

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 277 of 2014

(Arising out of judgment dated 29-1-2014 in ST No. 22/2009 of the
learned Addl. Sessions Judge (FTC), Dantewada (CG))

Madavi Gugge, S/o. Dundi, aged about 35 years, R/o. Kompalli,
P.S. Kutru, Civil Distt. Dantewada, Revenue Distt. Bijapur (CG)

---- Appellant

Versus

State of Chhattisgarh through Police Station Kutru, Distt. Bijapur
(CG)

---- Respondent

For appellant : Mr. Hanuman Prasad Agrawal, Adv.

For Respondent/State : Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Chandra Bhushan Bajpai

CAV JUDGMENT

Per Chandra Bhushan Bajpai, J

10/10/2017

1. This appeal has been filed against the judgment of conviction and order of sentence dated 29-1-2014 passed by the Addl. Sessions Judge (FTC) Dantewada (CG) in S.T. No. 22/2009 convicting the accused/ appellant under Section 302 of the Indian Penal Code, 1860 (for short 'the IPC') and sentencing him to undergo imprisonment for life and fine of Rs.500/-, in default to undergo additional R.I. for 3 months.
2. As per prosecution case, deceased Madvi Boti and the appellant are uncle and nephew. Some villagers said the appellant that the deceased is in illicit relation with his wife. The appellant armed with axe reached to the house of the deceased on 8-8-2008 at about 9 am and caused him injuries by axe. Thereafter he also

assaulted him by bedpost and dagger and caused injury, as a result of which Madvi Boti succumbed to the injuries. The incident was witnessed by P.W. 4 Madvi Budhani, wife of deceased, P.W. 5 Madvi Fagano, daughter of the deceased, one neighbour P.W. 6 Kawasi @ Lakhami and P.W. 11 Madvi Ayte, daughter of the deceased. Madvi Gulludi, son of the deceased has lodged FIR (Ex. P-5) on 9-8-2008 at 8.30 am to Kutru Police. Police registered the same as Crime No. 33/2008. Said Madvi Gulludi also lodged merg intimation Ex. P-6 and FIR Ex. P-5. Madvi Gulludi has not been examined by the prosecution during trial. Both the documents have been proved by P.W. 7 Shyam Sidar, investigating officer. Police during investigation gave notice to witnesses for inquest vide Ex. P-7, P-8, and thereafter prepared inquest Ex. P-9 on 9-8-2008. Thereafter body of the deceased was sent for post mortem. Dr. D.P. Singh conducted autopsy and gave his report Ex. P-13. Said Ex. P-13 has been proved by P.W. 9 Dr. Sujit Viswas as Dr. D.P. Singh was not traceable and not doing official duty for last two years. It is proved that the autopsy surgeon noticed 3 cut injuries over forehead, back side of skull and left side of lower abdomen. As per autopsy surgeon, mode of death is due to hemorrhagic shock on account of head injury and the death was homicidal in nature. The investigating officer has prepared the spot map Ex. P-11. Ex. P-12 was prepared by the Patwari P.W. 8 Shriram Markam. During investigation, police recorded memorandum statement of the accused/appellant on 11-8-2008 Ex.P-1 and on the basis of disclosure statement, police seized one axe, one bedpost and one dagger which was given by the accused/appellant from his house vide Ex. P-2.

Police also seized blood stained and plain soil from the spot vide Ex. P-3. The articles were sent for FSL examination. During trial, the FSL report is tendered by the prosecution. The trial Court vide order dated 3-1-2014 has admitted the FSL report in evidence and marked as Ex. P-14.

3. After investigation, police filed charge sheet before the Chief Judicial Magistrate, Bijapur which was initially registered as Criminal Case No. 379/2008 and the committal Court has committed the matter on 14-1-2009 to the Court of Sessions. Learned Additional Sessions Judge received the case on transfer. During trial the trial Court framed charge under Section 302 of the Indian Penal Code, 1860 against the appellant. The appellant denied the charges and prayed for trial.
4. So as to hold the accused/appellant, guilty prosecution examined total 11 witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.
5. Learned counsel for the accused/appellant submits that :-
 - I. Lodger of the merg Ex. P-6 and FIR Ex. P-5 was not examined as a witness during trial.
 - II. P.W. 6 Kawasi @ Lakhami, neighbour of the deceased though in the examination-in-chief has stated the entire incident of assaulting the deceased by the appellant but in cross-examination, she has stated that she was inside the house at the time of incident and when she came out, she saw the deceased lying dead and the appellant was not present there.

She has also stated that she did not see the incident.

III. P.W. 11 Madvi Ayte, resident of same village and also daughter of the deceased though initially in the examination-in-chief has stated that she had seen the appellant causing injury to her father by axe but in the cross-examination in para 5 she states that on the date of incident she was at Bhairamgarh and has not seen the incident. Therefore, on the basis of these two witnesses, the appellant may not be convicted.

IV. The appellant is falsely implicated due to the decision taken in the panchayat regarding lodging a false report against the appellant.

V. The statements of P.W. 4 Madvi Bhdhani and P.W. 5 Madvi Fagno are not reliable as both are wife and daughter of the deceased, hence interested witnesses and also there are variations in their statements.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that P.W. 4 Madvi Budhani and P.W. 5 Madvi Fagno have duly proved the prosecution's case against the accused/appellant. Their statements may not be disbelieved only because they are wife and daughter of the deceased. They are natural witnesses. In the natural course they were present at the time of incident. The place of incident is courtyard of the deceased. The appellant does not reside there and with the above circumstance, no one had opportunity to witness the incident but those who are present on the spot. There is nothing to discredit their statement. There is no reason for false implication. Report has been lodged without any delay and Merg

(Ex. P-6) and the FIR (Ex. P-5) are duly proved by the investigating officer. Non-examination of the author of merge and FIR may not be a basis to disbelieve the entire prosecution case as the P.W. 5 Madvi Fagno and PW 6 Kawasi @ Lakhami have duly proved the matter against the appellant. It is submitted that conviction and sentence passed by the trial Court against the appellant is strictly in accordance with law and there is no infirmity.

7. We have heard learned counsel for the parties and perused the record of the court below.
8. P.W. 1 Bedja Sampat is panch witness of seizure of clothes of the deceased vide Ex.P-4. P.W. 2 Kunjami Chaitu, brother-in-law of the accused/appellant has turned hostile. P.W. 3 Michcha Lakhamu has admitted his signature on the memorandum Ex. P-1 and seizure memo Ex. P-2 but not supported the other facts and turned hostile. P.W. 4 Madvi Budhani, wife of the deceased has stated that when her husband Madvi Boti was present in the residence, the appellant came and assaulted thrice through axe. Her husband died instantaneously. When she intervened and attempted to save her husband, the appellant also threatened her and her daughter P.W. 5 Madvi Fagno. This witness remained very firm in the cross-examination and supported the statement given by her. P.W. 5 Madvi Fagno, daughter of the deceased also narrated similar facts and supported the prosecution case and stated that the appellant assaulted thrice through axe and dagger. As a result of the assault, the deceased fell down and died. When they attempted to save deceased Madvi Boti, the

appellant threatened to kill them. This witness also remained very firm in the cross-examination and there is nothing surfaced so as to discredit the witness. P.W. 6 Kawasi alias Lakhami, neighbour of the deceased though in examination-in-chief has stated the entire incident but in para 6 she has categorically stated that at the time of the incident she was inside her residence and on hearing hue and cry when she reached the spot, she saw Madvi Boti lying there. She did not see the incident. P.W. 7 Shyam Sidar is Inspector of Police and investigating officer. He has conducted investigation and supported the prosecution case. P.W. 8 Shri Ram Markam has prepared the spot map Ex. P-12. P.W. 9 Dr. Sujit Viswas has proved the post mortem report Ex. P-13 conducted by Dr. V.P. Singh who was not traceable. He had also identified the signature of Dr. D.P.Singh. P.W. 10 P.P. Joshi, Asstt. Sub Inspector of police conducted part of investigation, prepared memorandum Ex. P-1, also seized the axe, wooden leg and dagger from the appellant. P.W. 11 Madvi Ayte, daughter of the deceased supported the prosecution case but in the cross-examination she has stated that at the time of incident she was at Bhairamgarh and she had not seen the incident, however she denied the other allegation of defence.

9. Close scrutiny of the evidence available on record makes it clear that there is nothing to discredit the statement of P.W. 4 Madvi Budhani and P.W. 5 Madvi Fagno as they are eye-witnesses present at the time of incident and saw the appellant assaulting Madvi Boti and causing his death. Though P.W. 6 Kawasi alias Lakhami and P.W.11 Madvi Ayte initially stated regarding the incident but in the cross-examination they stated that they have

not seen the incident. In the present matter, non-corroboration of P.W. 6 Kawasi alias Lakhami and P.W. 11 Madvi Ayte does not make the entire prosecution story suspicious as there is no reason to discredit the evidence of P.W. 4 Madvi Budhami and P.W. 5 Madvi Fagno and also there are FIR Ex. P-5 and merged Ex. P-6 written without any delay, named FIR which was duly proved by P.W. 7 Shyam Sidar who had recorded all those documents. Place of incident is the residence of the deceased and courtyard where he was assaulted. On the basis of memorandum statement of the appellant, axe, bedpost and dagger were also seized. In the FSL report blood was found positive over the clothes of the deceased and blood stained soil. Though there is no serological report on record, but this being a corroborative evidence is of no consequence particularly when the entire prosecution case rests on the eye-witness account. The statement of P.W. 4 Madvi Budhani and PW 5 Madvi Fagno are trustworthy and reliable.

10. On consideration of the entire facts, in the considered opinion of this court, it can be safely held that it is the appellant who committed murder of the deceased by causing injuries. While going through the evidence on record, this Court could not lay hand on even a single document which could speak in negative making this Court to form an opinion other than the conviction. There appears to be no reason for this Court to differ from the view taken by the Court below while passing the judgment impugned and that being so it is hereby confirmed.

11. Appeal thus being without any merit is liable to be dismissed and

it is dismissed as such.

12. The appellant is already serving jail sentence. Therefore,
no further orders is required.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge