

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 830 OF 2000

1. Bifna son of Bade Thakna, aged about 35 years,
 2. Manglu son of Anjan, aged about 32 years,
 3. Chote Biha son of Lewa, aged about 40 years,
 4. Bade Biha son of Anjan, aged about 45 years,
 5. Rattiram son of Bade Thakna, aged about 40 years,
- All residents of Village Chanchi-dand, P.S. Pratappur, District Sarguja (M.P.) (now C.G.)

... Appellants

Versus

State of Madhya Pradesh, through P.S. Pratappur, District Sarguja (M.P.) (now C.G.)

... Respondent

For Appellants	:	Mr. Aditya Khare, Advocate.
For Respondent-State	:	Mr. Vinod Deshmukh, Deputy Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgement on Board

Per NAVIN SINHA, C.J.

17/12/2015

1. This is an old appeal of the year 2000 transferred from the Madhya Pradesh High Court consequent to the reorganization of the State. The Appellants were enlarged on bail on 29.6.2000. The records reveal that they continued to mark attendance before this Court also. The cause-list shows the name of the Counsel from this Court, yet there is no representation on behalf of the Appellants. Rather than to issue notices to the Appellants or issue bailable warrants for appearance, in view of 2014 (14) SCC 222 (Surya Baksh Singh v. State of Uttar Pradesh) we considered it prudent to take up the matter for hearing with the assistance of the Learned Counsel for the State. At this stage, Shri Aditya Khare, Panel Lawyer from the High Court Legal Services

Committee, who happened to be present in the Court room was requested by us yesterday to assist us in the matter. The judgement was read out by him in open Court yesterday and we then adjourned the matter to enable Shri Khare to prepare himself and assist us. The appeal has then been taken up for hearing today.

2. The Appellants stand convicted to life imprisonment under Section 302 IPC with fine of Rs.1000/- each, in the event of failure to pay which they were required to undergo 1 year rigorous imprisonment each; the conviction is also under Section 201 IPC to 1 year rigorous imprisonment with fine of Rs. 100/- failing which they were required to undergo 1 month rigorous imprisonment each for the murder of Maghna and Baigin Bai, husband and wife, as ordered on 29.2.2000 by the Additional Sessions Judge, Surajpur, District Sarguja, in Sessions Trial No. 203 of 1989.

3. With regard to an occurrence at midnight on 19/20.2.1989, FIR, Exhibit P-23, was lodged on 24.2.1989 by the son of the deceased, Madho, PW-10. It was alleged that the Appellants came to the house of the witness, dragged his parents away to the house of Appellant No.4 where they were assaulted and the dead bodies brought back to the house of the witness. PW-10 Madho, tried to intervene for protecting his parents but he was also assaulted. The next morning the Appellants came back to the house of the witness took him along and buried the dead bodies. The witness was threatened that if he told about the occurrence to anybody he would also meet the same fate.

4. After the institution of the FIR, with orders from the Executive Magistrate, the bodies were exhumed on 26.2.1989 proved by PW-15 Vishwavijay Singh Gour. The post-mortem of the two deceased,

Exhibits P-20 and P-22, conducted by PW-13 Doctor Shivpal Singh

Paikra found the following injuries on their persons:-

1. Maghna

- (i) Bruise of 3"x1/2" over forehead which was 1" above right eyebrow.
- (ii) Multiple bruises different in size and shape placed over back of the body especially the scapular region.
- (iii) On internal examination all trachial rings in the neck were fractured and the hyoid bone was also fractured. The spleen was ruptured, the 4th to 8th left ribs were fractured from middle 3rd and mid clavicular line and the 4th to 5th right ribs were also fractured from middle 3rd and middle clavicular line. Black blood was accumulated in the thoracic cavity.

The cause of death was shock due to excessive internal hemorrhage caused by multiple injuries especially in the thoracic and abdominal region combined with rupture of spleen. The injuries were opined to be homicidal in nature and the time elapsed since death about 7 to 15 days.

2. Baigin Bai

- (i) Bruise of about 2"x1" over face which was 1" above right eyebrow.
- (ii) Bruise of about 2"x1" over chest between both breasts.
- (iii) Multiple bruises which are different in size and shape over the left arm.
- (iv) Bruise of 1/2"x1/2" over right leg, 6" below from knee.
- (v) Multiple bruises all over the back of the body of different size and shape.
- (vi) The Spleen was ruptured. There was fracture of right side of frontal bone with hemorrhage in between the skull and membrane of brain.
- (vii) 1st to 5th ribs of right side were fractured at the mid clavicular line.
- (viii) 1st to 4th ribs of left side were also fractured at mid clavicular line and there was accumulation of blood in thoracic cavity.

Death was opined due to shock because of excessive hemorrhage attributable to multiple injuries especially the thoracic and abdominal region, including rupture of the spleen. The

injuries were homicidal in nature and the time elapsed since death 5 to 15 days.

5. The MLC of PW-10 Madho, marked Exhibit P-18, affirmed injuries on the left ear but in view of his evidence and surrounding circumstances, the Trial Judge held that the possibility of the injuries having been caused due to fall while the witness was running away from the place of occurrence could not be ruled out. We see no reason to differ with the conclusion on basis of the discussion by the Trial Judge.

6. Learned Counsel for the Appellants submitted that the Appellants have been falsely implicated. There is no eye-witness to the occurrence. The assault had not taken place at the house of PW-9 Sukhmaniya and PW-10 Madho who are also husband and wife respectively. PW-2 Bigna and PW-8 Raghunath have stated that there was no enmity between the deceased and the Appellants. No motive therefore existed for the assault. It was next submitted that PW-9 Sukhmaniya and PW-10 Madho are not reliable witnesses being related to the deceased and thus interested witnesses to convict on their evidence alone. PW-9 Sukhmaniya was an unreliable witness as she has stated in cross-examination that the deceased Maghna and her husband (PW-10) came back home in the morning which suggests that the prosecution story of the Appellants having assaulted and killed him at the house of Appellant No.4 is false. PW-10, Madho himself states that when he tried to intervene, he was assaulted, fell down and became unconscious. There was no occasion for him to have witnessed the assault. He then states that he came back home and went to sleep and woke up only the next morning. There is no evidence to suggest how he came to know that the Appellants after killing his parents had

brought them back to the house of the witness at night. No specific allegation has been made with regard to which of the Appellants may have assaulted in what manner, if PW-10 was an eye-witness as claimed. While the witness states that he told PW-1 Rambhajan, the latter states that he was told by another village of Tarapani regarding the assault. Similarly, PW-4 Budhram to whom PW-10 Madho is alleged to have disclosed the assault has deposed in his cross-examination that the Appellants had been named as accused due to enmity. Devbhajan named by PW-10 Madho in his evidence as one of the persons to whom he informed about the occurrence has not been examined. The seizure of '*lathi*' allegedly on the confession of the Appellants is inconsequential because there is no evidence to suggest that it was used for assault in absence of any blood signs on it. A '*lathi*' is a common item available in the house of any villager. It was lastly submitted that there is delay of about five days in lodging the FIR which is unexplained and gives enough time for thinking, planning and false implication.

7. Learned Counsel for the State opposing the appeal submitted that the delay in lodging of the FIR has been fully explained. PW-10 Madho was threatened by the Appellants that he would meet the same fate if he complains to anybody. It was only later when he told some other villagers and who supported him that he got the courage to go to the police station. He is an injured witness and the conclusion of the Trial Judge that he may have injured himself by a fall is not justified. In any event, even if he injured himself by falling while running away from the place of occurrence, it does not detract from that part of his evidence that he was a witness to the assault. Having seen five persons

assaulting his parents at midnight, there is nothing unusual in his conduct if he ran away from the place of occurrence because he alone could not have done anything. The body was buried with an intention to conceal evidence as it was contrary to the normal social practice of the community for cremating the body. It was lastly submitted that PW-9 Sukhmaniya and PW-10 Madho are the daughter-in-law and son of the deceased. The Appellants have not taken any defence under Section 313 Cr.P.C. for false implication much less any previous enmity. Mere absence of motive cannot lead to acquittal by a conclusion of false implication. There is no reason why the son of the deceased would be lying to falsely implicate others and leave the real assailants of his parents. He would be the most interested that the real culprits are brought to book. The evidence of PW-9 and PW-10 is fully reliable and convincing. It cannot be rejected merely because they were related to the deceased. If the occurrence took place at midnight, there is nothing unusual about the absence of any independent witness. Time and again judicial precedents have taken note of the fact that in such assaults and occurrences outsiders are generally reluctant to be witnesses and it is primarily the family members who lodge report and pursue matters.

8. We have considered the submissions on behalf of the parties and perused the evidence on record also.

9. PW-9 Sukhmaniya and PW-10 Madho were the daughter-in-law and son of the two deceased, respectively. The Appellants came to the house of the deceased at midnight between 19/20.2.1989 and took them away to the house of Appellant No.4 where they were assaulted. PW-10, Madho went behind his parents when they were being taken to the house of Appellant No.4. We find no reason to suspect PW-10,

Madho as an eye-witness. In cross-examination no question has been asked to him that he did not follow the Appellants and his parents to the house of Appellant No.4. If five persons were forcibly taking his parents away at midnight, there is little that he could have done except gone behind them. Likewise, if the witness came back after he was unsuccessful in preventing the assault at the house of Appellant No.4 and was threatened himself, we find nothing unusual about his conduct as there was nothing he could have done to save his parents in the factual circumstances. The fact that he may have come away does not detract from the first part of his evidence where he talks of an assault on his parents when he tried to intervene. If he was a witness to the commencement of the assault, we do not consider it necessary to deal with the conclusion of the Trial Judge that the witness may have injured himself by a fall while running away from the place of occurrence. The witness has deposed that he came back home and later the Appellants reached the dead bodies of his parents to his house and came back again in the morning at about 8-9 a.m. to warn him and forcibly took away the dead bodies asking him to accompany them and then the bodies were buried. We do not find anything in his evidence to suggest that he was not an eye-witness to an assault or that his parents were not taken away from the house in his presence or that the dead bodies of his parents were not brought back to the house at night. No questions have been asked in this regard during the cross-examination. The fact that he may have come home and gone to sleep and woke up in the morning to find the dead bodies of his parents cannot lead to any conclusion of an assault by any third person as the Appellants have failed to demonstrate when the two deceased left their house alive to

consider the possibility of any other being the assailants or that death took place in a different manner.

10. Similarly, PW-9 Sukhmaniya was a rustic village witness and we find no inconsistency or contradictions as was sought to be suggested on behalf of the Appellants. In her evidence-in-chief, she clearly stated that her husband had gone behind her father-in-law when the latter was being taken away forcibly by the Appellants and the latter was killed and his body brought back home. In cross-examination, she specifically denied that she had not seen her husband and the deceased leaving home along with Appellants No. 1 and 2. If the deceased were taken away by the Appellants and there is nothing in the evidence to suggest that they had left the house of the Appellants alive, the only inference possible is that they were killed by the Appellants and the bodies brought back to their house.

11. PW-10 Madho, in the FIR stated that his parents were suspected of practicing witchcraft because of which the Appellants were annoyed. This may have provided the motive for the assault. In any event, if there is evidence otherwise pointing towards the guilt of the Appellants, the mere absence of motive cannot be sufficient to arrive at a conclusion for acquittal by giving benefit of doubt.

12. If the deceased were dragged from their house at midnight and the bodies were brought back in the night itself, naturally there will be no independent witness available even if there were any houses on the way. Learned Counsel for the State has therefore rightly urged that in occurrences like the present independent evidence is rarely forthcoming for various reasons and it is primarily the family members whose evidence alone is available.

13. The fact that '*lathis*' were seized and no evidence was found on them by blood etc., is considered irrelevant in view of the otherwise ocular evidence available of the assault. That leaves the question for delay in lodging of the FIR. Unreasonable delay, can always create doubts. But it is not an absolute principle and much would depend on the facts of each case. PW-1, Rambhajan deposed that PW-10, Madho had informed him of the threat held out to the latter if he lodged the police report. The witness then accompanied PW-10, Madho only after which PW-10, Madho gathered the courage to lodge a report. PW-2 Bigna likewise deposed that PW-10, Madho told him that he had been threatened and therefore he was hesitating in lodging the FIR. PW-10, Madho deposed that the dead bodies of his parents were brought back in the night and the next morning the Appellants came to his house at about 8-9 a.m., and forced him to accompany them with the dead bodies of his parents and then buried it. After burying the two deceased, the Appellants kept threatening him for 3 days that if he told anybody he would meet the same fate. In cross-examination, no suggestion was given on behalf of the Appellants to the witness that they had never threatened him. The denial under Section 313 Cr.P.C. was bald. It was only when he received support from other villagers including the Sarpanch and the Patel who took him to the police station that he lodged the FIR.

14. In the entirety of the facts and circumstances of the case that five persons having beaten his parents to death at midnight, brought the dead bodies back to his house, threatened him not to tell anybody, the Appellants coming back to the house of PW-10, Madho in the morning, forcing him to come along with them carrying the dead bodies of his

parents and then burying it in his presence and continuing to threaten him for 3 days thereafter not to lodge a police report, in our opinion more than sufficiently explains the delay. No suggestion has been given by the Appellants why the witness was falsely implicating them leaving out the real assailants of his parents who may have been others, for some reason or the other.

15. The post-mortem report reveals that the two deceased were brutally assaulted in a helpless condition in presence of each other.

16. There is no denial by the Appellants that they had never suspected the deceased of practicing witchcraft as alleged in the FIR.

17. In the entirety of the facts and circumstances of the case, the nature of evidence available, we find no reason to doubt or suspect the evidence of PW-9, Sukhmaniya and PW-10, Madho identifying the Appellants as the assailants.

18. The conviction and the sentence call for no interference. The appeal is dismissed. The Appellants are directed to surrender and/or be taken into custody forthwith for serving out the remaining period of their sentence.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge