

**AFR****Reserved on 5.4.2019****Delivered on 19.4.2019****Court No. - 34****Case :- JAIL APPEAL No. - 1415 of 2014****Appellant :- Shishu Pal****Respondent :- State Of U.P.****Counsel for Appellant :- From Jail, Ravi Chandra Srivastava (A.C.)****Counsel for Respondent :- A.G.A. Rishi Chaddha****Hon'ble Sudhir Agarwal,J.****Hon'ble Vivek Varma,J.***(Delivered by Hon. Vivek Varma, J.)*

1. This Jail Appeal, under Section 383 Cr.P.C. through Superintendent of Jail, Bareilly has been filed by accused-appellant, Shishu Pal, against the judgment and order dated 30.11.2013 passed by Sri Mridulesh Kumar Singh, Additional Sessions Judge, Court No. 13, Bareilly in Sessions Trial No. 778 of 2011, arising out of Case Crime No. 1303 of 2010, P.S. Bhamora, District Bareilly, convicting accused-appellant under Section 302 I.P.C. and sentencing him to undergo life imprisonment with a fine of Rs. 20,000/- and, in default of payment of fine, he has to undergo further additional simple imprisonment of six months.

2. Prosecution story, in brief, is that informant Runka Devi wife of deceased- Netram (PW-2) moved written report (Ex-Ka-1) dated 11.10.2010 alleging therein that real nephew of deceased, namely, Shishupal (accused-appellant) was having a bad intention on her land and, on that pretext, on 11.10.2010 at about 9 a.m., when husband of Informant was lying outside at the back portion of his house, Shishupal armed with a piece of brick gave multiple blows on his head as a result of which, he sustained serious injuries. Informant is said to have reached the

spot and with the help of villagers, namely, Mukesh son of Rajju, Ahbaran son of Khamani took her husband to District Hospital but on the way to hospital, he died. She has further stated that after postmortem examination, she has come to police station.

3. On the basis of written report (Ext. Ka-1) on 11.10.2010 at 17.45., chik F.I.R. was registered against accused-appellant, by constable Mewaram vide Case Crime No. 1303 of 2010, under Section 302 IPC, which is (Ext. Ka-5) on record. G.D. entry was also made at the same time in general diary as (Ext. Ka-6). Investigation was entrusted to Sri Rajesh Kumar Tiwari, (I.O.) concerned. It also appears that after registration of F.I.R., police started investigation; reached the place of occurrence and prepared site plan (Ext. Ka 7 & 8), collected plain soil and blood stained soil, sealed it and prepared recovery memo (Ex Ka-3).

4. Accused is said to have been arrested by police on 12.10.2010 at 5.30 a.m. from a closed brick-kiln and on pointing out of accused-appellant, police recovered blood stained piece of brick from a paddy field, sealed it and prepared recovery memo (Ex-Ka-4). Blood stained clothes, which were sent by Medical Officer, who had conducted post mortem, were also sent along with blood stained and plain soil to Forensic Science Laboratory, Lucknow through constable Jairam Singh (Ex-Ka-9). According to the reports of Forensic Science Laboratory (Ex-Ka-10 & 11), human-blood was found over contents of the recovered articles, which has been duly proved by Investigating Officer (P.W.-9).

5. Inquest of dead body was prepared on 11.10.2010 at District Hospital, Bareilly by the police (Ex-Ka-2). Other police

papers were also prepared at the same time and copies were attached along with inquest report for post mortem by SI Deeraj Singh Solanki (P.W.10). Dead body along with required police papers was dispatched for post mortem through Constable Vikram Nath and Sharad Kumar. Post mortem of deceased was conducted on 11.10.2010 at 04.50 P.M. by Dr. Suresh Yadav, Ortho Surgeon, District Hospital, Bareilly (P.W.-11). About the cause of death, he expressed his opinion as under:

“Cause of death due to coma because of injuries sustained”

6. He described ante mortem injuries as well as internal examination of dead body as under:

Contusion 14 cm X 10 cm on back of head 6 cm behind the right ear, 3cm X 2 cm over contusion 10 cm behind right ear.

आंतरिक परीक्षण

सिर के पीछे की आक्सीपीटल हड्डी व दाहिनी पैराइटल हड्डी टूटी हुई थी। झिल्लियां फटी हुई थी भोजा फटा हुआ था और उसमें खून के थक्के जमे हुए थे। दोनों फेफड़े कंजस्टिड थे हृदय के दाहिने हिस्से में खून मौजूद था आमाशय में अधिपचा खाना मौजूद था छोटी आंत में व बड़ी आंत में गैस मौजूद थी यकृत कंजस्टिड था 1260 ग्राम था और पित्ताशय आधा भरा था। प्लीहा 180 ग्राम का कंजस्टिड था दोनों गुर्दे 250 ग्राम के थे और कंजस्टिड थे।

Internal Examination

The occipital bone of the back of the head and right parietal bone were fractured. Membrane was lacerated. Brain was lacerated having clotted blood. Both the lungs were congested. Blood was present in the right chamber of the heart. Stomach had semi-digested food. Small and large intestines had gas. Liver was congested weighing 1260 grams. Gall bladder was half-ful. Spleen was congested weighing 180 grams. Both the kidneys were congested weighing 250 grams.

(Emphasis added)

(English Translation by Court)

7. Investigating Officer also interrogated witnesses. After

completing all formalities, charge-sheet (Ext. Ka-12) was submitted by I.O. namely, Sri Rajesh Kumar Tiwari. Concerned Magistrate took cognizance and case being exclusively triable by Sessions Court, it was committed to Court of Sessions on 26.7.2011. The case was registered as Sessions Trial No. 778 of 2011. Accused-appellant appeared and prosecution opened its case describing entire evidence collected by Investigating Officer. Trial Court also heard accused and framed charge for the offence under Section 302 IPC on 2.9.2011, which reads as under:-

आरोप

मैं विनोद कुमार सिंह, अपर सत्र न्यायधीश, कोर्ट सं० 13, बरेली आप अभियुक्त शिशुपाल को निम्न आरोप से आरोपित करता हूँ:-

यह कि दिनांक 11/10/10 को समय करीब 09:00 बजे सुबह वहद ग्राम देवीपुर थाना भमौरा जिला बरेली में आपने वादिनी मुकदमा श्रीमती रून्का देवी के पति नेतराम जाटव को **जान से मारने की नियत से इट के टुकड़े से मार कर सिर में गंभीर चोट पहुंचाई जिससे नेतराम की मृत्यु हो गयी।** इस तरह आपने नेत राम की हत्या कारित की। इस प्रकार आपका उक्त कृत्य भा० दं० सं० की धारा **302** के अन्तर्गत दण्डनीय अपराध है, जो इस न्यायालय के प्रसंज्ञान में है।

एतद् द्वारा आपको निर्देशित किया जाता है कि उक्त आरोप के लिए आपका विचारण इस न्यायालय द्वारा किया जावेगा।

CHARGE

I, Vinod Kumar Singh, Additional Sessions Judge, Court No. 13, Bareilly do hereby charge you, the accused, Shishu Pal with the following offence:-

*That on 11.10.2010 at around 9 a.m., at Village Devipur, PS Bhamora, District Bareilly, you, with the intent to kill Netram Jatav, i.e. husband of the complainant Smt Runka Devi, **caused grave injuries on his head by hitting him with a piece of brick which resulted in his death.** In this way, you have committed Netram's murder. Hence, this act of yours is punishable u/s 302 IPC, which is within cognizance of this court.*

(Emphasis added)

(English Translation by Court)

8. Charge was read over and explained to accused, who

pleaded not guilty and claimed to be tried.

