

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 420 of 2015**

1. Ghanshyamdas Manikpuri, son of Jhadidas Manikpuri, aged about 36 years, R/o village Araibandh, Police Station Takhatpur, Civil and Revenue District Bilaspur (C.G.)
2. Santoshdas Manikpuri, son of Agamandas Manikpuri, aged about 40 years, R/o village Chanadongri, Police Station Takhatpur, Civil and Revenue District Bilaspur (C.G.)
3. Sevakdas, son of Gurumukhdas, aged about 22 years, R/o village Chanadongri, Police Station Takhatpur, Civil and Revenue District Bilaspur (C.G.)

---- Appellants**Versus**

- State of Chhattisgarh, through the Police Station Ratanpur, Civil and Revenue District Bilaspur (C.G.).

---- Respondent

For Appellants	:	Smt. Kiran Jain, Advocate
For Respondent/State	:	Shri Avinash K. Mishra, PL

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

Order On Board by Hon'ble Shri Justice Manindra Mohan
Shrivastava

25/06/2019

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 18.03.2015 passed by First Additional Sessions Judge, Bilaspur (CG), in Sessions Trial No. 36/2013 whereby and whereunder, the

appellants have been held guilty of commission of offence and convicted and sentenced as described below:-

Conviction	Sentences
U/s. 302/34 of IPC	Life imprisonment and fine of Rs. 1000/- each, in default of payment of fine amount additional R.I. for 3 months.
U/s. 201 of IPC	R.I. for 3 years and fine of Rs. 500/- each, in default of payment of fine amount additional R.I for one month.

2. The prosecution case, as unfolded from the impugned judgment and the records of the case is that, Sukul Das (PW-1), father of the deceased, received a phone call from his son that he was surrounded by the appellants and was being assaulted. It is said that after receiving the call, Sukul Das (PW-1) went out in search of his son and, later on, his dead body was found. A merg intimation in Ex. P-1 was given in the police station, which was followed by registration of FIR in Ex. P-2. In the two informations given, it was divulged that the informant's son Mayadas gave a call to his father Sukul Das (PW-1) that he has been surrounded by appellants Ghanshyam Das, Sevak Das and Santosh Das, and thereafter, his mobile was switched off. Upon suspicion, he informed his son-in-law Feku Das and other members of the family and went out to search his son and then, near Ghonga river culvert, dead body of his son

Mayadas was found. The injuries appear to have been inflicted by a sharp edged weapon. Motorcycle was lying there and Pannalal Pali (PW-10) was not present at the spot. His younger son-in-law Dhanadas, who was going towards Chanadongri, happens to see Ghanshyam Das, Sevak Das and Santosh Das escaping towards Ganiyari. In the report, it was disclosed that Mayadas had eloped with the wife of Ghanshyam Das and when they came back to village, Mayadas started living with Suruchi, wife of Ghanshyam Das and due to this episode, relations between two families were strained. The police arrived at the place where the dead body was lying and inquest over the dead body was prepared and, thereafter, it was sent for postmortem. Dr. (Smt.) K. Patnayak (PW-11) conducted postmortem and prepared postmortem report in which she found large number of incised wounds in and around the neck, so much so that it was almost detached from the main part of the body. Later on, the three appellants were arrested, and it is the case of the prosecution that from the possession of appellant Santosh Das, blood stained clothes were seized, from Sevak Das mobile of deceased Mayadas and from possession of Ghanshyam Das '*Gandasa*' (an axe), alleged to be used while inflicting injuries, were also seized. The police also collected call details. After

completion of usual investigation, charge-sheet was filed against the appellants and they were tried for commission of offence under Section 302 IPC and other offences. The prosecution came out with the eye-witness account of Pannalal Pali (PW-10) who is said to have gone along with the deceased and present at the time when the appellants arrived at the spot and assaulted the deceased. In addition, the evidence of call details as also FSL report, evidencing presence of human blood in the clothes seized from Santosh Das and '*Gandasa*' seized from Ghanshyam were also led. The appellants were also examined under Section 313 of Cr.P.C. in respect of incriminating evidence and circumstances appearing against them in the evidence led by the prosecution. The appellants denied having committed the offence and said that they are innocent. Pannalal Pali (PW-10) who has also been examined as prosecution witness was, however, again examined at the instance of the defence as one of the defence witness.

3. The learned trial Court relying upon the evidence led by the prosecution, particularly that of Pannalal Pali (PW-10), the eyewitness, held the appellants guilty of commission of offence and sentenced as described above.
4. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel for the

appellant would argue that the evidence of Pannalal Pali (PW-10) is liable to be disbelieved as it is not free from doubt. It is the contention of learned counsel for the appellants that, according to the evidence of prosecution eyewitness and Pannalal Pali (PW-10) himself, he was present at the spot along with the deceased but his conduct in not immediately informing the parents of the deceased and running away from the spot and, later on, found in the police station raises serious doubt regarding his own conduct and renders possible suggestion and the case of the defence that it was Pannalal Pali (PW-10) and others who killed Mayadas. Learned counsel for the appellant would argue that the evidence of Sukul Das (PW-1) and I.O. S.B. Day (PW-13) proves that when Sukul Das (PW-1) father of the deceased, reached the police station for lodging report, Pannalal Pali (PW-10) was sitting there. Next submission is that, according to the evidence of Pannalal Pali (PW-10), at the spot, there were two other persons present when the incident happened but the Investigating Officer did not record their statements during investigation and he has admitted in his cross-examination that no inquiry was made by him to find out those two persons. This further renders the prosecution case highly doubtful and the appellants' defence of false implications cannot be ruled out

because the prosecution has not come out with any explanation as to why the statements of those two persons, who were present at the spot, were not taken during investigation nor made eye-witnesses of the incident. Learned counsel for the appellants would further argue that the evidence of Pannalal Pali (PW-10) suffers from contradictions and omissions also, which has been duly elicited in his cross-examination. Next submission is that the evidence of Sukul Das (PW-1) that he received a call from his son Mayadas that he was surrounded by the appellants is not proved from any cogent evidence because, though, certain mobile call details have been collected and produced during trial, the evidence is not of clinching nature that the cell phone seized from possession of Sukul Das (PW-1) and allegedly seized from appellant Sevak Das were those from which two SIM numbers 8120726376 registered in the name of Sukul Das (PW-1) and 9575782754 registered in the name of deceased Mayadas was used for making call at around the time of incident so as to support the prosecution story of Mayadas having given a call to his father Sukul Das (PW-1) when he is said to have been surrounded by the present appellants. Next submission of learned counsel for the appellants is that the independent witnesses of memorandum and seizure namely Rajesh

Yadav (PW-6) and Krishna (PW-7) have not supported the prosecution story and turned hostile, therefore, the recovery of mobile cell, clothes and Gandasa becomes doubtful and the evidence of Investigating Officer in this regard is liable to be disbelieved. It is also argued that from the evidence of Sukul Das (PW-1), it cannot be said that even after Mayadas had started living with the wife of Ghanshyam Das, this resulted in serious dispute or there was history of any kind of fight or quarrel between Ghanshyam Das and Mayadas. Therefore, the motive of the offence also is not proved. An alternative submission has also been made by the learned counsel for the appellants that even if it is accepted on its face value that at the spot, a quarrel arose and Ghanshyam Das assaulted the deceased, the prosecution case with regard to involvement of the other two appellants namely Sevak Das and Santosh Das is not free from doubt as these two persons had no motive to kill Mayadas, the deceased, and merely because they happened to be present at the spot and their criminal overt act being not proved from reliable evidence, the prosecution has failed to prove that they also shared common intention with Ghanshyam Das to commit murder of Mayadas.

5. On the other hand, learned counsel for the State, supporting the impugned judgment of conviction and order of sentence

has argued that, the prosecution story rests on the reliable testimony of the eye-witness Pannalal Pali (PW-10), who has clearly stated regarding he having seen the incident. His evidence, read as a whole, does not cast any doubt on his conduct because he has deposed that he ran away from the spot saying that he may also be assaulted and he was chased by one of the assailant. He went to the police station. His presence in the police station is proved by the prosecution witness and Investigating Officer both. It is not a case that he had absconded and, later on, he was apprehended. He had no motive to kill Mayadas. There is no other material to tilt the scale of probability in favour of the accused that Pannalal was one of the assailants. According to him, reliable testimony of father of the deceased Sukul Das (PW-1) clears the doubt when he states that he received a call from his son Mayadas that he has been surrounded by Ghanshyam Das, Santosh Das and Sevak Das, which lends corroboration to the testimony of Pannalal Pali (PW-10) that it is the appellants who assaulted the deceased. Next submission is that, even though, the independent seizure witnesses may not have supported, they have admitted their signatures and in this background, the evidence of Investigating Officer regarding seizure of clothes, mobile and Gandasa cannot be doubted.

He would submit that the clothes seized from Santosh Das and Gandasa seized from the possession of Ghanshyam Das were found to be stained with human blood which has not been explained by the accused. Thus, the involvement of the appellants in the alleged commission of offence is proved beyond reasonable doubt and their conviction does not warrant any interference.

6. We have heard learned counsel for the parties and perused the records including the impugned judgment.
7. FIR and merg intimation having been lodged promptly in the police station by Sukul Das (PW-1), the father of the deceased and is proved from his evidence and that of Investigating Officer S.B. Dey (PW-13) that on the date of incident i.e. 08.12.2012, merg intimation and FIR was given in the police station. These two documents have been duly proved. The contents of the FIR reflect upon the nature of allegations and the involvement of the appellants in the alleged commission of offence. According to the FIR, Mayads had eloped with the wife of Ghanshym Das and after they returned to village, they started living together as husband and wife, which led to strained relationship between the two families. Further, contents of the FIR is that Sukul Das (PW-1), the FIR informant and the father of the deceased, received phone call from his son Mayadas that

he has been surrounded by the present appellants. Their names have been clearly stated in the FIR. The two SIM numbers, one used by the FIR informant and the other by Mayadas have also been specifically stated.

8. The prosecution story of appellants having assaulted and killed the deceased rests mainly on singular eye-witness Pannalal Pali (PW-10). He has deposed in his evidence that the appellants assaulted and killed Mayadas. He has stated that Sevak Das was holding a club and Ghanshyam Das was holding a '*Gandasa*' (an axe). He has deposed in his evidence that when he, along with Mayadas was sitting under the culvert at about 4:35 hours, Ghanshyam Das, Santosh Das and Sevak Das arrived in a motorcycle, they all abused Mayadas and then Ghanshyam Das declared that Mayadas had run away with his wife. Thereafter, Sevak Das gave assault by club and then Ghanshyam Das assaulted Mayadas with axe held by him. Santosh Das also gave an assault on the head. Thereafter, all the three appellants, abusing this witness also, ran towards him to assault, due to which Pannalal Das ran away from the spot. He has further deposed that thereafter, he went to police station Takhatpur and the matter was informed and he was asked to stay overnight in the police station. Next day, after his statement was taken, he was released. He further

states that he had informed the incident to Sukul Das (PW-1), father of Mayadas also.

9. Insofar as, he being an eyewitness to the incident is concerned, the credibility of this witness is sought to be impeached by eliciting certain omissions from his case diary statement (Ex.D/3), as contained in paragraph 15 of his evidence. The omissions as elicited are that in the diary statement, it was not stated that Ghanshyam Das hurled abuses that Mayadas had taken his wife away; that when Mayadas was being assaulted, he tried to intervene; that he ran away from the spot and reached police station and that he was chased by the appellants to assault.

The aforesaid omissions as elicited are not so material so as to disbelieve the testimony of this witness being the eye-witness of the incident. There are discrepancies whether at the time or just before the incident, Ghanshyam Das had abused Mayadas and whether this witness attempted to save Mayadas or that at the spot, an attempt was made to assault him also. On material aspect with regard to arrival of the appellants at the spot, they assaulting the deceased, thought, with different weapons and deceased sustaining injuries on account of such assault have remained uncontroverted.

10. One of the principal argument raised by learned counsel for

the appellants is that Pannalal Pali's evidence is liable to be disbelieved because the circumstances of the case rendered equally probable involvement of Pannalal Pali himself in the alleged commission of offence. We have given our anxious consideration to the submission of learned counsel for the appellants but do not find any force in this submission. Firstly, there is no motive as to why Pannalal Pali would kill his own friend Mayadas. The evidence of this witness and what has been elicited in his cross-examination prove that in the morning, this witness had gone along with Mayadas to the house of Sevak Das for collecting loan advanced by Mayadas to Sevak Das. The evidence of Sukul Das (PW-1), the father of the deceased, does not show that there was any dispute or quarrel between the deceased and Pannalal Pali. The mother of the deceased Rammati Bai (PW-2) has stated that Pannalal had come to her house and her son had gone along with him. She, however, does not say that Pannalal Pali had any axe to grind against deceased Mayadas. From the evidence of these witnesses or any of the witnesses, there is no material to show that there was any kind of dispute between the deceased and Pannalal Pali.

11. There is another reason not to render probable involvement of Pannalal Pali himself in the alleged commission of

offence. Sukul Das (PW-1), father of the deceased, has deposed that he received a phone call from his son that he has been surrounded by Ghanshyam Das, Sevak Das and Santosh Das and, thereafter, his mobile phone was switched off. In his cross-examination, though, suggestion has been given that he himself was not an eyewitness, there is nothing to doubt this part of the testimony of the father of the deceased that he received phone call. In order to corroborate this part of the evidence of Sukul Das (PW-1) that he received phone call on the mobile phone from his son, the prosecution has led call details of the two phone calls. In the FIR itself, Sukul Das (PW-1) clearly stated regarding his own SIM number and the SIM number used by his son Mayadas. The call details (Ex.P/31) which have been collected by the prosecution from cyber cell and produced as evidence before the Court corroborate this evidence that the two SIM numbers 8120726376 and 9575782754 were registered in name of Sukul Das (PW-1) and Mayadas respectively. The call details at serial number 48 prove that from the SIM number of Mayadas, a call was received in the SIM number of Sukul Das (PW-1) at 16:45:58 hours of 08.12.2012. Though, there appears to be discrepancy insofar as IMEI number is concerned, once there is an evidence of two SIM numbers being registered in

the name of father and the son and, there being a call record of one SIM number with the other one at and around the time of incident as deposed by Sukul Das (PW-1), provides sufficient corroboration to the evidence of Sukul Das (PW-1) that he had received a call from his son. The prosecution has come out with the case that the said SIM number belonging to the son of the deceased was not found, and according to what was disclosed by accused Sevak Das the same was destroyed. Nevertheless, the call details and the evidence of registered owners of the SIM numbers provide sufficient corroboration.

12. Apart from above, the conduct of Pannalal Pali (PW-10) does not appear to be blameworthy so as to raise a doubt on him and to say that the defence is probable and plausible. Pannalal Pali (PW-10) has clearly deposed that at the spot he was chased and he ran away and then he went to the police station. The evidence of Sukul Das (PW-1) is that when he reached police station, he found that Pannalal Pali was sitting over there. Moreover, evidence of S. B. Dey (PW-13), Investigating Officer, is that Pannalal Pali had come to the police station, he was present there and was detained also. But in the evidence of Investigating Officer there is nothing to show that Pannalal Pali was taken into custody. The FIR and merg intimation were lodged in the

police station on 08.12.2012 itself around 9:00 PM. The incident is said to have happened at 05:00 in the evening. Thus, Pannlal had reached police station soon after the incident, and it is not that he was absconding, not traceable and was, later on, apprehended by someone or taken into custody by the police. This conduct on the part of Pannlal Pali also demolishes the defence version that Pannlal Pali could possibly be involved in the alleged incident.

13. Another argument to doubt the prosecution case with regard to involvement of the appellants is based on circumstance that according to Pannlal Pali, at the spot, there were two other boys who were also smoking. Thus, according to Pannlal Pali himself, it is argued, those two persons were also eye-witnesses, however, the police did not record their statements and in the evidence, Investigating Officer has admitted that no inquiry in that regard was made. This raises serious doubt over the entire prosecution story.

The evidence of Pannlal Pali (PW-10) would show that though he states that there were two other persons present at the spot, he does not say that he was familiar with them. He has not named. His statement does not show that those two persons who were present at the spot were known persons or residents of their village. Therefore, it does not appear that those persons were sitting along with

Pannalal Pali and deceased Mayadas as their friends, but it can be said that they were also present at the spot. Whether before arrival of appellants, those persons left the spot or continued to remain present has not been stated either-way by Pannalal Pali. It would have certainly been better for the prosecution to have made elaborate inquiry in this regard but, even if, those persons have not been examined, only on that ground, we are unable to disbelieve the testimony of Pannalal Pali unless we find that for any other reason, Pannalal Pali's evidence itself becomes doubtful. Once the evidence of Pannalal Pali is found to be credit-worthy, his conduct being not doubtful and his involvement in the alleged incident not indicated from any circumstances of the case and that the involvement of the appellants in the alleged incident corroborated from the evidence of Sukul Das (PW-1), father of the deceased, the prosecution case and the evidence of Pannalal Pali (PW-10) is not required to be disbelieved only because the investigation failed to trace those two persons who were also said to be present at the place of incident.

14. From the evidence of Sukul Das (PW-1), the father of the deceased, and Pannalal Pali (PW-10) and other witnesses, it is proved from overwhelming evidence that wife of Ghanshyam Das had eloped with deceased Mayadas and,

later on, when they came back to the village, they started living together. Though, there are no specific incidents of any quarrel between Mayadas and Ghanshyam Das, and according to the evidence of Sukul Das (PW-1), father of the deceased, there was no dispute as such existing between Mayadas and Ghanshyam Das, this background lays foundation of possibility of Ghanshyam Das having an axe to grind against Mayadas. Where the prosecution case is based on eyewitness account, there is no requirement of law that the prosecution is necessarily required to prove motive in order to lay credence to the evidence of the prosecution witnesses who have seen the incident. Even then, this background that Mayadas had entered into an affair with the wife of Ghanshyam Das and, thereafter, he and Suruchi, wife of Ghanshyam Das, started living together, by itself, without anything more provides a motive why Ghanshyam Das may have animosity against deceased Mayadas. This background corroborates the circumstance rather than going against the prosecution story.

15. Learned counsel for the appellant has argued that as far as other two appellants namely Santosh Das and Sevak Das are concerned, it does not appear that they had shared common intention with Ghanshyam Das because it has

come in the evidence that Ghanshyam Das had concealed the weapons and, may be at the spot, since he may have serious dispute with Mayadas, he might have suddenly taken out the weapon and assaulted on Mayadas. The arrival of three appellants together and Ghanshyam Das taking out a weapon and assaulting on deceased is not the only evidence. It has come in the evidence that two other appellants assaulted but one of the appellants Santosh caught hold of the deceased also. Neither from the evidence of the eyewitness nor from any other evidence on record it is discernible that some kind of dispute had all of a sudden arisen between the deceased and Ghanshyam Das and presence of other two appellants was only incidental and that they did not commit any overt act. The evidence of Pannalal Pali (PW-10) is that three persons arrived at the spot and assault was opened on deceased Mayadas. There is nothing to show that any altercation had taken place and long thereafter, Ghanshyam Das started assaulting. The arrival at the spot with a deadly weapon and then immediate opening of assault only leads to an inference that all of them shared common intention in execution of which Ghanshyam Das gave repeated assault with a sharp edged weapon resulting in death of Mayadas. The clothes seized from the possession of Santosh Das and *Gandasa*

seized from the possession of appellant Ghanshyam Das have been bound to be stained with human blood also, which at least could be used as corroborative circumstance in the absence of any explanation offered by these two appellants.

16. In the result, we find ourselves unable to interfere with the impugned judgment of conviction and order of sentence.

17. The appeal is liable to be dismissed and is hereby dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge