

HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Appeal No.748/2009

Gulla alias Gulab Singh.....Appellant

Versus

The State of Madhya Pradesh.....Respondent

For the appellant : Mrs. Pratibha Mishra, *Amicus Curiae*

For the respondent/State: Mr. Madhur Shukla, Government
Advocate

Present:

HON'BLE MR. JUSTICE ATUL SREEDHARAN

HON'BLE MR. JUSTICE V. P. S. CHAUHAN

J U D G M E N T
(23.2.2019)

Per Atul Sreedharan, J.

The present criminal appeal has been filed by the appellant Gulla alias Gulab Singh who is aggrieved by the judgment of conviction and sentence dated 6.2.2009 passed by the learned Sessions Judge, Bhopal, in Sessions Case No.101/2008.

2. The facts of the case simply put are that the appellant is alleged to have murdered the deceased Mathuri Bai on 28.11.2007 by inflicting injuries *inter-alia* on her neck and head with an axe. There are two eyewitnesses to this case. They are Mannu Banjara (P.W.1) and Viniya alias Vineet (P.W.6). Mannu Banjara says that his mother used to cut wood and sell it. Five to six months before his testimony in court, his mother had gone to cut wood. He thereafter says that his aunt informed him that his mother is calling and as he was going to meet her through the jungle, he saw the accused Gulla striking his mother on the neck

with an axe. At that point of time he was not very far away from the scene of occurrence and as the accused was going to strike his mother a second time with the axe, his uncle Viniya who also does the job of selling wood and was collecting the wood nearby came there upon hearing the shout of Mannu Banjara (P.W.1). Thereafter, the appellant Gulla ran away from there and P.W.1 and P.W.6 attempted to apprehend him. However, they were unsuccessful and when they returned the deceased Mathuri Bai was dead. Thereafter, this witness states that he went back to the village, informed his uncle, father and others in the village. The police was informed who came to the scene of occurrence, prepared the Dehati Nalishi and carried out the investigation. The same facts are reiterated in the FIR, which is Ex.P14. The FIR has been registered at Police Station Sukhisevaniya as Crime No.179 on 28.11.2007. The police station is about 11 kilometers away from the scene of occurrence. This witness has been cross-examined by the defence but for minor aberrations, which do not go to the root of the witness's testimony, no major contradiction has been brought about which would compel this court to consider the same as unreliable. This witness has not even been confronted with his statement under section 161 Cr.P.C. to bring out any contradictions and omissions. Under the circumstances, the eyewitness-testimony of this witness is credible and trustworthy.

3. P.W.2 is Deviram, who is a farmer by profession and also runs a general store at village Amauni. He says that he knows Kasiya Banjara who came to his shop screaming asking him to inform the police station that his wife has been axed to death by the appellant. The witness says that he had informed the police telephonically at Police Station

Sukhisevaniya, Bhopal. He further states that the police enquired into the case and has also recorded the statement. Nothing worthwhile has been brought out by way of contradiction in the cross-examination. Besides, the importance of this witness is not more than conveying the information to the police with regard to the incident.

4. P.W.3 is Kailash who states that he knows the accused and that the police seized an axe from the jungle upon the indication given by the accused. He says that the axe had a wooden handle and it had blood-stains. This witness has proved the seizure memo which is Ex.P8. This witness too has withstood the rigors of cross-examination and has not contradicted himself.

5. P.W.4 is Dr. Ashok Sharma who carried out the post-mortem. He has observed several abrasion injuries which are serialized from item nos.1 to 5. Injury no.6 is a long incised wound on the neck extending just below the right ear. The said injury severed the air passage and the major blood vessels of both sides of the neck and also the tissues of the neck and the cervical bone. Injury no.7 is a long incised wound behind the left ear, which is skin deep. Injury no.8 is a long incised wound on the central part of the head which had cut through the head resulting in subdural and subarachnoid haemorrhage. Injury no.9 is noted as fracture on both sides of the incised injuries on the head. This witness has proved the post-mortem report, which is Ex.P9.

6. P.W.5 is Kesar Bai, who is a witness to the information given in relation to the incident of a murder by the son of the deceased. She is also a witness to the subsequent incident of seeing the body. The relevance of this witness is no more beyond that.

7. P.W.6 is Viniya alias Vineet, who is the brother of the deceased, who states that upon being called by his nephew (P.W.1), he went to the scene of occurrence and there he saw the deceased lying still on the ground and the accused standing next to her with a blood-stained axe in his hand. This witness also has not contradicted himself in his cross-examination and but for minor embellishments, which do not go to the root of the case. None of the material witnesses in this case has turned hostile and they have all supported the case of the prosecution. There is nothing to suggest why the statement of P.W.1, who is an eyewitness to the incident, and P.W.6, who is a witness to the appellant standing right next to the deceased with a blood-stained axe in his hand, should be disbelieved. The embellishments in their cross-examinations are not of that nature that their statements ought to be disbelieved. The fact that the witnesses are close relations of the deceased is no reason in the facts and circumstances of this case to disbelieve them as their presence at the scene of occurrence is not unnatural. Besides, the defence has been unable to set up a parallel hypothesis of any pre-existing enmity either between the witnesses and the appellants or with any other member of their family. The injuries as described by Mannu Banjara (P.W.1) and Viniya alias Vineet (P.W.6) are corroborated adequately by the doctor who prepared the post-mortem report. The seizure witnesses in this case have also not turned hostile and have supported the case of the prosecution and have stated very clearly how the blood-stained axe was recovered in their presence upon the indication given by the appellant.

8. Under the circumstances, in view of the evidence that has appeared before the trial court and which has been referred to and

discussed hereinabove, this court does not find any reason to interfere with the impugned order of conviction and sentence imposed upon the appellant.

9. Under the circumstances, this criminal appeal is **dismissed**.

(Atul Sreedharan)
Judge

(V. P. S. Chauhan)
Judge

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