REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 206-207 OF 2017

ARJUN AND ANR. ETC. ETC. .....Appellants

Versus

STATE OF CHHATTISGARH .....Respondent

J U D G M E N T

R. Banumathi, J.

These appeals arise out of the judgment and order dated 30.08.2013 passed by the High Court of Chhattisgarh in Criminal Appeal Nos.111 of 2008 and 100 of 2008 whereby the High Court affirmed the conviction and sentence of life imprisonment imposed by the trial Court on the appellants.

2. Briefly stated case of the prosecution is that on 19.11.2006 at about 9:45 a.m., deceased Ayodhya Prasad @ Rahasu had gone to his field alongwith Bajrang Manjhi (PW-1), Borri Verma (PW-2), Gilli Raout (PW-7) and Makunda Raout (PW-8) to cut tree with the help of the above

persons which was on his land in village Ghatmadwa. At that time, the appellants-accused came to the field and they stopped the deceased and his labourers from cutting the tree. Deceased Ayodhya Prasad @ Rahasu told the appellants that he was the owner of the tree, therefore, he was cutting the tree which resulted in quarrel between the parties. The appellants assaulted the deceased with *katta*, *gandasa* and stone. The deceased fell down and sustained injuries on his head and his brain matter came out. He was taken to Bilaspur for treatment but he died on the way to the hospital.

3. Shivprasad (PW-6), brother of the deceased lodged the complaint in Police Outpost Gidhouri. Based on the complaint, FIR (Ex.P-16) was registered in Police Station Bilaigarh. PW-10, the Investigating Officer reached the place of occurrence and took up the investigation. After the inquest, the body was sent for autopsy. The post-mortem was conducted by Dr. Harnath Verma (PW-12) who gave the Post Mortem Report (Ex.P-26). Dr. Verma opined that the death of the deceased was due to excessive haemorrhage and injury to the head.

4. PW-10, the Investigating Officer arrested the appellants from the Gidhouri Bus Stand and recorded their statements under Section 27 of the Evidence Act. Disclosure statement of the appellants led to the

discovery of iron *katta* (cutting object), g*andasa* and stone weighing 12.5 kg which were seized from Lalaram @ Bhagat, Arjun and Padumlal respectively. Sando *baniyan* and full-pant of appellant Lalaram @ Bhagat were also seized. Seized articles were sent to Forensic Science Laboratory, Raipur for chemical examination *vide* Ex.P-23. After completion of the investigation, chargesheet was filed against the appellants in the Court of Judicial Magistrate, First Class Balodabazar, who, in turn, committed the case to the Court of Session, Raipur, from where it was received on transfer by Second Additional Sessions Judge, Balodabazar, District Raipur, who conducted the trial.

5. In order to prove its case, prosecution examined as many as twelve witnesses. Bajrang Manjhi (PW-1), Borri Verma (PW-2), Gilli Raout (PW-7) and Makunda Raout (PW-8) are the eye-witnesses, PW-6 Shivprasad is the complainant and brother of the deceased Rahasu. Constable Gandlal (PW-4), Constable M.R. Sinha (PW-9) and Constable Bhojram (PW-11) were involved in recording the statement and collection of evidence, PW-10 Deen Bandhu Uaikey is the Investigating Officer and PW-12 Dr. Harnath Verma is the doctor who conducted the post-mortem. The accused were questioned under Section 313 Cr.P.C about the incriminating evidence and circumstances, the accused denied all of

them. The accused pleaded that the deceased Ayodhya Prasad attempted to take possession of the land of the accused by force and, therefore, they acted in self-defence of their body and property. To substantiate their defence plea, the accused have examined DW-1 Shrawan Kumar and DW-2 Dwarika Prasad.

6. Having considered the evidence of the witnesses and the defence plea and the material placed before it, the trial court held that the appellants acted with common intention to commit the murder of deceased Ayodhya Prasad and found that the prosecution has proved the guilt of the accused beyond reasonable doubt and convicted the appellants under Section 302 IPC or 302/34 IPC and sentenced each of them to undergo imprisonment for life and imposed fine of Rs.20,000/- and in default of payment of fine to undergo rigorous imprisonment for two years. Aggrieved by the verdict of conviction, the accused-appellants Arjun and Lalaram together filed an appeal and accused Padumlal filed a separate appeal before the High Court. The High Court after hearing the counsel for the parties affirmed the conviction of the appellants and sentence imposed by the trial court. Aggrieved by the conviction and sentence imposed on them, the appellants are before us in these appeals by way of special leave.

7. Learned counsel for the appellants submitted that the name of accused Arjun has never found mention in the evidence of witnesses and the prosecution has failed to prove his presence at the place of incident. It was further submitted that the eye witnesses have named only Padum and Lalaram and not Arjun and thus, his conviction under Section 302/34 IPC was unsustainable in the eyes of law. It was contended that PW-6 Shivprasad is the real brother of the deceased and it would be unsafe to base conviction on such an interested testimony. It is also the case of the appellants that mere recovery of *gandasa* from accused Arjun cannot establish his guilt as it is normal that most of the farmers have *gandasa* in their possession and mere recovery without establishing its use defeats the case of the prosecution.

8. Per contra, the learned counsel for the State submitted that even though PW-6 Shivprasad is the brother of the deceased, his evidence is supported by other evidence and also the recovery of weapons from the appellants. It was further submitted that even though prosecution witnesses Bajrang Manjhi (PW-1), Borri Verma (PW-2), Gilli Raout(PW-7) and Makunda Raout (PW-8) were treated hostile, their evidence establish the presence of the accused and their overt act of surrounding the deceased and to that extent, corroborate the version of PW-6

Shivprasad. It was further submitted that considering the nature of weapon used by the appellants and the manner of attack, the trial court as well as the High Court rightly convicted the appellants under Section 302 IPC and the impugned judgment warrants no interference.

9. We have heard learned counsel for the parties at length and perused the impugned judgment and the materials placed on record.

10. Shivprasad PW-6 is the real brother of the deceased. PW-6 has deposed in his evidence that on 19.11.2006 at about 8:45 a.m., his brother Ayodhya Prasad @ Rahasu had gone to the field for cutting of trees alongwith four labourers who are eye witnesses i.e. PWs 1, 2, 7 and 8 and at that time A1-Lalaram, A2-Padumlal and A3-Arjun came there with *katta* and *gandasa* and surrounded the deceased quarrelled with him and prevented him from cutting the tree. The accused told the deceased that they are the owners of the land and questioned him as to why he was cutting the tree. When the deceased replied that he was the owner of the tree and he had the right to cut the tree, there was wordy altercation between the accused and the deceased and the accused attacked him with the weapons they had, namely, *katta*, *gandasa* and a stone. The deceased sustained injuries on his head, neck, back and abdomen and fell down on the field. He further deposed that he

witnessed the incident from near the shop and the distance between the shop and the place of occurrence is 15 to 20 feet and due to fear, he did not go near.

11. Shivprasad (PW-6) is the brother of the deceased, his relationship with the deceased does not affect the credibility of the witness. Only because PW-6 is related to the deceased that may not by itself be a ground to discard his evidence. Where the prosecution case rests upon the evidence of a related witness, it is well-settled that the court shall scrutinize the evidence with care as a rule of prudence and not as a rule of law. The fact of the witness being related to the victim or deceased does not by itself discredit the evidence.

12. In ***Mano Dutt and Anr. vs. State of Uttar Pradesh*** (2012) 4 SCC 79, in para (33), this Court held as under:-

> "**33.** The court can convict an accused on the statement of a sole witness, even if he was a relative of the deceased and thus, an interested party. The condition precedent to such an order is that the statement of such witness should satisfy the legal parameters stated by this Court in a catena of judgments. Once those parameters are satisfied and the statement of the witness is trustworthy, cogent and corroborated by other evidence produced by the prosecution, oral or documentary, then the court would not fall in error of law in relying upon the statement of such witness. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure its defect. Reference in this regard can be made to the judgment of this Court, in *Anil Phukan* v. *State of Assam* (1993) 3 SCC 282."

We find no reason to discard the evidence of PW-6 for the sole reason that he is related to the deceased and that he is an interested witness.

13. To bring home the guilt of the accused, prosecution has examined Bajrang Manjhi (PW-1), Borri Verma (PW-2), Gilli Raout (PW-7) and Makunda Raout (PW-8), the labourers who accompanied the deceased for cutting the trees. In his evidence, PW-1 Bajrang Manjhi stated that he alongwith Borri Verma (PW-2), Gilli Raout (PW-7) and Makunda Raout (PW-8) went with deceased Ayodhya for cutting the trees at about 7:00-8:00 a.m. and the deceased showed them three trees to be cut. PW-1 further stated that while they were cutting the tree, the appellants Padum and Lalaram came there and questioned them about cutting of tree and asked them to go away. PW-1 further stated that the appellants Lalaram and Padum were having iron knife and they surrounded the deceased. PW-1 further stated that out of fear, he and other labourers namely, Borri Verma (PW-2), Gilli Raout (PW-7) and Makunda Raout (PW-8) ran away from the scene and after about 20-25 minutes they came to know that Ayodhya Prasad was murdered. To the same extent, is the evidence of Borri Verma (PW-2), Gilli Raout (PW-7) and Makunda Raout (PW-8).

14. All the four eye witnesses have corroborated that the accused Padum and Lalaram were present. Further, according to PW-8 Makunda Raout, accused Padum and Lalaram were present and immediately on fleeing away from the spot, PW-8 Makunda Raout after some distance turned back and saw that there were three accused persons standing surrounding the deceased. The presence of two accused in the beginning and later on joining of the third accused Arjun is what falls from the evidence of PW-8. Evidence of PW-8, thus, corroborates the evidence of PW-6 as to the presence of three accused.

15. Though the eye witnesses PWs 1, 2, 7 and 8 were treated as hostile by the prosecution, their testimony insofar as the place of occurrence and presence of accused in the place of the incident and their questioning as to the cutting of the trees and two accused surrounding the deceased with weapons is not disputed. The trial court as well as the High Court rightly relied upon the evidence of PWs 1, 2, 7 and 8 to the above said extent of corroborating the evidence of PW-6 Shivprasad. Merely because the witnesses have turned hostile in part their evidence cannot be rejected in *toto*. The evidence of such witnesses cannot be treated as effaced altogether but the same can be accepted to the extent that their version is found to be dependable and the court shall examine

more cautiously to find out as to what extent he has supported the case of the prosecution.

16. In ***Paramjeet Singh alias Pamma vs. State of Uttarakhand*** (2010) 10 SCC 439, it was held as under:-

> "**16.** The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide *State of Rajasthan* v. *Bhawani* (2003) 7 SCC 291.)
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> **17.** This Court while deciding the issue in *Radha Mohan Singh* v. *State of U.P.* (2006) 2 SCC 450 observed as under: (SCC p. 457, para 7)
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> > "*7*. … It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof."
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> **18.** In *Mahesh* v. *State of Maharashtra* (2008) 13 SCC 271, this Court considered the value of the deposition of a hostile witness and held as under: (SCC p. 289, para 49)
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> > "*49*. … If PW 1 the maker of the complaint has chosen not to corroborate his earlier statement made in the complaint and recorded during investigation, the conduct of such a witness for no plausible and tenable reasons pointed out on record, will give rise to doubt the testimony of the investigating officer who had sincerely and honestly conducted the entire investigation of the case. In these circumstances, we are of the view that PW 1 has tried to conceal the material truth from the Court with the sole purpose of shielding and protecting the appellant for reasons best known to the witness and therefore, no benefit could be given to the appellant for unfavourable conduct of this witness to the prosecution."

> **19.** In *Rajendra* v. *State of U.P.* (2009) 13 SCC 480, this Court observed that merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. This Court reiterated a similar view in *Govindappa* v. *State of Karnataka* (2010) 6 SCC 533 observing that the deposition of a hostile witness can be relied upon at least up to the extent he supported the case of the prosecution.
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> **20.** In view of the above, it is evident that the evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution."

The same view is reiterated in ***Mrinal Das and Ors. vs. State of Tripura*** (2011) 9 SCC 479 in para (67) and also in ***Khachar Dipu alias Dilipbhai Nakubhai vs. State of Gujarat*** (2013) 4 SCC 322 in para (17).

17. The contention of the accused is that the eye witnesses PWs 1, 2, 7 and 8 have not mentioned the name of appellant Arjun. Appellant Arjun could have not been convicted, does not merit acceptance. In his evidence, PW-8 Makunda Raout stated that when they started cutting trees, accused Padum and Lala came there and surrounded Ayodhya Prasad and started questioning. After that PW-8 and other eye witnesses ran away from the spot. PW-8 further stated that after some distance, he turned back and saw three persons surrounding the deceased. The evidence of PW-8 establishes the presence of two accused in the beginning and that Arjun joined two other accused and the presence of appellant Arjun spoken by PW-6 is corroborated by the evidence of PW-8. That apart, recovery of *gandasa* from appellant Arjun is an incriminating circumstance/evidence against the appellant Arjun and

concurrent findings recorded by the courts below that appellant Arjun was also responsible for the homicidal death of Ayodhya is based on evidence.

18. PW-12 opined that the cause of death was haemorrhagic shock due to head injuries and the death was homicidal in nature. Medical evidence corroborates the oral testimony of PWs 6 and 10. Recovery of weapons i.e. *katta* (cutting object), g*andasa* and stone from the accused Lalaram, Arjun and Padum respectively also substantiates the prosecution version. The prosecution has established that the appellants are responsible for the homicidal death of deceased Ayodhya Prasad.

19. The point falling for consideration is whether the conviction of the appellants under Section 302 IPC is sustainable. As discussed earlier, the evidence clearly establishes that while Ayodhya Prasad and other witnesses were cutting the trees, there was exchange of words which resulted in altercation and during the said altercation, the appellants attacked the deceased. Thus, the incident occurred due to a sudden fight which, in our view, falls under exception (4) of Section 300 IPC.

20. To invoke this exception (4), the requirements that are to be fulfilled have been laid down by this Court in ***Surinder Kumar vs. Union***

Territory of Chandigarh (1989) 2 SCC 217, it has been explained as under:-

> "**7.** To invoke this exception four requirements must be satisfied, namely, (*i*) it was a sudden fight; (*ii*) there was no premeditation; (*iii*) the act was done in a heat of passion; and (*iv*) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly……."

21. Further in the case of ***Arumugam vs. State, Rrepresented by Inspector of Police, Tamil Nadu***, (2008) 15 SCC 590, in support of the proposition of law that under what circumstances exception (4) to Section 300 IPC can be invoked if death is caused, it has been explained as under:-

> "**9. …….**
> "18. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden

> quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'."

22. The accused, as per the version of PW-6 and eye witness account of other witnesses, had weapons in their hands, but the sequence of events that have been narrated by the witnesses only show that the weapons were used during altercation in a sudden fight and there was no pre-meditation. Injuries as reflected in the post-mortem report also suggest that appellants have not taken "undue advantage" or acted in a cruel manner. Therefore, in the fact situation, exception (4) under Section 300 IPC is attracted. The incident took place in a sudden fight as such the appellants are entitled to the benefit under Section 300 exception (4) IPC.

23. When and if there is intent and knowledge, then the same would be a case of Section 304 Part I IPC and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of Section 304 Part II IPC. Injuries/incised wound caused on the head i.e. right parietal region and right temporal region and also occipital region, the injuries indicate that the appellants had intention and knowledge to cause the injuries and thus it would be a case falling under Section 304 Part I IPC. The conviction of the appellants under

Section 302 read with Section 34 IPC is modified under Section 304 Part I IPC. As per the Jail Custody Certificates on record, the appellants have served 9 years 3 months and 13 days as on 2nd March, 2016, which means as on date the appellants have served 9 years 11 months. Taking into account the facts and circumstances in which the offence has been committed, for the modified conviction under Section 304 Part I IPC, the sentence is modified to that of the period already undergone.

24. In the result, conviction of the appellants under Section 302 IPC read with Section 34 IPC is modified as conviction under Section 304 Part I IPC and the sentence is reduced to the period already undergone and these appeals are partly allowed accordingly. The appellants are ordered to be released forthwith unless required in any other case.

25. Fee of the learned Amicus is fixed as per Rules.

……..……J.
[DIPAK MISRA]

……J.
[R. BANUMATHI]

New Delhi;
February 14, 2017