

GAHC010039112020



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

CRIMINAL APPEAL NO. 72/2020

Sankar Bakti, Age – 42 years, S/o Late Chusra Bakti, R/o – Dipling Tea Estate,
P.O. & P.S. – Kakotibari, District – Charaideo, Assam

.....*Appellant*

-VERSUS-

1. The State of Assam, represented by Public Prosecutor, Assam
2. Sri Bijay Tanti, S/o – Late K. Tanti, Village - Dipling Tea Estate, P.O. & P.S. – Kakotibari, District – Charaideo, Assam, PIN - 785691

.....*Respondents*

Advocates :

Appellant	:	Mr. I. Choudhury, Advocate
Respondent no. 1	:	Ms. S.H. Borah, Additional Public Prosecutor, Assam
Date of Hearing	:	10.06.2024
Date of Judgment & Order	:	26.06.2024

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT & ORDER

[M. Choudhury, J]

The instant criminal appeal under Section 374[2], Code of Criminal Procedure, 1973 ['the CrPC' or 'the Code', for short] is directed against a Judgment and Order dated 17.12.2019 passed by the Court of learned Additional Sessions Judge, Charaideo, Sonari in Sessions [CHA] Case no. 18 of 2018. By the Judgment and Order dated 17.12.2019, the accused-appellant has been convicted under Section 302, Indian Penal Code ['IPC' or 'Penal Code', for short] and he has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo simple imprisonment for another month. The accused-appellant has also been convicted under Section 447, IPC and he has been sentenced to undergo simple imprisonment for one month.

2. The investigation was set into motion on institution of a First Information Report [FIR] before the Officer In-Charge, Kakotibari Police Station by the informant-P.W.1, Bijay Tanti on 12.12.2017. In the FIR, the informant-P.W.1 reported that at around 06-00 p.m. on 12.12.2017, the accused came to his house and started hurling abuses using filthy language without any reason. At about 07-00 p.m. on that day, the accused again came to his house and shouted that he would kill the informant and the members of his family. When hearing the shouting of the accused the mother of the informant-P.W.1 went near him, the accused dealt a blow on the head of the mother of the informant-P.W.1 with an iron pipe and ran away from the place. His mother, Sobha Tanti @ Sova Tanti was then taken to hospital with the help of some persons but the doctors at the hospital declared his mother to be dead.

3. On receipt of the FIR, the Officer In-Charge, Kakotibari Police Station registered the same as Kakotibari Police Station Case no. 74/2017, on 12.12.2017, for the offences under Section 447, Indian Penal Code ['IPC' or 'Penal Code', for short] and Section 302, IPC and took up the investigation of the case himself as the Investigating Officer [I.O.]. As the accused appeared in the Police Station on the date of the incident itself, he was taken into custody. After arrest, the accused was forwarded to the Court of learned Judicial Magistrate, First Class, Charaideo, Sonari on 13.12.2017 and on being so produced, he was remanded to Jail custody. The I.O. of the case, P.W.10, during the course of investigation, visited the place of occurrence [P.O.] and prepared a Sketch Map of the P.O. [Ext.-4]. The statements of a number of witnesses were recorded under Section 161, CrPC. The

post-mortem examination on the deadbody of the deceased was performed at Sivasagar Civil Hospital on 13.12.2017 and the Autopsy Doctor [P.W.9] recorded his findings in a Post-Mortem Examination [PME] Report [Ext.-2]. An iron pipe, the alleged weapon of assault, on being produced by the brother of the accused, was seized vide a Seizure List [Ext.-5] dated 13.12.2017. The I.O. [P.W.10] upon completion of investigation into the case, Kakotibari Police Station Case no. 74/2017 [corresponding G.R. Case no. 777/2017], laid a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 5 on 31.01.2018 [Ext.-6] finding *a prima facie case* for the offences under Section 447, IPC and Section 302, IPC well established against the accused.

4. On submission of the Charge-Sheet, the learned Judicial Magistrate, First Class, Charaideo, Sonari securing appearance of the accused from Jail custody on 05.03.2018, furnished copies to him in compliance of the provisions of Section 207, CrPC. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Charaideo, Sonari committed the case records of G.R. Case no. 777/2017, arising out Kakotibari Police Station Case no. 74/2017, to the Court of Sessions, Charaideo, Sonari in compliance of the provisions of Section 209, CrPC by an Order of Commitment dated 05.03.2018 and the learned Public Prosecutor was notified accordingly. On receipt of the case records of G.R. Case no. 777/2017 pursuant to the Order of Commitment dated 05.03.2018, the Court of Sessions registered the same as Sessions [CHA] Case no. 18 of 2018 and transmitted the case records to the Court of Additional Sessions Judge, Charaideo, Sonari ['the trial court', for short] for trial and disposal.

5. On appearance of the accused before the learned trial court, the learned trial court after hearing the learned Public Prosecutor and the learned defence counsel and upon perusal of the materials on record, framed the following charges, on 23.03.2018, against the accused :-

First, That you, on 12.12.2017 at 06-00 p.m. assaulted the mother of the informant, i.e. Smti. Sova Tanti, with iron rod, which caused death of Smti. Sova Tanti and the assault was done with the intention to cause her death and thereby committed an offence punishable under Section 302, IPC, and within my cognizance.

Secondly, That you, on 12.12.2017 at 06-00 p.m. entered into the house campus of the informant Sri Bijay Tanti and thereby committed an offence punishable under Section 447, IPC, and within my cognizance.

