

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1719 of 2019**

- Munna S/o Dhadhru Muriya Aged About 25 Years R/o Village- Kasoli, Police Station- Geedam, District- South Bastar Dantewada, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station- Geedam, District- South Bastar Dantewada, Chhattisgarh

---- Respondent

For Appellant	:	Mr. J.K. Saxena, Advocate.
For State	:	Mr. Mateen Siddiqui, Dy. A.G.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment On Board****Per Manindra Mohan Shrivastava, J.****19/08/2021**

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 24.07.2007 passed by the learned Sessions Judge, South Bastar (Dantewada), C.G. in Sessions Trial No.36 of 2005, by which, the appellant has been held guilty of commission of offence and sentenced as described below:-

Conviction	Sentence
Under Section 302 of IPC	Life imprisonment and fine of Rs.100/-, and in default of payment of fine amount, further R.I. for one month.

2. The prosecution case, as is revealed from the impugned judgment and records of the case is that an FIR in Ex.P-3 was lodged by Raju (PW-3) in the Police Station- Geedam, District- South Bastar Dantewada on 16.11.2004 at 10:10 hours, wherein, it was reported that the appellant assaulted the

deceased by using an axe after a quarrel. In the FIR, it was stated that Tulasi Bai had seen the incident of assault on the deceased by the appellant which was informed to the FIR informant leading to lodging of the FIR.

The police proceeded to the scene of occurrence and inquest of dead body was prepared and dead body was sent for postmortem which was conducted by Dr. H.L. Thakur (PW-7) and report in Ex.P-4 was prepared by him. On the basis of examination of injuries, both internal and external, doctor opined that cause of death was due to external and internal excessive hemorrhage and it was stated to be homicidal. Duration of death was also stated to be about 17 to 18 hours.

As the appellant was named in the FIR as the assailant, he was arrested, investigation was completed, charge sheet was filed and the appellant was prosecuted. The prosecution led the evidence of Tulasi Bai as the eyewitness. Learned trial Court mainly relied upon the evidence of Tulasi Bai to hold the appellant guilty of commission of offence of murder and imposed life imprisonment giving rise to present appeal.

3. The argument of learned counsel for the appellant is mainly two fold. Firstly, it is submitted that the first information report was not immediately lodged soon after the incident. The incident of assault on the deceased happened at about 10 p.m. in the night on 15.11.2004 whereas the FIR was lodged in the police station after about 12 hours, on the next day. The prosecution has not explained and even the Investigating Officer has not explained the delay in lodging FIR. It is argued that in the absence of proper explanation in lodging FIR, right from inception, the prosecution case has become doubtful and possibility of false implication cannot be ruled out.

The other argument of learned counsel for the appellant is that the so-called eyewitness Tulasi Bai (PW-4) who has been heavily relied upon by the learned trial Court to return a finding of guilt, has stated regarding the incident in a manner which is quite improbable. According to her, while she was going to bed she heard noises then she came out and saw the appellant assaulting the deceased with the help of an axe. Firstly, it is argued, the presence of Tulasi Bai, a lady outside her house, late in the night, is quite improbable.

Secondly, she has not stated as to why the appellant assaulted the deceased and if her statement is to be taken as it is, the appellant for no reason, without any quarrel suddenly assaulted the deceased. Referring to what has been elicited in her cross-examination, it has also been argued that according to her, when she came out of her house, she saw Lalsai lying injured in the verandah and therefore, it is quite doubtful, if at all, she had seen the incident. The suggestion in this regard has been given though denied by this witness. Lastly, he would submit that the incident happened in the night at around 10 p.m. in a village outside the house in an open place and therefore, it was quite doubtful whether she would at all identify the assailant who assaulted the deceased Lalsai. She having not clearly stated that there was any source of light in which the incident of assault could be seen by her, the conviction of the appellant on the sole testimony of Tulasi Bai (PW-4) is not safe and it needed corroboration. Recovery of axe is doubtful. Though prosecution claims to have sent the blood stained soil from the alleged spot of incident, axe and cloth of the appellant to FSL but no report from FSL has been led in evidence to prove that the seized articles were stained with blood much less that of the group and origin of the deceased. Therefore, the appellant is entitled to be acquitted by giving benefit of doubt.

