

HIGH COURT OF MADHYA PRADESH AT JABALPUR

**Division Bench : Hon'ble Shri Justice J.K.Maheshwari, Judge
Hon'ble Smt. Justice Anjali Palo, Judge**

CRA No. 1511/2009

Chauda & Anr.

Vs.

State of Madhya Pradesh

Smt. Pratibha Mishra, Amicus Curiae for the appellants.
Shri Sourabh Shrivastav, Dy. Government Advocate for the
respondent/State.

Whether approved for reporting ? **Yes**

Law laid down :- (1) Testimony of interested and related witnesses
can be relied upon for conviction.
(2) Some discrepancies in the testimony of
witnesses, which does not affect the case, cannot
be the basis for rejection of the entire evidence.

Significant Paragraphs – 9 to 19.

JUDGMENT
(11/02/2019)

Per : Smt. Anjali Palo, J :-

Appellants have filed this appeal being aggrieved by the
judgment dated 22.06.2009 passed by the Additional Judge to the
Court of First Additional Session Judge, District Tikamgarh in
Session Trial No. 156/2007 whereby the appellants have been
convicted and sentenced as under :

Section	Act	Sentence	Fine	In default of fine
302/34	Indian Penal Code	R.I. for Life Imprisonment	Rs. 1,000/-	R.I. for 3

325/34	Indian Penal Code	R.I. for 2 years	Rs. 1,000/-	months for each fine
323/34	Indian Penal Code	R.I. for 1 year	Rs. 1,000/-	

2. In brief, the prosecution case is that on 01.04.2007 at about 10:00 am at village Purakhera, when the complainant-Chauda (PW-1) along with his wife Hirabai (since deceased), daughter Bhuvan Bai and son Dayaram had gone to the well for taking bath, appellants came there and assaulted them. The complainant, his son Dayaram and daughter Bhuvan Bai sustained injuries while his wife Hira Bai sustained grievous injuries. Later Hira Bai succumbed to the injuries and died. FIR was lodged by her husband complainant-Chauda (PW-1) at Police Station Kudila, District Tikamgarh. Police registered offence under Section 307 and 304/34 of IPC. After investigation, charge-sheet was filed under Section 302/34, 325/34 and 323/34 of the IPC against the appellants. Co-accused Binda has been tried by the juvenile Court.

3. After committal of the case, learned trial Court framed charges under Section 302 in alternate Section 302/34, Section 325 in alternate Section 325/34 and Section 323 in alternate Section 323/34 of the Indian Penal Code against the appellants. Appellants abjured guilt and pleaded "innocence". Defence witness Ganesh Singh (DW-1) has been examined by the appellants to establish that at the time of incident they were working at Delhi.

4. Learned Trial Court relied upon the testimony of

complainant Chouda (PW-1) and other injured eye-witnesses Bhuvan Bai (PW-8) and Dayaram (PW-7). Trial Court also relied upon the testimony of Doctor R.S.Rana (PW-12) who proved the injuries of the deceased and injured eye-witnesses. After considering the entire evidence at length, learned trial Court convicted the appellants under Sections 302/34, 325/34 and 323/34 and sentenced them as mentioned above.

5. Appellants have challenged the findings of the Trial Court on the grounds that the trial Court has not properly appreciated the evidence of the prosecution witnesses and has ignored the material contradictions and omissions in the statement of the prosecution witnesses. Appellants claimed that the trial Court erred in convicting the appellants merely relying on the statements of the interested eye-witnesses Chouda (PW-1), Dayaram (PW-7) and Bhuvan Bai (PW-8). Appellants have prayed for setting aside the impugned judgment and they be acquitted from the charges levelled against them.

6. Heard learned counsel for the parties at length and perused the record.

7. Now the question that arise is “whether the appellants are liable to be acquitted from the charges levelled against them.”

8. Chouda (PW-1) is the husband of the deceased Hira Bai. In paragraph 15 of the FIR, he has stated that at the time of incident,

he was present along with his wife Hira Bai, daughter Bhuvan Bai, and son Dayaram. He further stated that when they reached *sanwahaar* for taking bath, the appellants came there and started a fight (*marpeet*). They inserted a stick in the private parts of deceased Hira Bai and assaulted Bhuvan Bai and Dayaram with wooden sticks and axe. Due to the fatal injuries caused by an axe on the neck, Hira Bai died. Vimlesh reported the incident to the police. Police reached at the spot and took the injured persons with them. Thereafter, the injured persons were sent to Tikamgarh Hospital for treatment and medical examination. In his cross-examination, Chouda (PW-1) specified that the place of incident was about half kilometers away from his house. In paragraph 36 of his cross-examination, he further stated that both the appellants inflicted blows of their weapon on the injured persons. One Sevak Yadav witnessed the incident but he did not come forward to help the injured persons. His cross-examination also indicate the fact that the incident occurred due to some dispute between the complainant and the appellants.

9. Prosecution adduced Dayaram (PW-7), Bhuvan Bai (PW-8) as the eye-witnesses and Parvati (PW-5), Dhaniram (PW-6) as witnesses to prove that just after the incident they reached at the spot and saw the appellants on the spot along with “injured persons”. We find that the statements of aforesaid witnesses contain some minute contradictions from the testimony of Chouda. The

testimony of K.K.Khaneja (PW-15) Investigating Officer establish that Chouda (PW-1) was brought to the police station along with his injured daughter Bhuvan Bai and son Dayaram. At that time, he himself saw the injuries. Chouda (PW-1) promptly lodged name FIR at Police Station Kudils against the appellants mentioning all the details of the incident. In the FIR, he also narrated that the appellants inflicted injuries to them by wooden sticks. Ramdayal (PW-3) in his testimony has stated that the police has seized wooden sticks (lathi) from the accused appellants in his presence. Hence, only due to some contradictions about the weapon used by the appellants, the entire prosecution case does not become unreliable.

10. In case of Yogesh Singh vs. Mahabeer Singh & Ors. (2017) 11 SCC 195 :

“It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or

creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See *Rammi @ Rameshwar Vs. State of M.P.*, (1999) 8 SCC 649; *Leela Ram (dead) through Duli Chand Vs. State of Haryana and Another*, (1999) 9 SCC 525; *Bihari Nath Goswami Vs. Shiv Kumar Singh & Ors.*, (2004) 9 SCC 186; *Vijay @ Chinee Vs. State of Madhya Pradesh*, (2010) 8 SCC 191; *Sampath Kumar Vs. Inspector of Police, Krishnagiri*, (2012) 4 SCC 124; *Shyamal Ghosh Vs. State of West Bengal*, (2012) 7 SCC 646 and *Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Anr.*, (2013) 12 SCC 796).”

11. In India, The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is not applicable in criminal trial. Hence, the evidence of such witness which is partly unreliable, cannot be discarded wholly.

12. The medical evidence of Dr. R.S.Rana (PW-12) who examined the injured eye-witnesses on the same day corroborates the testimony of Chouda (PW-1), Bhuvan Bai (PW-8), Dayaram (PW-7). Dr. Rana found about 11 injuries including contusion and lacerated wound on the person of the deceased. He found six injuries on the body of Chouda (PW-1), four injuries on Bhuvan Bai and 13 injuries on the body of Dayaram. Dr. Rana opined that the nature of injuries establish that all the injuries were caused by the appellants collectively by using hard and blunt object such as wooden stick.

13. Dr. A.K.Tiwari (PW-13) who conducted postmortem of the deceased Hira Bai corroborated the testimony of Dr. R.S.Rana

who examined Hira Bai. We do not find any material contradictions between the testimony of eye-witnesses and the medical evidence.

14. Learned counsel for the appellants submits that all the eye-witnesses are close relatives of the deceased and are interested witnesses, therefore their testimony cannot be relied upon for conviction of the appellants. No independent eye-witness has been examined by the prosecution hence, prosecution case is apparently doubtful and unreliable.

15. It is also pertinent to mention here that the Chouda (PW-1), Bhuvan Bai (PW-8), Dayaram (PW-7) are injured eye-witnesses. The testimony of injured eye-witness has great evidentiary value. In case of **Mukesh Vs. State (NCT) of Delhi [(2017) 6 SCC 1]**, the Hon'ble Supreme Court has held that -

“The injuries found on the person of who was injured in the same occurrence lends assurance to his testimony that he was present at the time of the occurrence along with the prosecutrix. The evidence of an injured witness is entitled to a greater weight and the testimony of such a witness is considered to be beyond reproach and reliable. Firm, cogent and convincing ground is required to discard the evidence of an injured witness”.

16. In the present case, the presence of eye-witnesses at the time of incident is clearly established on the spot in their statements. Appellants have failed to rebut their testimony, hence, their testimonies are quite natural and without any material contradictions

and omissions. Otherwise also, close relatives are interested in punishing the real culprit. They do not want to involve any innocent person in place of real culprit in the offence, in which they have lost their dear ones. Conviction can be based on their testimony.

17. In case of **Roop Narain Mishra Vs. State of UP** [2017 Cri.LJ 1487] has held as under :

“On the point of 'interested witnesses', the Hon'ble Supreme Court in *State of U.P. v. Jagdeo*, reported in 2003 Cri LJ 844 (SC) observed that only on the ground of interested or related witnesses, their evidence cannot be discarded. Most of the times eye witnesses happen to be family members or close associates because unless a crime is committed near a public place, strangers are not likely to be present at the time of occurrence.

In **Mst. Dalbir Kaur v. State of Punjab**, 1976 Cr LJ 418 (SC), following observations were made:

The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused is somehow or the other is convicted either because he had some animus with the accused or for some other reason. In the reported case the incident took place at midnight inside the house, the only natural witnesses who could be present to see the assault were the persons present in the house at that time. No outsider can be expected to have come at that time because the attack was sudden. Moreover a close relative who is a very natural witness cannot be regarded as an interested witness.

Witness who gives details with absolute accuracy is trustworthy.”

[See also **Waman and others v. State of Maharashtra**, 2011 CrL. LJ 4827].

18. In case of **Arjun vs. State of C.G.** [2017 (2) MPLJ (Cri.) 305), the Hon'ble Supreme Court has held as under :

“Evidence of related witness is of evidentiary value. Court has to scrutinize evidence with case as a rule of prudence and not as a rule of law. Fact of witness being related to victim or deceased does not by itself discredit evidence.”

[See also **Bhaskarrao & Ors. Vs. State of Maharashtra (2018) 6 SCC 591**].

19. Therefore, we are not inclined to disbelieve the testimony of close relatives of the complainant Chouda (PW-1) and Hira Bai.

20. Appellants examined Ganesh Singh (DW-1) as a defence witness. But it is important to note that they have not challenged their presence during the cross-examination of main eye-witnesses. After concluding the prosecution evidence they have taken the plea of alibi. It clearly shows that it is an afterthought. They concocted a false story to save themselves from the criminal liability of the offence. Ganesh Singh (DW-1) stated that appellant Chouda was working with him at Delhi from the year 2006 till April 2007. In cross-examination, he admitted that Chouda and others frequently visited their native place. The contractor under whom they worked at Delhi has not been examined by them nor their attendance register was produced by the defence to prove their presence at Delhi at the time of incident. Ganesh further admitted that it was the first time that he had stated about the presence of the appellants at Delhi,

therefore the learned trial Court ignored the defence evidence and did not believe the defence of the appellants' plea of alibi.

21. In case of **Darshan Singh Vs. State of Punjab (2016) 3 SCC 37**, the Hon'ble Supreme Court has held :

“17. The word alibi means “elsewhere”. The plea of alibi is not one of the General Exceptions contained in Chapter IV of IPC. It is a rule of evidence recognized under Section 11 of the Evidence Act. However, plea of alibi taken by the defence is required to be proved only after prosecution has proved its case against the accused.”

[See also **Mukesh Meena Vs. State of Madhya Pradesh, M.Cr.C. No. 1958/2016**].

22. In view of the evidence on record as discussed above, in our considered opinion, the Trial Court after considering the evidence available on record, rightly held the appellants guilty for committing offence under Sections 302/34, 325/34 and 323/34 of the Indian Penal Code and rightly awarded the sentence. We do not find any merit in this appeal. It is hereby **dismissed**.

23. Copy of this judgment along with its record be sent to the Court below for information and compliance.

(J.K.MAHESHWARI)
JUDGE

(SMT. ANJULI PALO)
JUDGE