9. In order to prove its case, prosecution examined eleven witnesses, namely, P.W.-1 Mukesh, who has been declared hostile, P.W.-2 Runka Devi (informant); P.W.-3 Ahbaran, an eye witness as also witness of inquest; P.W.-4 Kishan Lal Gautam, witness of recovery; P.W.-5 Ramnath, witness of inquest; P.W.-6 Nanhey Lal, witness of Inquest; P.W.-7 Jaipal, witness of recovery; P.W.-8 Constable Mewaram, chik writer; P.W.-9 S.I. Rajesh Kumar Tiwari, Investigating Officer who has also proved recovery memo, site plan and also submitted charge sheet (Ext. Ka-12) in the matter; P.W-10 S.I. Dheeraj Singh, who has prepared inquest report and other police papers in the matter as Ext Ka-15 to Ext. Ka-19; and P.W-11 Dr Suresh Yadav, who has conducted post mortem on the dead body of deceased and has prepared and proved post mortem report (Ex-Ka 20).

10. On conclusion of prosecution evidence, statement of accused-appellant under Section 313 Cr.P.C. was recorded in which he has denied entire prosecution story and specifically stated that he was falsely implicated in this case; Charge sheet has wrongly been submitted against him by Investigating Officer, who has not conducted proper investigation; and witnesses have deposed falsely against him due to previous enmity. He denied his participation in the alleged incident. Appellant has not adduced any other evidence, oral or documentary in his defence.

11. After hearing learned counsel for the parties and going through the entire evidence available on record, Trial Court found that ocular evidence of material witnesses coupled with medical evidence proves guilt of appellant beyond reasonable

doubt; and there is no contradiction in the statements of witnesses to disbelieve their testimony. Therefore, Trial Court convicted and sentenced appellant, as said above.

12. Being aggrieved by aforesaid judgment and order of conviction and sentence, appellant has come to this court in this appeal.

13. We have heard Sri Ravi Chandra Srivastava, learned Amicus Curiae appearing on behalf of appellant and Sri Rishi Chaddha, learned Additional Government Advocate for State.

14. Learned Amicus Curiae appearing for appellant has challenged conviction of accused appellant advancing his submissions in the following manner:-

(i) There is a delay in lodging of FIR as distance between police station and place of occurrence is only two kilometers, therefore, the same has been lodged with consultation and deliberation.

(ii) Prosecution witnesses examined in the matter are interested witness. P.W.-3, who is stated to be an eye witness of the incident is a close relative of deceased and no independent witness of the locality had come forward to prove incident, hence his evidence cannot be relied upon being interested/related/chance witness.

(iii) Prosecution has not been able to show reason/motive to commit the crime.

(iv) Medical evidence also does not support ocular version. Nothing has been recovered from the place of occurrence to connect accused-appellant with this matter. Findings recorded by Trial Court are perverse.

(v) The two eye witnesses i.e. PW-2 and PW-3, are not reliable and trustworthy as there was no occasion for PW 3 to remain present at the place of occurrence, yet his presence has been shown and he has been cited as an eye witness, which cannot be believed.

(vi) There are major contradiction in the depositions of witnesses on material points.

(vii) Prosecution could not prove its case beyond reasonable doubt

15. On the other hand, learned A.G.A. argued that impugned judgment and order has been passed by Trial Court on the basis of correct appreciation of facts and evidence. It is a day light incident with eye witness account; FIR version stands corroborated by consistent medical evidence and consequently entire prosecution story cannot be said to be concocted and after thought. It is further submitted that delay occurred in lodging FIR has been properly explained by Informant in the written report itself, which stands corroborated by the evidence adduced by prosecution. The judgment passed by Trial Judge needs be approved as no contrary view then what has been taken in the impugned judgment is possible.

16. It is further submitted that there is strong motive of appellant to commit the said offence. The said fact is also established from depositions of P.W.-2 (informant) and P.W.-3 Ahbaran. The brick was recovered at the instance of appellant, duly proved by prosecution. Further Forensic Science Laboratory found human blood on the brick used in the commission of the offence; place of occurrence was proved by the presence of blood stained soil; Medical Officer who has conducted post

mortem also stated in his deposition that injury caused to the deceased is possible by use of brick or by use of some hard object, therefore, medical evidence also supports prosecution version. There is no reason to disbelieve the same and appellant's guilt is well established to commit murder of the deceased, therefore, Trial Court had rightly convicted him.

17. We have considered rival submissions made by learned counsel for parties and gone through entire record carefully.

18. Incident is alleged to have taken place on 11.10.2010 at 9.00 hrs. The Informant is stated to have taken her husband to the hospital and on the way he died. The information of death sent to police station Kotwali. The inquest of dead body was done at District Hospital, Bareilly. It started at 13.20 hrs and concluded at 15.20 hrs. The dead body was taken for post mortem examination by Constable CP 1420 Vikram Nath and CP 839 Sharad Kumar, P.S. Kotwali, District Bareilly. Thereafter, Informant got prepared a written report and lodged the same on 11.10.2010 at 17.45 hrs. Thus, the delay has been properly explained by the prosecution.

19. In **Ramdas Vs State of Maharashtra**, (1977) 2 SCC 124, it has been observed that:-

“.....the question whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation there may be circumstances appearing on record which provide a reasonable explanation for the delay.”

20. Further in **State of HP Vs Gian Chand**, reported in (2001) 6 SCC 71, Court has observed thus:-

“12. Delay in lodging the FIR cannot be used as a

ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.”

21. The contention of Learned Amics Curiae that prosecution witnesses examined in the matter are interested/related/chance witness in as much as PW-3, who is stated to be an eye witness of the incident, is a close relative (nephew) of Informant as well as deceased and no independent witness of the locality had come forward to prove the incident, the said argument cannot be accepted in view of the evidence as has come on record. P.W.-2. Informant, in her first statement at the time of lodging FIR had stated that accused had assaulted her husband with a piece of brick, and when she heard outcries of her husband, she rushed and saw the accused giving repeated blows with a piece of brick on the head of her husband. She supported her first statement throughout her deposition made before Trial Court.

22. PW-3 Ahbaran, while supporting prosecution case has stated that on the date of incident he was in the house of deceased, as he was called upon by deceased to look after him. On the date of incident, after hearing outcries of deceased, he rushed to the spot and saw accused-appellant hitting deceased with a piece of brick. When he tried to apprehend him, accused-appellant fled away. He further stated that deceased was taken

to hospital and on the way to hospital he died. He further clarified in deposition that first accused-appellant threw deceased on the floor and then gave him repeated blows. He has also deposed that deceased used to say that he would give all his property to him. However, accused appellant used to feel bad whenever he heard it and due to this reason accused-appellant bore animosity against deceased. In cross-examination, he remained very firm and nothing could be elicited from him by the defence to make his evidence untrustworthy or doubtful.

23. It is trite law that non-examination of an independent witness by itself is not sufficient to raise any suspicion or doubt as regards the case of the prosecution, if otherwise quality of evidence of the interested witnesses so examined, is found credible. It is also well settled legal position that the quality and not the quantity of witnesses which is material and conviction can be based even on a single testimony if it is found to be trustworthy.

24. Thus, we find that the evidence of PW-2 Runka Devi, wife of deceased and that of P.W. 3-Ahbaran (nephew of deceased) on record is trustworthy and reliable. Once Court is satisfied that witnesses were present at the scene of occurrence and their evidence inspires confidence then the same cannot be discarded on the sole ground of relationship with the deceased. Therefore, there is no reason to disbelieve their testimony merely for the reason that they are an interested/chance witnesses.

25. In **Dalip Singh and others Vs State of Punjab, AIR 1953, SC 364**, Court has observed:-

“ We are unable to agree with the learned Judges

*of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this court endeavoured to dispel in **Rameshwar Vs State of Rajasthan, AIR 1952 SC 54**. We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel. ”*

26. Again in **Masalti and others VS State of UP, AIR 1965, SC 202**, Court said as below:-

“But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

27. So far as the contention of Learned Amicus Curiae appearing for appellant that motive as alleged by the prosecution is very weak and alleged motive could not have been the reason for causing murder of deceased Netram, we find that there is no dispute with the legal proposition that if ocular version coupled with medical evidence inspires confidence then even total absence of motive will not have any deleterious effect upon the prosecution case.

28. However, in the instant case, there appears to be strong

motive for appellant to commit murder of his uncle (deceased). P.W.2 Runka Devi in her deposition stated that she does not have any children; all the three brothers of her husband died earlier; and her sister's son (P.W.-3) always came to her house and used to take care of his Mause (deceased). Shishupal-accused-appellant is her real nephew, who lived separately and had an eye on their land and wanted to get it transferred in his name. She further deposed that accused-appellant was under impression that her husband who was real uncle of accused-appellant, would give his entire property to Ahbaran (P.W.-3). P.W.-3 in his testimony also claimed that deceased Netram was his real Mause, who was prone to illness and as such he was called upon to stay there and look after him. He further stated that deceased had been talking of giving his property to him, and accused appellant used to feel bad whenever he heard it. In such view of the matter, prosecution in our opinion has established a strong and compelling motive to commit crime.

29. In State of UP Vs Babu Ram, reported in (2000) 4 SCC 515 in para-11 & 12, Court has observed as follows:-

"11. We are unable to occur with the legal proposition adumbrated in the impugned judgment that motive may not be very much material cases depending on direct evidence whereas motive is material only when the case depends upon circumstantial evidence. There is no legal warrant for making such a hiatus in criminal cases as for the motive for committing the crime. Motive is a relevant factor in all criminal cases whether based on the testimony of eye witnesses or circumstantial evidence. The question in this regard is whether a prosecution must fail because it failed to prove the motive or even whether inability to prove motive would weaken the prosecution to any perceptible limit. No doubt, if the prosecution proves the existence of a motive it would be well and good for it, particularly in a case depending on circumstantial evidence, for, such motive could then be counted as one of

the circumstances. However, it cannot be forgotten that it is generally a difficult area for any prosecution to bring on record what was in the mind of the respondent. Even if the Investigating Officer would have succeeded in knowing it through interrogations that cannot be put in evidence by them due to the ban imposed by law."

12. In this context we would reiterate what this court has said about the value of motive evidence and the consequences of prosecution failing to prove it, in **Nathuni Yadav Vs State of Bihar, {1998 (9) SCC 238}** and **State of Himachal Pradesh Vs Jeet Singh {1999 (4 SCC 370)}**. Following passage can be quoted from the latter decision:

"No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended."

30. So far as medical evidence is concerned, Dr. Suresh Yadav (P.W.-11), had conducted post-mortem (vide Ex-Ka-20) on the body of the deceased. He noticed fracture of occipital and parietal skull bone. In his opinion, cause of death was due to coma because of injuries sustained. Medical officer has opined in his deposition that injuries sustained were ante mortem in nature, which might be caused by hard and blunt object like brick. If the opinion expressed by P.W.-11 Dr. Suresh Yadav is compared with facts and evidence of present matter, findings recorded by Trial Court on this issue need no interference as

prosecution case is that when P.W-2 (informant) reached on the spot, she saw accused-appellant hitting deceased on his head with a piece of brick and when she tried to save her husband, accused fled from the spot. P.W.-3 Ahbaran (nephew of informant) has also deposed before Trial Court that on hearing cries of deceased, he reached the spot and saw accused-appellant hitting deceased on his head with a piece of brick and when he tried to apprehend the accused, he fled from the spot. The version in F.I.R. about manner of incident finds support with medical evidence. On close scrutiny of evidence on the issue of medical evidence, we are of the view that deceased died due to injuries sustained by him and caused by appellant. There is no conflict between ocular and medical evidence.

31. Learned Amicus Curiae appearing for appellant in the last contended that injuries sustained by deceased could be due to sudden fall on the ground as P.W.-3 in his testimony stated that deceased was not keeping well. This argument of appellant also cannot be accepted inasmuch as no defence evidence has been adduced by appellant, either oral or documentary, to substantiate this plea. Therefore, there is no substance in the argument of Learned Amicus Curiae appearing for appellant that injuries sustained by deceased were not sufficient, in ordinary course of nature, to cause his death and also there is no reason to disbelieve the testimony of P.W.-11 Dr Suresh Yadav, which is otherwise trustworthy.

32. As far as presence of P.W.-2 and P.W.-3 is concerned, we find no reason to doubt it. P.W.-2 Informant of the case is the wife of deceased and incident took place at her house therefore her presence is most natural. P.W.-3 Ahbaran, who is son of

Informant's sister had also deposed before Trial Court that he used to visit house of his Mause (deceased) to look after him, who was issue-less, and he reached the place of occurrence after hearing cries of deceased and saw accused-appellant committing the present offence. This fact is also supported by statement of PW-2 (informant). We find nothing unnatural and unusual therein.

33. The site plan (Ex-Ka-8) shows that houses of deceased as well as accused appellant are adjacent to each other. At the back portion there is an open place, which opens at the field of Nafis Khan, from where blood stained brick was recovered. Thus, the perusal of site plan also supports prosecution version.

34. Therefore, we are of the view that findings recorded by Trial Court about presence of PW-2 and PW-3 at the place of occurrence cannot be termed to be perverse and same is based on correct appreciation of facts and evidence. There are eye account witnesses and their statements made before Court on oath regarding involvement of accused appellant in the present offence and the same are consistent, clear and cogent. There is no contradiction in the statement of P.W.-2 and P.W.-3, which also finds support with medical evidence. Even in their cross examination, P.W.-2 and P.W.-3 have supported prosecution version. Prosecution was also able to prove beyond reasonable doubt the manner in which present offence was committed by accused-appellant as also date, time and place of incident. Thus, findings recorded by Trial Court about guilt of accused-appellant for committing murder of deceased Netram need no interference.

35. P.W-5 & P.W. 6 are the witness of inquest. They have duly

proved the inquest to have been prepared in their presence.

36. P.W-4 & P.W-7 are witnesses of recovery and have proved the recovery memo (Ex Ka-3 & Ka 4) and have duly supported prosecution version. P.W.-4 Kishan Lal Gautam and P.W.-7 Jaipal in their depositions admitted that the piece of brick (Ex-Ka-10) soaked in blood was recovered at the instance of accused appellant on 12.10.2010.

37. P.W-8 is a formal witness, who has prepared chick report on the basis of the written report (Ex-Ka-1).

38. PW-9 is Investigating Officer of the case, who has duly supported prosecution case.

39. As per FSL report (Ex. Ka 10), blood was found on the brick recovered from the paddy field at the disclosure of accused-appellant.

40. Close scrutiny of the evidence makes it clear that on 11.10.2010 it is the accused-appellant who had murdered husband of Informant by repeated blows on his head with a piece of brick. Eye witnesses to the incident, PW-2 and P.W.-3, have categorically stated the manner in which deceased was assaulted by accused-appellant. Both these witnesses (PW-2 & PW-3) have duly supported prosecution version. The evidence of witnesses finds due corroboration from medical evidence (postmortem report of the deceased), according to which corresponding injuries by hard and blunt object were noticed on the person of deceased. This apart, from the paddy field, a blood stained piece of brick (Ex-Ka-4) was recovered which has been duly proved by prosecution and according to FSL report (Ex. ka-10) presence of human blood on the brick was confirmed.

41. P.W.-4 Kishanlal Gautam, who is also resident of same

village, in his statement before court stated that after arrest of accused-appellant on 12.10.2010. Police recovered the brick, which was soaked with human blood, from the paddy field of one Nafees Khan on the basis of his disclosure statement. P.W-7 Jaipal also corroborated the said fact and there is nothing contradictory to disbelieve their testimonies otherwise. Further even in the testimony of P.W.-9, I.O. Rajesh Kumar Tiwari, the said fact gets corroborated.

42. Court in **State of Maharashtra vs. Damu, JT 200 (5) SC 575: 2000 (6) SCC 269**, has held:

*"13. While dealing with the fundamental facet of Section 27 of the Evidence Act, the Court observed that the basic idea embedded in the said provision is the doctrine of confession by subsequent events, which is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. It further stated that the **information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information and, therefore, the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum.***

14. Thus, if an accused person gives a statement that relates to the discovery of a fact in consequence of information received from him is admissible. The rest part of the statement has to be treated as inadmissible. In view of the same, the recovery made at the instance of the accused-appellant has been rightly accepted by the trial Court as well as by the High Court, and we perceive no flaw in it."

(Emphasis added)

43. Thus, on the basis of aforesaid ocular and medical evidence involvement of the accused-appellant in commission of the offence stands proved beyond all reasonable doubt. The accused/appellant assaulted the deceased repeatedly with a

piece of brick on his head, thereby causing fracture of occipital and parietal bone of skull and two contusions on the head. If the act of the accused-appellant is seen in the background of facts and circumstances of the case, it is quite evident that the accused-appellant acted in a cruel manner, he had intention to cause death of deceased and also had every knowledge that the injuries being so inflicted by him on deceased would result in his death. The prosecution has successfully proved the guilt of the accused-appellant on the basis of evidence adduced by it and the Trial Court was fully justified in holding the appellant guilty under Section 302 of IPC.

44. Finally, learned Amicus Curiae for the appellant while pointing out that accused-appellant has served more than eight years in jail, pleaded for leniency. We are unable to accept the above claim for the appellant as the prosecution has established his case beyond reasonable doubt. Since we are affirming the conviction under Section 302 IPC, Court cannot impose a lesser sentence than what is prescribed by law.

45. So far as sentence regarding appellant Shishu Pal is concerned, it is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual cases.

46. It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of offence and the manner in which it was executed or committed. It is obligation of court to constantly remind itself that right of victim, and be it said, on

certain occasions person aggrieved as well as society at large can be victims, never be marginalised. The measure of punishment should be proportionate to gravity of offence. Object of sentencing should be to protect society and to deter the criminal in achieving avowed object of law. Further, it is expected that Courts would operate the sentencing system so as to impose such sentence which reflects conscience of society and sentencing process has to be stern where it should be. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against individual victim but also against society to which criminal and victim belong. Punishment to be awarded for a crime must not be irrelevant, but it should conform to and be consistent with the atrocity and brutality which the crime has been perpetrated, enormity of crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. [Vide: **Sumer Singh vs. Surajbhan Singh and others**, (2014) 7 SCC 323, **Sham Sunder vs. Puran**, (1990) 4 SCC 731, **M.P. v. Saleem**, (2005) 5 SCC 554, **Ravji v. State of Rajasthan**, (1996) 2 SCC 175].

47. Hence, applying the principles laid down by the Apex Court in the aforesaid judgments and having regard to the totality of facts and circumstances of case, nature of offence and the manner in which it was executed or committed, we find that punishment imposed upon accused-appellant Shishu Pal by Trial Court in impugned judgment and order is not excessive or exorbitant and no question arises to interfere in the matter on the point of punishment imposed upon him.

48. In view of above discussion, the appeal is dismissed.

Impugned Judgment and order dated 30.11.2013 passed by Sri Mridulesh Kumar Singh, Additional Sessions Judge, Court No. 13, Bareilly in Sessions Trial No. 778 of 2011, arising out of Case Crime No. 1303 of 2010, P.S. Bhamora, District Bareilly awarding sentence of imprisonment for life to accused appellant, Shishu Pal for the offence under Section 302 IPC, is maintained and confirmed.

49. Lower Court record along with the copy of this judgment be sent back immediately to court concerned for necessary compliance. A Copy of this judgment be also sent to accused-appellant through Jail Superintendent concerned for initiation forthwith. Compliance report be also submitted to this Court.

50. Mr. Ravi Chandra Srivastava, learned Amicus Curiae has assisted the Court very diligently. We provide that he shall be paid counsel's fee as Rs.10,000/-. State Government is directed to ensure payment of aforesaid fee through Additional Legal Remembrancer posted in the office of Advocate General at Allahabad to Mr Ravi Chandra Srivastava, Amicus Curiae, without any delay and, in any case, within 15 days from the date of receipt of copy of this judgment.

Order Date :- 19.4.2019

Ravindra Kr. Singh