6. When the charges were read over and explained to the accused, he pleaded not guilty and claimed to be tried. During the course of the trial, the prosecution side examined as many as ten nos. of witnesses and

exhibited six nos. of documents to bring home the charges against the accused. After closure of the evidence from the prosecution side, the accused was examined under Section 313, CrPC and his plea was denial. The defence did not adduce any evidence. After appreciation of the evidence on record and hearing the learned counsel for the parties, the learned trial court has convicted the accused-appellant for the offences, mentioned above, and he has been sentenced in the manner, indicated above.

7. We have heard Mr. I. Choudhury, learned counsel for the accused-appellant and Ms. S.H. Borah, learned Additional Public Prosecutor for the respondent State.

8. Mr. Choudhury, learned counsel appearing for the accused-appellant has submitted that there are a number of discrepancies and inconsistencies in the testimonies of the prosecution witnesses affecting vitally the case of the prosecution. He has contended that the prosecution witness, P.W.1 did not say about the presence of P.W.4 and P.W.6 at the time and place of occurrence. These three witnesses being close relations of the deceased, are interested witnesses and in view of the discrepancies and inconsistencies in their testimonies, their versions require strict scrutiny. It is his submission that their testimonies do not pass the strict scrutiny test. It appears from the evidence on record, according to him, that the circumstances in which the incident took place were suggestive of a fight between the accused and the informant-P.W.1. There were different versions regarding the alleged weapon of assault and handing over of the alleged weapon of assault to the Police. Moreover, the alleged weapon of assault was neither sent to the forensic science laboratory for examination nor was exhibited during the trial. In support of his submissions, Mr. Choudhury has referred to the case titled ***State of Rajasthan vs. Wakteng***, reported in ***AIR 2007 SC 2020***. He has further contended that since the prosecution had alleged only about a single blow, the offence, by no means, would come under the ambit of murder, defined in Section 300 of the Penal Code.

9. Ms. Borah, learned Additional Public Prosecutor appearing for the State has submitted that the presence of the related witnesses at the time and place of occurrence was quite natural and just because they were related, they cannot be said to be interested witnesses. The learned Additional Public Prosecutor has further contended that even in the strict scrutiny test, the testimonies of the eye-witnesses are found to be reliable and trustworthy, leaving aside inconsistencies on immaterial points. The testimonies of the eye-witnesses have found corroboration from the independent witnesses and the medical evidence. To buttress such submissions, reliance has been placed in the decisions in ***Dalip Singh vs. State of Punjab***, reported in ***AIR 1953 SC 364***; ***Kuriya and another vs. State of Rajasthan***, reported in ***[2012] 10 SCC 433***; ***Sahabuddin vs. State of Assam***, reported in ***[2012] 13 SCC 213***; and ***Laltu Ghosh vs. State of West Bengal***, reported in ***[2019] 15 SCC 344***. It is the contention that the prosecution has been able to bring the charges on the scale of beyond all reasonable doubts. Therefore, the impugned Judgment and Order of

conviction and sentence is one which does not require any interference.

10. We have given due consideration to the submissions advanced by the learned counsel for the parties. We have also gone through the testimonies of the witnesses and the other evidence/materials on record, available in the case records of Sessions [CHA] Case no. 18/2018, in original. The citations referred to by the learned counsel for the parties are taken note of and considered.

11. From the submissions advanced by the learned counsel for the parties, it has emerged that the testimony of the informant-P.W.1 is material and vital. It is the contention of the learned Additional Public Prosecutor that the core of the prosecution case would be evident from the cogent testimony of this witness while the learned counsel for the accused-appellant has dubbed his testimony as one, being not wholly truthful, which is not to be relied upon.

12. P.W.1, Bijay Tanti was the informant and a son of the deceased. In his evidence-in-chief, P.W.1 deposed to the effect that on 12.12.2007, he and his mother were at home. At around 06-00 p.m. on that day, the accused raised a commotion. Addressing someone, he kept on shouting : 'you have bought a car; you have built a house' for about 10/15 minutes. Coming out of their house then, they saw the presence of the accused who was shouting. His mother asked the accused about the reason of his shouting. Then, the wife of the accused and his younger brother took away the accused along with them. Thereafter, the accused brought an iron pipe with him and broke the gate, made of bamboo, of his [the informant-P.W.1] house with that iron pipe. P.W.1 deposed that the accused then, dealt a blow on the head of his mother with that iron pipe and as a result, his mother fell down. Due to the impact, his mother's head got cracked and there was profuse bleeding. After giving the blow, the accused ran away from the place of occurrence [P.O.]. P.W.1 further deposed that some persons including Shyam Karmakar [P.W.5], Arati Karmakar [P.W.7], Omphul and Hitesh, gathered at the place immediately thereafter. His mother was then taken to Rajapukhuri Hospital with the help of those persons. But the doctors at the hospital declared his mother to be dead. P.W.1 stated that the person named Hitesh gave information about the incident over phone. P.W.1 further stated that he lodged the FIR [Ext.-1] in that night itself and identified his signature therein as Ext.-1[1].

12.1. During cross-examination, P.W.1 stated that one Bhupen Gogoi wrote the FIR as told by him. P.W.1 stated that the distance between his house and the house of the accused was fifty metres. P.W.1 further stated that the house of Shyam Karmakar [P.W.5] was close to his house and it was towards east to his house. The accused when came for the first time at 06-00 p.m., did not bring any object with him. The accused was not under intoxication. P.W.1 further stated that at the time of occurrence, there were three lights outside. According to him, the iron pipe brought by the accused was about 2/3 feet long. P.W.1 further deposed that when the accused

came for the first time, no quarrel took place with the accused and no fight took place. P.W.1 stated that when he was in the Police Station, Police personnel brought the accused there. At that time, Shyam Karmakar [P.W.5], Ratiram and others were present in the Police Station. P.W.1 stated that the iron pipe and blood stained clothes were not shown to him in the court. He denied suggestions to the effect that when the accused sought his daily wages from them, they quarreled with the accused; and that the stick with which the blow was struck, was with him and the blow landed on the body of his mother.

13. The prosecution's version is that the two prosecution witnesses – P.W.4 and P.W.6 – were also eye-witnesses.

13.1. P.W.4, Raj Tanti is the son of the informant-P.W.1 and is a grandson of the deceased. P.W.6, Doli Tanti is a granddaughter of the deceased from her daughter. The informant-P.W.1 is a maternal uncle of P.W.6 and P.W.4 is a cousin brother of P.W.6. At the time of giving testimonies before the trial court on 10.07.2018, P.W.4 was aged about sixteen years and P.W.6 was aged about fifteen years. P.W.6 stated that she at the relevant time, was staying in her maternal uncle's house. Both P.W.4 and P.W.6 deposed that on the date of the incident, they were in the house. Both P.W.4 and P.W.6 testified that they knew the accused well.

13.2. As regards the incident, P.W.4 stated that the incident occurred at around 06-00/06-30 p.m. on 12.12.2017. The accused came near their residence and urinated at their gate. Then, the accused started shouting that he would cut all of them. His grandmother went out of the house and asked the accused about the matter. The accused gave a scolding to his grandmother. Thereafter, the wife of the accused came to the place and took away the accused. When all of them were talking about the matter, the accused came to the place again with an iron pipe and gave a blow on the head of his grandmother. Due to the impact, blood oozed out of the head due to the cracking of head. The accused ran away from the place. Though all of them took the injured to the hospital where she was declared dead.

13.3. During cross-examination, P.W.4 stated that at the time of occurrence, all the members of their family including his deceased grandmother, were present in their residence. As regards the presence of light, P.W.4 stated that though it was dark but there was light in their courtyard. As regards the P.O., P.W.4 stated that the occurrence took place in their courtyard and the spot was near the road. As regards the iron pipe used, P.W.4 stated that it was about 3/4 feet long. P.W.4 further stated that two persons brought the pipe to the courtyard after the accused ran away and he placed the pipe before the Police personnel. P.W.4 stated that he did not tell the names of those two persons before Police and the Police personnel did not also take his signature. P.W.4 stated that the iron pipe was not shown to him in the court. A number of suggestions were put to this witness by the defence and all the suggestions were denied by the witness.

13.4. P.W.6 testifying on the incident, deposed that she was studying inside the house at that time. She acknowledged the presence of her deceased grandmother, her maternal uncle [P.W.1] and her cousin brother [P.W.6] in the house. In the evening hours on that day, the accused came to the front of the gate of their house and started shouting. Hearing the shouting, all of them came out of the house. Her grandmother went close to the gate to ask the accused about the reason of his shouting. Then, the wife of the accused and his younger brother took away the accused from the place. Hearing the commotion, the persons from the neighbourhood also came out. After the event, all of them were talking near the gate. At that point of time, the accused came again with an iron pipe in his hands. After breaking the fence with the iron pipe, the accused came near them and dealt a blow on the head of her grandmother with that iron pipe. As a result of the impact, her grandmother fell down and her head got cracked. There was bleeding from the head of her grandmother and her grandmother lost her senses. When her maternal uncle [P.W.1] wanted to catch the accused, the accused ran away from the place. The injured was then taken to Rajapukhuri Hospital by a vehicle. But the doctors at the hospital declared her grandmother to be dead. It was thereafter, her maternal uncle [P.W.1] lodged the FIR.

13.5. During cross-examination, P.W.6 stated that there were electric lights at the gate and the verandah of their house and at the time of occurrence, those lights were on. P.W.6 further stated that there was no electric light in the approach road to their house and on the main road in front of their house. P.W.6 stated that when the accused came for the first time, he hurled abuses using filthy language. But when the accused came for the next time, the accused did not hurl abuses at them and he directly assaulted her grandmother by giving the blow on her head, after breaking the fence. At the time of occurrence, all of them were present at the P.O. P.W.6 also stated that the accused had a good rapport with her maternal uncle [P.W.1] and her deceased grandmother.

14. The prosecution witnesses – P.W.2, P.W.3, P.W.5, P.W.7 and P.W.8 - were neither related to the deceased/the informant-P.W.1 nor related to the accused. They were residents of the same locality as that of the deceased/the informant-P.W.1 and the accused.

