

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 285 of 2014**

- Lakhmo Mandavi S/o Madda Mandavi Aged About 33 Years, Caste Madiya, Occupation Agricultural, R/o Village Kodonar, Paklupara, P.S. Kodonar, Civil And Revenue District Bastar C.G.

---- Appellant**Versus**

- State of Chhattisgarh Through Station House Officer, Police Station Kodonar, Civil And Revenue District Bastar Chhattisgarh

---- Respondent

For Appellant	:	Shri Kshitij Sharma, Advocate
For Respondent/State	:	Shri SK Mishra, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****17/08/2018**

1. This is an appeal against the judgment dated 31.12.2013 passed by the Sessions Judge, Bastar, place Jagdalpur in S.T. No.125/2012 whereby the appellant has been convicted under Sections 304 (II) and 452 IPC and has been sentenced for 10 years RI under Section 304 (II) IPC and a fine of Rs.2000/- and in absence of payment of fine, additional 2 years RI was ordered for and has been sentenced to 2 years R.I. under Section 452 IPC and fine of Rs.500/- and in absence of payment of fine, additional 2 months RI was ordered for.

2. As per the prosecution case, Lakhmi Mandavi Madiya is the wife of the deceased Kosho Madavi Madiya, they had a dispute with the appellant over a land. On 03.08.2012 while the complainant Lakhmi Mandavi Madiya was cooking and her husband was with the children at about 8 pm, the nephew of the complainant and the deceased i.e. the present appellant came and asked for drink namely *Landa*, when she went to take out the drink, the appellant charged her husband with the allegation that he has sowed his field and inflicted stab injury on his chest and after sometime her husband died. The incident was reported to the villagers and they came to the spot and saw and because of the night, the report was not immediately made. Subsequently, on the next date after conducting Panchayat, the report was made vide Ex. P-1 and the merger intimation was recorded vide Ex. P-2. Subsequently, the dead body was subjected to postmortem and from the spot, blood stained soil and the plain soil was recovered and after receiving the postmortem report (Ex. P-4) which affirmed the fact that the death was homicidal in nature, the accused was arrested and from his custody a knife was recovered (vide Ex. P-12). The prosecution, thereafter, after investigation recorded the statement of the witnesses and charge-sheet was filed under Sections 302 & 450 IPC.
3. During the course of trial, the appellant abjured the guilt and claimed to be tried. The prosecution on their behalf had examined as many as 7 witnesses including two eye witnesses i.e. Lakhmi (PW-1), who is the wife of the appellant and Ku. Rame (PW-6), who is the daughter of the appellant and the Court after evaluating the evidence and the circumstances, in which the incident

happened convicted the appellant/accused under Sections 304 (II) and Section 452 of the IPC and sentenced as aforesaid.

4. Learned counsel for the appellant submits that in the instant case, the entire conviction is based on the contradictory evidence of two eye witnesses. He went through the statement of eyewitness Lakhmi (PW-1) and eyewitness Ku. Rame (Pw-6) and would submit that though both of them claimed that they were present on the spot but one witness eliminated the presence of the other and a different story has been projected. It is further stated that inconsistency exists in the statement of the eyewitnesses. He further submits that the seizure witness has not supported the case of the prosecution and also stated that it is not in dispute that the appellant was the relative of the deceased and the incident happened without any premeditation and over a trivial issue as the family members of the deceased refused to give the liquor, the incident happened. He placed his reliance in the case of ***Gurmukh Singh Versus State of Haryana {(2009) 15 SCC 635}*** and ***Jagtar Singh Versus State of Punjab {1983 AIR (SC) 463}*** and would submit that the under the circumstances, the appellant who is already in jail since 31.08.2012, the sentence may be adequately reduced.
5. Per contra, learned State counsel opposes the arguments advanced by learned counsel for the appellant and submits that the order of the Court below is well merited which do not call for any interference.
6. The death of Kosho Madavi Madiya on 30.08.2012 is not in dispute. The

postmortem report Ex. P-4 shows that the death was caused due to excessive internal and external bleeding cardio pulmonary shock with haemothorax perforated to main branch of subclavian artery and the death was homicidal in nature. The postmortem report shows that the incised wound was present over the interior chest wall about 3x6 cm lateral to right side of sternum bone about 3 cm distance in between second and third ribs . The postmortem is proved by Dr. D.P. Bhardwaj (PW-4). According to him, it was external and internal bleeding, which caused the death.

7. The prosecution had examined two eyewitnesses namely Lakhmi (PW-1), who is the wife of the deceased and the daughter of the deceased Ku. Rame (PW-6). As per Lakhmi (PW-1), she has stated that she knows Lakhmo Mandavi, who is the nephew of the deceased and on the date of incident while she was in the house, the appellant came and demanded *Landa* (the local liquor), thereafter, she gave the liquor and after that the appellant gave an assault on the chest of her husband and thereafter fled away. She further stated that she has seen the happening of the incident. In the cross-examination, she has stated that she went to bring the liquor inside the house, thereafter, the appellant had also consumed liquor. Subsequently, he demanded the liquor for his children and having refused the same, the assault was made by way of knife.
8. The other eyewitness is Ku. Rame (PW-6), she stated that his father's name was Koso, the deceased. While he was cooking, the appellant came inside the house and stabbed his father on his chest, thereafter, his father chased the

appellant to a certain distance then came back to the house and fell down and died. She stated that she has seen the incident herself at that time her mother Lakhmi (PW-1) had went to some other place. She further stated that she thereafter shouted and hearing the same other persons came. According to this witness, she was the sole eyewitness and eliminated the presence of her mother. Whereas the mother Lakhmi (PW-1) on the other hand stated that she has seen the incident.

9. There has been some inconsistency in between the two eyewitnesses, however, but the nature of omission do not discredit the version of the witnesses. The presence of the accused in the house to consume liquor is not in dispute, thereafter, the stabbing is also been proved, which is further fortified by the statement of the doctor and the postmortem report. Consequently, the inconsistency of the nature which has been state cannot be said to be completely fatal to the prosecution.
10. The prosecution has examined the seizure witness Neeldhar (PW-7) to prove the memorandum (Ex. P-11) and Ex. P-12. According to this witness, the seizure was made from the appellant, however, in the cross-examination, he has stated that when he reached to the village, the police had already arrested the accused/appellant and the police was holding the knife, which was subsequently seized. The seizure of the weapon also becomes doubtful and has not been properly explained beyond the reasonable doubt by the prosecution, but only for the reason that the seizure of weapon was not been proved, the entire case of the prosecution cannot be denied.

11. Somaru (PW-2) has corroborated the fact which immediately happened after the incident that on the date of incident, the wife of the deceased Lakhmi came and informed him that the accused has stabbed her husband on the chest and when he went there he saw the dead body of Kosho Mandavi.
12. Taking into the statements of the prosecution witnesses, the incident, the way it happened and after careful examination, I am of the opinion that trial Court was justified in holding that the offence has been committed under Section 304 (II) IPC. As a result, the conviction cannot be faulted. Now further reverting to the quantum of sentence, the facts would further show that the appellant and the deceased both had consumed liquor and were related to each other. The incident triggered when the appellant demanded further liquor *Landa* for his children, which was refused. It would show that the motive or the previous enmity in between the parties were absent and the incident had taken place on the spur of moment. The facts will suggest that the both had consumed liquor, therefore, while inflicting the injury, the knowledge of the accused to cause such injury also becomes blurred. As per the statement of Ku. Rame (PW-6) after injury was inflicted, the deceased ran to a distance and chased the accused and thereafter came back and fell down. The postmortem report shows that the only one injury was inflicted. The prosecution has not brought on record that the accused/appellant has a past history and the evidence & the fact suggest that the incident happened in the tribal area at Bastar, where consumption of liquor is a common and on trivial issues like non sharing of the alcohol, the tribals attack each other. After evaluating the evidence, the background under

which it happened, the geographical area where it happened and the custom which is prevailing in between the parties i.e. the victim and the accused, the conviction made under Section 452 and 304 (II) IPC are upheld. Further in view of the reasons assigned, the nature of crime, the appellant who is a tribal and is in jail since 31.08.2012, the jail sentence of two years and the fine amount of Rs.500/- imposed under Section 452 IPC and in absence of payment of fine two months additional R.I. is maintained and the jail sentence awarded under Section 304 (II) IPC of 10 years is reduced as already undergone by him and fine amount of Rs.2000/- given under Section 304 (II) IPC is maintained and in absence of payment of fine, the appellant shall suffer additional R.I. for 6 months. Accordingly, the jail sentences are modified to the above extent. Both the jail sentences shall run concurrently.

13. With such observation the appeal stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu