

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 547 of 2016**

Barsa Hirma S/o Aayatu, aged about 55 years, Occupation-
Agriculturist R/o Gamawada, Jampara, P.S. Bhansi, District South
Bastar Dantewada (CG)

---- Appellant**Versus**

State of Chhattisgarh Through Station House Officer, Police Station
Bhansi, District South Bastar Dantewada (CG)

---- Respondent

For the Appellant :- Mr. Sudhir Verma, Advocate
For the respondent :- Mr. Ravish Verma, Govt. Advocate

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

Judgment on Board**By Manindra Mohan Shrivastava, J.****27.07.2021**

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 25/02/2016 passed by the Sessions Judge South Bastar, Dantewada (C.G.) in Sessions Trial No. 49/2009, whereby the appellant has been held guilty for commission of offence under Sections 302 of the IPC and sentenced him to undergo for life imprisonment.

2. Facts of the case, in brief, are that Somaru (PW4), brother of the Sankuram (deceased) lodged a report in the police station alleging therein that the deceased was assaulted with the help of knife by the appellant, resulting in cut in the neck, due to which, the deceased died. After recording FIR and Merg intimation, the police proceeded to the scene of occurrence. Dead body was found lying in the house of the deceased. Inquest on the dead body was prepared in presence of the witnesses. It was sent for postmortem which was conducted by Dr. Prabhakar Rao (PW6), who upon examination on internal and external injuries, found cut injury in the neck and opined that cause of death seems to be syncope and asphyxia. From the spot of the incident, a knife was seized.

Further case of the prosecution is that during investigation, the blood stained cloths were seized from the possession of the appellant. Blood stained soil, simple cloths, clothes of the appellant, clothes of the deceased appearing to be blood stained and the knife, were all sent for Forensic examination. Upon completion of investigation, a charge-sheet was filed on the basis of which, the learned trial Court framed charges for commission of offence under Section 302 of the IPC. The appellant having abjured guilty was put on trial and the prosecution, in order to prove its case, examined as many as 11 witnesses including eyewitness namely Budhram (PW1), Kalmu (PW9) and Ku. Mangali (PW10). In addition, the prosecution also led in evidence, the FSL

report confirming blood in the clothes of the appellant, clothes of the deceased, knife and the soil seized from the spot. Relying mainly on the evidence of eye-witnesses, the appellant was found guilty for the commission of offence, not satisfied with the explanation offered by the appellant in his examination under Section 313 of the Cr.P.C. There was no defence witness examined by the appellant/accused.

3. Learned counsel for the appellant would argue that though the prosecution has come out with number of eye-witnesses, the manner in which the eye-witnesses have deposed, particularly what has been elicited in their cross-examination, present is a case of false implication. He would argue that Kalmu Mangal (PW9) has clearly stated in his cross-examination that when the death took place, it was decided in the meeting of village panchayat that someone has to be involved so that the police may not harass all the villagers and since the appellant was troublesome person causing trouble to all in the villages, he was implicated. He would submit that this statement of prosecution witnesses raises serious cloud and doubt on the testimony, not only of this witness, but other witnesses who have been examined as eye-witnesses of the incident. He would next submit that as far as Budhram (PW1) is concerned, his evidence, as has been stated in the cross-examination, reveals that the involvement of the appellant was made on the instance of the brother of the deceased namely Somaru who has lot of influence in the village.

He would submit that as far as Ku. Mangli (PW10-) is concerned, her statement with regard to place of incident where the deceased was assaulted is at variance with what has been stated by Budhram (PW1) and her statement also shows that she was not present at the spot. Learned counsel would argue that even Budhram (PW1) has stated that at the time when the deceased died, Pandru, Kamlu, Mangali, Balram and Sukhram were in their respective houses and therefore, in view of this statement, the evidence of Kalmu (PW9) and Ku. Mangali (PW10) are liable to be disbelieved as being concocted. It has also come in evidence that some dispute was going on between Somaru and the appellant, but all the witnesses of prosecution have denied that there was any kind of dispute between them, therefore, it is a case of false implication. During the course of argument, it was also highlighted that recovery of blood stained shirt from the appellant is also quite doubtful that such a recovery was from the possession of the appellant.

4. On the other hand, learned State counsel would submit that the conviction of the appellant is founded on the eye-witnesses testimony of the incident given by Budhram (PW1), Kalmu (PW9) and Ku. Mangali (PW10) and they have clearly stated that the appellant had assaulted the deceased with the help of knife in the neck. He would argue that though the learned trial Court has not considered, there is evidence of extra-judicial confession also, as deposed by Pandaru (PW7) and further, the eye-witness account

of the incident is also corroborated from presence of blood in the cloths of accused and extra-judicial confession. There is nothing to show that extra-judicial confession was extracted by extending any threat or coercion and such suggestion has been denied.

5. We have considered the submissions of learned counsel for the parties and gone through the record and impugned judgment.
6. The conviction of the appellant is founded mainly on the eyewitness account of the incident given by as many as three prosecution witnesses namely, Budhram (PW1), Kalmu (PW9) and Ku. Mangli (PW10). In addition, the trial Court has found that the soil seized from the spot, clothes of the deceased, clothes of the accused and knife which was alleged to be used in the incident, was found stained with blood, though the group and origin was not disclosed in the FSL report.

Budhram (PW1) has deposed that while he had gone to the house of Peda during festival along with Manglu, there he had gone to sleep. In the courtyard behind the house of Peda, Barsa Sanku, the deceased were also sleeping. This witness further stated that the appellant came there and cut the neck of the deceased with the help of knife at about 3 pm in the afternoon. He had seen the appellant assaulting the deceased and there was cut injury in the neck of the deceased. Thereafter, the appellant left the place. The incident was informed to Peda. In the cross-examination, it has been elicited that the accused was intoxicated on the date of incident, and even this witnesses had consumed

locally manufactured liquor. He also admitted that other persons namely Somaru, Pandaru, Kamlu, Mangli, Balram and Barsa had also consumed locally manufactured liquor. In Panchayat meeting held after death of Santu, it was stated by Somaru that a report has to be lodged against the appellant. He has admitted that earlier also, the appellant had entered into quarrel and was sent to jail. He further stated that the report was lodged by Somaru as decided in the Panchayat meeting. Suggestion that he has not seen the incident, has been denied. Though, he has admitted that at the time of festival, he was in the house, he also denies that at that time, when the deceased died, he was inside the house. He himself states and reiterates that at the time of incident, he was in the house of Peda. A suggestion was given to this witness, to which, he stated that at the time when the deceased died, Pandaru, Kamalu, Mangali, Balram, Sukhram were in their respective houses. The suggestion that it was agreed amongst all that the accused is to be kept in jail, and therefore, the statement is being made, has been denied. He admitted that the accused had some land dispute with Somaru though no dispute with the deceased. He admitted that in the Panchayat meeting, Somaru stated that a report is to be lodged against the accused and he has to be sent to jail and according to such resolution taken in the Panchayat, he had informed. While this witness admits that in the Panchayat meeting, Somaru had said that a report is to be lodged against the appellant and thereafter, the report was lodged as per

the decision of Panchayat, at the same time, the statement of this witness that he had actually seen the appellant assaulting the deceased, had remained intact as even in the cross-examination, this witness has been emphatic on this aspect and the suggestion that he had not seen the incident, has been denied. There is nothing in the evidence of this witnesses that Somaru had stated that the appellant is to be falsely implicated in this case. As far as Kalmu (PW9) is concerned, though this witness states that he had seen the incident, his cross-examination renders his statement unreliable because he says that in Panchayat, it was decided that someone is to be implicated and as the appellant was troublesome person in the village, it was decided to implicate the appellant.

7. Ku. Mangli (PW10), daughter of Peda in whose house, the incident is said to have happened, has also supported the prosecution story that she had seen the appellant assaulting the deceased. In her cross-examination, it has been elicited that she was not inside the house and the distance from which, the incident was witnessed was about 10 meters or 10 steps.
8. Counsel for the appellant highlighted the contradiction in the statement of this witness and Budhram (PW1) with regard to place where incident happened. He would submit that according to Budhram (PW1), the incident happened when the deceased was sleeping in the Courtyard (Badi) of the house of Peda, whereas, according to Ku. Mangli (PW10), daughter of Peda, the deceased

was sleeping in their house. He would submit that the statement of this witness is a concocted one.

9. According to Budhram (PW1), the deceased was sleeping in the Badi of Peda. The Badi being a enclosed premise and attached to a particular house, is actually being referred to by Ku. Mangli (PW10), and therefore a suggestion that she was inside the house has been denied. This is not a contradiction which renders unreliable the testimony of Ku. Mangli (PW10) with regard to she witnessing the incident. There is nothing on record which shows that she is falsely implicating the appellant in the alleged commission of offence.

Whether the statement of Kalmu (PW9), as elicited in the cross-examination, should cut across the entire case of the prosecution and render doubtful being a case of false implication, falls for consideration.

10. The prosecution case, as far as eye-witnesses account is concerned rests on three witnesses, Budhram (PW1), Kalmu (PW9) and Ku. Mangli (PW10). As far as Budhram (PW1) and Ku. Mangli (PW10) are concerned, whatever suggestions with regard to false implication was given, have been denied. But it is Kalmu (PW9) who is saying that a decision was taken in the Panchayat meeting to falsely implicate the appellant. Therefore, in such a situation when a report was lodged by the brother of the deceased, namely Somaru and evidence has come on record that Somaru had some dispute with the appellant and that in the past also, and the

appellant had assaulted the uncle of Somaru (deceased also) and was sent to jail, this Court considers it necessary to find corroboration and for that purpose evidence of Pandaru (PW7) and Balram Bhaskar (PW8) becomes very important.

11. Pandaru (PW7) has stated that after the incident, the appellant was missing and a meeting was held in the village. On the next day, again meeting was held and at that time, the appellant's son namely Boti had traced the appellant and brought him in Panchayat. The appellant was holding an iron knife and had stated that he had killed the deceased with the help of that iron knife. The cross-examination of this witness states that at about 22-23 persons were present and may be about 100 persons. As far as the statement of this witness with regard to extra-judicial confession is concerned, the same has remained uncontroverted.
12. Balram (PW8) has also stated that a meeting was arranged where the appellant was asked to come and he had confessed upon being inquired by the Panchaas that he had killed the deceased by assaulting with a knife. A suggestion that the extra-judicial confession was extracted by exerting pressure has been denied.

Highlighting admission in para 13 of cross-examination of this witness that the appellant was brought by 3-4 persons in the meeting, it is argued that he was threatened and pressurized. This argument cannot be accepted because in the very next line in the suggestion that he was forcibly brought by the persons, has been denied. It has come in evidence that when the accused was

brought in the meeting, he was in drunken condition. Therefore, merely because 3-4 persons had brought him in the meeting, without any other evidence, it cannot be presumed that whatever was stated by the appellant in presence of villagers was not voluntary but was extracted by threat or assault on him by the villagers.

13. The evidence of extra-judicial confession therefore appears, to be voluntarily. This corroborates the evidence of eye-witness Budhram (PW1) and Kamlu (PW9) regarding they having seen the incident of assault on deceased by the appellant with the help of knife.
14. The prosecution has also come out with the evidence of shirt of the appellant found stained with blood. Though group and origin is not known, but in this circumstances, if blood is found on the cloth of the appellant, he could atleast have explained how his clothes were stained with blood which he has failed to explain in his examination under Section 313 Cr.P.C. This failure to explain provides additional link.
15. It would thus be seen that the evidence against the appellant is not only the testimony of the eye-witnesses, but also the evidence of extra-judicial confession and blood stained clothes. Therefore, doubt if any created, from what has been stated by Kamlu (PW9) in his cross-examination is cleared and it can be safely concluded that prosecution has succeeded in proving its case beyond reasonable doubt.

16. In the result, the appeal fails and it is dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge

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