

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 767 of 2013

1. Dudhmat Bai W/o Kholuram Patre Aged About 45 Years
2. Chandrika Bai W/o Shyambabu Jalhare Aged About 48 Years

Both are resident of Kishan Parsada, PS Masturi, Bilaspur, Civil
And Rev. Distt. Bilaspur C.G.

---- Appellants

In Jail

Versus

- State Of Chhattisgarh Through SHO, Masturi, Bilaspur, Distt.
Bilaspur C.G.

---- Respondent

For Appellants	:	Shri Vinay Dubey, Advocate.
For Respondent/State	:	Shri Avinash K. Mishra, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board by Justice Pritinker Diwaker

20.06.2018:

This appeal arises out of the judgment of conviction and order of sentence dated 20.6.2013 passed by the 3rd Additional Judge to the Court of 1st Additional Sessions Judge, Bilaspur (CG) in S.T. No.138/2011, convicting the appellants under Section 302/34 of IPC and sentencing each of them to undergo imprisonment for life and to pay a fine of Rs.100/- with default stipulation.

02. In the present case, name of the deceased is Samuel Minj and

as per prosecution story, there was a land dispute between the deceased and the appellants. The disputed land was in possession of the accused persons whereas the deceased was claiming the same to be of his own. It is an admitted fact that a civil suit was also pending between the parties in this regard. It is said that on 6.7.2011 at around 10.30 am deceased Samuel Minj and PW-2 Amod Khess went to the field in question where the appellants had hidden themselves and waiting for the arrival of the deceased. As soon as the deceased reached there, they caused him several injuries by swords. Seeing the incident, PW-2 Amod Khess fled from the spot and informed about the incident to PW-1 Sushil Minj, son of the deceased, who was residing at Bilaspur and thereafter, both of them went to the place of occurrence. At the instance of PW-1 unnumbered merg (Ex.P/2) was recorded on 6.7.2011. Immediately thereafter Dehati Nalishi (Ex.P/1) was registered. Inquest on the dead body was conducted on 6.7.2011 vide Ex.P/4 and thereafter, the body was sent for postmortem which was conducted on the same day by PW-13 Dr. Smt. Madhu Saxena vide Ex.P/25. The autopsy surgeon noticed multiple incised wounds on left eyebrow to back side of ear, upper part of the ear got separated, multiples injuries over the face which were bone deep; two deep wounds on the neck, windpipe and foodpipe were cut; major blood vessels of neck were cut; cut wound on the right side of head over parietal bone, injuries were also on the palm, right wrist, elbow region. In her opinion, the cause of death was shock and hemorrhage as a result of cutting of major blood vessels of neck and that the death was homicidal in nature.

Numbered merg (Ex.P/31) was registered on 6.7.2011 and FIR

(Ex.P/6) was registered on the same day against the appellants under Section 302/34 of IPC and Section 25 of the Arms Act. Memorandum of accused/appellant Chandrikabai was recorded on 6.7.2011 vide Ex.P/14 which led to recovery of sword and pieces of broken bangles vide Ex.P/20 and P/21. Likewise, memorandum of accused/appellant Dudhmatbai (Ex.P/15) led to recovery of sword and pieces of broken bangles vide Ex.P/16 & P/17. While framing charge, the trial Court framed charge under Section 302/34 of IPC and Section 25 of Arms Act against the accused/appellants.

03. So as to hold the accused/appellants guilty, the prosecution examined 16 witnesses in all. Statement 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. In defence, they examined one Ramcharan as DW-1.

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 in para-1 of this judgment.

05. Counsel for the appellants submits as under:

(i) that PW-2 Amod Khess, the alleged eyewitness, has in fact not seen the incident and this fact is evident from his statement itself.

(ii) that as per PW-2 Amod Khess, he was informed about the incident by PW-1 Sushil Minj and then both of them went to the place of occurrence and saw the dead body of the deceased.

(iii) according to PW-2 it is PW-1 to informed him about the incident whereas as per PW-1 he came to know about the incident through PW-2 only.

(iv) though on the memorandum of the accused persons, seizure of swords has been made vide Ex.P/16 & P/20 but in absence of FSL and serological report confirming its nexus with the crime in question, the same cannot be considered against the appellants.

(v) that FSL report (Ex.P/33) in respect of pieces of broken bangles is not conclusive and as such, fails to establish involvement of the appellants in commission of the crime.

(vi) that defence witness (DW-1), claiming himself to be an eyewitness, has categorically stated that the deceased was killed by the labourers working in the field but unfortunately, two ladies (appellants) have been falsely implicated.

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. There was no reason for PW-1 and PW-2 to falsely implicate the appellants and once it has been proved that death of deceased Samuel Minj was homicidal after being assaulted by swords, the appellants have rightly been convicted by the trial Court under Section 302/34 of IPC.

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

08. PW-2 Amod Khess is the sole eyewitness to the incident. He has stated that he knew the appellants and the deceased. On the fateful

day, the deceased was done to death by the appellants. He had gone to the place of occurrence and saw dead body of the deceased lying there with number of injuries on his body. He has clarified that the deceased had taken his Balero vehicle for purchasing manure and when he could not get the same he asked him to accompany him to the field in question. When they went to the field, the appellants who were lying in ambush started assaulting the deceased with swords and at that time he (this witness) was at some distance. When the deceased cried for help, he tried to save him but he too was chased and attempted to be assaulted, however, accidentally the sword of appellant Dudhmatbai hit the hand of appellant Chandrikabai. He states that out of fear he ran away from the spot with his vehicle and informed about the incident to son of the deceased Sushil Minj (PW-1) and thereafter, both of them went to Police Station – Masturi. However, before that the police had already reached the place of occurrence. At the spot itself, his statement was recorded and by that time, Superintendent of Police also reached there. The accused persons were arrested immediately on the spot itself.

In cross-examination he has stated that there was a land dispute between the accused persons and the deceased. In para-5 he has stated that information about the incident was first given to him by PW-1 Sushil Minj and for the first time he went to the place of occurrence along with PW-1. By the time they reached the spot, the police was already there and the police was enquiring from the villagers about the incident. Further he states that on the spot itself for the first time they were informed about the incident by the police. At about 12.30 noon

the police informed him that his statement is going to be recorded and therefore, he should give his photograph. Since he was not having his photograph, the same was given at the police station after two days. He admits that his relation with the deceased was good, however, denies the suggestion that on this count only, he is stating incorrect facts before the Court.

09. PW-1 Sushil Minj, son of the deceased, states that on 6.7.2011 in between 11 & 12 noon when he was taking rest in his house, PW-2 who most often used to remain in the company of his father, came to his house perplexed and on being asked informed that his father Samuel Minj has been done to death by the appellants in the filed by assaulting him with swords. Thereafter, he along with PW-2 and other villagers went to Police Station – Masturi, lodged the report Ex.P/1 and then they went to the place of occurrence, however, by that time the police had already reached there. He saw his father/deceased lying dead in pool of blood with multiple injuries on his head, chest and hands. He also lodged merg intimation Ex.P/2. He is also a witness to inquest Ex.P/4.

In cross-examination he states that for the first time he and PW-2 reached the place of occurrence at 12.30 noon and by that time police had already reached there and was enquiring about the incident from the villagers and that the information about the incident was given to them by the police only. The police also informed them that their statements are going to be recorded and therefore, they should give their photograph, which was given to them at the police station after 2-3 days.

10. PW-3 Kishun Ram Bhagat is a formal witness. PW-4 Suryaprakash Shukla, Patwari, prepared the spot map Ex.P/5. PW-5 Ghasidas, Kotwar, is a witness to seizure Ex.P/6 and P/7. PW-6 Mukesh Kumar Verma, PW-7 Vijay Kumar Soni, PW-8 Bhartand Dev Upadhyay and PW-15 TR Joshi, police personnel, assisted in the investigation. PW-9 Ramdeen Yadav is a witness to inquest Ex.P/4, and seizure Exs.P/6, P/7 & P/13. PW-10 Lokesh Mourya and PW-11 Ravi Tirki are witnesses to inquest Ex.P/4. PW-12 Ishwar Singh and PW-14 Rajkumar, witnesses to memorandums of the appellants (Exs.P/14 & P/15) and seizure (Exs.P/16, P/17, P/20 to P/24) have partially supported the prosecution case. PW-13 Dr. Smt. Madhu Saxena conducted postmortem on the body of the deceased on 6.7.2011 vide Ex.P/25 and noticed multiple incised wounds on left eyebrow to back side of ear, upper part of the ear got separated, multiples injuries over the face which were bone deep; two deep wounds on the neck, windpipe and foodpipe were cut; major blood vessels of neck were cut; cut wound on the right side of head over parietal bone, injuries were also on the palm, right wrist, elbow region. In her opinion, the cause of death was shock and hemorrhage as a result of cutting of major blood vessels of neck and that the death was homicidal in nature. She also examined the seized weapons swords and opined that the injuries suffered by the deceased could be caused by these weapons. She also noticed a cut wound on the elbow region of appellant Chandrikabai vide Ex.P/28, which was simple in nature. PW-16 Pranesh Dubey, investigating officer, has supported the prosecution case.

11. DW-1 Ramcharan has stated that on the date of incident he was working in his field, which was near the field of the accused/appellants. After engaging some labourers in their field, the appellants left the said place. At that time there was some altercation going on between those labourers and the deceased. He has specifically stated that when quarrel took place, the appellants were not present there.

12. Close scrutiny of the evidence makes it clear that the entire prosecution case rests upon the statement of PW-2 Amod Khess, who has been cited as an eyewitness to the incident. According to the prosecution, PW-2 having seen the incident came to Bilaspur and narrated the incident to PW-1 Sushil Minj, son of the deceased, both of them went to Police Station – Masturi where PW-1 lodged FIR and then they went to the place of occurrence. However, in the Court PW-2 has stated that it is PW-1 who informed him about the incident first and then they went to the place of occurrence together for the first time and by that time, police had already reached there and was enquiring from the villagers about the incident. He further states that for the first time he came to know about the incident through police at 12.30 noon on the date of incident when he along with PW-1 went to the spot, and he was told by the police that his statement is to be recorded and therefore, his photograph is required which was given after two days at the police station. Even in examination-in-chief he has stated that he went to the place of occurrence and saw dead body of the deceased with multiple injuries.

On the contrary, PW-1 Sushil Minj states that when he was resting in his house, PW-2 came there and informed him about the

murder of his father Samuel Minj by the appellants. According to PW-1 also when he along with PW-2 reached the place of occurrence, the police had already reached there and it is the police who informed them about the incident for the first time and told them that as their statements are to be recorded, they are required to give their photographs.

13. Thus, it is apparent that the statements of PW-1 & PW-2 run contrary to each other and it is not clear as to who is the eyewitness of the actual occurrence. It is nobody's case that PW-1 is the eyewitness to the incident. Though according to medical evidence the injuries suffered by the deceased could be caused by sharp edged weapon, her death was homicidal in nature but until and unless involvement of the appellants in crime in question is proved beyond all reasonable doubt, medical evidence is of no significance. This apart, the defence witness (DW-1 Ramcharan) has stated that on the date of incident some altercation was going on in the field in question between the labourers and the deceased, and at that time the appellants were not there.

14. As regards seizure of swords at the instance of the appellants, in absence of FSL and serological report in respect of the swords establishing nexus between the seized weapon and the crime in question as also considering the fact that the memorandum and seizure witnesses have also not fully supported the prosecution case, it would not be safe to uphold conviction of the appellants on this ground. Furthermore, FSL report (Ex.P/33) in respect of pieces of broken bangles is also not conclusive in nature so as to prove complicity of the

appellants beyond reasonable doubt.

So far as injury sustained by appellant Chandrikabai on her right elbow is concerned, the same has been duly explained by her in her statement under Section 313 of CrPC wherein she has stated that while cutting straw, she suffered that injury.

15. In the given facts and circumstances of the case, the nature and quality of evidence adduced by the prosecution, involvement of the appellants in commission of the offence becomes doubtful and the possibility of some other person being perpetrator of the crime and false implication of the appellants cannot be ruled out. Being so, the benefit of doubt must go to the appellants.

16. In the result, the appeal is allowed and the impugned judgment is hereby set aside. The appellants are acquitted of the charge under Section 302/34 of IPC by extending them benefit of doubt. They are reported to be in jail, therefore, they be set free forthwith if not required to be detained in connection with any other offence.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(Goutam Chourdiya)

Judge