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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1229 of 1999**

Lalit Kumar S/o Durjan Singh Halba, aged 17 years R/o Rajiv Nagar Zone-II, Khursipar Bhilai, Distt. Durg (MP) (Now CG).

---- Appellant**Versus**

State of Madhya Pradesh (Now Chhattisgarh) through P.S. Chhavni Distt. Durg (CG).

--- Respondent

For Appellant	:	Shri A.K. Yadav, Advocate.
For Respondent	:	Shri Bhupendra Singh, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

C A V JUDGMENT**Per P. Sam Koshy, J****16/09/2015.**

1. The appellant in the instant case stands convicted for the offence under Section 302/34 IPC and sentenced to undergo life imprisonment with fine of Rs.500/- with default stipulation vide judgment dated 30.03.1999 passed by the Additional Sessions Judge, Durg, in Sessions Trial No. 275 of 1998.
2. The brief facts necessary for adjudication of this appeal are that, on 28.02.1998 First Information Report (FIR) was lodged by Mohd. Ishaq Ali, PW-4, brother of the deceased-Salim at around 11:00 am intimating the authorities that at around 7 am some children of the locality came to his house and informed him that some persons are

fighting with his brother Salim. Thereafter, he reached to Bapu Nagar i.e. place of occurrence and found that his brother Salim was being assaulted by Lalit, Jhabbu, Madan and Machhandar and upon seeing him, the accused persons ran away from the spot. The complainant i.e. Mohd. Ishaq Ali further reported that the accused persons were assaulting his brother with Danda, Kicks and fist blows. Thereafter, the complainant took his brother to the nearby hospital where he was declared dead. The dead body was then sent for postmortem which was conducted by Dr. P. Balkishore, PW-1 who opined that death was due to shock and hemorrhage caused because of multiple injuries. He also proved the postmortem report Exhibit P-1.

3. Based upon the investigation carried out by the police, the matter was put to trial before the Session Court wherein the case was registered as Sessions Trial No. 275 of 1998.
4. During the course of trial, the prosecution examined as many as 7 witnesses and the defence examined two witnesses. After trial was concluded, the court below vide judgment impugned found the case against the Appellant to have been proved beyond reasonable doubts and convicted him for the offence under Section 302/34 IPC and sentenced as aforementioned.
5. Initially the case was registered against four accused persons of which one accused Machhandar went absconding and therefore his case was separated from the trial and the other three accused persons namely Jhabbu, Madan and the present Appellant were tried together. Jhabbu being juvenile was tried by the Juvenile Court and Madan who was tried along with present Appellant was acquitted by

the court below. Thus, present Appeal is being prosecuted on behalf of the sole Appellant-Lalit.

6. Learned counsel for the Appellant challenging the said judgment of conviction submitted that the court below has wrongly convicted the Appellant and has challenged the judgment impugned on two counts. Firstly on the ground that the prosecution has not been able to prove its case beyond reasonable doubts so as to convict the Appellant and secondly, the prosecution case has not been established independently inasmuch as there is no sufficient material evidence directly and conclusively attributing the Appellant having committed the offence. The entire conviction is based on inference being drawn by the court below as there being no direct evidence concretely establishing beyond all doubts about the Appellant himself to have committed the offence. Similarly, the conviction of Appellant is mainly based upon the deposition of PW-4, Mohd. Ishaq Ali and also the statement of PW-7, P.C. Sonkar, the Investigating Officer of the crime.
7. According to counsel for the Appellant, there are large number of contradiction and omissions in the statement of PW-4, Mohd. Ishaq Ali, between the statement made before the police authorities and before the court and as such the said witness also becomes unreliable and if there is no sufficient direct or indirect evidence led by the prosecution, the conviction solely on the deposition of Investigating Officer alone would not be proper. Likewise, the confession statement of Appellant (Exhibit P-9) and subsequent seizure of Danda at the instance of Appellant is of no consequence

on account of fact that the Danda did not have any blood stain marks on it. Confession and the seizure is admissible only to the extent of recovery of Danda which, in absence of any blood stain, would not come to the aid of the prosecution particularly when the witness to the memorandum statement as well as seizure have turned hostile and not supported the case of prosecution. Thus, for all these reasons, the findings of trial court deserves to be interfered with and the order of conviction is liable to be set aside.

8. Per contra, learned State counsel opposing the appeal submitted that perusal of impugned judgment and records of trial court would establish the fact that the prosecution case in-fact stands fully established before the court below and the impugned judgment does not call for any interference. Countering the arguments advanced by the counsel for the Appellant, State counsel submitted that even if most of the witnesses have turned hostile and have not supported the case of prosecution, yet deposition of PW-4, Mohd. Ishaq Ali, the eyewitness to the incident and the statement of PW-7, P.C. Sonkar, the Investigating Officer, are sufficient to establish the guilt against the Appellant as in the deposition of these two witnesses, there are sufficient materials brought before the court by which it could be conclusively held that the Appellant was responsible for the assault made upon the deceased along with the other accused persons and therefore the court below has rightly convicted the Appellant and the appeal being devoid of substance is liable to be rejected.
9. We have considered the submissions on behalf of parties and perused the evidence available on record.

10. Dr. P. Balkishore, PW-1, who conducted postmortem upon the deceased-Salim found multiple contusion over right knee, left knee, left thigh, middle part of thigh, abrasion over both foot, punctured wound on postero medial aspect of right arm area, elbow joint, abrasion over right elbow joint, multiple abrasions on left wrist, left elbow joint abrasion, left shoulder joint abrasion, abrasion on left side of the face, contusion of upper part of neck and multiple contusions over back of chest. Cause of death was opined due to shock and hemorrhage because of multiple injuries.
11. PW-4, Mohd. Ishaq Ali, brother of the deceased is stated to be the sole eyewitness. PW-5, Syed Kasim, father of the deceased and PW-4 has denied that latter had come and informed him anything or that he had then gone to the place of occurrence with PW-4. In his deposition, he stated that he learnt of the occurrence from other sources. No blood stained earth has been seized from the place of occurrence. Co-accused Madan @ Ahsan Mohammad against whom allegations were common with the Appellant has also been acquitted on benefit of doubt as PW-4 subsequently turned hostile and denied his presence at the time of occurrence.
12. The evidence of a related witness cannot be rejected merely for that reason or calling him an interested witness. It may call for a closer scrutiny to exclude any possibility of embellishment or false implication due to personal vendetta or otherwise. Similarly, the evidence of a solitary eyewitness if convincing and reliable can also be basis for conviction. But it is a rule of prudence that where there is a solitary eyewitness, the Court should make a closer scrutiny to

satisfy itself with regard to reliability, genuineness and convincing nature of evidence available. Thus, the principle that conjointly emerges is even if there is a solitary eyewitness related to the deceased, conviction can still be based on it if it is otherwise bonafide, genuine and convincing. But if a closer scrutiny reveals loop holes and there remain areas where the Court is not fully satisfied, what may euphemistically be called missing links in the evidence, it will not be safe to convict on the reasoning simplicitor that in absence of any motive for false implication there is no reason why the witness would not be telling the truth if he had seen the assault on his own brother. In this background, we shall now examine the evidence of PW-4 alongwith his police statement and its manner of consideration by the Trial Judge.

13. PW-4, Mohd. Ishaq Ali lodged the FIR on 28.2.1998 at 7:00 am. In Court deposition the witness acknowledged that he was living in the area for over last nine years. Yet, in the FIR he stated in a bald manner that small children came and informed him that his brother was being assaulted at Bapu Nagar. Neither did he name any of the children nor did he mention their number. The witness further stated that he went back home after visiting the place of occurrence, informed his father and brother-in-law Sheikh Munir Alam, after which all three of them proceeded to the spot again, picked up his brother and took him to the hospital. He specifically named the assailants as Lalit, Jhabbu, Machhander and Madan. But his own father and that of the deceased Syed Kasim, PW-5, deposed that some children came and informed him that his son was lying injured near bushes and not that PW-4 had informed him. The witness on that information went

with his son-in-law to the place of occurrence and not that he was accompanied by PW-4. The witness denied that PW-4, Mohd. Ishaq Ali had told him anything regarding the occurrence. The witness deposed that his son, the deceased, had gone for a walk but in cross-examination acknowledged that in Bapu Nagar there was no area where one could go for exercises and that he was sleeping when the deceased left home contrary to the statement in chief that the deceased told him before leaving that he was going for a walk. Again, he denied having gone straight to the place of occurrence stating that he went to the police station and if the police had recorded to the contrary, it was wrong.

14. The police statement of PW-4, Mohd. Ishaq Ali was recorded on the day of occurrence itself in which also he named the assailants as Jhabbu, Lalit, Machhandar and Madan. In his evidence in chief, he again named Madan as one of the assailants alongwith others. The FIR (Exhibit P-7) also names Madan. But in cross-examination, the witness suddenly turned turtle and denied having seen Madan at the place of occurrence and having named him spinning a yarn that it was another Madan in a *suo moto* explanation. Despite being a resident of the locality for nine years, he was not able to tell the name of children who came and informed him that his brother was being assaulted. He also sought to deny that he had gone with his father to the place of occurrence contrary to his own statement in the FIR and the police statement to that effect. He acknowledged that when he reached the place of occurrence, there was a big crowd assembled there early in the morning and despite being a resident of the locality for nine years, he was not able to name a single person amongst the

mob who had assembled there. In his cross-examination, he further acknowledged that a news item has been published that theft had been committed in the house of Sushil Bharti and the thief had been caught and assaulted by the people but sought to contend that the news item mentioning the name of his brother was wrong. Despite being a resident for nine years in the locality, he was not able to name one person whose shop or residence was near the place of occurrence saying he could not remember. No blood has been found at the place of occurrence.

15. In the entirety of the evidence of the alleged solitary eyewitness as discussed, the Court is not satisfied that it inspires confidence to uphold conviction on that basis. It is always possible that the accused were part of the mob which had gathered after the deceased was caught committing theft in the house of another and PW-4 was able to identify the four named alone as present at the place of occurrence and therefore named them as the assailants. The benefit of doubt therefore has to be given to the Appellant. Absence of any specific motive for false implication is not considered relevant as it cannot raise a presumption of guilt or innocence by itself.
16. The Trial Judge committed a gross error in improper appreciation of entire evidence of PW-4, Mohd. Ishaq Ali by culling out only one line that the witness had deposed in the Court that Madan was not present at the time of the assault without considering the reliability of the witness alongwith other evidence to grant acquittal to Madan. The memorandum and seizure list witnesses have been declared hostile. The conclusion that contradictions and omissions in the police

statement and the Court statements of the witnesses were inconsequential and trivial cannot be upheld as they are raising serious doubts about the credibility of PW-4 as solitary eyewitness and on basis of which it would not be safe to uphold the conviction.

- 17.** The conviction of the Appellant is therefore set aside. The appeal is allowed subject to the conditions mentioned in Section 437A CrPC.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE