

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.1297 of 2015**

Kushaldas S/o Itwaridas Bandhe Aged About 40 Years R/o Village
Dokerpali, Thana Pithoura, District Mahasamund, Chhattisgarh

---- Appellant**Versus**

State Of Chhattisgarh Through Police Station Pithoura, District
Mahasamund Chhattisgarh

....Respondent

For Appellant	:	Mr. Alok Kumar Dewangan, Advocate
For State	:	Mr. Lalit Jangde, Dy.G.A.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment On Board by Manindra Mohan Shrivastava, J.****24/06/2021**

Heard.

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 03.05.2008 passed by Sessions Judge, Mahasamund (CG) in Sessions Trial No.16/2008, whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below :

Conviction	Sentence
Under Section 302 of IPC	Life imprisonment with fine of Rs.1000/- and in default of fine further R.I. for 3 months.

2. The prosecution story, as unfolded from the impugned judgment and records of the case, is that a morgue intimation was given in the Police Station by one Thanuram (PW1) on 17.11.2007 at about 00:15 hrs. that his nephew Preetam Dhidhi was assaulted and killed by the appellant as seen by informant's wife Laxmibai (PW2). On receipt of such intimation, morgue enquiry was made, offence was registered on the report of Thanuram (PW1) on that very day in Ex.P/2. In the inquest report prepared by Investigating Officer after giving notice to the

witnesses, the dead body was found in the house of Thanuram (PW1). Dead body was sent for postmortem and postmortem was conducted by Dr. Dinesh Kumar Sinha (PW6) who, upon examination of the dead body, prepared postmortem report in Ex.P/11. He opined that cause of death was cardio respiratory failure as a result of excessive hemorrhage. The doctor also opined that death was homicidal in nature and caused between 24 to 36 hrs. of the examination. The appellant being the prime suspect and having been named at the very first instance, was taken into custody, his memorandum was recorded wherein it is said that he disclosed that he killed the deceased by an axe. Further case of the prosecution is that on the basis of the memorandum of the appellant, bloodstained axe and his cloths were also seized and were sent for forensic examination. On the basis of the charge-sheet placed before the Trial Court, charges were framed for commission of offence under Section 302 of IPC. The appellant having abjured guilt, was put to trial. In order to prove its case, prosecution examined as many as 8 witnesses which also included one Laxmi Bai (PW2), who claims to be the eyewitness of the incident. Thereafter appellant was examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him in the evidence led by the prosecution. He denied having committed the offence and said that he has been falsely implicated. No defence witness was examined. According to his defence as disclosed in 313 Cr.P.C. examination, he disclosed that he was the Secretary and a conspiracy was hatched against him by Vijay Dewangan, husband of Sarpanch and Hira Singh Panch and Thanuram (PW1), who have got him earlier also implicated in a misappropriation case and then in the case of murder.

3. Learned Trial Court however relying upon the prosecution evidence particularly the eyewitness account given by Laxmi Bai (PW2) held the appellant guilty of commission of offence and sentence described above.

4. Assailing correctness and validity of impugned judgment of conviction and order of sentence, learned counsel for the appellant argues that present is a case where instead of registering offence, the resident of the house wherein, the dead body was found, the appellant has been falsely implicated who was next door neighbour of Thanuram (PW1). It is argued that according to police, dead body of Preetam Dhidhi was found in the house of Thanuram (PW1). Therefore, it was for Thanuram (PW1) to explain but he came out with the false case that the appellant had assaulted the deceased. He would further submit that in the entire evidence led by the prosecution except Vijay Kumar (PW5) nobody has stated regarding any kind of enmity or dispute between the appellant and the deceased. Even

Thanuram (PW1) and his wife Laxmi Bai (PW2) have not stated anywhere why the appellant would kill Preetam Dhidhi though he was good friend of him and the evidence has come on record that at times both of them used to sleep together also.

