

HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT**AT JABALPUR**

**Division Bench: Hon'ble Shri Justice S. K. Gangele &
Hon'ble Smt. Justice Vijay Kumar Shukla.**

CRIMINAL APPEAL NO.2636/2007.

Vijayh Singh @ Vijay Kumar
Versus
State of Madhya Pradesh

For appellant : Shri V. P. Singh, Advocate.

For Respondent : Shri B. P. Pandey, Govt. Advocate.

Whether approved for reporting: Yes/ No.

J U D G M E N T
(Passed on 03.02.2018)

As per S.K. Gangele, J:

1. Appellant has filed this appeal against the judgment dated 20.11.2007 passed in S. T. No.4/2007. Trial court convicted the appellant under Section 302 and 307 of IPC and sentenced for imprisonment of life with fine of Rs.1,000/- in earlier count while RI five years with fine of Rs.1,000/- in later.

2. Prosecution story in brief is that there was a dispute in regard to land between appellant and the deceased. On 7.11.2006 at around 9.30 O'clock in the morning appellant had reached on the spot. He was armed with Farsa. He had inflicted injuries on the head and other parts of the body of the deceased. Appellant also chased the son of the deceased, who ran away from the spot. Other witnesses were also present. Report of the incident was lodged by the son of the deceased

at P. S. Mandla. Thereafter police conducted investigation and filed charge sheet. During trial appellant abjured guilt and pleaded innocence. Trial Court held appellant guilty for commission of offence punishable under Section 302 and 307 of IPC and awarded the sentence as mentioned above.

3. Learned counsel for the appellant has submitted that witnesses are relatives of the deceased, hence their evidence is unreliable. It is further submitted by the learned counsel for the appellant that there is no evidence that appellant had inflicted injury to the son of the deceased. Hence, trial Court has committed error in holding the appellant guilty for commission of offence punishable under Section 307 of IPC.

4. Learned counsel for the State has submitted that there are eye witnesses of incident, FIR was lodged promptly. He was armed with deadly weapon. Appellant had inflicted injuries on the body of the deceased, from the possession of the appellant a Farsa was recovered. Hence, trial Court has rightly been held appellant guilty for commission of offence and awarded proper sentence.

5. Phool Chand P. W. 6 is the son of the deceased. He deposed that at around 9-10 O'clock in the morning on the date of the incident i. e. on 7.11.2006, I was at my field. My mother Halkibai, Ritiraj and Ginnidas were working in my field. Ratidas and his wife Ginnibai have been ploughing their field. I was also ploughing my field. My

father was sitting there. Appellant came there, he was armed with Farsa. Appellant inflicted injuries on my father then he had tried to inflict a blow of Farsa on me also, I sat down and saved blow. He chased me up to the distance of 100 feet. Thereafter, he returned back and he had inflicted blows on the body of the person of the deceased, when I reached on the spot my father was died. My mother was also there. I went to the house of the village Kotwar, thereafter I lodged report at P. S. Mandla. Ex. P. 7 is merg and Ex. P.8 is FIR. He admitted his signature on FIR. He further deposed that there was a dispute between appellant and my father about the land. We had sowed seeds of wheat in the land, on this count there was a dispute and appellant had killed my father. In his cross-examination he deposed that Ex.P.7 is merg, Ex.P.8 is FIR and Ex.P.2 is statement recorded under Section 161 of Cr. P. C., he deposed the fact that appellant tried to inflict injury by Farsa at me but why this fact has not been mentioned in FIR I don't know.

6. Halki Bai P. W. 7 is the wife of the deceased. She deposed that on the date of incident my husband was sitting beside me and my son was ploughing the field. Appellant came there, he was armed with Farsa. He had inflicted injuries on the body of the deceased by Farsa, at that time my younger daughter was in the lap of my husband. She also cried. Other children were also there, they also cried. My son who was ploughing the field ran towards the appellant. Appellant also

tried to inflict injury on the son and my son saved the same. I told the appellant not to kill my husband. However, he ran away from the spot. Police also came on the spot.

7. Another witness Ginni Bai P. W. 8 deposed that I had been cutting the grass from the field. Kaliram was sitting there; he had a daughter in his lap. I had seen that appellant was chasing Phool Chand son of the deceased and his mother was running behind him. Son of the deceased ran away up to some distance and appellant came there. Thereafter I reached at my house. Wife of the deceased was weeping and she was crying.

8. Tijobai P. W. 9 deposed that I was cutting paddy and I had seen that appellant was chasing the son of the deceased and wife of the deceased was telling the appellant not to beat and after some time I heard that wife of the deceased was weeping and saying that appellant had killed my husband.

9. Ratidas P. W. 1 deposed that I had been grazing my ox. I had seen that appellant chasing Phool Chand, he was armed with Farsa. Mother of Phool chand was also running behind them. He was telling the appellant not to inflict any injury to her son. Thereafter, appellant ran away from the spot. Wife of the appellant told me that appellant had killed her husband-the deceased. There is no other witness of the incidence.

10. Shyam Das P. W.10 is the witness of seizure. He deposed that on the memorandum of the appellant a Farsa, Lungi and Shirt were seized from the residence of the appellant by seizure memo Ex.P.6. I signed the same. He admitted his signature on the memorandum Ex.P.5. He further deposed that police had seized plain and red earth by seizure memo Ex.P.4. I signed the same.

11. P. W.13 is the Dr. Arjun Singh Dhurve, who performed postmortem of the deceased. He deposed that he noticed following injuries on the person of the body of the deceased.

गला कटा हुआ था । शव का गला पीछे से बीच तक कटा हुआ था । सरवाईकल बोन के लेवल तक था । उस भाग की हड्डी कटी हुयी थी । यह चोट हार्ड एवं शार्प वस्ते कड़ी और धारदार वस्तु से आयी थी । जो 7 इंच लम्बाई तक और 4 इंच गहराई और 2 इंच चौड़ाई थी । माथे पर कई कंटियूजन पाये गये थे जो 1 1 इंच के आकार के थे । पीठ में लम्बा सा खरोंच था । जिसकी लंबाई 11 10 इंच की थी ।

अन्य चोटें : पैर की पिडली पर पायी गई । दोनों पैर की पिडली पर चोटें थी । दोनों पैर में कीचड़ पाया गया था । नाक से खून निकल रहा था । माथे से और कान से खून निकल रहा था ।

गले की चोट एंटीमार्टम प्रकृति की थी जो कड़ी एवं धारदार वस्तु से आ सकती थी । सभी खरोंचे कड़ी एवं सख्त वस्तु से आ सकती थी तथा एंटीमार्टम प्रकृति की थी ।

12. G. P. Dubey P. W. 12 deposed that I recorded merg Ex. P.7 and FIR Ex. P.8 on the information of Phool Chand. He verified the fact that he recorded merg and FIR and signed Ex. P.7 and FIR Ex.P.8.

13. Virendra Singh P. W. 11 is the Investigation Officer. He deposed that I was posted as Assistant Sub Inspector at P. S. Mandla on

7.11.2006. He further deposed that on the date of the incident he seized plain earth and red earth vide Ex. P.4. Appellant was arrested by arrest memo Ex. P.12. On the memorandum of appellant Ex.P.5 a Farsa, Lungi and other clothes were seized from his house. Thereafter, I recorded the statements of Nanhe Singh and Tijo Bai. Seized articles were sent to FSL.

14. P. W. 6 and P. W.7 are eye-witnesses. P. W.6 is the son of the deceased and P. W. 7 is wife of the deceased. Both were present on the spot and deceased was also present on the spot. Their presence is natural because at the time of the incident son of the deceased Phool Chand P. W. 6 had been ploughing his field. Hon'ble the Apex court in the matter of Jodhan Vs. State of Madhya Pradesh reported in **(2015) 11 SCC 52** has held as under in regard to evidence of interested witness :

“First, we shall deal with the credibility of related witnesses. [In Dalip Singh v. State of Punjab](#)[8], it has been observed thus:-

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench

of this Court endeavoured to dispel in [Rameshwar v. State of Rajasthan](#)[9]."

In the said case, it has also been further observed:-

"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."

19. [In Hari Obula Reddy v. State of A.P.](#)[10], the Court has ruled that evidence of interested witnesses per se cannot be said to be unreliable evidence. Partisanship by itself is not a valid ground for discrediting or discarding sole testimony. We may fruitfully reproduced a passage from the said authority:-

"An invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

20. The principles that have been stated in number of decisions are to the effect that evidence of an interested witness can be relied upon if it is found to be trustworthy and credible. Needless to say, a testimony, if after careful scrutiny is found as unreliable and improbable or suspicious it ought to be rejected. That apart, when a witness has a motive or makes false implication, the Court before relying upon his testimony should seek corroboration in regard to material particulars. In the instant case, the witnesses who have deposed against the accused persons are close relatives and had suffered injuries in the occurrence. Their presence at the scene of occurrence cannot be doubted, their version is consistent and nothing has been elicited in the cross-examination to shake their testimony. There are some minor or trivial discrepancies, but they really do not create a dent in their evidence warranting to treat the same as improbable or untrustworthy.”

The Apex court has held that the evidence of interested witness can be relied upon, if it is found to be trustworthy and credible.

15. P. W. 7 P.W.8 and P. W.9 were present at the place of occurrence. They specifically deposed that they had seen the appellant who was chasing the son of the deceased and soon after the incident wife of the deceased told that appellant had killed the deceased. From the possession of Appellant a Farsa, Lungi and Shirt were seized and as per report of FSL blood stains were found on Farsa, Gamchha and Lungi. The report of the incident was lodged at around 15.30 O'clock in the afternoon. In the report it has been mentioned that appellant had inflicted injuries, due to which the deceased was died. Doctor who performed postmortem verified the fact that he noticed incised injuries

on the person of the body of the deceased, which may be caused by sharp edge weapon. Hence, this fact has been proved that the appellant caused injuries to the deceased and due to aforesaid injuries the deceased was died.

16. Next question is that whether the trial Court has rightly convicted the appellant for commission of offence punishable under Section 302 of IPC. Appellant was armed with deadly weapon Farsa. He came on the spot on the date of the incident. He chased the son of the deceased and thereafter inflicted injuries on the vital part of the body of the deceased neck. He had inflicted other injuries also. Hence, in our opinion intention and motive of the appellant was to murder the deceased. In such circumstances the trial court has rightly convicted the appellant for commission of offence punishable under Section 302 of IPC and awarded proper sentence.

17. Next question is that whether conviction of the appellant for commission of offence punishable under Section 307 of IPC is proper or not. Conviction of the appellant under Section 307 of IPC is based on the fact that appellant had tried to inflict injury on the son of the deceased Phool Chand. It is a fact that there was no injury on the body of Phool Chand. Phool Chand and his mother deposed that the appellant tried to inflict injury on Phool Chand, however, he sat down on the earth and saved himself. This fact has not been mentioned by the witness Phool Chand himself in merg Ex. P.7 and FIR Ex.P.8. He

himself admitted in his cross-examination that this fact has not been mentioned in the merg and FIR. Even though this fact has not been mentioned in the statement of Phool Chand recorded under Section 161 of Cr. P. C., that appellant also tried to inflict injury on him and he saved himself. Hence, statement of Phool Chand in this regard is unreliable. Hence, in our opinion, trial Court has committed error in convicting the appellant for commission of offence punishable under Section 307 of IPC. Consequently, the appeal filed by the appellant is partly allowed. Conviction and sentence awarded by the trial Court under Section 302 of IPC is affirmed while conviction and sentence awarded by the trial Court against the appellant for commission of offence punishable under Section 307 of IPC is hereby set aside.

18. Appeal is allowed in part, as indicated above.

(S.K. Gangele)
Judge

(Vijay Kumar Shukla)
Judge

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