

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 106 of 2014****Judgment Reserved on: 03.03.2020****Judgment Delivered on: 22.05.2020**

- Dal Pratap Singh @ Dadu, S/o Late Dalveer Singh Gond, Aged about 22 years, R/o Village Ghaghra Fuljhar, P.S. Kelhari, District Korea, C.G.

**----Appellant****Versus**

- State of C.G., Through Police Station Kelhari, District Korea, C.G.

**---- Respondent**

For Appellant

Shri Pawan Shrivastava, Advocate.

For Respondent/State

Smt. Madhunisha Singh, P.L.

**Hon'ble Shri Justice Prashant Kumar Mishra****Hon'ble Shri Justice Gautam Chourdiya****CAV Judgment****Per Gautam Chourdiya, J**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 19.12.2013 passed by the 2<sup>nd</sup> Additional Sessions Judge, Manendragarh, District Korea, C.G. in S.T. No.10/2013, whereby the appellant stands convicted for the offence under Section 302 of Indian Penal Code (for short 'IPC') and sentenced to undergo imprisonment for life and fine of Rs.2,000/-, in default of payment of fine amount to undergo additional R.I. for four months.
2. Case of the prosecution in brief is that on the date of incident i.e. 20.10.2012 at about 20:00 pm at village Ghaghrapara, when deceased-Sumitra was warming herself by fire at home along with her

sister Semvati and son-in-law Ramayan, at that time accused/appellant came there with Farsa/Battle Axe and assaulted the deceased on her temple. When PW-1 Semvati started crying then accused/appellant ran away from the place of occurrence. The said incident was informed by PW-1 Smt. Semvati to PW-4 Heeralal and thereafter to villagers. After the incident, merg intimation Ex.P-2 and FIR Ex.P-1 was lodged by PW-1 Smt. Semvati on the same day i.e. 20.10.2012. During investigation, spot map was prepared by (PW-8) D.P. Sahu, Sub-Inspector as per Ex.P-3 and spot map Ex.P-4 was prepared by Patwari PW-5 Surendra Pal Singh. Inquest report Ex.P-5 was prepared in presence of the witnesses. Accused memorandum was recorded as per Ex.P-6 upon which it was discovered that appellant's aunt (*Chacheri Fufi*) used to change her husband frequently and keep them *Ghar Jawai* and for this reason he murdered Sumitra Bai by Farsa/Battle Axe (iron weapon). Plain and blood stained soil were seized as per Ex.P-7. Pursuant to the memorandum used Battle Axe was seized as per Ex.P-8. Clothes of accused were seized as per Ex.P-9 and clothes of deceased were seized as per Ex.P-10 from the spot. Accused/appellant was arrested as per Ex.P-11. The dead body of the deceased was sent for postmortem examination with application Ex.P-12 and postmortem was conducted by PW-7 Dr. Mahesh Singh, who found following injuries:-

“Incised wound parallel placed on left side of the head with clotted blood present 6”x1 ½”x bone deep and upper part ½” of the left ear (pinna) cut and out.

And opined that mode of death was shock due to brain hemorrhage due to as a result of sharp cut of brain and death

was homicidal in nature and time lapsed since death 12-18 hours.

3. Seized Battle Axe/Farsa was also examined by PW-7 Dr. Mahesh Singh on which he found that the injury found on the body of the deceased may be caused by this article. Seized article (Battle Axe) was sent for chemical examination along with memo Ex.P-16 and Ex.P-16A and same was received by FSL as per Ex.P-16B. Statements of the witnesses were recorded. After completion of investigation, charge sheet was filed against the appellant Dal Pratap Singh @ Dadu under Section 302 of IPC. The trial Court framed the charge under Section 302 of IPC against the appellant which was denied by him and he prayed for trial.
4. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses i.e. PW-1 Smt. Semvati, PW-2 Smt. Ramvati, PW-3 Raghav Bhan, PW-4 Heera Lal, PW-5 Surendra Pal Singh, PW-6 Shiv Prasad, PW-7 Dr. Mahesh Singh, PW-8 D.P. Sahu, PW-9 Kosmas Tirkey and PW-10 Atul Jaiswal. Statement of the accused was also recorded under Section 313 of CrPC in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. He also took the plea of alibi. Two witnesses i.e. DW-1 Munna and DW-2 Ram Singh were examined by him in his defence.
5. 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 appellant as mentioned in para -1 of his judgment.
6. Learned counsel for the appellant submits that in this case no

independent eye-witness supports the prosecution case, only family members of the deceased i.e. sister PW-1 Semvati and mother PW-2 Ramvati stated before the Court that accused/appellant committed murder of the deceased but looking to their contradictory statements, learned trial Court wrongly convicted the appellant. He further submits that in this case no fair investigation was made by the Investigating Officer. In this case, memorandum and seizure are also not proved by the independent witnesses and they stated that *Fersa/Battle Axe* was not recovered from the accused/appellant but for false implication of the appellant, the police prepared the memorandum of the appellant and the seizure. Therefore, no any clinching, reliable and trust-worthy evidence is available on record against the appellant, he has been falsely implicated in this case. He also submits that accused/appellant was not identified by the witnesses. Looking to the statement of PW-2 Smt Ramvati accused/appellant was muffled and therefore, appellant was not identified. Further, at the time of incident, accused/appellant was not present in the village where offence was committed, he was at another place and this plea of alibi has been proved by DW-2 Ram Singh. He also submits that there is no motive proved by the prosecution, therefore, learned trial Court wrongly appreciated the evidence of the prosecution and as such, conviction of the appellant is liable to be set aside.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. We have heard learned counsel for the parties and perused the

material available on record.

9. It is not disputed by both the parties that the accused/appellant is the Nephew of PW-2 Smt. Ramvati and PW-1 Semvati is the cousin sister of the appellant, therefore, they were well known to each other and residing in the same village.
10. PW-1 Semvati has categorically stated in paras 1 to 4 that when she was sitting in the home along with Sumitra (deceased), Ramayan Singh, Chanda Bai, and Ramvati then accused/appellant reached at the home of Smt. Ramvati where Ramayan Singh, deceased and Chanda Bai were residing together and they were warming themselves by fire. The accused/appellant came there with Farsa/Battle Axe and assaulted upon Sumitra (deceased) as a result of which she sustained grievous injuries and died. She also stated in her deposition that when accused/appellant assaulted the deceased by means of Farsa/Battle Axe at that time blood was oozing from the body of the deceased. PW-1 Semvati tried to catch hold of the appellant and she was crying for help. Thereafter, accused/appellant fled from the place of occurrence. The same fact is also stated by PW-2 Smt. Ramvati and there is no major omissions or contradictions in their statements. PW-1 Smt. Semvati also stated that just after the incident she was crying for help and immediately rushed to the house of PW-4 Hiralal and informed him about the incident but PW-4 Hiralal has turned hostile and he only supported this fact that PW-1 Semvati reached his house in the night and informed him about the incident that accused/appellant had killed her sister Sumitra (deceased) and when he reached the home of Semvati, he found that Sumitra was lying dead on the place of occurrence and blood was oozing from the body of deceased. Since

PW-4 Hiralal has not supported the memorandum and seizure, he has been declared hostile. In his cross-examination PW-4 Hiralal first supported the memorandum and thereafter he turned hostile in cross-examination and not supported the prosecution case but he supported this fact that at the time of incident PW-1 Semvati was crying for help and immediately after the incident she reached his home for help and when they reached the place of occurrence they found the deceased in injured condition. Therefore, the statements of PW-1 Semvati and PW-2 Ramvati is partly supported by PW-4 Hiralal. Just after the incident, PW-1 Semvati lodged named FIR Ex.P-1 against the accused/appellant and the same fact is also mentioned in FIR. As per Inquest report Ex.P-5 proved by PW-3 Raghav Bhan and other witnesses they inspected the place of occurrence and found that the place where Ramvati, Semvati and deceased were warming themselves by fire, ash was there and blood was also found at the place of occurrence. They also found injury on the person of the deceased as mentioned in PM report Ex.P-12A. It is possible that the injury caused on the body of the deceased can be caused by article (Battle Axe/Farsa) seized by the Police Officer during investigation from the appellant and sent for examination because PW-7 Dr. Mahesh Singh after examination of the said weapon opined as per Ex.P-13A that injury found on the body of the deceased can be caused by this weapon. PW-7 Dr. Mahesh Singh has duly proved the postmortem report Ex.P-12A and the query report of the weapon Ex.P-13A.

- 11.** PW-3 Raghav Bhan also supported in examination-in-chief that the inquest report Ex.P-5 was prepared in his presence where blood stains were found on the place of occurrence and deceased was lying in

injured condition. Though PW-3 has not supported the memorandum and seizure Exs. P-6 and P-7 but he admitted his signatures in Exs.P-5 to P-10. When PW-3 Raghav Bhan was declared hostile and examined by prosecution, he supported the memorandum statement and seizure but he again turned hostile in his cross-examination. Both witnesses PW-3 Raghav Bhan and PW-4 Heralal admitted in examination-in-chief their signatures in Ex.P-6 and Ex.P-10 and that police reached at the place of incident and prepared the documents.

**12.** PW-5 Surendra Pal Singh proved the Spot Map Ex.P-4. PW-6 Shiv Prasad also proved the fact that from the place of occurrence article (as per Ex.P-7) was seized in his presence.

**13.** PW-8 D.P. Sahu, Sub-Inspector registered FIR Ex.P-1 as stated by PW-1 Smt. Semvati and he also proved the memorandum Ex.P-6 and seizure memo Ex.P-8. This witness also proved the spot map Ex.P-3 which was prepared on next day of the incident where he found ashes and unburnt wooden log on the place of occurrence. When he prepared the spot map, he found that the dead body was lying in injured condition on the place of occurrence.

**14.** Looking to the entire statements of PW-1 Semvati, PW-2 Smt. Ramvati and PW-4 Heera Lal who partly supported the prosecution case and PW-3 Raghav Bhan, PW-7 Dr. Mahesh Singh and PW-8 D.P. Sahu, the postmortem report Ex.P/12A and the inquest report Ex.P/5 it stands proved that death of deceased was homicidal in nature.

**15.** It is true that the PW-3 Raghav Bhan and PW-4 Heera Lal have not fully supported the prosecution case regarding memorandum and seizure and that article is also not produced before the Court nor FSL report was produced before the Court. However, present is a case

which is based mainly on the evidence of the eye-witnesses i.e. PW-1 Smt. Semvati and PW-2 Smt. Ramvati. Just after the incident PW-1 Smt. Semvati informed PW-4 Heeralal that appellant committed murder of Sumitra Bai and thereafter, prompt FIR is lodged against the appellant. PW-4 has also supported the prosecution case to the above extent. Therefore, there is no reason to disbelieve the eye-witnesses i.e. PW-1 Smt. Semvati and PW-2 Smt. Ramvati.

**16.** Learned counsel for the appellant vehemently argued that as per the PW-2 Smt. Ramvati accused/appellant was muffled, therefore, the question of the identification of the appellant does not arise. But this witness has specifically admitted that she identified the appellant because she knew the appellant since before. As the accused/appellant was well known to PW-1 Smt. Semvati and PW-2 Ramvati being their relative and they were residing in the same village, we find no substance in this argument that appellant was not identified by PW-1 Smt. Semvati and PW-2 Smt. Ramvati.

**17.** Learned counsel for the appellant submits that in this case no motive was proved by prosecution. It is admitted fact that there is no direct dispute between appellant, PW-1 Smt. Semvati and PW-2 Smt. Ramvati regarding property, and partition between PW-2 Smt. Ramvati and appellant had already taken place 2-3 years prior to the date of incident. But as per memorandum of the accused, he disclosed this fact that his aunt (*Chacheri Fufi*) Sumitra used to change her husband frequently and keep them as Ghar Jawai and for this reason he murdered Sumitra Bai by iron weapon. PW-2 Smt. Ramvati in her deposition in para-5 has also stated that appellant was annoyed as Ramayan Singh was kept as a Ghar Jawai. The memorandum and

seizure have been duly proved by the investigating officer PW-8 D.P.Sahu. It is a well settled principle of law that statements of police officers cannot be discarded or looked with suspicion merely because they are involved in the investigation. If their statements are found free from the suspicion of falsity and have a ring of truth, they can safely be relied upon. In this case, the defence has not alleged that the investigating officer was in any way inimical to the accused or was having any ill-will against him. No such suggestion was put to the IO during his cross-examination. Even otherwise, as observed above, present is a case based on the eye-witness account and not on circumstantial evidence. In the case like the present one, even if motive is not proved by the prosecution by adducing specific evidence in this regard, it does not affect the credibility of the prosecution case.

**18.** Learned counsel for the appellant submits that as per the statement of PW-1 Smt. Semvati, she went alone for lodging FIR but other witnesses say that she went with some persons. However, in the given facts and circumstances of the case and the eyewitnesses account, it cannot be said to be a material contradiction or omission which demolishes the prosecution case in its entirety.

**19.** Placing reliance upon the judgment dated 21.8.2019 of Division Bench of this Court in the matter of **Sanjay Lakda Vs. State of CG, CRA No.980/2019**, learned counsel for the appellant argued that this case is covered under Section 304 Part-II of IPC looking to the fact that only one injury was caused by the appellant in the heat of passion without any premeditation.

**20.** Though in this case only one injury has been caused to the deceased by the appellant i.e. incised wound parallel placed on left

side of the head but present is not a case where the incident took place on a sudden fight in the heat of passion upon grave provocation etc. As reflected from the evidence, the appellant came to the place of occurrence armed with a deadly weapon *Farsi/Battle Axe* and assaulted the deceased on her vital part i.e. left side of the head with such a force which resulted in her instantaneous death. As per postmortem report the cause of death was shock due to brain hemorrhage as a result of sharp cut of brain. It is not the case that the appellant picked up said weapon from the place of occurrence or that there was any quarrel or provocation on the part of the deceased to him which made him furious and forced to make assault on the deceased. Thus, the manner in which the offence was committed it is clear that the appellant assaulted the deceased with premeditated mind in order to kill her which cannot be said to be culpable homicide not amounting to murder. Therefore, keeping in view the facts and circumstances of the case giving rise to the incident, the manner in which the assault was made with a deadly weapon on vital part of the deceased with such a force which led to her on the spot death, this Court is of the opinion that conviction of the appellant under Section 302 of IPC awarded by the trial Court is strictly in accordance with law and the judgment cited by the appellant's counsel being distinguishable on facts from the present case is of no help to him. Accused had taken the plea of alibi in his defence but looking to the evidence of the eyewitnesses, place of occurrence memorandum of the appellant and his identification by PW-1 Smt. Semvati, PW-2 Smt. Ramvati as perpetrator of the crime, the plea of alibi is not maintainable and as such, dismissed.

**21.** Resultantly, the appeal being meritless is liable to be dismissed and is, accordingly, dismissed. The appellant is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/-  
Prashant Kumar Mishra  
Judge

Sd/-  
Gautam Chourdiya  
Judge

Akhilesh