5. Next submission of learned counsel for the appellant is that in the present case, the dead body having been found in the house of Thanuram (PW1), the evidence of Thanuram (PW1) and his wife Laxmi Bai (PW2) ought not to be relied upon unless there is material corroboration to the evidence. Though the cloths owned by the appellant and axe allegedly seized from the possession of the appellant, were sent for FSL report but no FSL report has been led in evidence before the Trial Court to prove that the axe and cloths of the appellant was stained with the blood of the same group and origin and that of the deceased. In the absence of such corroboration, the appellant ought to have been given benefit of doubt.

6. On the other hand, learned counsel for the State would argue that the conviction is founded on reliable testimony of Laxmi Bai (PW2), who has actually seen the incident of assault. He would further submit that her statement is corroborated by evidence of Thanuram (PW1), who has stated that he has seen the appellant at the spot with an axe before he ran away. Learned counsel for the appellant would submit that version of Thanuram (PW1) and Laxmi Bai (PW2) are also corroborated from the evidence of independent witness Gulab Das (PW3), who has also stated regarding alarm raised by Thanuram (PW1) and Laxmi Bai (PW2), they reached at the spot and finding the appellant standing in front of his house with an axe in his hand. Learned State counsel would further argue that independent witnesses of seizure have supported the prosecution case with regard to recording of memorandum and recovery of bloodstained axe from the house of the appellant. He would further point out that Vijay Kumar (PW5) has come out with a categoric statement that there was an illicit relation between the deceased and the wife of the appellant and that was the motive appellant to kill the deceased. It is submitted that the doubt cast on Thanuram (PW1) and Laxmi Bai (PW2) for the reason that the dead body was found in their house, does not stand because they had taken immediate steps not only to raise alarm to call neighbour but also take injured Preetam Dhidhi to hospital where he was declared dead. Nothing could be led by the defence nor emerged from the evidence of the prosecution that Thanuram (PW1) and Laxmi Bai (PW2) had strong motive to kill their own nephew. The axe was seized from the possession of the appellant. Therefore, the conviction of the appellant does not warrant any interference.

7. We have heard learned counsel for the parties and perused the records and the impugned judgment.

8. The conviction of the appellant is mainly founded on the eyewitness account by Laxmi Bai (PW2). In the present case, the morgue intimation and FIR both were lodged at the earliest opportunity by Thanuram (PW1). Thanuram (PW1) in his evidence has clearly stated regarding lodging of morgue intimation and FIR in the Police Station which have been marked as Ex.P/1 and P/2 respectively. The Investigating Officer has also clearly supported that he had recorded the morgue intimation and FIR at the instance of Thanuram (PW1). These two informations proved that right from the beginning, since the incident, appellant was involved in the alleged commission of offence as the assailant and these information lodged by Thanuram (PW1) are based on what has been informed to him by his wife Laxmi Bai (PW2). Laxmi Bai (PW2), sole eyewitness of the case, has deposed that in the night of 16th November, while she was sleeping at home with her husband and two children, her mother-in-law was sleeping in another room with another children and in that night, Preetam Dhidhi (the deceased) had also slept in the varanda. In the night, when they were preparing to go to bed, appellant came in stating that as there are number of guest in his house, he would sleep in the house of this witness and then appellant went to sleep along with her nephew Preetam Dhidhi (the deceased). This witness has further deposed that when she came out in the night to respond to call of nature, she saw that the appellant was giving assault with the help of an axe on Preetam Dhidhi and she raised alarm. Thereafter her husband and mother-in-law came out and having seen all of them, the appellant ran away from the spot. She has deposed that the appellant had caused injury on the neck and cheek of the deceased. Further deposed that when her husband raised alarm, Villager Gulab Das and other persons had also arrived at the spot and Preetam Dhidhi was taken to hospital in a vehicle where he was declared dead.

She was subjected to detailed cross-examination and denied suggestion that Preetam Dhidhi and Kushal Das had slept by switching off the light. She has denied suggestion that she could not see the incident as the light was switched off. A suggestion that it was not visible to see any activity across the wall in the varanda because of the height of the wall has been specifically denied. She has reiterated that out of fear, she did not go to the spot but raised alarm and Kushal Das, the appellant ran away.

Therefore, the evidence of this witness as eyewitness of the incident, it is reliable as she has remained firm in the cross-examination and no material contradiction or omission could be elicited. There is nothing her cross-examination why she would falsely implicate the appellant. No suggestion given to her that either she or her husband Thanuram (PW1) murdered Preetam but the suggestion which has been denied is that she has not seen the incident and that statements are being given to falsely implicate the appellant in conspiracy with Sarpanch of the village.

9. Thanuram (PW1) husband of eyewitness has corroborated the statement to the extent of presence of the appellant soon after the incident while stating that in the night, the appellant had come to his house to stay and sleep stating that there are guest in his house. Thereafter he slept with Preetam Dhidhi in the night. He further deposed that when his wife raised alarm that Kushal Das was assaulting his nephew, he got up and rush to the spot and found that appellant was holding an axe which was stained with blood and started running away. He has further stated that when he raised alarm that appellant is running away, Gulab Das and Gadaram arrived at the spot and they had also seen the appellant running away. He then states that he along with Gulab Das and Gadaram went to see Preetam Dhidhi who was lying on the cot and there was a cut injury in his neck and blood was oozing out thereafter vehicle was arranged and Preetam was taken to hospital where he was declared dead. He has categorically stated that he had seen the appellant running away from the spot with an axe. He has been subjected to cross-examination but nothing could be elicited to disbelieve the testimony. He has stated that the appellant frequently used to come to his house and relation between the appellant and the deceased were cordial and earlier also at times they used to sleep together. A suggestion that at the time of incident, the appellant had lost his mental balance has been denied. He admits that he had actually not seen the incident of murder but he saw the appellant running away. He has further stated that the place where the incident happened, there was enough light and the suggestion that at the time of incident, light was switched off, has been denied. A suggestion that varanda is not visible, has been denied and he has emphatically said that from inside, "Parchhi" (varanda) is clearly visible to see as to who was sleeping. A suggestion given to this witness which has been denied is that in conspiracy with Sarpanch, the appellant has been falsely implicated. In the cross-examination of this witness also, no suggestion has been given that Thanuram himself is involved in the murder of his nephew Preetam and appellant is being falsely implicated.

10. Thus from the evidence of the aforesaid two witnesses, it is proved that it is

the appellant who assaulted the deceased with the help an axe and thereafter he ran away with the axe.

11. Gulab Das, independent witness, has been examined as by the prosecution who has deposed that in the night while he was sleeping in his house, Thanuram (PW1) raised alarm that the appellant is running away after killing his nephew Preetam Dhidhi whereafter, he came to the spot and saw that Preetam Dhidhi was lying there, there was an injury in his neck which was bleeding. He further deposed that he had also seen the accused, who was near his house at that time but later on, went inside the house and he was also holding an axe in his hand. In the cross-examination, states that the incident happened around 9 to 10 p.m. in the night. He further states that house of the accused is next to the house of Thanuram (PW1) and his house is next to that of accused. He further reaffirmed that he had not seen the accused assaulting but he had seen the accused near his house. He has also stated that the place where the incident occurred, there was light available.

12. Sudama Ram Bariha (PW4), Patwari who prepared spot map has stated that Varanda (parchhi) was surrounded by 5 to 6 feet wall over which it could be seen inside and outside the same and suggestion that if someone looks from inside, varanda part could not be seen, has been denied.

Another important witness of the prosecution, Vijay Kumar (PW5), who has not only proved memorandum and seizure from the appellant but has also disclosed that Kushal Das informed him that Preetam Dhidhi was having illicit relation with Mangatin Bai, wife of Kushal Das and therefore, when guest had come to his house, he came to the house of Preetam Dhidhi and then killed him. This witness has proved memorandum and recovery of axe from the house of the appellant on the basis of the memorandum.

Though, most of the prosecution witnesses do not come out to spell out as to what was the motive for the appellant to kill the deceased, Vijay Kumar (PW5) an independent witness and villager of the same village has stated that he was informed by Kushal Das the appellant that the deceased Preetam Dhidhi was maintaining illicit relation with his wife. This discloses why the appellant had strong motive to murder Preetam Dhidhi.

13. In the present case, FSL report has not been received and therefore learned counsel for the appellant highlighting this lapse on the part of the

prosecution would submit that as dead body was found in the house of Thanuram (PW1) and Laxmi Bai (PW2), it would not be safe to convict the appellant on the evidence of Thanuram (PW1) and Laxmi Bai (PW2) unless there is independent corroboration to the statement of Laxmi Bai (PW2) as eyewitness and Thanuram (PW1) that the appellant killed the deceased.

14. The said argument of learned counsel for the appellant deserves rejection because firstly though Preetam Dhidhi happened to be the nephew of Thanuram (PW1) and Laxmi Bai (PW2), nothing has been brought in evidence from the side of the defence that they had any motive to kill the deceased. The deceased was their relative. True, it is that the dead body of Preetam Dhidhi was found in the house of Thanuram (PW1) and Laxmi Bai (PW2) but then in the present case, the conduct of Thanuram (PW1) and Laxmi Bai (PW2) is that as soon as they saw the dead body, they raised alarm and neighbour Gulab Das had arrived at the spot and thereafter, Preetam Dhidhi was taken to the hospital for immediate treatment. Had there been any involvement in the alleged commission of offence, in all probability, Thanuram (PW1) and Laxmi Bai (PW2) would have attempted to dispose off the body without bringing it to the notice of anybody rather than raising alarm.

15. Further more, the defence which is being now developed before this Court is only an afterthought because no suggestion has been given to Thanuram (PW1) and Laxmi Bai (PW2) that the incident was committed by them individually or together by killing their own nephew in the house. No such suggestion has been given. The suggestion of false implication stands alone without imputing any allegation on Thanuram (PW1) and Laxmi Bai (PW2).

16. In the defence statement made during the course of examination under Section 313 Cr.P.C. also, the appellant has not come out with any such story but has stated that a conspiracy was hatched against him by sarpanch, up sarpanch and panchs including Thanuram (PW1) under which, he was falsely implicated in an allegation of misappropriation followed by false implication in the case of murder.

17. Gulab Das (PW3) is an independent witness and who is the next door neighbour of the appellant as stated by him in the evidence. This witness has clearly stated that when Thanuram raised an alarm in the night, he reached to the spot and saw that Preetam Dhiidhi was assaulted and bleeding and has categorically stated that at that time, he saw the appellant near his house and he

was holding an axe. This part of evidence has remained uncontroverted. The evidence of this witness is that house of the appellant is situated next to the house of Thanuram (PW1) that means, Thanuram (PW1) and appellant are next door neighbour. The appellant and Gulab Das are also next door neighbour. In the light of this fact, stated by Gulab Das, it assumes great importance that when Gulab Das reached at the spot, the appellant was found near the house that means the appellant was very much present there. Not only this, this witness stated that the appellant was also holding an axe. In the cross-examination, no suggestion has been given that appellant was not holding any axe or that he had come to save some one. Both Thanuram (PW1) and Laxmi Bai (PW2) have stated in their evidence that the appellant was holding an axe.

18. True it is that the FSL report has not been received and it would have been better for the prosecution to obtain and lead evidence to FSL report but we find from the evidence of Vijay Kumar (PW5) the witness of memorandum and seizure and the evidence of doctor Dinesh Kumar Sinha (PW6), who conducted postmortem report and also examined the clothes and the weapon that the axe and the clothes of the appellant was found bloodstained. Thus their impression upon seeing these articles that it was stained with blood but in the absence of FSL report, it cannot be definitely said as to what was the origin and group but to that extent, the evidence is relevant and only support the case of prosecution as against the appellant because seizure of an axe from the house of the appellant has been proved from the reliable evidence of Investigating Officer corroborated from the evidence of seizure witness Vijay Kumar (PW5).

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

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge