

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURJudgment Reserved on 24.08.2020Judgment Delivered on 06.10.2020CRA No.31 of 2013

(Arising out of judgment of conviction and order of sentence dated 28-7-2012 passed by the Additional Sessions Judge, South Bastar, Dantewada, in ST No.282/11)

1. Sheshman @ Shesho S/o Manbodh Aged About 40 Years R/o Bastanar Balood, PS And Post Dantewada, District Dantewada, Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh Through District Magistrate South Bastar, District Dantewada Chhattisgarh.

---- Respondent

For Appellant Mr. Prafull Bharat, Advocate

For Respondent/State Ms. Fouzia Mirza, Addl. Adv. General

Hon'ble Shri Prashant Kumar Mishra, J.

Hon'ble Shri Gautam Chourdiya, J.

By

Prashant Kumar Mishra, J.

1. Appellant has been convicted under Section 302 of the Indian Penal Code (IPC) (twice) and sentenced to undergo life imprisonment (twice) with default stipulations by the Additional Sessions Judge, Dantewada, in ST No.282/11 for committing murder of Madhav Sethiya (since deceased) and

his wife Sudhamani (since deceased) at 5.00 – 6.00 pm on 9-7-2011. It is this conviction, which is under challenge in this appeal.

2. As per the prosecution case, PW-1 Kamlochan Sethiya lodged First Information Report (FIR) (Ex.P/3) at 8.55 am on 10-7-2011 informing that his father-in-law Madhav Sethiya and mother-in-law Sudhamani Sethiya reside at village Balood, Bastapara. PW-2 Suganti @ Sugandhi was also residing with the deceased persons. Appellant had forcibly possessed four acres land belonging to the deceased Sudhamani for which there was a subsisting dispute between them. In the evening of 9-7-2011 his nephew Tularam (PW-6) informed him about the murder of two deceased persons whereafter he went to village Balood and saw his father-in-law & mother-in-law lying dead under a Mahua tree at some distance from their house. PW-2 Suganti @ Sugandhi informed him that the appellant has committed murder.
3. Before the above FIR (Ex.P/3), merg intimations (Ex.P/1 & Ex.P/2) were lodged by PW-1 Kamlochan Sethiya. Appellant's memorandum statement was recorded vide Ex.P/7 consequent to which one axe & one teak wood log was recovered vide Ex.P/8. Bloodstained soil & plain soil was recovered from the place of occurrence vide Ex.P/9. Naksha panchayatnama was recorded vide Ex.P/11. Postmortem of deceased Sudhamani was carried out by PW-10 Dr. R.N. Gangesh who submitted his report vide Ex.P/14 opining that cause of death is coma due to head injury resulting into hypovolemic shock; homicidal in nature. Similarly postmortem of Madhav was carried out by the same Doctor who submitted his report vide Ex.P/15 giving similar opinion.

4. After preparing the crime detail form, spot map, etc. and recording diary statements of witnesses charge sheet was filed. The seized articles were sent for FSL examination vide Ex.P/24 & Ex.P/25 for which the FSL report was submitted which is part of paper book.
5. In course of trial the prosecution examined 11 witnesses to bring home the charges. The appellant denied the charges; abjured the guilt; and pleaded innocence, however, he did not examine any defence witness. Upon appreciation of evidence, the trial Court convicted & sentenced the appellant as mentioned above.
6. Assailing the impugned conviction, Shri Prafull Bharat, learned counsel appearing for the appellant, would submit that the merg intimations (Ex.P/1 & Ex.P/2) were lodged at 8.40 am & 8.45 am on 10-7-2011 whereas the FIR (Ex.P/3) is shown to have lodged at 8.55 am, which is not possible because distance between village Balood and Police Station Dantewada is 8 kms., therefore, such distance cannot be covered within 10 minutes. Shri Bharat would further submit that seizure of the weapon does not connect the appellant with the incident and the FSL report is negative, therefore, there is no evidence of appellant's involvement in the crime. Learned counsel would also submit that the deceased Sudhamani sustained only one injury whereas deceased Madhav sustained only three lacerated wounds, therefore, there was no intention to commit murder. Learned counsel would next submit that the nazari naksha (Ex.P/13) and the map attached with the crime detail form (Ex.P/20) are not showing the place where the eyewitness was hiding, therefore, the eyewitness is not at all reliable and she is a planted witness.

7. On the other hand, Ms. Fouzia Mirza, learned Additional Advocate General appearing for the State, would submit that the FIR itself states that eyewitness PW-2 Suganti @ Sugandhi was residing with the deceased, therefore, her presence at the place of occurrence was very natural. Learned counsel would further submit that the description of the injuries narrated by the Doctor corroborates the statement of eyewitness. Learned counsel would also submit that trivial deviation or inconsistency in the evidence is required to be ignored and moreover witnesses to the memorandum and seizure have also supported the prosecution. Thus, she would submit that the appellant has rightly been convicted by the trial Court.
8. Since the entire prosecution case revolves around statement of eyewitness and other witnesses, we would first appreciate their statements.
9. PW-1 Kamlochan Sethiya is the informant. This witness was informed by PW-2 Suganti @ Sugandhi about the incident. He speaks about the subsisting land dispute between the appellant and the deceased. He has categorically stated during cross-examination that distance between the village Balood and Police Station Dantewada can be covered in 10 minutes. He has denied the suggestion that PW-2 Suganti @ Sugandhi did not inform him as to who committed the offence.
10. PW-2 Suganti @ Sugandhi is the most important witness examined by the prosecution. This lady aged about 27 years was residing in the same house where the deceased persons were residing. She is the daughter of sister of deceased

Sudhamani. She narrates the turn of events, which unfolded at the time of occurrence. She says that firstly appellant assaulted deceased Madhav by chasing him on the road and thereafter he started running after her on which she hid herself and saw that appellant also committed murder of deceased Sudhamani by means of club & axe. According to this witness, the deceased persons had brought her up, therefore, she used to treat and call them as her parents. In cross-examination she admits that appellant assaulted the deceased by the blunt part of the axe and that she witnessed the incident from a distance of about 50 mtrs. She denies that she has not seen the incident and that the FIR was lodged after discussion to frame the appellant.

11. PW-3 Devaram also speaks about the land dispute between the appellant and the deceased. He had accompanied PW-1 Kamlochan to the Police Station. PW-4 Shomduram is the village Kotwar to whom PW-1 Kamlochan informed about the incident and accompanied him to the police station. PW-5 Banshidhar & PW-6 Tularam are the witnesses to the memorandum statement Ex.P/7 and the seizure memos Ex.P/8 & Ex.P/9. While PW-5 Banshidhar has supported the prosecution in his examination-in-chief, but later on declared hostile, PW-6 Tularam has supported the prosecution in entirety.
12. PW-7 Mangal is a villager, who was informed about the incident by the villagers. PW-8 Dhaniram is witness to the dead body inquest. PW-9 Ramlu Karma is the Patwari who prepared the map Ex.P/13. PW-10 Dr. R.N. Gangesh has conducted the postmortem whereas PW-11 Jagdish Ukey has conducted the investigation.

13. The above discussed evidence of the prosecution witnesses clearly prove that the incident happened when the deceased and PW-2 Suganti @ Sugandhi were in the house in the evening of 9-7-2011. This witness informed about the incident to PW-1 Kamlochan through PW-6 Tularam. PW-1 Kamlochan clearly deposes that PW-6 Tularam informed him over telephone and this fact is also mentioned in the FIR. Though PW-6 Tularam has not stated that he had informed PW-1 Kamlochan about the incident, but this witness has been examined for proving the memorandum statement and consequent seizure. His diary statement has not been exhibited, therefore, from the examination-in-chief of this witness it can be gathered that he was examined only to prove the memorandum and seizure and not for any other purpose.
14. Diary statement of eyewitness PW-2 Suganti @ Sugandhi was recorded on the very next day of incident i.e. on 10-7-2011, therefore, it is not a case where she was planted as an eyewitness. PW-2 Suganti @ Sugandhi, being the resident of the same house as one of the family member of the deceased, her presence in the evening of the date of incident is very natural and she is not a chance witness. Merely because the place where she was hiding at the time of incident is not mentioned in the spot map prepared by the Patwari, her statement cannot be discarded.
15. If we closely read the deposition of PW-2 Suganti @ Sugandhi it is not her statement that she was hiding throughout the time when the appellant committed both the murders. In the first part of her statement she says that deceased Madhav was murdered in her presence whereafter the appellant also chased her, therefore, she went hiding to save

herself. It is at this point when she witnessed the second part of incident where the appellant committed murder of Sudhamani which was seen by this witness while she was hiding. Since both the murders were committed in a quick succession it is not a case where the eyewitness had seen the entire occurrence while hiding at some distance from the place of actual occurrence.

16. It has also been argued by the learned counsel appearing for the appellant that recording of merged statement in the village and thereafter registering the FIR in the police station cannot happen within 10 minutes because the distance between village Balood and Police Station Dantewada is 8 kms., however, this argument has been answered by PW-1 Kamlochan in his cross-examination where he clearly says that distance between police station Dantewada and village Balood can be covered through jeep in 10 minutes.
17. It is the trite law that minor deviations/discrepancies in the statement of prosecution witnesses would not affect the prosecution case unless it goes to the root of the prosecution case.
18. In *Thoti Manohar v. State of Andhra Pradesh* (2012) 7 SCC 723 and *Kuriya and Another v. State of Rajasthan* (2012) 10 SCC 433, the Supreme Court has held that minor discrepancies or improvements which do not affect the case of prosecution and are insignificant cannot be made basis for doubting the case of prosecution and they have to be ignored.
19. It is also to be seen that PW-6 Tularam has fully supported the prosecution case in so far as the appellant's memorandum statement and consequent seizure is concerned. Thus,

statement of eyewitness PW-2 Suganti @ Sugandhi is corroborated by this witness, who has proved the appellant's memorandum statement.

20. In so far as the negative FSL report is concerned, the same may not come to the appellant's rescue for the reason that when eyewitness account is available and the said evidence is found to be reliable the corroborative scientific evidence cannot be given primacy.
21. It is the settled law that whenever reliable ocular version of the incident is available the same has to be preferred in comparison to the expert witness.
22. The Supreme Court in *Abdul Sayeed v State of Madhya Pradesh* (2010) 10 SCC 259 held thus in paras 34 to 39 :

34. Drawing on Bhagirath case, this Court has held that where the medical evidence is at variance with ocular evidence,

“it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the ‘variable’ keeping the medical evidence as the ‘constant’”.

35. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility.

“21. ... The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the ‘credit’ of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.”

[Vide *Thaman Kumar v. State (UT of Chandigarh)* and *Krishnan v. State* at SCC pp. 62-63, para 21.]

36. In *Solanki Chimanbhai Ukabhai v. State of Gujarat*, this Court observed: (SCC p. 180, para 13)

“13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eyewitnesses. *Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eyewitnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.*”

(emphasis added)

37. A similar view has been taken in *Mani Ram v. State of U.P.*, *Khambam Raja Reddy v. Public Prosecutor and State of U.P.* v. *Dinesh*.

38. In *State of U.P. v. Hari Chand* this Court reiterated the aforementioned position of law and stated that: (SCC p. 545, para 13)

“13. ... In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy.”

39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

23. Since both the deceased have sustained head injuries, the appellant cannot be given benefit of any of the exceptions of Section 300 of the IPC because he has acted in a cruel manner. Had it been a case of single murder the nature of injuries would have been relevant and important, but a case of double murder by itself demonstrates firm intention of the accused to commit murder, therefore, it cannot be converted to a case of culpable homicide, not amounting to murder.
24. For the foregoing reasons, in our considered opinion, the appellant has rightly been convicted and sentenced by the trial Court.
25. In the result, the appeal, *sans* merit, is liable to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Gowri