

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 65 of 2015**

(Arising out of judgment and order dated 12.12.2014 in Session Trial No. 57/2014 passed by the Learned Fourth Additional Session Judge, Ambikapur, District Surguja (C.G.)

- Madvari @ Ajay Kumar S/o Jarahu Bargah, aged about 60 years, Occupation – Agriculture, R/o Village Birimkela, P.S. Batouli, Civil and Revenue District Surguja (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Through – Station House Officer, Police Station Batouli, District- Surguja (C.G.)

---- Respondent

For Appellant	: Shri Pankaj Agrawal, Advocate
For Respondent/State	: Shri Anil Pillai, Deputy Advocate General

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board By Justice Gautam Chourdiya**26/06/2018**

1. This appeal arises out of impugned judgment and order dated 12.12.2014 passed by the Fourth Additional Sessions Judge, Ambikapur, District Sarguja (C.G.) in Sessions Trial No. 57/2014 convicting the appellant under Section 302 of the Indian Penal Code (hereinafter referred to as the 'IPC') and sentencing him to undergo imprisonment for life and pay a fine of Rs. 300/- and in default of payment to further undergo rigorous imprisonment for three months.

2. In the present case, the name of deceased is Sunder Ram Bargaha. Case of the prosecution is that PW-1 Jhakhi Ram had lodged morgue intimation (Ex.-P/1) on 18-03-2014 at about 15.30 hrs to the effect that on the same day at about 11.00 AM, when he was grazing his goats at *dand* of the village, heard shouting of his

nephew PW-5 Santram that “run-run, my father has been killed by Madvari”. He rushed to *Bantarai Dand* and saw Sunder Ram Bargaha (deceased) breathing slowly, there was cut wound on head with profuse bleeding. Thereafter, he narrated the incident to the village Kotwar and Sarpanch. The ambulance was called by the villagers and the deceased was taken to the hospital, Batouli, where he breathed his last. He also stated there that the accused Madvari ran towards his house after assaulting the deceased. The incident was witnessed by PW-5 Santram and many other villagers. The accused has killed the deceased over property dispute.

3. Based on morgue intimation (Ex.-P/1), First Information Report (Ex.-P/2) was registered by Bharadwaj Singh (PW-16) at about 15.40 hours on information by PW-1- Jhakhi Ram against the accused/appellant under Sections 302 of the Indian Penal Code. Bharadwaj Singh (PW-16) sent the copy of FIR to the concerned Magistrate and receipt thereof is Ex.-P/2-A. Inquest report (Ex.-P/8) was prepared by him and he found deep injury on the middle of head of the dead body. The head of the deceased was ruptured. Thereafter, the dead body of the deceased was sent for autopsy. The postmortem examination was conducted by Dr. Ganesh Beck (PW-15), who prepared his report Ex.P/18A. Doctor found that rigor mortis was present in the body of the deceased. There were blood clots in both nostrils and ear. Semen was ejaculated from penis. There was cut wound of size 3” x ½” x 4” on mid anterolateral left side of head and brain material had come out of head. On internal examination the Doctor found semi circle cut on left parietal bone and brain tissues had come out from there. There was sub depressed hemorrhage on left and front side of wound on head. Skull was broken from back of the face side. There was hemorrhaging on outer and inner tegument of brain, brain was totally damaged. The left and right lungs were pale. Both the chambers of heart were empty. Stomach contained semi digested food material of light yellow color. Small intestine contained liquid material and digested food. Faecal material was present in the large intestine. The Doctor opined that the cause of death of the deceased

was due to head injury and caused by hard and sharp object. The death of the deceased was homicidal in nature.

4. After completion of the usual investigation, charge-sheet was filed in the Court of Judicial Magistrate, First Class, Sitapur, District- Surguja (C.G.), who in turn committed the case to the Court of Sessions Judge, Surguja (Ambikapur), from where it was received on transfer by the Fourth Additional Sessions Judge, Ambikapur, Surguja, who after conducting the trial, convicted and sentenced the accused/appellant as aforementioned.

5. Learned counsel for the appellant has not disputed the homicidal death of the deceased. He submitted that the prosecution has failed to prove the guilt of the appellant in crime in question. He also submitted that the eye-witnesses to the incident had not seen the incident and the appellant has been falsely implicated. He further submits that the most important witness i.e driver of JCB machine is not examined in this case. He submits that the recovery of the axe from accused is not proved and no blood stain proved in the axe.

6. On the other hand, Shri Adil Minhaz, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment and order passed by the learned trial Court. He argued that the case of prosecution is based on eye-witnesses account and there is no reason to disbelieve the eye-witnesses of this case. Only on the basis that the blood stain on axe is not proved, it cannot be discarded in the prosecution case.

7. We have heard the counsel for the respective parties and perused the evidence on record.

8. Prosecution case is based on eye-witnesses account i.e. Jhakhi Ram (PW-1), Santram (PW-5) and Urmila Bai (PW-9).

9. Jhakhi Ram (PW-1) deposed that the accused is well known to him and the incident occurred in the month of March 2014. He deposed that at about 11.00 AM, when he was grazing his goats, he heard shouting of his nephew Santram (PW-5) that the accused has killed his father (deceased-Sunder) with axe. Thereafter, he rushed to the spot and saw blood and injury on the head of Sunder. He also deposed that the accused was running away from place of occurrence towards his house. Thereafter, he narrated the incident to the village Kotwar and Sarpanch.

10. Santram (PW-5), son of the deceased, deposed that he was around 15 feet away from the place of occurrence and was grazing his goats, when the accused killed his father Sunder by assaulting on his head with axe. He also deposed that one JCB machine was working there in the field of Anandram and was putting soil in his field adjacent to the field of the deceased. When the deceased objected on this, the accused assaulted the deceased by axe. He also deposed that when he was shouting for help, Jhakhi Ram (PW-1) came there.

11. The said evidence has been corroborated by the statement of Urmila Bai (PW-9) who deposed that she knows the accused and she went towards the field following the deceased. She further deposed that the deceased told the brother of accused not to pitch soil on his field on which the accused assaulted the deceased with axe.

12. Sarita Bai (PW-11), daughter of the deceased, has deposed that she reached the spot after hearing commotion and saw her father laying on the field and injury as well a bleeding was present on his head. She has also deposed that she saw the accused running away from the place of incident.

13. Latti @ Anandram (PW-13) is brother of the accused. Latti @ Anandram also states, in his police statement (Ex.P/16), that Madvari @ Ajay Kumar has assaulted on the head of the deceased by sharp edged weapon. He also states that there

was previous enmity between the deceased and Madvari/accused, but in the court statement, he has not supported the prosecution case and has been declared hostile.

14. On the date of incident at about 11.00 AM, JCB machine was operated in the field of Anandram and soil was being put on the boundary of his field. The dispute arose between the deceased-Sunder and Latti @ Ananadram brother of the accused. At that time accused/appellant came there and assaulted Sunder Ram by axe on his head. Seeing this, Santram (PW-5) shouted “run-run” my father has been killed by Madvari. Immediately thereafter Jhakhi Ram (PW-1) rushed to the place of incident and saw that accused- Ajay @ Madvari was running away from the place of incident having axe in his hand. Urmila Bai (PW-9) had also come to the place of incident and narrated the entire story to the villagers. Sarita Bai (PW-11), who is daughter of the deceased, had also come at the place of incident.

15. Only on the basis, that driver of JCB machine was not examined, the prosecution case cannot be discarded. The eye-witnesses are trustworthy and no substantial contradiction or omission mentioned in the evidence of PW-1 – Jhakhi Ram, PW-5 – Santram, PW-9 – Urmila Bai and PW-11 – Sarita Bai was found.

16. The recovery of axe (Ex.-P/11) from the accused is not proved by the independent witness but the investigating officer PW-16 – Bhardwaj Singh in paragraph No.4 of his statement mentioned that memoradam of accused (Ex.-P/10) and seizure memo of axe (Ex.-P/11) are prepared on information obtained from the accused/appellant and axe was sent for examination. Ex.-P/10 and Ex.-P/11 have been duly proved by PW-3 – Nansai. PW-15 Dr. Ganesh Beck in paragraph 6 and 9 of his report clearly mentioned that the injuries seen on the body of the deceased could have been caused by axe so seized. Axe was examined by PW-15 and his report is Ex.-P/19.

17. Prem Singh (PW-10) also narrated that seeing the crowd, he went to the place of incident and then Urmila Bai (PW-9), who is sister of the deceased, informed him that accused/appellant assaulted Sunder (deceased). At that time, he saw that Sunder is alive and breathing slowly. Spot map (Ex.-P/14) was prepared which has been proved by Prem Singh (PW-10). Sarita Bai (PW-11) also saw accused-Madvani running from the place of incident after assaulting Sunder (deceased).

18. No eye-witness or circumstantial evidence has proved that the injury of the deceased was caused by the JCB machine. If driver of JCB machine has not been examined, it cannot be fatal to the prosecution case as there was otherwise cogent and reliable eye-witness account available.

19. In ***Alagupandi @ Alagupandian vs. State of Tamil Nadu, (2012) 10 SCC 451***, the Supreme Court has held in para 29 thereof, that existence of a motive for committing a crime is not an absolute requirement of law but it is always a relevant factor, which will be taken into consideration by the Courts as it will render assistance to the Courts while analyzing the prosecution evidence and determining the guilt of the accused.

20. In the present case, prompt FIR (Ex.-P/2) has been duly corroborated by the Court statement of Jhakhi Ram (PW-1), Santram (PW-5), Urmila Bai (PW-9) and Sarita Bai (PW-11) supported with medical evidence of Doctor Ganesh Beck (PW-15) and his report Ex.-P/18A, inquest report (Ex.-P/8) and statement of I.O. Bhardwaj Singh (PW-16) as well.

21. In view of the above discussion and in light of the law laid down by the Hon'ble Supreme Court in *Alagupandi's* case (supra), we are of the considered opinion that the lack of proof of motive of the accused for commission of the alleged offence is also not fatal for the prosecution case and close scrutiny of the

evidence makes it clear that all the important eye-witnesses (PW-1, PW-5, PW-9 and PW-11) of the prosecution have supported the prosecution case. We have gone through the entire evidence and material available on record and come to the conclusion that the learned trial Court has rightly convicted the appellant/accused under Section 302 IPC.

22. We do not find any reason to interfere with the judgment of conviction and order of sentence passed by the trial Court. The appeal has no merits. The same deserves to be and is accordingly dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge