

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 587 of 2013

1. Meethu Sodhi, S/o Sandhya Sodhi, Aged About 47 Years.
2. Hidmo Kawasi, S/o Tokki Kawasi, aged about 46 years,
3. Aytu Kawasi, S/o Pandu Kawasi, aged about 45 years,
4. Raju Poyami S/o Poya Poyami, aged about 25 years,
5. Meta @ Somaru S/o Gangaram Kawasi, aged about 46 years,

All R/o Village Nainar, Police Station Kodenar, Tahsil, Civil and Revenue District-Bastar (CG)

---- Appellants

Versus

- State Of Chhattisgarh S/o Through - SHO., P.S. Kodenar , Distt. Bastar C.G.

---- Respondent

For Appellants	:	Shri Shravan Chandel, Advocate.
For Respondent/State	:	Shri Garry Mukhopadhyay, Dy. GA.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board By Justice Pritinker Diwaker

04/11/2017

This appeal arises out of the judgment of conviction and order of sentence dated 26.2.2013 passed by the 1st Additional Sessions Judge, Bastar at Jagdalpur in S.T.No.43/2012 convicting the accused/appellants under Sections 147, 148/149, 450/149, 302/149 of IPC and Sections 4 & 5 of Tonhi Pratadna Nivaran Adhiniyam and sentencing them to undergo RI for 6 months, fine of Rs.100/-, RI for 1 year, fine of Rs.100/-; RI for 2 years, fine of Rs.200/-; life imprisonment,

fine of Rs.100/-, RI for 1 year, fine of Rs.200/- & RI for 2 years, fine of Rs.200/- with default stipulations respectively.

02. As per prosecution case, the accused/appellants used to suspect deceased Samdu Kawasi as Tonhi and on 9.3.2012 at about 7 pm they entered the house of the deceased and committed his murder by causing several injuries by knife as well as by pestle. On 10.3.2012 at 11.30 am FIR (Ex.P/21) was lodged by PW-1 Jugo Kawasi, eyewitness to the incident and daughter-in-law of the deceased against the appellants under Sections 302, 450, 147, 148 & 149 of IPC and Sections 4 & 5 of Tonhi Pratadna Adhiniyam. Immediately thereafter merger intimation was recorded vide Ex.P/22. Inquest over the dead body was conducted vide Ex.P/3 on 10.3.2012 and the body was thereafter sent for postmortem which was conducted on the same day by PW-6 Dr. Pradeep Baghel vide Ex.P/12, who noticed incised wounds on ear, chest, abdomen, thigh and neck and opined that the cause of death was circulatory failure and coma due to excessive hemorrhage and that the death was homicidal in nature. On 10.3.2012 memorandum of accused/appellant Aytu Kawasi was recorded vide Ex.P/8, pursuant to which one pestle was seized vide Ex.P/9. Likewise, memorandum of accused/appellant Meta @ Somaru (Ex.P/6) recorded on 10.3.2012 led to recovery of one knife vide Ex.P/7. Further, case of the prosecution is that the incident has been witnessed by PW-9 Kawasi Adme. After completion of investigation, the trial Court framed charges under Sections 147, 148/149, 450/149, 302/149 of IPC and Sections 4 & 5 of the Tonhi Pratadna Nivaran Adhiniyam.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above.

05. Learned counsel for the appellants submits that PW-1 Jugo Kawasi is not the eyewitness to the incident has falsely implicated the appellants. It is further argued that statement of other eyewitness Kawasi Adme (PW-9) is also not very reliable and considering the fact that the incident took place in the dark night, the question of witnessing the incident by this witness also does not arise.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellants is strictly in accordance with law and as such, there is no scope for any interference in the judgment impugned by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Jugo Kawasi, daughter-in-law of the deceased and lodger of FIR, in examination-in-chief has stated that she saw the appellants committing murder of the deceased as they were suspecting him as Tonhi. However, in cross-examination she states that as it was dark in

the night she could not identify anyone. She has further stated that as the deceased did not return till late night, all the family members after taking meals slept and in the morning when they woke up they saw dead body of the deceased near the tamarind tree. When they went near him, they found him dead. She has further stated that she is not aware as to how the deceased died and who killed him.

09. PW-9 Kawadi Adme, wife of the deceased, while supporting the prosecution case has stated that at about 7 pm the appellants entered her house carrying knife and pestle, accused/appellant Meethu started talking to her and immediately thereafter the other accused persons started assaulting the deceased by knife and pestle and thereafter ran away from there. In cross-examination she remained firm and nothing could be elicited from her to discredit her testimony.

10. PW-2 Lachhinder has not stated anything specific and has turned hostile. PW-3 Puna & PW-5 have also not supported the prosecution case and have been declared hostile. PW-5 Kishore Nand, Patwari, prepared the spot map Ex.P/11. PW-6 Dr. Pradeep Baghel conducted postmortem on the body of the deceased on 10.3.2012 vide Ex.P/12 and noticed incised wounds on ear, chest, abdomen, thigh and neck and opined that the cause of death was circulatory failure and coma due to excessive hemorrhage and that the death was homicidal in nature. In cross-examination he has denied the suggestion that the injuries suffered by the deceased could be caused due to fall. PW-7 D. Banjare, investigating officer, has duly supported the prosecution case. PW-8 Maso Poyami has turned hostile. PW-10 Kume Poyami, daughter of the deceased, is a hearsay witness.

11. Close scrutiny of the evidence makes it clear that the accused/appellants used to suspect deceased Samdu Kawasi as Tonhi. According to eyewitness to the incident PW-9 Kawasi, wife of the deceased, the accused/appellants entered her house armed with knife and pestle and while accused/appellant Meethu was talking with her, the other accused persons started assaulting the deceased by knife and pestle and thereafter ran away from there. In cross-examination this witness remained firm and nothing could be elicited from her to render her testimony doubtful or unreliable. Though she has admitted that on the date of incident it was dark but nowhere she has admitted that on account of darkness she could not see the assailants. Rather in her cross-examination she has stated that when appellant Meethu came to her house on the date of incident she was talking to him in the house. The evidence of this witness finds due corroboration from the medical evidence of PW-6 Dr. Pradeep Baghel who conducted postmortem on the body of the deceased and noticed corresponding injuries on his person and opined that it was a homicidal death.

12. True it is that other eyewitness to the incident namely Jugo Kawasi (PW-1) has not supported the prosecution case, however, in view of unrebutted evidence of other eyewitness PW-9 which finds due corroboration from the medical evidence, it does not affect the credibility of the prosecution case. It is the mandate of Section 134 of Evidence Act that quality and not quantity of evidence is material. Section 134 enshrines the well recognized maxim "Evidence has to be weighed not counted". the matter thus depends upon the circumstances of each case and the quality of evidence even of a

single witness whose testimony has either to be accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof.

13. On the basis of aforesaid discussions, we are of the considered opinion that the findings of guilt of the appellants recorded by the trial Court are based on proper appreciation of the entire evidence available on record. There is no illegality or infirmity in the judgment impugned warranting interference by this Court. Accordingly, the appeal fails and is hereby dismissed. Appellants are reported to be in jail, therefore, no further order regarding their arrest/surrender etc. is required.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(R.C.S. Samant)
Judge