

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 923 of 2004

1. Sodi Hidma, S/o Bhima Muriya, Aged about 32 years;
 2. Sodi Sanna, S/o Bhima Muriya, Aged about 27 years;
 3. Sodi Bhima, S/o Dama Muriya, Aged about 44 years;
- All R/o Village Kuakonda, Pujaripal Buttupara, P.S.
Kuakonda, District Bastar (C.G.)

---- Appellants

Versus

The State of Chhattisgarh through Police Station Kuakonda,
District Bastar (Chhattisgarh)

---- Respondent

For Appellants:	Smt. Kiran Jain, Advocate.
For State/Respondent:	Shri Vinod Deshmukh, Dy. G.A.

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

Judgment on Board By

Prashant Kumar Mishra, J.

05/12/2016

1. Appellants No.1 & 2 are the sons of appellant No.3. They have called in question the impugned judgment of conviction and order of sentence dated 20-08-1998 passed by Third Additional Sessions Judge, Bastar at Jagdalpur in S.T. No.524/1996 whereby the trial Court has convicted them for committing offence punishable under Section 302 read with Section 34 of the IPC and sentenced them to life imprisonment with a fine of

Rs.1000/-, in default of payment of fine to undergo RI for one month each.

2. The appellants have committed murder of deceased Sodi Bodda in an incident which took place at about 7.00 p.m. on 17-10-1996. FIR (Ex.P-7) was lodged by Sodi Dewa (PW-2) at about 20.10 hours on 19-10-1996. Before lodging FIR, morgue intimation (Ex.P-21) was lodged by Sodi Dewa (PW-2) at 20.15 hours on 19-10-1996. In the morgue intimation as well as in the FIR, the informant reported that at the time of incident, the 'informant', his brother deceased Bodda and his wife Hadme were in the house. The accused Sanna, Hidma armed with bow, arrow and accused Bhima with Banda (Sickle) entered their house and started quarreling with the deceased as to how he alone cultivated the field. The deceased stated that hence-forth he alone will cultivate the field on which Hidma exhorted to kill the deceased and put the strings of bow arrow and inflicted blow on the abdomen of the deceased. Sanna also inflicted two arrow injuries over abdomen and on the back on which the deceased fell down. Bhima thereafter, assaulted the deceased over both knees and over chest by means of Banda (Sickle). The informant categorically stated in the FIR that the incident has been witnessed by himself, his sister-in-law Hadme and neighbour Kosa. Seeing the informant and two other eyewitnesses, the accused ran away from the place of

occurrence.

3. In the Postmortem Report (Ex. P-1) performed by Dr. R.A. Khan (PW-1), the deceased was found to have sustained (1) depressed fracture of left parietal bone caused by hard and blunt object. Brain matter has come out from the wound (2) One incised penetrating wound in 4th right intercostal space between nipple & sternum caused by sharp and penetrating weapon like arrow; (3) One incised penetrating wound over right hypo gastric region caused by sharp and penetrating weapon like arrow; (4) One penetrating wound on posterior aspect of right elbow joint caused by arrow; (5) Two incised wounds one on each leg at knee joint caused by hard and blunt object and (6) Two incised wounds over both feet caused by hard and blunt object. Cause of death was due to shock (neurogenic & hemorrhage) caused by head injuries & other injuries on body and the death is homicidal and antemortem in nature. Duration of death is about 3 – 4 days before the autopsy examination.
4. In course of investigation, the bow and arrow were recovered from the appellants Hidma and Sanna whereas Banda (sickle) was recovered from the appellant Bhima. Dr. R.A. Khan (PW-1) answered the query in the positive to say that the injuries sustained by the deceased could be caused by the weapons recovered from the appellants.
5. Based on the statement of Sodi Dewa (PW-2), Hadme (PW-3)

and Kosa (PW-4), the trial judge has convicted the appellants for committing the offence under Section 302 read with Section 34 of the IPC.

6. Challenging the conviction and sentence, Smt. Kiran Jain, learned counsel for the appellants would argue that Sodi Dewa (PW-2) and Hadme (PW-3) have not seen the incident and they have falsely projected themselves as eyewitnesses. For Kosa (PW-4), it is argued that this witness is not consistent, therefore, he is not reliable and the conviction cannot rest on his sole testimony. Therefore, the appeal deserves to be allowed.
7. Per contra, Shri Vinod Deshmukh, learned State counsel would submit that the evidence of witnesses should be read as a whole and not in isolation. According to him all the above witnesses being family members of the deceased are natural and trustworthy witnesses whose presence in the house have never been doubted. Therefore, the conviction is well founded.
8. The fate of the appeal depends upon the statement of three witnesses namely, Sodi Dewa (PW-2), Hadme (PW-3) and Kosa (PW-4). If these witnesses are disbelieved, the appeal may be allowed and vice-versa.
9. Sodi Dewa (PW-2) lodged the FIR and from the very beginning he has been asserting that he has seen the incident. This witness also lodged the morgue intimation. In both the

documents i.e. FIR (Ex. P-7) lodged after two days of the incident and the Morgue Intimation (Ex. P-21), the informant has narrated the whole incident in a most natural and flawless manner. The incident took place at a remote village of Bastar District lying at a distance of 40 Kms away from the Police Station. The Postmortem itself was performed by Dr. R.A. Khan (PW-1), after two days of the incident. The reason for delay in lodging the FIR is that the village is distantly located and a panchayat meeting was convened in the village.

10. It is not a case where the contents of FIR and Morgue Intimation are after thought and have been cooked up to frame the appellants. Sodi Dewa (PW-2) has stated that he has seen appellants No.1 & 2 injuring the deceased by arrow and appellant No.3 Bhima injuring him by means of Banda (Sickle). Like in the FIR and Morgue Intimation, he has stated in his examination in Chief that Hadme (PW-3) and Kosa (PW-4) have also seen the incident.
11. The other witnesses namely, Hadme (PW-3) is the widow of Bodda. She has also given a very natural and spontaneous statement that the appellants Hidma and Sanna caused injuries to her husband by means of arrow, whereas appellant Bhima caused injuries by Banda (Sickle). There is some inconsistency in para 4 of her cross-examination where she has stated that at the time of incident she and her brother-in-law Dewa were

having dinner inside the house and her husband was outside the house and further that when after hearing the alarm raised by her husband she and Dewa came out, they saw that her husband was having arrows over his body but immediately in the same breath she denied the suggestion that she has not seen the incident or that when she came out, the appellants were not present on the spot.

12. Kosa (PW-4) has also fully supported the case of prosecution in para 2 of his statement. However, in para 3 he denied to have seen the incident but once again when re-examined and asked by the prosecution as to which of his two statements are correct about he having seen the incident or not, he emphatically replied that the statement that I have seen the incident is correct.
13. While marshaling the evidence of above discussed three witnesses, it has to be kept in mind that the witnesses are tribals from Bastar area and they do not understand Hindi. Their statements have been reduced to writing with the assistance of interpreters. Moreover, the statements are to be read as a whole and not in piecemeal. On collective analysis and on consideration of all the determining factors like the witnesses being tribal not well-versed or aware of Hindi; their statements having been recorded with the assistance of interpreters and there being consistency in earlier statement to police, we find that their statements are unimpeachable. There is no reason as

to why the witnesses being close relatives of the deceased would implicate some one else than the real culprits. On the basis of above analysis and discussion, we are unable to agree with the arguments raised by learned counsel for the appellants that Dewa (PW-2), Hadme (PW-3) and Kosa (PW-4) are not the eyewitnesses.

14. There is another piece of evidence against the appellants in form of extra judicial confession made by the appellants before the Panchayat. Laxman Markam (PW-5) is a witness to the said extra judicial confession. Dewa (PW-2) is also a witness to the extra judicial confession. Dewa (PW-2) has stated that after the incident, Panchayat was convened where the appellants have confessed their guilt of committing murder of deceased Bodda. This witness has not been cross-examined by confronting him with his case diary statement or with the contents of FIR on this aspect of the evidence, even though in the Morgue intimation and in the FIR, he has stated that he informed the police that a panchayat was convened in the village on 18-10-1996. Similarly, Laxman Markam (PW-5) who is Sarpanch of the Village would state that the appellants had confessed before the Panchayat about their act of committing murder of deceased Bodda. In cross-examination, this witness speaks about convening of Panchayat in presence of police after lodging the FIR. It appears there might have been two Panchayat meetings

convened in the village one before the lodging of FIR on 18-10-1996 because this panchayat is mentioned in the FIR itself. If there was another panchayat after lodging of FIR, Laxman Markam (PW-5) has admitted of this subsequent panchayat meeting in para 4 of his statement because here he speaks about Panchayat meeting after lodging of the FIR. In our considered view, Dewa (PW-2) and Laxman Markam (PW-5) are also reliable and trustworthy witnesses on this aspect that the appellants have made extra judicial confession before them in the Panchayat meeting.

15. In view of the above, we do not find any illegality or infirmity in the impugned judgment passed by the trial Court. Accordingly, the instant appeal *sans stratum* is liable to be and is hereby dismissed.
16. The appellants are on bail. Their bail bonds are cancelled. They be taken into custody forthwith and sent to jail for serving the remaining part of the sentence.

Sd/-
JUDGE
(Prashant Kumar Mishra)

Sd/-
JUDGE
(Anil Kumar Shukla)