14.1. P.W.2, Usha Koiri deposed that she knew the informant-P.W.1, the deceased and the accused. She stated that the incident took place at 07-00 p.m. on 12.12.2017. At that time, she was in his house. On hearing a commotion, she went to the roof of her house. From the roof, she saw that the accused taking some object in his hand, was going from the house of the informant-P.W.1. She heard someone shouting about being assaulted. Then she saw that the mother of the informant-P.W.1 was being carried into a vehicle and there was bleeding from the head of the injured. P.W.2 stated that she saw the blood and the injury from close. She noticed that the head was fractured and there was bleeding from the head. She heard that the assault was made by the accused. It was the informant-P.W.1 who took the injured to hospital. Later on, she heard that the mother of the informant-

P.W.1 expired. The accused had absconded when Police looked to arrest him. P.W.2 stated that she was interrogated by Police.

14.2. Narrating about the incident, P.W.2 during her cross-examination, stated that when she went to the roof of her house, it was 07-00 p.m. and there was darkness. She denied that she mentioned the name of the accused on assumption. As regards the object in the hands of the accused, P.W.2 stated that she was not sure about the nature, shape and size of the object. It was at the time when the injured was being taken to hospital she went to the road in front the house of the informant-P.W.1. She was on the road in front of the gate of the house of the informant-P.W.1 when the mother of the informant-P.W.1 was being taken to hospital. P.W.2 had admitted that she did not witness the incident which happened in the house of the informant-P.W.1. A number of suggestions were put to P.W.2 by the defence and those suggestions were denied by P.W.2.

14.3. P.W.3, Smti. Geeta Koiri deposed that she knew the informant as well as the accused. P.W.3 stated that the incident took place at 07-00 p.m. on 12.12.2017. At that point of time, she was in her house. When she heard a commotion raised from the road, she saw that some persons were lifting the mother of the informant-P.W.1 in a vehicle. The injured was bleeding from her head. She heard from persons that it was the accused who had assaulted the mother of the informant-P.W.1, that is, the injured. Later on, she heard that the injured breathed her last. During her cross-examination, P.W.3 stated that she did not witness the incident. She stated that she learnt about the incident from others.

14.4. P.W.5, Shyam Karmakar deposed that he knew both the informant-P.W.1 and the accused. On the date of the incident, he heard hue and cry, at night, coming from the house of the informant-P.W.1. He saw that the accused was being taken away by his wife. He stated that the accused, later on, brought a pipe and cut the mother of the informant-P.W.1 when she came out of the house. As blood oozed out from her head, the injured was taken to hospital. He was told that the injured died at the hospital. In cross-examination, P.W.5 stated that his house was situated near the house of the informant-P.W.1 and the house of the accused was situated at a distance. He heard screamings for the second time after five minutes. P.W.5 stated that he and his mother, Arati Karmakar [P.W.7] were present nearby. P.W.5 stated that the accused took away the pipe. Later on, the brother of the accused handed over the pipe to Police. The informant-P.W.1 told him that the pipe was recovered from a drain, which was about 2½/3 feet long. He denied a suggestion that he stated before the Police that the accused was under influence of liquor.

14.5. In her testimony, P.W.7, Arati Karmakar stated that she knew the informant-P.W.1, the deceased and the accused. She stated that she was the immediate neighbour of the informant-P.W.1 and the deceased. As regards the incident, P.W.7 deposed that the incident took place at 06-00 p.m. The accused was found raising noise

regarding some issue with the informant-P.W.1 in front of the house of the informant-P.W.1. The accused was found hurling abuses using filthy languages. Then, the wife and the younger brother of the accused took away the accused to his house from the place. Hearing the commotion, she came out of the house. Hearing the shouting of the accused, the informant-P.W.1, his mother and his niece [P.W.6] also came out. A short while later, the accused came to the place again with an iron pipe. He broke the fence of the informant's house at first. Entering inside the campus of the informant's house, the accused dealt a blow on the head of the mother of the informant-P.W.1, Sobha Tanti with the iron pipe and due to the impact, Sobha Tanti fell down. The head of Sobha Tanti got cracked and she was bleeding profusely. P.W.7 testified that she witnessed the entire incident. After giving the blow, the accused ran away from the spot. The injured, Sobha Tanti was taken to hospital but she expired. P.W.7 stated that Police personnel questioned her. During cross-examination, P.W.7 reiterated that she was present when the accused hurled abuses at first. P.W.7 also reiterated that she was present when the blow was struck on the head of Sobha Tanti from the front side. She denied the suggestions put to her by the defence that she did not tell the Police that the accused hurled abuses; and that she was present when the blow was dealt on the head. P.W.7 had, however, admitted that she did not tell the Police that accused had consumed liquor.

14.6. P.W.8, Amit Karmakar deposed that he knew the informant-P.W.1, the deceased and the accused. On the relevant day, he saw the informant-P.W.1 lifting his injured-mother in a vehicle. He saw that the head of the injured was cracked and there was bleeding. He also went with the informant-P.W.1 in the vehicle. When he asked the informant-P.W.1, the informant told him that it was the accused who had assaulted his mother. P.W.8 stated that injured died in the hospital. In cross-examination, P.W.8 stated that he learnt about the incident from the informant-P.W.1.

15. From the testimonies of the prosecution witnesses – P.W.2, P.W.3, P.W.5 and P.W.8 – it is evident that all of them knew the informant-P.W.1, the deceased and the accused well. These prosecution witnesses had corroborated the version of the eye-witnesses as regards the fact that the incident occurred on 12.12.2017. All these prosecution witnesses had seen the deceased immediately after the incident and they testified that the deceased received the injury on her head. As a result of the injury, the head got fractured/cracked and there was bleeding from the head. The version given by P.W.1, P.W.4 and P.W.6 that after giving the blow the accused ran away from the place has found support from P.W.2 and P.W.5. The prosecution witnesses – P.W.2, P.W.3, P.W.5 and P.W.8 – have also supported the version of the eye-witnesses that immediately after the deceased was assaulted, the deceased was taken to the hospital in a vehicle, but the deceased was declared dead later on. The prosecution witnesses – P.W.2, P.W.3, P.W.5 and P.W.8 – stated that their houses were located near the house of the informant-P.W.1 and in the evening hours of the relevant day, they heard shouting and commotion near the house of the informant-P.W.1. Being neighbours, the presence of these prosecution witnesses at or near the P.O. immediately after the incident is quite natural. The defence has not been able to shake the versions of these

prosecution witnesses as regards their presence at the P.O. immediately after the incident. The fact that the houses of the prosecution witnesses – P.W.5 and P.W.8 – are located very near to the house of the informant-P.W.1 is evident from the Sketch Map of the P.O. [Ext.-4].

16. P.W.7, Arati Karmakar, in her testimony, deposed to the effect that she witnessed both the events, *firstly*, shouting and hurling abuses using filthy language by the accused by coming in front of the house of the informant-P.W.1 and the deceased, and his taking back from the place by his wife and younger brother; and, *secondly*, return of the accused to the place again, after a short while, with an iron pipe and giving of a blow by him on the head of the deceased with the iron pipe, after breaking the fence of the house. P.W.7 testified that due to the impact of the blow, the deceased fell down and her head got cracked and she was bleeding profusely. The defence had failed to shake in any manner the testimony of P.W.7 that she [P.W.7] was present at the P.O. at the time of both the events. P.W.7 was an immediate neighbour of the informant-P.W.1 and the deceased, and her [P.W.7's] presence at the P.O. at the time of both the events seemed natural. On appreciation, we are of the considered view that the version of the prosecution witnesses – P.W.1, P.W.4 and P.W.6 – who were claimed to be related witnesses by the defence, had received sufficient corroboration from this independent eye-witness, P.W.7 on material points.

17. One of the grounds canvassed on behalf of the accused-appellant is that there is variance in the testimonies of the prosecution witnesses as regards the time of occurrence. It has been contended that there were, thus, inconsistencies in their versions. A contention has also been raised to the effect that there was doubt as regards the alleged weapon of assault.

18. Deliberating on the matter of appreciation of evidence of related witnesses, the Hon'ble Supreme Court of India in *Dalip Singh* [supra] has observed that 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 has been observed further that while it is true that when feelings run high and there is personal cause for enmity, then 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. It has, however, been further observed that each case must be limited to and governed by its own fact.

18.1. In *Sahabuddin* [supra], the decisions in *Dalip Singh* [supra] and *State of Andhra Pradesh vs. S. Rayappa, [2006] 4 SCC 512*, are referred to on the issue of related witness and/or interested witness. In

S. Rayappa [supra], it is held to be a well established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other because of animosity or some other reasons.

18.2. In **Lalit Ghosh** [supra], the contention advanced was that the eye-witnesses were close relatives of the deceased. It is in that context, it has been held as well-settled that a related witness cannot be said to be an ‘interested’ witness merely by virtue of being a relative of the victim. The difference between ‘interested’ and ‘related’ witnesses have been well elucidated by holding 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.

19. From the evidence/materials on record, it has not emerged that there was any kind of prior enmity existing between the families of the deceased and the accused. The presence of the prosecution witnesses – P.W.1, P.W.4 and P.W.6 – being inmates of the same house, as that of the deceased, with them being the son and the grandchildren of the deceased, at the time and place of occurrence is found to be natural. With the accused shouting and hurling abuses by standing near the gate of their residence, their identification of the accused, even in the evening hours or in darkness, cannot be doubted as the accused was well known to them from much earlier point of time. The omission to mention about the presence of P.W.4 and P.W.6 in the house and also at the place and time of occurrence of the incident by P.W.1 is not an omission to doubt the testimony of P.W.1. The defence had elicited by cross-examining P.W.4 that though there was darkness but the light in the courtyard of their house where the incident occurred, was on at the relevant time. It was further elicited from P.W.7 that there were electric lights in the gate and the verandah of their house and at the time of the incident, those lights were on. The defence did not elicit anything material as regards presence or absence of light at the time and place of occurrence from the prosecution witness, P.W.7, who testified to have witnessed the entire incident of assault made by the accused on the head of the deceased at the time and place of occurrence. P.W.7 was a close neighbour of the deceased and she is not related either to the accused or to the deceased. There was nothing to infer even remotely that P.W.7 had any kind of animosity towards the accused to falsely implicate him with a serious charge of murder.

20. Having regard to the above evidence/materials on record and well-settled principle of law of appreciation of evidence of related witnesses, the testimonies of the prosecution witnesses, P.W.1, P.W.4 and P.W.6 who were related to the deceased, are found credible, consistent and reliable on all the material points as regards the

incident of assault on the deceased by the accused and such testimonies cannot be discarded as testimonies of interested witnesses. Moreover, their testimonies had received sufficient corroboration on those material points from the other prosecution witnesses, who fall in the category of independent witnesses.

21. It may be iterated that the learned counsel for the accused-appellant has pointed out variations in the depositions of the prosecution witnesses with regard to the time of incident and by pointing to such variations, it has been contended that their testimonies cannot be accepted due to such pale of doubt. In response to such submissions, learned Additional Public Prosecutor has, in reply, contended that such trivial or variations discrepancies which do not affect the credibility of the prosecution evidence on any material point are not of much significance.

21.1. Having considered the rival submissions on the above aspects and the decisions in *Kuriya* [supra] and *Sahabuddin* [supra], we find no merit in the above contention raised on behalf of the appellant. Our view is fortified by the following observations made in the afore-mentioned two decisions.

21.2. The relevant excerpts from the decisions in *Kuriya* [supra] are quoted hereunder :-

*30. This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even in law render credential to the depositions. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements. Reference in this regard can be made to the judgments of this Court in *Kathi Bharat Vajsur vs. State of Gujarat*, [2012] 5 SCC 724; *Narayan Chetanram**

Chaudhary vs. State of Maharashtra, [2000] 8 SCC 457; Gura Singh vs. State of Rajasthan, [2001] 2 SCC 205; and Sukhchain Singh vs. State of Haryana, [2002] 5 SCC 100.

21.3. In *Sahabuddin* [supra], the Hon'ble Supreme Court has observed in the following manner :-

20. The Learned counsel appearing for the appellants contended that there are material variations and contradictions in the statements of PW 3 and PW 6 respectively with regard to the time of incident as well as death of the deceased. Therefore, neither these witnesses can be relied upon nor can prosecution be said to have proved its case beyond reasonable doubt. Such a submission can only be noticed to be rejected. PW 3 had mentioned that she came to know about the death of her daughter at about 9.30 p.m., however, according to PW 6, it was about 8 or 9 o'clock when she was informed of the death of her sister. This would hardly be a contradiction. It is a plausible fact that there could be some variations in the statements of witnesses with respect to a particular incident. Thus, in the facts and circumstances of the present case, a mere variation in time is not a material contradiction. It was the uncle of the deceased, PW 7, who had been informed by the co-accused, the brother-in-Law of the deceased, firstly about the sickness of the deceased and then about her death.

21. Every variation or immaterial contradiction cannot provide advantage to the accused. In the facts and circumstances of the present case, variation of 45 minutes or an hour in giving the time of incident will not be considered fatal. It is a settled principle of law that while appreciating the evidence, the court must examine the evidence in its entirety upon reading the statement of a witness as a whole, and if the court finds the statement to be truthful and worthy of credence, then every variation or discrepancy particularly which is immaterial and does not affect the root of the case of the prosecution would be of no consequences. Reference in this regard can be made to State v. Saravanan [2008] 17 SCC 587.

22. There is unanimity in the testimonies of the prosecution witnesses in that the accused with the iron pipe gave the blow on the head of the deceased and as a result of the impact from the blow, the head of the deceased

got cracked and she started bleeding profusely. In the backdrop of such ocular evidence, we can now turn to the medical evidence, which are in the form of the PME Report [Ext.-2] and the testimony of the Autopsy Doctor, P.W.9.

22.1. The post-mortem examination on the deadbody of the deceased was performed at Sivasagar Civil Hospital, on 13.12.2017, by Dr. Bishwajit Dutta [P.W.9]. In the PME Report [Ext.-2], following findings were recorded :-

I- External Appearance

- 1. Condition of subject stout emaciated, decomposed etc.***

* * * *

Rigor mortise present.

- 2. Wounds – position and character :***

- 1) Crush injury to skull, on occipital bone.***
- 2) Multiple fracture rib on [R] chest.***
- 3) Fracture occipital bone.***
- 4) Oozing of blood of mouth and nostril.***

* * * *

II- Cranium and spinal canal

- 1. Scalp, skull, vertebrae : As described.***
- 2. Membrane : Ruptured.***
- 3. Brain and spinal cord : Pale & congested.***

* * * *

V. Muscles, Bones and Joints

- 1. Injury : As described.***

* * * *

More detailed description of injury or disease

A healthy female body, Rigor mortis present. Crush injury to skull on occipital bone, multiple fracture rib on [R] Chest. Stomach contains digested food particles, heart empty on both [...illegible...]. At the charge were ante-mortem in nature.

22.2. P.W.9, Dr. Bishwajit Dutta was working as the Senior Medical & Health Officer-I, Sivasagar Civil Hospital on 13.12.2017. In his testimony, P.W.9 stated that he performed the post-mortem examination on the deadbody of the deceased on 13.12.2017 at Sivasagar Civil Hospital. After performing autopsy on the deadbody, he recorded his findings in the PME Report and he exhibited the PME Report as Ext.-2. He identified his signature therein as Ext.-2[1]. P.W.9 stated that when he examined the deadbody, he found presence of rigor mortis. On the basis of the PME Report [Ext.-2], he stated about the injuries found on the deadbody of the deceased. He stated that after autopsy, he opined that all the injuries were ante-mortem in nature and the cause of death was shock and haemorrhage. In cross-examination, P.W.9 stated that the fracture of occipital bone was above the backside of the neck. He further stated that he did not see injuries on parietal, frontal or temporal region. The injuries might be caused by falling or hitting by heavy object. He further stated that the hitting place might have the impression of the object and if the hitting was by a rod, there would be a linear impression. He further stated that in multiple rib fracture, the lungs would generally get ruptured. One can die due to multiple fractures. An aged person might die if the person loses one-third of blood.

22.3. From the PME Report [Ext.-2] and the evidence of the Autopsy Doctor [P.W.9], it has clearly emerged that there was fracture of occipital bone above the back side of the neck of the deceased. There was crush injury to skull and there were also multiple fractures of ribs of the right chest. As per the Autopsy Doctor [P.W.9], the injuries might be caused by falling or hitting by a heavy object.

23. When the ocular evidence and the medical evidence are evaluated together, it is found that the ocular evidence has received corroboration from the medical evidence. From such evidence – ocular evidence and medical evidence – it can be conclusively held that it was the accused who struck a blow on the head of the deceased by an iron pipe at the time and place of occurrence. The force and ferocity of the assault were such that it resulted in a crush injury on the skull and fracture of the occipital bone above the back side of the neck of the deceased. On receipt of the injury, the deceased met death immediately thereafter due to shock and haemorrhage.

24. Though a plea has been raised on behalf of the accused-appellant that the circumstances in which the incident took place were suggestive of a fight between the accused and the informant-P.W.1, the evidence on record was deficient even to infer remotely that there was any kind of quarrel followed by any kind of fight.

25. The offence of culpable homicide is defined in Section 299 of the Indian Penal Code [IPC]. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Culpable homicide is the genus and the offence of murder its species, meaning thereby, all murders are culpable homicides but all culpable homicides are not murders. The offence of murder is defined in Section 300, IPC, which reads as under :-

300. Murder -

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly - If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

26. The meaning and scope of Clause '**thirdly**' of Section 300, IPC has been explained in ***Virsa Singh vs. State of Punjab***, reported in **AIR 1958 SC 465**, which has become **Locus classicus**. It has been observed therein that the prosecution must prove the following facts before it can bring a case under Clause '**thirdly**' of Section 300, IPC. First, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is

purely objective and inferential and has nothing to do with the intention of the offender. From the test laid down by ***Virsa Singh case***, the applicability of Clause ‘**thirdly**’ of Section 300, IPC, that is, the offence of culpable homicide is murder, arises if the following conditions are satisfied :- [a] that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and [b] that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. Even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and it did not extend to the intention of causing death, the offence would still be murder. Illustration [c] appended to Section 300, IPC has also highlighted the same point.

27. The contention that since there was only a single blow the ingredients required to fulfill the charge of murder were invariably absent is not acceptable. Number of injuries is not always determinative for reaching a finding as to whether the offence is murder or culpable homicide not amounting to murder. It is the nature of the injury; the part of body where it is caused; the weapon used in causing such injury; the ferocity of assault; and the force employed in causing the injury; etc. are some determinative factors to ascertain the fact whether the accused caused the death of the deceased with the intention of causing death or he caused a bodily injury with the intention to cause that particular bodily injury which is sufficient in the ordinary course of nature to cause death or not. Just because there was only a single blow it cannot be readily concluded that the offence was not murder, but culpable homicide not amounting to murder.

28. On the above aspect, reference can be made to some of the decisions.

28.1 In ***Jagrup Singh vs. State of Haryana***, reported in **[1981] 3 SCC 616**, it was found by the High Court that the appellant struck a blow on the head of the deceased with the blunt side of a ***gandhala*** with the intent of causing such bodily injury which was sufficient in the ordinarily course of nature to cause death and that being so, the appellant was guilty of culpable homicide amounting to murder punishable under Section 302 of the Penal Code. In appeal before the Hon’ble Supreme Court, it was contended that having struck a solitary blow on the head of the deceased with the blunt side of the ***gandhala***, the accused could be attributed with the knowledge that it would cause an injury which was likely to cause death and not with an intention to cause the death of the deceased. Negating such contention, the Hon’ble Court has observed as under :-

6. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the

skull, he must, in the absence of any circumstances negativing the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.

28.2. In *Singapagu Anjaiah vs. State of Andhra Pradesh*, [2010] 9 SCC 799], the Hon'ble Supreme Court considered a question whether a blow on the skull of the deceased with a crowbar would attract Section 302, IPC. In that context, the Hon'ble Supreme Court has held as under :-

16. In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of offence. He has further chosen a vital part of the body i.e. the head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased.

28.3. In *Ashokkumar Magabhai Vankar vs. State of Gujarat*, reported in [2011] 10 SCC 604], the accused-appellant was convicted for the charge of murder under Section 302, IPC. The accused-appellant was found to have dealt one single blow on the head of the deceased with a wooden pestle. It was found that the accused used the pestle with such force that the head of the deceased was broken into pieces. The act of the accused, though solitary in number, had caused multiple fractures on the skull of the deceased leading to almost instantaneous death. The Hon'ble Court considered whether the case would fall under Section 302, IPC or not. It was held that the injury sustained by the deceased, not only exhibited the intention of the accused in causing death of the victim, but also knowledge of the accused in that regard. It was observed that such attack could be none other than for causing death of the victim. It was observed that any reasonable person with any stretch of imagination can come to conclusion that such an injury on such a vital part of the body with such a weapon could cause death. The conviction of the accused under Section 302, IPC had been affirmed.

28.4. From the evidence/materials on record of the case in hand, as recapitulated in the preceding paragraphs, it is conclusively established that the accused once earlier came in front of the house of the deceased and started

shouting and hurling abuses using filthy language. The accused was thereafter, taken back to his house by his wife and his brother. During the first visit of the accused, the inmates of the house came out to their courtyard. After the accused was taken away from the place, the inmates of the house, that is, the deceased, the informant-P.W.1, P.W.4 and P.W.6 were still in their courtyard along with their neighbour, P.W.7 in the vicinity. After some time, the accused came back to the place again and when he came back for the second time, he got armed himself with an iron pipe. The accused that time broke the bamboo gate of the house of the deceased/the informant-P.W.1 by the iron pipe. After the accused entered the house campus of the deceased/the informant-P.W.1 by breaking open the bamboo gate, he gave the blow directly on the head of the deceased with the iron pipe on his head and after giving the blow he ran away from the place.

29. Even though the accused herein was found to have struck a single blow on the head of the deceased with the iron pipe carried by him when he came to the place again for the second time, the impact of the blow was such that it resulted into crush injury of the occipital bone of the deceased. There were fracture of the occipital bone and rupture of membrane. There were multiple fractures of ribs of the right chest of the deceased. From the nature of the injury sustained by the deceased who had met almost instantaneous death, it is not difficult to gauge the ferocity of assault and the force employed by the accused in causing the injury. The blow was struck on a vital part of the body of the deceased, that is, the head. The blow was found to be fatal. The accused when he came for the second time, came armed with an iron pipe which is clearly indicative of premeditation. These facts have clearly established that the accused had intended to cause such injury on the head of the deceased which leads to a conclusion that the accused struck the blow with the intention to cause that particular bodily injury, which was sufficient to cause death in the ordinary course of nature, thus, bringing the offence within the scope and ambit of culpable homicide of the highest degree, that is, murder.

30. It has been strenuously urged on behalf of the accused that the evidence/materials were discrepant on the point of recovery of the weapon of assault. It has been further urged that non-production of the weapon of assault during the course of the trial had dented the case of the prosecution to a considerable extent and the benefit should go to the accused. As we have already reached a view that the oral testimonies of the eye-witnesses on the matter of assault were credible and consistent and the medical evidence had corroborated the ocular evidence on the material points of the weapon of assault used, the part of the body chosen for assault, the force employed in giving the blow and the nature of injury sustained, such contention of non-production of the weapon of assault is only to be discarded holding that such discrepancy is of inconsequential nature. The prosecution witnesses – P.W.1, P.W.4, P.W.5, P.W.6 and P.W.7 – had all deposed that the assault was made by an iron pipe. There was, however, some discrepancy in the testimonies of these witnesses regarding the length of the iron pipe. The I.O. [P.W.10] had, in his testimony, stated that the brother of the accused had placed one piece of iron pipe before him and the said iron pipe was used to commit the crime. The iron pipe was seized vide the Seizure List [Ext.-5] and

the I.O. [P.W.10] had exhibited his signature therein as Ext.5[1]. In his cross-examination, the I.O. [P.W.10] was not asked specifically as regards the seizure. But he was only questioned whether the seized weapon was sent for serological examination. The I.O. [P.W.10] admitted that the seized weapon was not sent for report to the forensic science laboratory.

30.1. It is not a general and broad proposition that in case the weapon of assault is not produced during the trial the whole of the prosecution case gets weakened. It has been held in the case of ***State through the Inspector of Police vs. Laly @ Manikandan and another, [2022] 15 SCR 633***, that recovery of the weapon used in the commission of the offence is not a ***sine qua non*** to convict the accused. It has been held therein that if there is direct evidence in the form of an eye-witness, even in the absence of recovery of weapon, the accused can be convicted. Similar observation has been made in ***Rakesh and another vs. State of Uttar Pradesh and another, [2021] 7 SCC 188***. It has been observed in ***Prabhash Kumar Singh vs. the State of Bihar [now Jharkhand], [2019] 9 SCC 262***, that as there is clear eye-witness account of the incident and none of the eye-witnesses could be shaken during cross-examination and they had stuck to the re-collection of the facts relating to the incident, the mere fact that the weapon of assault was not recovered cannot demolish the prosecution case. At the cost of repetition, it is iterated that we have already found the eye-witness accounts and the medical evidence credible, consistent and trustworthy. In such view of the matter, the contention regarding non-showing of the weapon has not dented the core of the prosecution case in any manner. In the obtaining fact situation of the case, the decision in ***Wakteng*** [supra] is not found of relevance as the facts and circumstances therein are not similar to the case in hand.

31. In view of the discussion made above and for the reasons assigned therein, we are of the unhesitant view that the finding of guilt recorded by the learned trial court against the accused-appellant for the charge of murder under Section 300, IPC does not require any interference. We, therefore, affirm the Judgment of conviction and order on sentence passed under Section 302, IPC by the learned trial court in its Judgment and Order dated 17.12.2009.

32. There is clear evidence to the effect that the accused before entering into the house campus of the deceased/informant-P.W.1 for causing assault on the deceased, broke open the entrance gate/fence, made of bamboo, by the iron pipe. Therefore, the conviction and sentence for the offence under Section 447, IPC would remain unaltered.

33. In view of the fact that the accused-appellant has been convicted for the offence under Section 302, IPC and has been sentenced to undergo imprisonment for life, we further observe that the sentences are to run

concurrently.

34. Resultantly, the instant criminal appeal being bereft of any merits, does not succeed. The criminal appeal is accordingly dismissed.

35. The office to send back the case records to the trial court forthwith.

JUDGE

JUDGE

Comparing Assistant