood clot present.

4. I/w on the left side chest below nipple size 3 cm x 1 cm x muscle deep.

5. Stab injury on the left side chest at the level of 7th 8th 9th Rib size 3 cm x 1 ½ cm upto bone deep blood clot present.

6. 7th 8th 9th Rib was fractured and same side sternum fractured on same side on desertion stab injury upto Rt Ventricle side 2 cm x ½ cm x upto the cavity of the ventricle. All injury is antemortem in nature & caused by sharp & hard object.”

14. In the post mortem report (Ex.P/3), the doctor has categorically stated that the death of Melanbai was homicidal in nature. Therefore, the finding recorded by the trial Court with

regard to homicidal death of Melanbai on the basis of other evidence and evidence of Dr. Suresh Ratre (PW2) appears to be reasonable and finding of learned trial Court regarding homicidal death of Melanbai is neither illegal nor perverse.

15. The next question which is to be considered by this Court is whether the appellant is the author of crime ?

16. Case of the prosecution is based on the eye witness account. The eye witnesses are Santoshi (PW7), Umendiram (PW6) and Ramgobind (PW8). Santoshi (PW7) is the daughter of the deceased. In paragraph 1 of her statement, Santoshi has categorically stated that the appellant stabbed her mother (the deceased) with knife. She further goes on to state that the appellant pushed her mother and took her inside and committed *marpeet*. She further states that when she was trying to intervene, at that point of time, she sustained injury by knife. Thereafter, she shouted for help and then, Umendiram, Ramgopal and Ramgobind came there. She further states that the appellant hid beside the door. When other persons entered the house, the appellant started running and they also received injuries. In her cross-examination, this witness stood firm and she has denied that she has not seen the appellant assaulting her mother. This witness also suggests that the appellant has assaulted the deceased on account of some property dispute.

17. The other eye witness Ramgobind (PW8) also corroborates the statement of Santoshi (PW7). In paragraph 2, he states that at about 7 – 8 PM, Santoshi (PW7) shouted and he went inside the house of Melanbai (the deceased). At that time, the appellant was coming out of the house and he was carrying knife which was about 1 feet long. When he tried to catch hold the appellant, he sustained injury by knife. In cross-examination, he denied that he

did not intercept the appellant.

18. Umendi Ram (PW6) also corroborates the statement of Santoshi (PW7) and stated that when he reached the house of Santoshi, the appellant was holding knife and he was coming out of the house. He proves the report (Ex.P/15) and admits signature on it and also proves *dehati nalishi* (Ex.P/16). He further states in paragraph 7 that there was dark at the time of incident. It is important to add that the murder weapon knife was seized from the spot and the same was sent to Forensic Science Laboratory and FSL report (Ex.P/25) indicates that blood was found on it. Likewise, the shirt of the appellant was also sent for FSL and blood was found on it. It is also important to add that Sanat Sahu (PW4) has categorically proved seizure of soil which was sent to FSL and in the report, blood was found in it.

19. Now, credibility of statement of these witnesses is to be examined. It is true that Santoshi (PW7) is the daughter of the deceased but presence of Santoshi (PW7) in deceased-Melanbai's house is natural because Melanbai is her mother. This Court is of the opinion that she may be a relative witness but her testimony is credible and there is no reason for her to falsely implicate an innocent person and protect the real culprit. The statement of this witness is corroborated with other witnesses in natural course that when she saw the appellant assaulting her mother, she shouted for help. Then Umendiram (PW6) and Ramgobind (PW8) came to her house, at that time, the appellant was coming out of the house and during intervention, injuries were sustained by Ramgobind (PW8). Therefore, the finding of the trial Court with regard to credibility of the witnesses appears to be reasonable and natural.

20. Hon'ble Supreme Court in the case of **Rajesh Yadav and**

another v. State of U.P.¹, held as below -

“Related and Interested Witness :

28. 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 rigor of cross examination, it becomes sterling, not requiring further corroboration. A related witness would become an interest witness, only when he is desirous of implicating the accused in rendering a conviction, on purpose.

29. 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*, (2018) 6 SCC 592 :

“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 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, 1954 SCR 145: AIR 1953 SC 364 : 1953 Cri LJ 1465], 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. , (1964) 8 SCR 133 : AIR 1965 SC 202 : (1965) 1 Cri LJ 226], 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, 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 rejected because it is partisan cannot be accepted as correct.”

34. In *Darya Singh v. State of Punjab* [(1964)

3SCR 397 : AIR 1965 SC 328 : (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. In Harbans Kaur v. State of Haryana [(2005) 9 SCC 195 : 2005 SCC (cri) 1213 : 2005 Cri LJ 2199], this Court observed that : (SCC p.227, para 6)

“6. 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 [(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.”

30. 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 straightjacket 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.”

21. Therefore, in the light of the above principle, we are of the considered opinion that the statement of Santoshi (PW7) which has been corroborated by Umendiram (PW6) and Gobindram (PW8) are trustworthy and credible, so far as the argument of the appellant with regard to darkness at the time of commission of offence, this submission is liable to be rejected because from the evidence, it is apparent that the incident took place inside the house and there is nothing on record to suggest and show that Santoshi (PW7) and the appellant was not known to each other or the other witnesses Umendiram (PW6) and Gobindram (PW8) are not known to the present appellant. Spot map Ex.P/1 also indicates that there was lamp post near the house of the deceased. It is not the case or suggested by the appellant to the witnesses that inside the house, there was no light. Therefore, simply one line of statement of Umendi Ram (PW6) that at the time of incident, there was darkness, would not make much difference to the prosecution case.

22. The case laws cited by the counsel for the appellant, with due respect, does not support or help in any manner to the submissions of learned counsel for the appellant because they are distinguishable on facts.

23. In the case of **Balwan Singh** (supra), there was delay in recording statement of eye witnesses but here in the case in hand, it does not appear that there is delay in recording statement of the witnesses. Likewise, in **M.C.Ali** (supra) case, Hon'ble Supreme Court reversed the judgment of conviction passed by the High Court against acquittal of the accused by the Sessions Court and reiterated that if two reasonable conclusions are possible on the basis of evidence on record, the finding of acquittal could not have been disturbed. It is also held in paragraph 51 of this judgment that the law as settled by the Supreme Court in number of judgments, it is held that relationship is not a factor to affect credibility of a witness. The facts stated in the case of **Jagir Singh** (supra) is different from the case in hand. Therefore, no benefit can be derived by the appellant. In the case of **Ramesh** (supra), the accused was identified in the Court. Therefore, this judgment is also distinguishable on facts. In the case of **Ashoksinh Jayendrasinh** (supra), identification of the accused was at night / darkness and there was no source of light. However, in the case in hand, the offence was committed inside the house and as disclosed earlier, it is not established that there was no light inside the house. Therefore, in the opinion of this Court, the case laws as relied upon by counsel for the appellant, with due respect, does not help the appellant in any manner.

24. As a fall out of the above discussion, we do not find any material illegality in the impugned judgment and therefore, this appeal has no merit. It is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Sachin Singh Rajput)
Judge