

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 405 of 2004

Madwee Labba, Aged 30 years, S/o Guddo Madia, R/o Chandargiri, P.S. Darbha, District Bastar (M.P.) (Now Chhattisgarh)

---- **Appellant**

Versus

State of Madhya Pradesh (Now Chhattisgarh) through P.S. Darbha, District Bastar (M.P.) (Now C.G.)

---- **Respondent**

For Appellant:	Shri Ramkrishna Sharma, Advocate.
For State/Respondent:	Shri UNS Deo, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Anil Kumar Shukla

Judgment on Board By

Prashant Kumar Mishra, J.

08/11/2016

1. Appellant - Madwee Labba has impugned the judgment rendered by the trial Court convicting him for offence punishable under Section 302 of the IPC and imposing sentence of life imprisonment for committing the murder of deceased Kawasi Mase and Podiyami Sukhram. As a matter of fact three persons namely accused No.1 Madwee Sukda, accused No.2 Madwee Labba and accused No.3 Madawee Budhram were charge sheeted but the accused No.1 Madwee Sukda has been

acquitted by the trial Court and accused No.3 Madwee Budhram has died during pendency of the trial.

2. Case of the prosecution as appearing in the Dehati Nallishi (Ex. P-8) and FIR (Ex. P-7) is that informant Kawasi Hirma is the father of eyewitness, (PW-3) Podiyami Labbo. The informant Kawasi Hirma had gone to attend a funeral on 14-09-1992. On the funeral ground, accused Madwee Sukda came near him making allegation that he is engaged in witchcraft/sorcery causing death of villagers. Sukda assaulted him over the back of the nape. The informant ran away from the funeral ground and hid himself in the house of (PW-2) Madwami Mado. On the next morning his daughter Labbo came to inform him that the accused persons have caused injury to herself and her son Sukhram by axe and have killed her mother Kawasi Mase. Thereafter, the informant along with Sarpanch Prem Singh, Mado Madiya Kotwar etc. proceeded towards the police station to lodge the report. Budhram met them on their way to police station on which he ran away out of fear. However, thereafter, they reached the police station. Prior to the FIR (Ex. P-7) recorded at 18-00 hours, morgue intimation was registered vide Ex. P-8 at 17-45 hours on 15-09-1992.
3. In course of investigation, Podiyami Sukhram, (PW-3) and Podiyami Labbo were sent for medical examination for which report (Ex. P-2) was submitted by the concerned physician.

Informant Kawasi Hirma was also sent for medical examination for the injury suffered by him on the previous day. While Kawasi Mase died on the spot, Podiyam Sukhram later on succumbed to the injuries on 18-09-1992, in course of treatment as is mentioned in Ex. P-6. In the Postmortem Report (Ex. P-29) relating to deceased Kawasi Mase, the death was found to be caused due to excessive hemorrhage from the external injury on scalp and rupture of liver along with shock. Whereas in the Postmortem Report (Ex. P-30) relating to deceased Podiyami Sukhram, the death was found to be caused due to coma as a result of head injury. Both Postmortem Reports were performed by (PW-11) Dr. P.C. Karun.

4. After filing of the charge-sheet and conclusion of trial, the appellant has been convicted mainly on the evidence of (PW-3) Podiyami Labbo and (PW-4) Kawasi Hirma.
5. Shri Ramkrishna Sharma, learned counsel for the appellant would argue that there are over writing and interpolation in the FIR and the morgue intimation, therefore, coupled with material contradictions in the statement of the eyewitness, the prosecution has failed to prove its case against the appellant. He would submit that the impugned judgment of conviction being based on shaky evidence, deserves to be set aside.

6. *Per contra*, Shri UNS Deo, learned State counsel would support the impugned judgment on submission that (PW-3) Podiyami Labbo has fully supported the case of prosecution and she being injured eyewitness, her statement ought not be discarded.
7. We have heard learned counsel for the parties at length and perused the record.
8. The evidence available on the record would reveal that there was an incident on the funeral ground a day prior to the present incident wherein Madwee Sukda had assaulted the informant over the back of neck by alleging that he is involved in witchcraft/sorcery. The accused persons later on allegedly entered the house of informant Kawasi Hirma, probably to teach him lesson in connection with the previous incident. It is not in dispute that the incident has taken place during dawn hours just before the sunrise in the morning of 15-09-1992. While initially the FIR and morgue intimation did not contain the name of assailant which appears to have been inserted subsequently as is appearing through naked eye bearing over writing. In the morgue intimation there is overwriting also at the place where time of lodging morgue is mentioned.
9. In view of these crucial aspect of the matter, the statement of (PW-3) Podiyami Labbo and (PW-4) Kawasi Hirma needs to be closely scrutinized. (PW-3) Podiyami Labbo would state in para

two of her examination-in-chief that at the time of occurrence she was sleeping when all the three accused persons entered the house and this appellant caused injury over the head of her son Sukhram. In the process she also received injury on her left cheek. Accused No.3 Budhram (since deceased) assaulted her mother Kawasi Mase who died instantly. In her cross-examination, she would again say that the sun was about to rise and it was not dark. However, in further cross-examination, she would clearly state that since there was some darkness, she could not see the quarrel (the incident) and further that when she woke up, she found her son lying injured and her mother was dead. This witness has also stated that all the three accused persons are her brother-in-laws. To further ascertain with exactitude as to the amount of light available at the time of occurrence, if we read para 6 of the statement made by (PW-4) Kawasi Hirmi, he has stated that when (PW-3) Podiyami Labbo reached his house there was some darkness. If (PW-3) Podiyami Labbo has taken even 5 or 10 minutes to reach the house of (PW-4) Kawasi Hirmi, there would have been less light at the time when the incident took place. Although (PW-3) Podiyami Labbo has also stated that she heard the accused persons exhorting that they would kill the persons until they are dead, in view of the contradictory statement of (PW-3) Podiyami Labbo that she has not seen the quarrel or the occurrence and

when she awake Sukhram was lying injured and Mase was lying dead, it may not be safe to convict the appellant Madwee Labbo for causing death of Sukhram.

10. The other witness have drawn information about the incident from (PW-3) Podiyami Labbo who has been disbelieved, therefore, the statement of other witnesses i.e. (PW-2) Madwami Mado and (PW-4) Kawasi Hiema would not be reliable to convict the appellant.
11. In view of the above, we are of the considered opinion that in view of material contradictions and omissions there is serious doubt as to whether (PW-3) Podiyami Labbo has seen the occurrence, therefore, the prosecution has not been able to prove its case beyond all reasonable doubt against the appellant. Hence, the appeal succeeds and the impugned conviction is set aside.
12. Learned counsel for the parties would inform that the appellant is on bail. His bail bond shall remain in force for a period of six months as provided under Section 437-A of Cr.P.C.

Sd/-
JUDGE
(Prashant Kumar Mishra)

Sd/-
JUDGE
(Anil Kumar Shukla)