

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.463 of 2013**

- Mohan S/o Naadi Panika Aged About 38 Years R/o Village Udiyapal, Talpara , Chowki - Bakwand , P.S. Nagarnar , Civil And Revenue Distt. Bastar C.G., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through - Sho, Of P.S. Nagarnar ,distt. Bastar C.G. , Chhattisgarh

---- Respondent/State

For Appellant	:	Smt. Savita Tiwari, Advocate
For Respondent/State	:	Shri Rajendra Tripathi, Panel Lawyer

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board**Per Manindra Mohan Shrivastava, J.****20-09-2021**

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 14-03-2013 passed by the First Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.68/2010, whereby and whereunder the appellant has been held guilty for commission of offence under Section 307 & 302 of IPC and sentenced him, as described below-

Section-302 IPC	Life Imprisonment and fine of Rs.100/-, in default of payment of fine, additional imprisonment for six months.
Section-307 IPC	Rigorous Imprisonment for seven years and fine of Rs.200/-, in default of payment of fine, additional imprisonment for six months.

2. The prosecution story, as unfolded from the impugned judgment of

conviction and order of sentence and records of the case is that an incident of murder and assault took place in Village-Udiyapal Kotwarpara, Police Station Nagarnar, in which, Kamlu, PW-7 was injured and his daughter-in-law-Kanak Bai died of injuries. FIR was lodged by Duryodhan, PW-5, husband of Kanak Bai, in which, he discloses that in the night, the appellant had come with an axe. According to the FIR, Duryodhan was called by his father-Kamlu at around 11.30 PM in the night that Mohan is assaulting him and when this informant came out and saw appellant running away with an axe in his hand and declaring that he has been given less share of land and in such a event, if Duryodhan comes forward, he would also be assaulted like his wife and father. Thereafter, the appellant-Mohan went inside in his house. When informant came back to his house, he found his wife having sustained injuries in left temporal part and his father having sustained injuries under the left shoulder said to be caused by an axe and he was bleeding and the wife fainted. According to this witness, Shiv Shankar and Lakhiram had seen this incident. On such information being received, initially, FIR at Zero number was recorded in Ex.P-11 by the Investigating Officer. The Merg was also recorded in Ex.P-10 and numbered FIR was registered as 111/2016 (Ex.P-9). Inquest over the dead body of Kanak Bai was prepared and thereafter, dead body was sent for postmortem. As Kamlu, PW-7 had sustained injuries, he was also medically examined. Dr. S. R. Korram, PW-2 examined the injuries found on the body of Kamlu, PW-7. Dr. Shiv Narayan Manjhi, PW-13 conducted postmortem and prepared postmortem report in Ex.P-21 that death was due to cardio-respiratory failure as a result of incised wound on the head and connected complications. It was also stated that the injuries were caused by a hard and blunt object, antemortem in nature and death was homicidal in nature and further that duration of injuries was within 2 to 5 days since prior to postmortem. Upon completion of usual investigation, charge sheet was filed. On the basis of material contained in the charge sheet,

learned Additional Sessions Judge framed charges against the appellant for alleged commission of offence. The appellant abjured guilt and he was put to trial. In order to prove its case, the prosecution examined as many as 14 witnesses, out of these, Duryodhan, PW-5, Shiv Shankar, PW-6, Kamlu, PW-7 and Lakhiram, PW-8 were cited as eye-witnesses of the incident. The appellant was examined under Section 313 of Cr.P.C. in respect of incriminating circumstances and evidence appearing against him. The appellant denied having committed the offence and came out with the defence that he has been falsely implicated. No defence witness was examined. Relying upon the evidence of prosecution witnesses, particularly the evidence of Duryodhan, PW-5, Shiv Shankar, PW-6, Kamlu, PW-7 and Lakhiram, PW-8, learned trial Court convicted the appellant under Section 302 & 307 of the IPC and sentenced him, as described above.

3. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant would submit that in so far as conviction of the appellant for alleged murder of Kanak Bai is concerned, it is based on unreliable and improbable statement of prosecution witnesses. Learned counsel for the appellant would submit that on the basis of statement of Kamlu, PW-7, injured, conviction of the appellant has been ordered ignoring that Kamlu and the deceased-Kanak Bai were residing in different houses separated at a distance of 41 meters. It is further submitted that the incident is said to have happened in the night after victim Kamlu went to sleep. The evidence of prosecution witnesses did not inspire confidence in so far as availability of light is concerned and on such suspicion, the appellant is being involved, because, there were certain dispute as reflected from the FIR lodged by Duryodhan, PW-5. Learned counsel for the appellant would argue that in the FIR given by Duryodhan, PW-5, it has not been recorded that appellant assaulted his wife, but, in the Court statement, he has prepared a false story that appellant

assaulted his wife. Therefore, to that extent, court statement of Duryodhan, PW-5 is not reliable. Further submission of learned counsel for the appellant is that relying upon the statement of Kamlu, PW-7 that before assaulting him in his house, the appellant had first assaulted Kanak Bai is highly improbable, because, the incident is of midnight and it is improbable that this appellant sleeping in his own house could have seen the assault on the deceased, in her house. Learned counsel for the appellant would further argue that the evidence of another villager-Lakhiram, PW-8 that he saw the incident of assault on Kanak Bai in her house by the appellant from his own house, is completely false, fabricated and wholly improbable. Thus, it is argued that only on suspicion, the appellant is being involved in the alleged commission of offence. It is argued that only on the basis that Kamlu said that he was assaulted by the appellant in the aforesaid night, no inference of appellant having assaulted Kanak Bai could be drawn. No forensic report was adduced in the evidence of the prosecution to corroborate the statement of any of the witnesses that the clothes of the appellant were not found bloodstained with the same group and origin of blood of the deceased. Lastly, it is argued that even if conviction of the appellant under Section 307 of the IPC is upheld, the appellant has undergone more than 10 years of jail sentence by now, therefore, the appellant is entitled to be released by acquitting him from the charges of commission of offence under Section 302 of the IPC.

4. On the other hand, learned State counsel argued that the evidence of prosecution witnesses, who are more than one, in so far as assault on Kamlu, PW-7 and deceased-Kanak Bai is concerned, Kanak Bai is the daughter-in-law of Kamlu and both Kamlu and Kanak bai resided in a separate room. Kamlu, PW-7 has emphatically stated that he and Kanak Bai were assaulted by the present appellant and that it was Duryodhan, PW-5, who lodged the prompt FIR and involved the appellant in the alleged commission of offence. Though, FIR

was lodged at the stage when Kanak Bai, wife of Duryodhan and his father, Kamlu, both were badly injured and therefore, while lodging FIR, he stated the details of incident to the extent and manner, in which, the appellant assaulted his wife Kanak Bai also. For that reason also, his evidence in the Court could not be discarded. He would further submit that other witnesses are natural and independent witnesses of the village, who either happened to see the incident as neighbour or they came forward on the call given by the informant. Their evidence proves arrival of the appellant in the house of Kanak Bai opening the door with the help of axe and found running away, finally entering into his own house and closing the door. Nothing has been elicited as to why they would speak false and implicate him. Therefore, the doubt, if any, in the evidence of eye-witnesses stand fully corroborated from the circumstantial evidence of appellant's arrival and departure with an axe in his hand from the house of Kamlu in the midnight.

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

6. Prosecution case rests mainly on the evidence of four witnesses namely Duryodhan, PW-5, husband of Kanak Bai, who lodged FIR, Shiv Shankar, PW-6, another villager, who saw the appellant running away from the house of the deceased-Kanak Bai and the victim himself and the evidence of Lakhiram, PW-8, another villager, who had seen the appellant coming to the house of Kanak Bai, forcefully opening the door and assaulting Kanak Bai and Kamlu and then running away.

7. The evidence on record is required to be scrutinized to find out whether their evidence with regard to incident of assault on the deceased and the victim is reliable or not.

8. The FIR of the incident was lodged promptly on 18-05-2010 at 00.30 hours by Duryodhan, PW-5. According to Duryodhan, PW-5, the incident happened around 11 to 11.30 PM in the night and FIR is lodged on 18-05-2010

at 00.30 hours, within one hour of the incident. In the FIR, the appellant has been named as the assailant, who assaulted informant's father-Kamlu, PW-7 and Kanak Bai. Where FIR is promptly lodged, there are minimal chances of false implication and fabrication to involve an innocent. The lodging of FIR in the present case has to be viewed from this angle. In the FIR, Duryodhan, PW-5 has stated that while he was sleeping in the night in the house along with his wife-Kanak Bai and children, his father-Kamlu was sleeping in another room, his father-Kamlu called for help that the appellant is assaulting him, then, this witness came out and saw the appellant running away with an axe in his hand. According to the contents of FIR, this witness asked the appellant as to why he assaulted Kanak Bai and Kamlu, to which, the appellant stated that he was not given due share of land and if this witness comes forward, he would also be assaulted like his father.

9. In the evidence, this witness, apart from stating regarding he being called by his father, he states that he saw the appellant running away with axe in his hand and also states that the appellant assaulted his wife Kanak Bai also. This part of the statement does not find place in the FIR. The FIR was lodged within one hour of the incident. However, in this FIR, he does not say that he saw the appellant also assaulting his wife. It is not an omission of some description regarding the manner, in which, the offence was committed, which was not given in the details of the FIR. His statement regarding assault on the wife of FIR informant is doubtful. Non disclosure of the appellant as the person giving assault on the wife by the FIR informant raises doubt with regard to this witness being the eye-witness of the incident of assault on wife of Duryodhan i.e. Kanak Bai.

10. Further, Duryodhan, PW-5 has given different version with regard to what happened to his father-Kamlu. According to him, after appellant assaulted his wife-Kanak Bai, his father came forward, then, he was also assaulted and

thereafter, the appellant ran away. He states that the appellant had assaulted on the head of his wife-Kanak Bai on two occasions. In the FIR also, the witness stated that when his father-Kamlu called for help by stating that he was being assaulted by the appellant, then, he came out and saw the appellant running away. Thus, according to the FIR, this witness had not actually seen the appellant assaulting his father, but, in his Court evidence, he improves and started claiming to be an eye-witness regarding assault on his father. Thus, we find that the manner, in which, the incident happened and further with regard to person, on whom, the appellant assaulted, the story in the FIR and the evidence of this witness are contradictory. However, evidence of presence of appellant-Mohan in the house of this witness and in the house of his father-Kamlu, is reliable, because, according to this witness, Mohan was seen in the house in the night with the axe in his hand. To that extent, the presence of the appellant, the evidence of this witness is reliable. This witness has been cross-examined and attempt has been made to elicit that there was no light present at the spot, which has been denied. This witness admits that there was no arrangement of street light as also this witness states that there was no arrangement of light in front of the house.

11. Shiv Shankar, PW-6 has deposed that Duryodhan called by stating that Mohan assaulted his father and wife, then, he came out and went to the house of Duryodhan and saw Mohan running away from the house of Duryodhan and thereafter, went towards his house and then, his wife and children brought him inside and door was closed.

12. As far as availability of light is concerned, this witness in his cross-examination states that there was no street light arrangement and every villager keeps lights on in front of their house. This witness admits that he had gone to sleep approximately 7 to 8 PM. This witness states that he does not know as to who assaulted Kamlu and Kanak Bai, but, an axe was seized from the house of

Kamlu in his presence.

13. One of the victim-Kamlu, father of Duryodhan, PW-7 has stated that when he was sleeping in his house around 8 to 9 PM, the appellant came to his house. The appellant-Mohan, holding an axe in his hand, opened the door forcefully and assaulted this witness-Kamlu under the shoulder. This witness called for help, then, his son-Duryodhan, Shiv Shankar and Lakhiram arrived at the spot and Mohan ran away. According to this witness, before assaulting him, the appellant-Mohan also assaulted his daughter-in-law-Kanak Bai on the head. Suggestion that lights of the room were switched off, where he was sleeping, has been denied. He states that he and Kanak Bai were sleeping in different houses. Suggestion that he had not seen the person, who assaulted Kanak Bai, has been denied. As far as assault on this witness by the appellant with the help of axe is concerned, nothing could be elicited in the cross-examination to disbelieve this part of the testimony. He has been medically examined also and Dr. S. R. Korram, PW-2 has examined the injuries and his evidence clearly shows that this witness sustained injury on his left shoulder and it was bleeding. This witness proved in his report, Ex.P-6 that the injuries sustained by Kamlu could be caused by an axe. The evidence of Kamlu, PW-7, in so far as assault on him, is concerned, cannot be doubted and it is proved that the appellant-Mohan had assaulted Kamlu in the night.

However, the evidence of this witness, in so far as assault by the appellant on his daughter-in-law-Kanak Bai is concerned, is doubtful.

