

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 465 of 2013**

- Yogesh Vishwakarma, S/o Shivilal Vishwakarma, Caste-Lohar, aged about 20 years, Occupation - Farmer, R/o village Dhanpur Budra Para, P.S. Kondagaon, Revenue District Kondagaon and Civil District - Bastar (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : P.S. Kondagaon, District - Kondagaon (Bastar) (C.G.)

---- Respondent

For Appellant : Smt. Kiran Jain, Advocate.
For Respondent/State : Shri Vikash Shrivastava, P.L.

**D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Smt Justice Rajani Dubey**

Judgment On Board**25.02.2019****Per Manindra Mohan Shrivastava, J**

01. The appellant has been convicted in Sessions Trial No.27/2012 vide judgment dated 13.03.2013 passed by learned Sessions Judge (Atrocities), Bastar at Jagdalpur (C.G.) on the allegation of commission of offence of murder of Soman Markam, causing disappearance of evidence of offence and sentenced him as described below:-

CONVICTION	SENTENCE
Under Section 302 IPC	Imprisonment for life (till death) and fine of Rs.1000/-.
Under Section 201 IPC	R.I. for three years.

03. The prosecution case is that the appellant had taken the

daughter of the deceased, namely Rambati, along with him to another station and it is said that they had an affair, but, later on, they were brought back and the village Panchayat was held in which, though, the appellant was insisted to take the daughter of the deceased with him, the appellant refused and Panchayat imposed penalty of Rs.5000/-. Within a week, it is alleged, that the appellant who resides opposite to the house of the deceased, came to his house in *Kothar* (paddy store) and gave an axe blow on the neck, leading to his instantaneous death. FIR in Ex.P/8 was lodged by Pohduram (PW/1), son of the deceased, in the police station, in which, he stated that when he reached near 'Kothar', he saw the appellant running away from the place with an axe in his hand and his father was lying dead. Postmortem report in Ex.P/10 revealed homicidal death on account of cut injury on the neck of the deceased. Upon conclusion of usual investigation, the police filed charge sheet before the concerned jurisdictional Magistrate, who in turn, committed the case for trial to the Sessions Court. On the basis of material contained in the charge sheet, learned trial Court framed charges against the appellant alleging commission of offence under Sections 302, 201 of IPC and 3 (2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Appellant abjured guilt and was, therefore, put to trial. The trial ended in conviction. The learned trial Court, relied upon the evidence of prosecution witnesses in proof of the fact that there was an affair between the appellant and the daughter of the deceased, they had run away and then they were brought back and in village panchayat, when the appellant refused to marry deceased's daughter, a fine of Rs.5,000/- was imposed. The

prosecution also came out with the evidence of Pohduram (PW/1), Dinesh Markam (PW/2) and Sunder Lal (PW/8) that the appellant was found at the spot and he was running away after killing the deceased and when he was chased and an attempt was made to catch hold of him (the appellant) by Pohduram, the appellant threatened him (PW/1) also.

04. Learned counsel for the appellant would argue that the prosecution case failed to translate into truth and suspicion, howsoever grave, could not be made a basis to convict the appellant. He would argue that the prosecution evidence of appellant seen assaulting the deceased, has turn out to be a concocted story. He would further argue that on a shaky and doubtful evidence of the appellant found at the spot, where the dead body was lying and trying to run away, the entire case of the prosecution, has been built up. He would also argue that the family members of the deceased suspected the appellant as the culprit only because there was a background of a dispute relating to an affair with the appellant and the daughter of the deceased and then they found their father dead, the needle of suspicion pointed on the appellant, and only on this suspicion, all allegations have been levelled. He would also argue that though, the axe has been seized from the house of the appellant but there is no FSL report on record to confirm presence of blood on the axe.

05. On the other hand, learned counsel for the State would argue that the evidence of Pohduram (PW/1), Dinesh Markam (PW/2) and Sunder Lal (PW/8) proves that the appellant was not only found running away from the spot where the dead body of the deceased was

lying, holding an axe in his hand, when Pohduram (PW/1), son of the deceased, chased him and tried to catch hold of him (the appellant), he was also threatened that he (PW/1) would also be killed. Learned State counsel would further argue that in the background of the dispute between the appellant and the deceased on account of appellant having run away with the daughter of the deceased, a village panchayat convened and fine imposed on the appellant, soon before the incident, only points towards the guilt of the appellant. He would submit that the prosecution case of memorandum and recovery proves from the evidence of Pohduram (PW/1), son of the deceased, and Dinesh Markam (PW/2), nephew, is that on the memorandum given by the appellant, the axe was recovered from a nearby place under the bushes.

06. We have heard learned counsel for the parties and perused the record and the impugned judgment.

07. The FIR (Ex.P/8) which was lodged by Pohduram (PW/1) has been proved by him. In the FIR (Ex.P/8), the story is that the appellant was found running away from the spot with an axe in his hand and this was seen by the son of the deceased Pohduram (PW/1), the FIR informant.

08. In the Court statement, Pohduram (PW/1), in his examination-in-chief, states that when he was bringing paddy to the store, the appellant emerged from behind paddy in the store and was running away. When he went to the spot, he found that his father Soman Markam was lying dead in blood bath. He then gave a call that his

father was assaulted by Yogesh, the appellant, and chased to catch hold of him upto some distance when the appellant wielded axe and threatened him that if he comes, he would also be killed. Thereafter, this witness states that he came back and informed his cousin Dinesh (PW/2). He has further deposed that the appellant had developed relation with his sister Rambati. Later on, his sister was deserted due to which, a village panchayat was held. The appellant did not come to the village panchayat. The appellant was also asked to take his (this witness) sister with him to which, the appellant refused and 3-4 days after this, he assaulted his father.

In his cross-examination, he admits that he had not seen anyone assaulting his father but has stated of his own that he saw the appellant hiding in paddy. The suggestion that he had not seen the accused running away from the spot, has been denied. He also admits that he suspected the involvement of the appellant, therefore, he had lodged the report.

The evidence of this witness is that he had seen the appellant at the spot where the dead body was lying. The appellant was seen in the paddy store of the deceased. He (the appellant) was also seen holding an axe and running away from the spot. Not only this, the uncontroverted testimony of Pohduram (PW/1) is that he chased the appellant and then appellant wielded axe on him also and threatened that if he comes, he would also be killed.

09. The evidence of Dinesh (PW/2), the cousin, is that he had also seen the appellant holding an axe. According to him, when he called

Pohduram (PW/1), who was carrying paddy, also came to the spot and saw the appellant running away. He also states that the appellant was chased and was caught hold by 10-12 villagers. In the cross-examination, he admits that before Pohduram could reach Kothar, the appellant had run away.

10. Sunder Lal (PW/8), another son of the deceased, has deposed that while Pohduram (PW/1) was carrying paddy, he was also following him and the appellant was seen running away from behind the heap of paddy after which, his brother Pohduram (PW/1) chased the appellant. He came near the paddy and found his father dead and there was an injury in his neck. His brother was chasing the appellant, he (this witness) saw this. In the cross-examination, however, he admits that when his brother informed regarding the death, he was on way and from there he went back to call his mother and then came with his mother. He then admits that he was told by his brother regarding the incident and he himself has not seen the incident.

11. From the evidence of these three witnesses, one thing is clear that none of them have actually seen the appellant assaulting the deceased. However, the evidence of Pohduram (PW/1) and Dinesh Markam (PW/2) clearly proves that from the spot, in the paddy store, where the dead body of deceased Soman Markam was lying, the appellant was seen running away from that spot, holding an axe in his hand.

Categoric evidence of Pohduram (PW/1) that he having seen the appellant running away from the spot, chased him and caught hold of

him but the appellant wielded axe and threatened him not to follow otherwise he would also be killed, has remained uncontroverted and there is no reason for us to disbelieve this specific evidence of Pohduram (PW/1). Dinesh Markam (PW/2) has also not seen actual assault but he also confirms that the appellant was seen running away. In the cross-examination of both these witnesses, we do not find anything elicited to doubt their evidence atleast to the extent that both of them saw the appellant with an axe in his hand, running away from the spot and then wielding axe on Pohduram (PW/1) not to chase him otherwise he would also be killed and the motive for the incident is also proved from an incident of the past, within a week. The appellant had run away along with the daughter of the deceased and after he came back, it appears that the deceased and his family was insisting the appellant that he should now keep his daughter because both of them had developed some relations. The appellant, however, was not willing to do it. The fact that there was a panchayat held and in panchayat, though, the appellant was asked to keep Rambati, daughter of the deceased, with him, the appellant denied, for which he was imposed fine of Rs.5,000/- by panchayat, is proved from the evidence of independent witness Saytu Ram (PW/5). The incident is said to have taken place within a short period of two days. Therefore, in view of the aforesaid evidence, we are inclined to rely upon the prosecution evidence that it is the appellant and the appellant alone who must have assaulted the deceased and no one else.

12. We, however, do not consider present to be a case where the appellant should be imposed life imprisonment till his death. To the

extent that this life imprisonment **“till his death”**, the appeal is partly allowed and it would be life imprisonment only.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge

vijay