IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA
&
HON'BLE SHRI JUSTICE HIRDESH

ON THE 29th OF MAY, 2024

CRIMINAL APPEAL No. 122 of 2014

BETWEEN:-

GANESH BALAI S/O SHRI RAMESH BALAI, AGED ABOUT 29 YEARS, OCCUPATION: BELDARI R/O RAMKRISHNA BAGH COLONY, INDORE AT PRESENT IN CENTRAL JAIL (MADHYA PRADESH)

.....APPELLANT

(BY SMT. INDU RAJGURU – ADVOCATE)

AND

THE STATE OF MADHYA PRADESH. THROUGH P.S. KHAJRANA, DISTRICT INDORE (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI SUDHANSHU VYAS – GOVERNMENT ADVOCATE)

This appeal coming on for hearing this day, ***Justice Hirdesh*** *passed the following:*

J U D G M E N T

1. This criminal appeal under Section 374 (2) of Cr.P.C. has been preferred by the appellant being aggrieved by the judgment dated 20.11.2013 passed by Sessions Judge, Indore in Session Trial No.829/2012 whereby the trial court

has convicted the appellant for the offence punishable under Section 302 of IPC and sentenced him to undergo rigorous imprisonment for life with fine of Rs.10,000/- and in default of payment of fine to further undergo six months additional R.I.

2. According to the prosecution story on 11.04.2012, Sheetal (PW-7) who is daughter of deceased and accused came to the house of her grandfather (Nana) at 5:30 P.M. and stated that appellant is beating her mother. Thereafter, grandfather Gorelal (PW-5) and grandmother Sundarbai (PW-6) came along with Sheetal (PW-7) to the house of the appellant and saw that appellant assaulted his wife Aarti with knife and she was lying on the floor fully covered with blood. The appellant pushed Gorelal and Sundarbai and fled away from the spot. Thereafter, Gorelal (PW-5) went to the police station Khajrana with his granddaughter and lodged the FIR. The Police came on the spot and enquired the matter. The Investigating Officer prepared the Lash Panchnama and thereafter send the body of the deceased for postmortem and arrested the accused, seized his clothes and blooded knife.

3. After due investigation, police filed charge-sheet against the appellant before the concerned Court of Magistrate. After committal, the case was sent to the Court of Sessions Judge, Indore for trial.

4. The appellant abjured the guilt and sought trial. In turn, prosecution in order to prove its case examined 12 witnesses. After completion of evidence of prosecution witnesses, the appellant was examined under Section 313 of Cr.P.C. Appellant took defence that he has not committed the offence and he was falsely implicated in the case. He also took the defence that he was not present at the spot at the time of incident, but he did not examine any witness in his defence. After conclusion of trial, the trial Court held the appellant

guilty for the offence and sentenced him as mentioned above.

5. Being aggrieved by the impugned judgment, the appellant filed this appeal and submitted that trial Court has committed grave error in not considering the fact that the case of the prosecution is based on circumstantial evidence. It is further submitted that Sheetal PW-7 is a child witness and is tutored. She stated in the cross examination that at the time of incident she was playing outside the house and Gorelal (PW-5) and Sundarbai (PW-6) are interested witnesses but there are so many omissions and contradictions in their statements. The seizure of clothes and knife was not duly proved. In FSL report blood group was not mentioned. So the judgment of the trial Court is erroneous and liable to be set aside.

6. On the other hand, learned counsel for the respondent/State supported the impugned judgment and submitted that prosecution has proved its case with direct evidence which is corroborated by the medical evidence and the FSL report and prays for dismissal of the appeal.

7. We have heard the learned counsel for the parties and perused the record.

8. The first question arises before this Court is whether the death of deceased was homicidal in nature or not?

9. Kulwant Singh (PW-12) C.S.P., Investigating Officer stated in examination-in-chief that on the date of incident i.e. 11.04.2012 he reached on the spot for enquiry of the Merg. He prepared the Panchnama of the dead body of the deceased/victim which is Ex.P-13 and prepared application for postmortem Ex.P-12 and send the body for postmortem. Dr. Deepak Gawli (PW-8) stated in examination-in-chief that he was posted as Medical Officer in M. Y. Hospital, Indore and on 11.04.2012 he conducted the postmortem of

the dead body of the deceased and found the following injuries on the body:-

> "Injuries:- (1) A stab wound of size 2 x 1 cms with 4 cms depth present on left side of neck which is 4 cms away from left angel of mandible, 5 cms downwardly away from left ear lobule, which is directed lateral to medial downwardly acute angle at medial side and broad angle at lateral side, underlying structures such as sternocleidomastoid muscles, carotid artery and C7 vertebra anteriorly showing stab wound.
>
> (2) An incised wound of size 2 x 0.2 cms present on abdomen situated at midline, 4 cms just above umbilicus.
>
> (3) An incised wound of size 1.5 x 0.5 cms present on left ear over Pinna just below the external meatus.
>
> (4) An incised wound of size 1 x 0.1 cms present on right upper and medial side of palm which is 3 cms below wrist joint."

10. He stated that the death of the deceased was due to the stab injury over the neck region and the injuries are sufficient to cause death in the ordinary course and the death is homicidal in nature. The duration of death is 24 hours since the postmortem examination. Hence, considering the evidence of Dr. Deepak Gawli PW-8 and Kulwant Singh PW-12, it is proved that deceased died due to shock and hemorrhage as a result of stab injury over the neck region and death is homicidal in nature. There is no substantial cross examination done by the defence in this regard to Dr.Deepak Gawli (PW-8).

11. Now the point of determination is as to whether the appellant has caused the death of deceased by assaulting her by knife.

12. At the outset, Gorelal (PW-5), Sundarbai (PW-6) and Sheetal (PW-7) are required to be enunciated.

13. Sheetal (PW-7) who is daughter of the appellant and deceased stated in examination-in-chief that appellant is her father and deceased is her mother. In the morning on the date of incident, her father had demanded money from her mother. Thereafter, her mother went for her work and came back at 5 P.M. When her mother was cooking food, her father banged her mother's head on the platform due to which she fell down and her father assaulted her mother by knife on her stomach and neck. Thereafter, she went to her grandfather's house and narrated the story on which her grandfather and grandmother went to the house of appellant along with Sheetal (PW-7).

14. Gorelal (PW-5) father of the deceased stated in examination-in-chief that on the date of incident at 5 P.M. Sheetal (PW-7) came to their house and stated that a quarrel took place between her father and mother, they went to their daughter's house where he saw the appellant was present in the room and on seeing him, the appellant fled away from the spot. He saw the knife in the hand of the appellant. Sundarbai (PW-6) supported the version of Gorelal (PW-5) in her examination-in-chief.

15. Learned counsel for the appellant submits that no independent witness has supported the case of the prosecution. It is only indicated by the relative witnesses and there are so many omissions and contradictions in the statement of witnesses.

16. With regard to these aspects, in the case of **Chauda Vs. State of Madhya Pradesh,** 2019 ILR M.P. 471, a Division Bench of this Court has held as **– an interested eye witnesses- presence of eye witnesses establishes their statement**.

> "The appellants failed to rebut their testimony which was quite natural and without any material contradiction and omission the conviction can be based on the testimony of close relatives/interested witnesses. There is no material contradiction or omission between testimony of eye witnesses and medical evidence which must be relied upon. In this case it is held that if interested / relative witnesses are reliable then these evidence are not discarded merely on this ground."

17. In the case of **Smt. Dalbir Kaur Vs. State of Punjab,** Cr.LJ 1976, the Apex Court has made following observations:-

> "Interested witnesses are related witnesses and they are natural witnesses. They are not interested witnesses and their testimony can be relied upon."

18. In the case of **Arjun Singh Vs. State of Chhattisgarh, 2017 Vol.2 MPLJ Cr. 305**, the Apex Court held the evidence of related witnesses has the evidentiary value, court has to scrutinize the evidences with care in each and every case is a rule of prudence and a rule of law. Facts of witnesses being related to victim or deceased are not by itself discredit evidence.

19. In the case of **Laltu Ghos Vs. State of West Bengal,** AIR (2019) SC 1058, the Apex Court has quoted as under:-

> " (a) This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused.
>
> (b) Actually in many cases, it is often that the offence is witnessed by a close relative of the victim / deceased, whose presence on the spot of the incident would be natural. The evidence of such a witness cannot automatically be discarded by

labelling the witness as interested."

20. Applying the aforesaid law, now the evidence of prosecution witnesses is discussed as under:-

Sheetal (PW-7) is daughter of appellant and deceased, so she cannot be called as interested witness.

21. Learned counsel for the appellant submitted that she was tutored and she came to the Court with her grandfather and grandmother, so her witness is not reliable. She has relied on the judgment of the Division Bench of this Court in the case of **Dare Rajgond Vs. State of M.P. 2013(III) MPWN 107** wherein it has been held that child witness tutored, his testimony not reliable, testimony of other witnesses also not reliable, benefit of doubt extended to the accused. She has also relied on the judgment of Division Bench of this Court in the case of **Sukhram Vs. State of M.P. 1995 Cr.L.J 595** wherein it has been held that evidence of child of tender age tainted with infirmities of description on point of proper identification. Evidence also show that child is tutored and evidence of sole eye witness, a child of tender age tainted with infirmities of description on point of proper identification, she is not reliable.

22. In the present case, Sheetal (PW-7) is daughter of appellant and deceased. She is 8 years old and she totally narrated the incident in examination-in-chief and she has stated that she saw the incident and her father assaulted her mother by knife on her neck and stomach and when she called her grandfather and grandmother, then her father fled away from the spot. Considering her cross examination, she was substantially intact in her cross examination and stated that she saw the incident and thereafter narrated this incident to grandfather and grandmother.

23. So in the considered opinion of this Court, this witness is not tutored witness, but she is the only sole witness of this incident. Hence, the judgment relied upon by the learned counsel for the appellant is of no help to the appellant.

24. The Evidence Act, 1872 does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer, J. in Wheeler v. United States (159 US 523). The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. **(See Suryanarayana Vs. State of Karnataka (2001) 9 SCC 129)**

25. In **Dattu Ramrao Sakhare v. State of Maharashtra** [(1997) 5 SCC 341] it was held as follows:

> "5…….A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind

> while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

26. In the present case, Sheetal (PW-7) was substantially intact in her cross examination therefore, there is no reason to discard her evidence by merely stating that grandfather and grandmother had tutored her to give statement. Gorelal (PW-5) is father of the deceased and Sundarbai (PW-6) is mother of the deceased. When they came at the spot they found the presence of the appellant in the house of the deceased and after seeing them the appellant fled away from the spot. These two witnesses are also totally intact. There is no reason to disbelieve them.

27. Learned counsel for the appellant submitted that seizure of the knife from the appellant was not duly proved.

28. Kulwant Singh (PW-12) Investigating Officer who investigated the matter stated in para 2 of his evidence that he arrested the appellant and recorded his memorandum under Section 27 of the Evidence Act Ex.P-2 and seized knife and clothes of the appellant from Shriramkrishna Bagh Colony from the house of Mahendra Verma. Seizure memo is Ex.P-3. Gajendra (PW-1) has fully supported the evidence of Kulwant Singh (PW-12).

29. Learned counsel for the appellant further submitted that Gajendra (PW-1) stated in his cross examination that he signed all the papers in police station. This statement does not give any benefit to the appellant. Kulwant Singh (PW-12) was totally intact in his evidence in regard to the memorandum Ex.P-2 and seizure memo Ex.P-3. Kulwant Singh (PW-12) is a police officer.

30. In the case of **Karamjeet Singh Vs. State (Delhi Administration) (2003) 5 SCC 291** the Apex Court held that police officers are doing their work in official capacity. They are to be treated as common man. Their evidence cannot be discarded merely because they are police officers. If their evidence is found unrebutted without malafide, then they must be reliable Their evidence cannot be discarded only on the ground that they are police officers.

31. In the present case, Kulwant Singh (PW-12) is totally intact in his evidence and is substantially corroborated by Gajendra (PW-1). In view of the aforesaid discussion recovery of blooded knife and clothes which were worn by the appellant at the time of incident was totally proved. The clothes and knife were sent for FSL examination by the police. FSL report is Ex.P-17. In Ex.P-17 it is found that in the clothes of the appellant which were worn by him at the time of incident and the knife recovered from him had human blood. So it is the duty of the appellant to disclose the fact as per Section 106 of the Evidence Act as to how and why the human blood was found on the clothes of the appellant which was worn by him at the time of incident and knife which was recovered from the possession of the appellant, but appellant was unable to rebut this fact in defence and he has not stated a single word about it in his statement under Section 313 of Cr.P.C. Therefore, even if blood group is not mentioned in the FSL report, the same will not help the appellant. Hence, the FSL report Ex.P-17 is also against the appellant.

32. Considering the facts and circumstances of the case as well as the arguments advanced by the learned counsel for the parties, evidence adduced by the prosecution witnesses as well as the report available on record, it is found that prosecution is able to prove this case against the appellant. The trial

Court has properly assessed the evidence available on record and has not committed any error and has rightly convicted and sentenced the appellant under the aforesaid Section of the IPC. Hence, conviction and sentence deserves to be maintained.

33. Resultantly, the appeal filed by the appellant is dismissed and the conviction and sentence passed by the trial Court is hereby upheld.

Let a copy of this judgment along with the record be sent back to the concerned trial Court for information and necessary compliance.

(VIJAY KUMAR SHUKLA)
JUDGE

(HIRDESH)
JUDGE

RJ