14. Even according to the prosecution, in the night of incident, Kamlu, father-in-law of Kanak Bai was sleeping in another house and his daughter-in-law Kanak Bai was sleeping in other house with her husband. This is what has been stated by the witnesses including Kamlu, PW-7 and Duryodhan, PW-5. We find out that the room, in which, Kamlu was sleeping and another room, in which, his daughter-in-law-Kanak Bai was sleeping, is not adjacent to each other, but, we

find that from the spot map prepared by the Patwari, R. Ramaiyya, PW-1 that house of Kamlu is situated at a distance of 41 meters from the house of Kanak Bai, where she used to reside with her husband. It was stated in his evidence that there was no boundary wall between two houses or both houses are nearer to each other. It was not stated that the incident happened in a manner that the victim-Kamlu along with family members came out and the appellant opened assault. According to his evidence, kamlu was sleeping in his house and the appellant came and opened assault. Statement of this witness that before assaulting him, the appellant also assaulted Kanak Bai in the midnight, the daughter-in-law, who otherwise was sleeping in another house, appears to be doubtful.

15. Lakhiram, PW-8, who is the neighbour, has deposed that he came out from his house, after taking meals around 7 to 8 PM and saw Mohan going towards the house of Kanak Bai, holding axe in his hand, which he was witnessing from his house. It was stated that Mohan went up to the house of Kanak Bai and opened the door forcefully with the help of axe and then assaulted Kanak Bai on her head. Duryodhan thereafter came and gave a call to him, then, he reached there and saw Mohan running away after assaulting Kamlu, thereafter, he, Duryodhan and Shiv Shankar chased Mohan. Mohan entered into his house and closed the door. In his cross-examination, he states that his house is situated at about four steps away from the house of Kamlu. Suggestion that it was not possible to see anything in the house of Kanak from the place, where he was standing, has been denied. He admits that when Duryodhan called him for help, then he went inside the house. He also admits that he had no talks with the person, who was running away. He further admits that he had chased Mohan. Suggestion that he, however, could not recognize the person, who was running towards the house of Mohan, has been denied. This witness has emphatically stated that it was Mohan, who was running away.

The evidence of this witness to the extent that he could see the appellant going along with axe in his hand and reaching the house of Kanak Bai and forcefully opening the door with the help of axe, appears to be reliable, but, the other part of the evidence of this witness that the appellant went inside the house of Kanak Bai and assaulted her, is doubtful. The house of this witness is nearer to the house of Kamlu. Therefore, it is not possible for this witness to see what was going on inside the house of Kanak Bai, but, at the most, this witness could see the appellant going along with an axe towards the house of Kanak Bai, opening the door forcefully with the help of axe. In short, what happened inside the house, it was wholly improbable for this witness to see. Then, this witness was called by Duryodhan, thereafter, he went inside and saw Mohan running away. This witness in his cross-examination has reiterated this fact, making evidence of this witness reliable, in so far as presence of appellant with the axe in his hand in the night, in the house of Kamlu and Duryodhan is concerned.

16. A conjoint reading and analysis of the evidence of aforesaid witnesses render doubtful as to whether any witness actually saw the appellant assaulting Kanak Bai in the night. However, it is proved beyond doubt that in the night of incident, the appellant had come to the house of Kamlu and assaulted Kamlu. It is also proved from the evidence of prosecution witnesses that the appellant was seen going towards the house of Kanak Bai in the night and at that time, he was holding axe in his hand and opened the door with the help of axe. It is also proved beyond doubt that it was the appellant-Mohan, who was present in the house of Kamlu and Kanak Bai in the night. Lastly, it was seen that the appellant was running away from the house of Duryodhan and going towards his own house and closing the door.

17. In view of the proved facts and circumstances of the case and the evidence of the prosecution witnesses, as discussed above, it leaves no manner of doubt that the appellant came and opened the door of the house of

Kamlu and assaulted him in the left shoulder.

18. Even though, there is a doubt in the testimony of witnesses of they having actually seen the appellant assaulting Kamlu and Kanak Bai, the established circumstances, as analyzed above, leads to inference that in all probability, it is the appellant and the appellant alone, who had killed the deceased. Arrival of appellant in the house of Kanak Bai is proved, breaking open the door with the help of axe is also proved. It is also proved from the evidence of prosecution witnesses that the appellant was running away from the house of Kamlu and Kanak Bai and came back to his own house. It is an important link because in the same night as also at the same time, the appellant had assaulted Kanak Bai and Kamlu both, who resided separately at a distance of 41 meters.

19. All these facts and circumstances form a complete chain of circumstances to come to the conclusion that in all probability, it is the appellant and the appellant alone, who must have killed the deceased-Kanak Bai.

20. In the result, we do not find any good ground to interfere with the impugned judgment of conviction and order of sentence. The appeal, is therefore, dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor)
Judge