

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1371 of 2016

Kunjam Poska @ Puska S/o. Shri Kunjam Gundi, aged about 60 years,
occupation Agriculture, R/o.village Muriyapara Pamed, Police Station
Pamed, District Bijapur (CG)

---- Appellant

Versus

State of Chhattisgarh Through Station House Officer- Police Station
Pamed, District Bijapur (CG)

---- Respondent

For the Appellant :- Mr. Amit Singh, Advocate
For the respondent :- Mr. Lalit Jangade, Dy. GA

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

Judgment on Board
By Manindra Mohan Shrivastava, J.

08.07.2021

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 05.09.2016 passed by the Sessions Judge South Bastar Dantewada, in Sessions Trial No. 203/2007, whereby and whereunder the appellant has been held guilty for commission of offence under Sections 302/34 IPC and sentenced him to undergo for life imprisonment.
2. According to the prosecution case, appellant and co-accused Kumjam Lakhma (since deceased) murdered Kattam Deva on

21.02.2007 by assaulting him with a knife. Next day i.e. on 22.02.2007, FIR was lodged on the police station at 8.30 PM by Kattam Sunita (PW-1) daughter of the deceased, wherein it was disclosed that the appellant and co-accused assaulted Kattam Deva, due to which, Kattam Deva died. Postmortem (Ex.P-16) was conducted by (PW-8) and according to the doctor, there were number of stab injuries which resulted in death. The prosecution case rested on eyewitness account of the incident given by Kattam Sunita (PW-1) the daughter of deceased, Kattam Parwati (PW-5) the wife of the deceased and Kattam Mangabeni (PW-6), the daughter of the deceased. Learned trial Court, relying on the medical evidence of homicidal death due to stab injuries and the eyewitness account of the incident given by Kattam Sunita (PW-1), Kattam Parvati (PW-5) and Kattam Mangabeni (PW-6), convicted the appellant.

3. Learned counsel for the appellant raised two fold arguments. The first submission of learned counsel for the appellant is that two persons are alleged to be involved in the incident of assault namely the present appellant and other co-accused Kunjam Lakhma, who, later on, died. He would argue that in the present case, the manner in which the incident happened and the criminal overt act as alleged, assault with the help of knife could not be proved to be given by the present appellant but the co-accused, who, later on, died was actually involved in the assault and the appellant is being involved only because the appellant happened be father of co-accused. The other submission of learned counsel

for the appellant is that the witnesses of the prosecution are all interested being the wife and the daughters, therefore, the conviction ought not to be rested without independent corroboration. It is also argued that evidence of PW-1 (Kottam Sunita) does not inspire confidence in view of her statement in the cross-examination that she could not see the incident standing at a distance of 200 ft and it being a dark night at about 9.00 PM. The other two witnesses have given statement which are highly improbable and they being interested witnesses, it would not be safe to convict the appellant on the basis of such weak evidence.

4. On the other hand, learned State counsel would argue that in the present case conviction is founded mainly on the eyewitness. He would submit that the FIR was also lodged on the very next day in which the appellant was involved on the basis of the report lodged at the instance of one of the eyewitness of the case. He would further submit that even if, the evidence of Kattam Sunita (PW-1) is discarded, the evidence of Kattam Parvati (PW-5) and Kattam Mangabeni (PW-6) are natural and reliable and nothing could be elicited in their cross-examination to disbelieve their testimony, therefore, learned trial Court has rightly relied upon their statement to hold the appellant guilty.
5. We have considered the submission 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 to the incident. The incident is said to have occurred at about 9.00 PM on 21.02.2007 and on the next day, at

about 8.30 AM, FIR was lodged by Kattam Parvati (PW-5) wife of the deceased and so recorded by K.B. Singh (PW-7). The contents of the FIR are to the effect that in the night, the appellant and the co-accused had come to the deceased and started quarreling. There existed disputed with regard collection of Rs. 100/- in connection with water supply facility. The FIR states regarding assault on Kattam Deva, It further records that while Kunjam Lakhma caught hold of the deceased, Kunjam Poska, the appellant herein, who was carrying a knife, assaulted in the abdomen, chest and back of the deceased due to which Kattam Deva died.

7. Kattam Sunita (PW-1) is the daughter of the deceased and has stated in her examination-in-chief regarding appellant assaulting the deceased with the help of a knife on the chest and abdomen more than once. However, what this witness has stated in her cross-examination, renders it doubtful whether she could properly identify the appellant and the incident of assault because according to her, she was standing at distance of about 200 ft and because of darkness, she could not see that who had assaulted her father. Though at the same breath, she states that she has seen Kunjam Poska assaulting her father but she could not identify the weapon of assault.
8. The doubt if any on the statement of Kattam Sunita (PW-1) is removed from the reliable evidence of Kattam Parvati (PW-5) the wife of the deceased and Kattam Mangabeni (PW-6) another daughter of the deceased. Kattam Parvati (PW-5) has clearly deposed in her evidence regarding incident that she had seen the

appellant coming to her house raising a dispute with regard to collection of Rs. 100/- towards water supply facility and then assaulting her husband by a knife number of times on the chest and abdomen, due to which her husband died. She has been subjected to detailed cross-examination but nothing could be elicited to doubt her statement. She has confirmed the presence of Kattam Sunita (PW-1). According to this witness, her statement was taken by the police on the next date. FIR (Ex.P-16) was lodged by this witness. Suggestion has been given that her husband was on the other side of the road has been denied.

The other witness is Kattam Mangabeni (PW-6), another daughter of the deceased and she has also fully supported the statement of her mother PW-5, on all material particulars with regard to time of arrival, the weapon used and the part of the body where the assault was given by the appellant on the deceased.

At this stage, the argument of learned counsel for the appellant is that it was dark in the night and therefore, it is doubtful whether this witness could at all identify the appellant.

9. Though in the evidence of the witnesses it has come that it was in the night when incident had occurred at about 9.00 PM, but it is clear from the evidence of Kattam Parvati (PW-5) and Kattam Mangabeni (PW-6), that the incident took place in their own house. It is not a case where the appellant is unknown person. He is the resident of the same village and otherwise well known to these witnesses. Therefore, the evidence of these witnesses could

not be disbelieved only on this ground. Moreover, ocular testimony is fully corroborated from the medical evidence. Dr. G. Aanjanelyu (PW-8) who conducted the postmortem and proved injuries on the body of the deceased has clearly deposed in the Court examination regarding the number, nature and extent of injury as also the weapon by which such injuries could be caused and this evidence leave no doubt that the deceased died because of multiple stab injuries which according to the opinion of the doctor, could be caused by the said knife.

10. In the considered opinion of this Court, that the prosecution has proved beyond reasonable doubt that it is the appellant who had assaulted the deceased with the knife and the argument of learned counsel for the appellant that the other co-accused had assaulted the deceased cannot be accepted and is liable to be rejected.
11. In the result, we do not find any good ground to interfere with the impugned judgment of conviction and order of sentence. Appeal is therefore, dismissed.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge