

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 1217 of 2015

- Ramkailash Sahu, S/o Ramkeshwar Sahu, aged about 35 years, R/o Village - Gouripur (Kashipara), Police Station - Premnagar, District – Surguja, Chhattisgarh. ---- **Appellant.**

Versus

- The State Of Chhattisgarh, through Station House Office, Police Station - Premnagar, District Surguja, Chhattisgarh. ---- **Respondent.**

For the Appellant	:-	Mr. Rahul Mishra, Adv.
For the State	:-	Mr. Ravish Verma, GA.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Manindra Mohan Shrivastava, J.
08.06.2021

This appeal is directed against the judgment of conviction and order of sentence dated 24.11.2008 passed by learned Special Judge, Surguja, District Ambikapur in Sessions Trial No.16/2008, whereby and whereunder the appellant has been held guilty for the offence as follows:-

Conviction	Sentence
U/s. 302 IPC	Life imprisonment with fine of Rs.200/-.

2. As per prosecution story Kashiram (PW-4) lodged a report in the police station on 19.09.2007 alleging that when he heard cries and when he was called he rushed to the spot and he saw that the appellant Ramkailash Sahu was running away from the spot after giving assault on victim Pawaro Bai and the incident has been witnessed by number of persons. Upon lodging of FIR

the police swung in action, reached at the place of occurrence, inquest over dead body was prepared and it was sent for postmortem. Postmortem report (Ex.P-10) was conducted by Dr. S.K. Gupta (PW-10). Upon examination of various injuries found on the deceased including grievous injuries on the parietal part, the doctor opined that the mode of death was shock and hemorrhage caused due to head injury and it was homicidal in nature. As the appellant was named in the FIR as the culprit, he was taken into custody. Upon usual investigation charge-sheet was filed and charge was framed. The appellant abjured guilt was put to trial. The prosecution examined as many as 12 witnesses including some of the eye witnesses of the incident. The appellant in his examination under Section 313 Cr.P.C. denied every incriminating circumstances and evidence appearing against him in the evidence of the prosecution and claimed to be innocent. No defence witness was examined. The learned trial Court relying upon the evidence of lodging of FIR, evidence of eye witnesses Kashiram (PW-4), Kumari Basanti (PW-5), Amrit Singh (PW-8) and Kaushilya Bai (PW-9) and the medical report of homicidal death proved by doctor (PW-10) held the appellant guilty of commission of offence, giving rise to the instant appeal.

3. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned Counsel for the appellant would argue that the prosecution has examined witnesses as eye witnesses but of none of them has seen the

incident and it was because of some previous enmity and a recent dispute that on suspicion the appellant has been involved. Learned counsel for the appellant would argue that Kashiram (PW-4) in the FIR itself has stated that when he reached at the spot he saw the appellant running away from that field. He did not witness the incident of assault. This has also been stated by other prosecution witnesses. As far as, other so called eye witnesses Basanti (PW-5) is concerned, she admits that at the time of incident she was inside the kitchen and was taking her meals to proceed to school therefore, her presence is also doubtful. As far as Amrit Singh (PW-8) is concerned, the evidence of PW-5, this witness and the evidence of PW-9 all shows that this witness was not keeping well and was in fact sleeping, therefore, it is highly improbable that he must have seen the incident. Kashuilya Bai (PW-9) have not been named as the witness having seen the incident, as per the FIR. The evidence of this witness is also contradictory and at variance in the evidence of other prosecution witnesses on material particulars. In this manner, it is argued, the entire case of the prosecution becomes highly doubtful. He is further submitted that though the allegedly seized blood stained clothes of the deceased/appellant and the alleged weapon crowbar were sent for forensic examination, no blood was found which also renders the prosecution case doubtful. Yet another argument advanced by learned counsel for the appellant is that though the prosecution has come out with the case that the

appellant assaulted the deceased as he was aggrieved due to witchcraft played by the deceased as *Tonahi*, no evidence could be led to prove this fact. Therefore, the motive as alleged by the prosecution also falls to the ground and renders the prosecution story still more doubtful. Learned counsel for the appellant would also argue that the Investigating Officer (PW-2) has admitted in para 11 and 12 of his cross-examination that he was jurisdictionally not competent to investigate the matter and the so called authority given to him has not been proved by any of the records of the higher authority therefore, the investigation itself was without jurisdiction and therefore, on that basis alone the entire case of the prosecution must fall and the impugned judgment of conviction and sentence is rendered *void ab initio*.

4. Learned State counsel on the other hand would submit that as far as jurisdictional competence is concern, at the time of filing of the charge-sheet no challenge was laid to the competence of the investigating officer. Even at the stage when the investigation was going on it was not challenged. He submits that otherwise the Officer (PW-2) has clearly stated in his cross-examination that he had power to investigate the matter as he was authorized by higher authorities. Therefore, on this ground the entire trial and conviction cannot be vitiated. As far as, credibility and reliability of eye witnesses PW-4, PW-5, PW-8 and PW-9 is concerned, he would submit that even if the evidence of PW-4 as eye witness is considered to be doubtful, the evidence of other witnesses PW-5,

PW-8 and PW-9 clearly inspire confidence because all of them have involved the appellant in the alleged incident of assault and all of them have coherently stated regarding the manner in which the incident occurred, place where the incident occurred and the weapon which was used by appellant which was seized from the appellant during investigation. Homicidal death of Pawaro Bai is proved from the reliable evidence of doctor (PW-10) and postmortem report Ex. P-17. Therefore, there is no scope for interference in the judgment impugned.

5. We have heard learned counsel for the parties and perused the records.

6. The First Information Report has been proved by PW-2 and PW-4 both. PW-4 has clearly stated regarding lodging of FIR on the date of incident within two hours of the incident in which he has clearly named the appellant who assaulted Pawaro Bai with the help of crowbar. In the FIR he has stated that the incident was seen by him and also by Basanti (PW-5) and Amrit (PW-8).

7. The contents of the FIR as lodged by PW-4 and proved to have been lodged by him in his own evidence, are that when he reached at the spot, he saw the appellant running away from the spot. In the FIR he does not claim to have seen the act of assault on him. Amrit (PW-8) has deposed in para 3 of his evidence that after assault was given to the appellant, his father and other villagers had arrived at the spot. This shows that by that time, Kashiram reached at the spot assault was already given to the

deceased. Kaushilya Bai (PW-9) has also stated in para 5 of her statement that when she cried, her husband Kashi immediately reached at the spot and chased the appellant. This also renders it doubtful that Kashiram (PW-4) was present at the spot prior to assault given to the deceased. According to the FIR (Ex.P-2) and the evidence of PW-6, PW-8 and PW-9, though Kashiram reached at the spot upon being called, by that time assault was already given to the deceased. Therefore, it is doubtful whether the PW-4 had actually seen the incident of assault.

8. However, there is otherwise abundance of evidence led by the prosecution to prove that it is the appellant who had assaulted the deceased. In this regard, the evidence of PW-5, PW-8 and PW-9 are worthy of reliance. Basanti (PW-5) aged 18 years has clearly deposed that the appellant arrived at the spot with a crowbar and gave multiple assault on Pawaro Bai. This witness has been cross-examined in detail but all attempts to impeach her credibility have failed. She has reaffirmed and reiterated in her cross-examination that she had seen the incident. Suggestion that by that time she reached, the appellant was leaving the spot has been denied. Though she is the grand-daughter of the deceased, it is well settled law that only on the ground of witness being relative, the evidence cannot be discarded. She has also denied any previous enmity. Though suggestion has been given that on the date of incident appellant was badly assaulted by her father and later on settlement was arrived at, suggestion has been

denied. No other evidence has been led from the side of the defence to prove this suggestion. Therefore, there is no plausible defence set up. There is no reason why this witness would falsely implicate the appellant and try to save one who is the actual culprit and assaulted the deceased.

9. The evidence of Amrit (PW-8) lends support and corroborates the evidence of PW-5. He has also clearly stated that the appellant came running with the crowbar and assaulted Pawaro Bai. He has also been subjected to cross-examination and he has denied suggestion that he has not seen the incident. There is no reason to disbelieve this witness. Moreover, PW-5 has very emphatically stated in para 5 of her evidence that when Amrit (PW-8) heard cries and had seen the appellant assaulting Pawaro.

10. PW-9 – the wife of PW-4 and mother of PW-5 has also affirmed the statement of other eye witnesses stating that appellant came with the crowbar in his hands and assaulted Pawaro Bai. She has been subjected to cross-examination and attempt has been made to impeach her credibility by pointing out certain discrepancies with regard to the location of other witnesses at the time of incident, the same does not impeach the credibility of this witness. Suggestion of false implication has been denied.

11. Dr. Gupta (PW-10) who conducted the postmortem examination of the dead body has proved homicidal death as the

deceased sustained grievous injuries including the fatal injury given on her head in the parietal bone leading to her death as a result of shock. The crowbar said to have been seized from the appellant was also examined by the doctor and according to this evidence it is uncontroverted, injuries could be caused by it.

12. Therefore, we do not find any ground to interfere with the impugned judgment and conviction of order of sentence.

Appeal thus fails and **dismissed**.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Ajay