4. On the other hand, learned State counsel would submit that the incident happened in a remote village at about 10 p.m. in the night and which is stated to be about 10 km away from the police station and the very next day FIR was lodged. Learned State counsel would next submit that neither any specific suggestion has been given nor any material has been brought during trial to support defence case as nothing has been elicited in the cross-examination of Tulasi Bai (PW-4) as to why she would falsely implicate the appellant in the alleged commission of offence. He would submit that the sole eyewitness has clearly stated regarding the incident, the manner in which it happened and it has been elicited in her cross-examination that she had come out with lantern in her hand and in the light of that lantern, she had seen the incident and all suggestions that she could not see has been emphatically denied.
5. We have heard learned counsel for the parties and perused impugned judgment and records of the case.
6. As far as nature of death of the deceased is concerned, the evidence of

the Dr. H.L. Thakur (PW-7) has remained uncontroverted. He has proved the postmortem report prepared by him and has clearly stated regarding the nature of injury sustained by the deceased upon internal examination as below:-

“बाई कनपट्टी की हड्डी टूटी हुई थी, ब्रेन मटेरियल बाहर निकला हुआ था। फेफड़ा, लीवर, श्वासनली संकुचित था। हृदय में रक्त नहीं था, आंते भी संकुचित थी। पेट में अधपच्चा खाना मौजूद था। किडनी, प्लीहा, लीवर सब संकुचित थे।

मेरे मतानुसार मृतक की मृत्यु अत्यधिक रक्तस्राव होने एवं सॉक में जाने के कारण हुई। मृतक की मृत्यु की प्रकृति हत्यात्मक थी। जो मेरे परीक्षण के 17 से 18 घंटे पूर्व की थी।”

The only suggestion which has been given in the cross-examination is that such injury could be caused if a person falls on a sharp aged stone. The homicidal death of the deceased, because of injuries, is therefore required to be examined in the light of the evidence of the eyewitness Tulasi Bai (PW-4). Tulasi Bai is an independent witness. In her entire evidence or in the evidence of other prosecution witness, it has not been stated by any of them that she was related to the deceased. She has deposed that the appellant and the deceased both are resident of her colony. She has deposed that in the night when she was about to go to sleep after taking dinner, she heard noises and came out of her house in the verandah and saw that the appellant Munna was holding an axe in his hand and assaulting Lalsai repeatedly. She further deposed that due to assault, Lalsai fell down in the verandah and died. The appellant ran away leaving behind the axe. The incident was informed to Jeth Guddi and another neighbor Maniram and the matter was then informed to mother and wife of Lalsai. In her cross-examination, it has been elicited that the incident happened at a distance of about 15-20 feet from the doorstep of her house. She again repeats that the assault was given on Lalsai. She has stated that having heard the noise she came out with a lantern in her hand and in the light of lantern she had seen the appellant assaulting the deceased Lalsai and when she advanced further, she saw that Lalsai was lying on the ground. She has stated in her examination-in-chief that the appellant assaulted Lalsai with the help of an axe and when she asked Munna why he was assaulting, he did not say anything, threw away axe and ran away. The

suggestion that she had not seen the incident of assault, has been denied. Another suggestion that it was dark in the night and therefore, she could not see in the light of lantern as to who assaulted, has also been specifically denied.

The evidence of this witness has remained unshaken in her cross-examination. According to her, the incident happened in the night and the weapon used to assault was axe. The ocular testimony is corroborated from the medical evidence. The injury has been found on the head caused by sharp edged weapon resulting in incised wound and fracture also. The time of death stated to be about 17 to 18 hours. Postmortem was conducted at about 3 p.m. on 16.11.2004 that means, incident happened some times in the previous night 9-10 p.m. Therefore, the evidence of Tulasi Bai is substantially corroborated from the medical evidence with regard to nature of injury, nature of weapon by which assault was given and time of death.

7. Even though, where the prosecution case is proved from reliable testimony of eyewitness, it is not requirement of law that motive should also be established, in the present case, Raju (PW-3) has clearly stated that a quarrel had taken place between the appellant and the deceased. The accused Munna was in the employment of deceased Lalsai and when the appellant did not attend the work he was slapped by Lalsai and a quarrel had taken place. This statement of Raju (PW-3) has not been controverted in the cross-examination.
8. Though, in the present case, the FSL report was not received. However, having found that the evidence of eyewitness Tulasi Bai (PW-4) is reliable, she being independent witness and particularly when there is nothing elicited during cross-examination of any of the prosecution witnesses that Tulasi Bai (PW-4) had any enmity with the appellant and that her statement is otherwise corroborated from medical evidence, there being uncontroverted evidence of quarrel between the appellant and the deceased before the incident, absence of FSL report regarding presence of blood on the axe and cloth, would not render the prosecution story and the evidence of Tulasi Bai (PW-4) unreliable on that ground alone.
9. In the result, we do not find any ground to interfere with the impugned

judgment of conviction and order of sentence. The appeal is therefore dismissed. Bail bonds are cancelled and if the appellant has already been released, shall be taken into custody and sent to jail to serve remaining part of sentence.

Before we part with the judgment, in view of the statement made by learned counsel for the appellant that the present appeal has been filed through legal aid and that according to the present guidelines of the State Government, the appellant is entitled to appropriate considerations for release under Section 432 Cr.P.C, we would observe that the concerned jail authorities and the legal aid authority shall do well to expeditiously process the application of appellant for consideration of his case for release under Section 432 Cr.P.C. For that purpose, if any legal aid is necessary, that should also be provided to the appellant at the earliest.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge