

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 661 of 2012**

- Deepak Gond S/o Dadulal Gond Aged About 26 Years R/o Village Newsa Devrajpara, Ps - Gaurella, Distt. - Bilaspur C.G.

---- Appellant**Versus**

- State Of Chhattisgarh S/o Through Ps Incharge, PS - Gaurella, Distt. - Bilaspur, C.G.

---- Respondent

For Appellant	: Shri Ankit Singhal, Advocate
For Respondent/State	: Shri R.K.Mishra, Dy.AG

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board By Manindra Mohan Shrivastava,J.**11/12/2018**

This appeal is directed against the impugned judgment of conviction

and order of sentence dated 08.08.2011 passed by the Additional District and Sessions Judge, Pendra Road in S.T. No. 1/2011 whereby and whereunder the appellant has been held guilty for commission of the offence under Section and sentenced as described below :

Offence	Punishment
450 IPC	Rigorous Imprisonment for 10 years and fine of Rs. 1,000/- and in default to undergo RI for one year.
302 IPC	Imprisonment for life and fine of Rs.

	1,000/- and in default to undergo RI for one year.
--	--

2. Prosecution story,. as is unfolded from the records of the case and impugned judgment is that one Mansingh Marco (PW-1) lodged a report in the police station on 15.10.2010 at 20.40 hrs. in which it was reported that when he came back to his house at 5.30 in the evening, he was informed by his sister Kamla that Deepak, the appellant had come to their house at about 5.00 p.m. and while her mother was sleeping inside the house, it was seen that the door was broken and Deepak was running away with a sickle in his hand and when she went inside, she found that her mother was killed and various injuries were found on her neck. On this report, the merg intimation was recorded in EX.P-2 and inquest over dead body was prepared in Ex.P-3 in the presence of witnesses. Dead body was sent for postmortem and Dr. Manmohan Singh Marco (PW-8) conducted postmortem and prepared postmortem report in Ex.P-11. About 11 injuries were found and according to the doctor, cause of death was syncope due to cut of windpipe on account of multiple injuries on the neck caused by sharp edged weapon. According to him, death was homicidal in nature. Police filed charge sheet and the charges were framed against the appellant for alleged offence which was denied whereby the appellant was put to trial. The trial court relying mainly upon the testimony of Kamla Bai, held the appellant guilty of commission of the offence and sentenced as described above.

3. Learned counsel for the appellant, assailing correctness and

validity of the impugned judgment of conviction and order of sentence, would submit that there was no motive proved by the prosecution as to why Deepak would kill Parvati (deceased). He would further submit that the weapon alleged to have been used in the commission of the offence, namely, sickle was sent to FSL but there is no report that it was found stained with human blood, much less blood of the group and origin of that of the deceased.

6. On the other hand, State counsel would argue that the conviction of the appellant rests on the eyewitness account given by DW-2 who had remained firm on her statement that it is the appellant who had inflicted injuries on her mother. Occular testimony is supported by medical evidence. The plea of alibi is too weak and it being one and the same village, presence of the appellant at the spot cannot be ruled out in the weak plea of *alibi* as taken by him.

7. Prosecution and conviction rests on the eyewitness account of Kamla Bai (PW-2). Kamla Bai has deposed in her evidence that on the date of incident, at about 5.00 p.m. in the evening she was there along with her mother and her son. Deepak came to the house of her mother and told her that she is being called by Maniram and believing him she started to leave and when reached near Mahua tree, she heard the noise and came back and when she reached at the door step, she witnessed that the appellant had taken her mother for a ride and was inflicting injury on her neck with the help of a sickle (agricultural tool). Having seen this, she was horrified and ran away. She informed this to her brother Uday and, later on, when she came back she found her

mother lying in blood bath. This witness has been subjected to cross-examination and certain contradictions and omissions have been elicited which relates regarding the appellant having chased her also to assault.

Further in the cross-examination, two omissions have been elicited. One is with regard to the fact that her mother had asked her to put a lock in the house and other is that she had actually seen the appellant assaulting her mother. She has been confronted with her diary statement Ex.D-2 from which we find that there is an improvement in the evidence of this witness with regard to she having herself seen the appellant giving assault to her mother. We also find that even in the FIR Ex.P-1 lodged by Mansingh Marco, brother of Kamla (PW-2), Kamla had informed him that appellant Deepak had come to her house and told her that she was being called by Maniram and, thereafter, she went away and when she came out she saw that the appellant was running away from the spot, holding sickle in his hand.

8. Thus, in so far as the evidence of Kamla Bai (PW-2) that when she was there along with her mother in her house at about 5.00 in the evening appellant Deepak came there and on his information, she had left the mothers house to meet Maniram and when she came back she saw the appellant running away from the spot along with sickle in his hand, is trustworthy and reliable. This fact has also been stated in the FIR and her diary statement. The improvement is that she herself had seen the incident, as deposed by her in her evidence. Therefore, to the extent that she herself had seen the incident of actual assault, becomes doubtful. However, the other part of the evidence of the

prosecution that the appellant came and on his information, she left the house and when she immediately came back, she saw the appellant running away, holding sickle in his hand and that her mother was lying dead in the house in blood bath, having sustained multiple injuries, cannot be doubted. All these point towards the guilt of the appellant.

9. According to counsel for the appellant absence of clear motive, non-absence of report of blood stain on sickle and plea of alibi taken together would raise doubt in the prosecution case and, therefore, he should be given benefit of doubt.

10. The evidence of Kamla Bai (PW-2) regarding absence of the appellant at the spot along with sickle in his hand and his conduct of asking Kamla Bai to leave the place and he being seen by Kamla running away from the spot with sickle in his hand is a very strong evidence of involvement of the appellant, which could be dislodged by a very strong plea of *alibi* to raise a reasonable doubt. If such evidence is reliable, absence of clinching evidence to motive would not raise any doubt. Moreover, the absence of blood in the sickle, which is said to be seized from the possession of the appellant, also does not help the appellant, because, his presence at the spot, just before and after the incident, is proved. Plea of alibi is based on evidence of Budhram (DW-1) is also not convincing. According to Budhram, appellant came to his shop at around 5.00 p.m. Incident is alleged to have happened around 5.00 p.m. it has to be noticed that the place of incident and place where the appellant was getting his cycle repaired,

are not far off so as to completely rule out, presence of the appellant at the spot of incident for the reason that around 5.00 in the evening, he was seen in the shop getting his bicycle repaired. Plea of *alibi* has to be established by clinching evidence.

12. For the aforesaid reasons we do not find that the circumstances pointed out by counsel for the appellant raises such a doubt so as to give benefit of doubt. In the result the appeal fails and is dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge