

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Appeal No. 141 of 2013

- Aajuram Sahu, son of Late Shri Mehattar Sahu, aged about 35 years, resident of Village Dholiya, Police Station Bemetara, District Bemetara, Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh, Through : The Station House Officer Bemetara, District Bemetara (C.G.)

---- Respondent

For Appellant	:	Shri Rudranath Mukherjee, Advocate
For Respondent	:	Shri Ravish Verma, Government Advocate

D.B. : Hon'ble Mr. Justice, Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Vimla Singh Kapoor

Judgment on Board

Per, Manindra Mohan Shrivastava, J.

21.06.2021

1. This appeal is directed against the judgment of conviction and order of sentence dated 29.01.2013 passed by Additional Session Judge, Bemetara, Civil District Durg (C.G.) whereby and whereunder the appellant has been held guilty of commission of offence punishable under Section 302 of the IPC and sentenced to undergo life imprisonment with fine of Rs.500/- and in default of payment of fine, additional RI for one month.
2. As per prosecution story, Yudhisthir (PW-1) lodged FIR in the police station on 09.12.2011 at about 20.10 hrs. that his grandfather Mahettar was assaulted with the help of axe by the appellant Aajuram. After FIR in Ex.P-2, the police proceeded to the place of occurrence. Inquest over

dead body was prepared in Ex.P-10. Thereafter, dead body was sent for postmortem. Next day on 10.12.2011, postmortem was conducted and upon examination of internal and external injuries, Dr. Smt. Nidhi Meshram (PW-15) prepared postmortem report in Ex.P-22 and opined that cause of death is due to incised wounds over head and neck which are vital organs of any body with haemorrhage and that death appears to be homicidal in nature. Time elapsed since death was stated to be 16-18 hours approximately. As appellant was accused assailant as per FIR, he was taken into custody and further case of the prosecution is that memorandum / disclosure statement was recorded in presence of independent witnesses and it is said that on that basis, the axe was seized from the house of Satruhan Sahu (PW-7). The clothes of the appellant were also seized. Simple soil and bloodstained soil collected from the spot along with weapon, clothes of the appellant, deceased and other articles were seized and sent for forensic examination to the FSL wherefrom FSL report in EX.P-30 was received. On the basis of charge-sheet filed by the police, the learned Trial Court framed charges against the appellant for commission of offence under Section 302 of the IPC. As the appellant abjured his guilt, he was subjected to trial. In order to prove guilt, prosecution examined as many as 20 witnesses. The appellant was examined under Section 313 Cr.P.C. and he denied having committed offence and stated in his defence that he had not committed the alleged offence. He also examined solitary eyewitness Smt. Rukmani (DW-1), his own wife.

3. Learned Trial Court, however, relying upon the prosecution evidence, particularly, eyewitness account of the incident, as stated by Yudhisthir (PW-1) and another evidence with regard to homicidal death, recovery of bloodstained weapon at the instance of the appellant and his cloth also found bloodstained, held the appellant guilty and convicted as described above.
4. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant would argue that the prosecution has rested its case on the so-called solitary eyewitness account of Yudhisthir (PW-1) who is not at all an independent witness. He would argue that from the evidence of this witness and other prosecution witnesses as also defence witness, it has clearly come out that there existed a dispute between the appellant on one side and deceased and father of Yudhisthir (PW-1) on the other. With this background of enmity between this witness and the appellant, it would not be safe to convict the appellant on the solitary evidence of Yudhisthir (PW-1) without there being any other independent corroboration. It is next argued that though prosecution has come out with a case that along with the Yudhisthir (PW-1) his two friends, namely, Manoj Yadav (PW-9) and Kishan Sahu (PW-12) were also sitting near the new pond, but these witnesses have not stated regarding they having seen the incident. They were independent witnesses and therefore, as they have not supported the version of Yudhisthir, the case of the prosecution becomes doubtful. Next

submission is that the evidence of the witnesses including eyewitness shows that the incident happened late in the evening and in winter days, the time of incident, as stated by the eyewitness and the distance from which he claimed to have seen the incident, renders it highly doubtful that he could at all witness as to who was assaulting whom, but only on his apprehension that his grandfather must have been killed by the appellant, that he has been involved. Learned counsel for the appellant would further submit that the prosecution claims to have prepared memorandum of the appellant and based on the said disclosure, recovered axe from the house of Satruhan Sahu (PW-7), but the two witnesses of memorandum, namely, Johan Sahu (PW-4) and Lakhan Lal Sahu (PW-5) have not supported the same and mere evidence of recovery bloodstained axe from the house of third person, without a connecting evidence that the axe was kept in the house of Satruhan (PW-7) by the appellant, does not amount to an incriminating circumstantial evidence to corroborate the statement of Yudhisthir (PW-1) eyewitness.

5. On the other hand, learned State Counsel would argue that the evidence of eyewitness Yudhisthir (PW-1) is coherent and does not suffer from any discrepancy and no material contradiction, as mentioned, has been elicited from his examination though he was subjected to a detailed cross-examination. He would argue that this witness proved through documentary evidence (Ex.P-1) that his grandfather Mahettar lodged report in police station short time before

the date of incident that his son Aajuram is time and again attempting to raise dispute, abusing and also frequently attempts to assault and had prayed police authority to remove encroachment by his son Aajuram, the appellant. Thus, there was clear motive on the part of appellant to kill his own father Mahettar. He further submits that FIR, which is within two hours of incident, has been proved to be lodged by Yudhisthir (PW-1) which gives clear picture of the time and manner in which the incident happened as also the weapon used and the part of the body on which assault was given by the appellant on the deceased. In the postmortem report (Ex.P-22), the nature of injuries are stated to be incised and the place of body are almost the same as stated in the FIR itself. The FSL report also support and corroborate the evidence of eyewitness.

6. We heard learned counsel for the parties and perused the records and also the judgment of the Trial Court.
7. As far as nature of death, cause of death and also the nature and extent of injuries on the deceased Mahettar are concerned, there is no substantial challenge to the same at the appellate stage. We have also examined the evidence of Dr. Smt. Nidhi Meshram (PW-15) and the postmortem report (Ex.P-22) prepared by her, which clearly states regarding multiple incised wounds and head injuries on the deceased and the opinion, which has remained unchallenged in the evidence, is that the deceased died death which appeared to be homicidal in nature

because of the nature and extent of injuries caused. The injuries, as per evidence of Dr. Smt. Nidhi Meshram (PW-15), are incised wound around the eyes, neck, head, shoulder along with other minor injuries. The nature of injury stated to be incised. Dr. Smt. Nidhi Meshram (PW-15) has stated in her evidence that the cause of the death was incised wound found on the head and neck. The evidence of Yudhisthir (PW-1) is that the appellant assaulted the deceased with the help of an axe around the eyes, head and neck. These broadly are in line with the nature and extent of the injury and the part of the body where the assault was given as per the oral evidence. The version of Yudhisthir (PW-1) that the assault was given by axe is also corroborated from the medical evidence that the injuries were incised in nature, meaning thereby they were caused by a sharp edged weapon. The evidence of Dr. Smt. Nidhi Meshram (PW-15) with regard to these aspects has remained unchallenged.

8. According to Dr. Smt. Nidhi Meshram (PW-15), death had occurred 16-18 hours before the time post-mortem was conducted. Post-mortem, as per Ex.P-22, was conducted on 10.12.2011 at 12.00 pm. Thus, according to the Doctor, the death occurred between 6.00 pm to 8.00 pm of the previous day *i.e.*, 09.12.2011. According to evidence of Yudhisthir (PW-1), the eyewitness, the incident happened just after sunset and onset of darkness. Manoj Yadav (PW-9) also stated in his examination that while he, Yudhisthir and Kishan were sitting by the side of the pond it has become dark in the night.

9. The time of lodging of FIR, as per the statement of Yudhisthir (PW-1) and the evidence of Investigating Officer (PW-17), is 8.10 pm and the time of the incident is stated to be around 6.30 pm. He has stated that merging intimation and FIR both were recorded in Exs.P-5 and P-2 respectively in the evening at 8.15 pm. The time of incident was noted to be at 6.30 pm. Thus, from the aforesaid evidence it is proved that the time of incident was some times between 6.00 to 8.00 pm in the evening and that is the period of time which falls between 16-18 hours, as stated in the postmortem report.
10. Moreover, the evidence of Yudhisthir (PW-1) is also corroborated with respect to the place of incident which is stated to be near Shiv Mandir, the place wherefrom the bloodstained soil, simple soil, dead body and other articles were seized which has not been substantially disputed. Therefore, it is not a case that the place where dead body was found and where incident happened, as stated by Yudhisthir (PW-1), is contradicted from any other evidence on record with regard to the place of incident, place where dead body was found etc., as discussed above. Thus, in our view, the material particulars with regard to the place of incident, manner of assault, weapon used, part of the body, time of incident, the evidence of Yudhisthir (PW-1) is fully corroborated from other evidence collected and proved in the case.
11. True it is that Manoj Yadav (PW-9) and Kishan Sahu (PW-12) have not

claimed to be eyewitnesses of the incident, but both of them have supported the version of Yudhisthir (PW-1) that they all were sitting together by the side of the pond near temple and were listening to music and then Yudhisthir got up and went towards the temple.

12. The reliability of the evidence of Yudhisthir (PW-1) is sought to be impeached by referring to the evidence of these two witnesses Manoj Yadav (PW-9) and Kishan Sahu (PW-12) that it is wholly improbable that if Yudhisthir could hear the cries for help why these witnesses do not say that they also heard cries for help and why they simply say that Yudhisthir suddenly got up and left towards temple.
13. In our considered opinion, the evidence of Manoj Yadav (PW-9) and Kishan Sahu (PW-12) do not shake the veracity of evidence of Yudhisthir (PW-1) only on that account. These two witnesses, it appears, have sought to suppress some facts otherwise the statement that suddenly someone should get up from the spot and slowly leave without telling other two friends and then other friends are also leaving the spot after sometime appears to be rather improbable. In any case, this should not be made a basis to disbelieve the evidence of Yudhisthir (PW-1).
14. True it is that the evidence has come that Yudhisthir (PW-1) had seen the incident from distance about 20-25 feet and time of incident was between 6.00 to 8.00 pm and there was onset of darkness, it has to be seen that Yudhisthir (PW-1) has seen his uncle assaulting his

grandfather and they are not unknown persons. He has said that it was possible for him to see as to who was assaulting whom. He has said that it was bright moon light evening.

15. Though the prosecution witnesses Johan Sahu (PW-4) and Doman Sahu (PW-6) have not supported the prosecution version of recording of memorandum statement with regard to discovery of bloodstained axe, both these witnesses admit that they had accompanied the police and the appellant upto the house of Satruhan Sahu (PW-7) wherefrom bloodstained axe was recovered. Satruhan Sahu (PW-7) also said that the police officer had come along with the accused and witnesses and axe was recovered. This corroborates the evidence of Investigating Officer (PW-17) with regard to recording of memorandum of the appellant with regard to discovery of place wherefrom the bloodstained axe was recovered. The clothes and axe have been found to be stained with blood. This has not been explained by the appellant.
16. In view of the above consideration, in our view there is no ground to interfere with the judgment of conviction and order of sentence. The appeal fails and is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge