

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 2584 OF 1998

Smt. Dropadibai wife of Bhulauram Pal,
aged about 43 years, R/o Balbharad Ward,
Bhatapara, District Raipur

... Appellant

Versus

State of Madhya Pradesh,
through P.S. Bhatapara, District Raipur

... Respondent

CRIMINAL APPEAL NO. 2738 OF 1998

Tanmaypal S/o Bhulauram Pal,
aged about 21 years, R/o Balbharad Ward,
Bhatapara, District Raipur

... Appellant

Versus

State of Madhya Pradesh,
through P.S. Bhatapara, District Raipur

... Respondent

For Appellants	:	Mr. Suryakant Mishra, Advocate.
For Respondent/State	:	Mr. B. Gopa Kumar, Dy. Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgement on Board

Per Navin Sinha, C.J.

16/04/2015

1. The Appellant in Criminal Appeal No.2738 of 1998 took a plea of juvenility. An inquiry was ordered on 19.12.2014. The report dated 3.3.2015 received from the Sessions Judge, Balodabazar, confirms that on the date of occurrence, the Appellant was 17 years and 8 months of age, hence a juvenile. The Appellant in Criminal Appeal No.2584 of 1998 is the mother of the former. The former has been convicted under Section 302 IPC to rigorous life imprisonment with fine of Rs.5000/-, in the event of failure to pay which he was required to undergo one year's further rigorous imprisonment. The latter has been convicted under Section 201 IPC to three years' rigorous imprisonment with fine of Rs.1000/-, in the event of failure to pay which she was required to undergo six months' further rigorous imprisonment, as ordered by the First Additional Sessions Judge, Balodabazar, in Sessions Trial No.143 of 1995, dated 14.10.1998.

2. The deceased Kumari Annapurna Sinha, aged approximately 16 years, was a school going girl. Appellant Tanmaypal, also a school going boy is stated to have been a friend of the deceased. Dehati Nalishi, Exhibit P-17, was lodged by Shyam Sunder Sharma stating that he was informed at about 11:45 am by the shop keeper across the road that a girl had been murdered in the lane opposite Gayatri Mandir by a boy, who had assaulted himself also. Both were lying on the road bleeding. He took the boy to the hospital while the girl was taken home by her mother. FIR, Exhibit P-18, was lodged at 14:45 pm by Shyam Sunder Sharma naming Appellant Tanmaypal as the assailant. Postmortem report, Exhibit P-15, was conducted by PW-23 Dr. Rajesh Awasthi who found the following injuries on the deceased:-

1. Incised wound on mid line in the back at the level of 8th & 9th intercostal space. Size $5\frac{1}{2}$ cm x 2cm obliquely placed. Depth is $20\frac{1}{2}$ cm (probe passed up to $20\frac{1}{2}$ cm direction was below upwards in antero lateral direction).
2. Incised wound $1\frac{1}{2}$ cm x 2mm to $\frac{1}{2}$ cm at 2nd intercostal space near & Rt. sternal border. Wound was deep up to muscles in upper portion and up to skin in lower end.
3. Incised wound in Lt. forearm 5cm x $\frac{3}{4}$ cm deep up to subcutaneous tissue.
4. Incised wound 1cm x 1cm deep up to subcutaneous tissue on the post part of arm near post axillary fold.
5. L.W. 3 x $\frac{1}{2}$ cm size on the lateral aspect of Rt. knee joint.
6. L.W. 4 x $2\frac{1}{2}$ cm size deep up to skin just above the wound No.5. Direction of both L.W. Was below upwards.
7. Abrasion multiple in no size varies from 1.5 to 2cm x 1 to 1.5cm over both knee joint.

3. Learned Counsel for the Appellants submitted that PW-4, Gulabo Dewangan was not an eye witness as claimed by her. The witness has deposed that the deceased was assaulted in the stomach. The injuries revealed in the post-mortem report are on the back. It would not be safe to convict on the basis of a solitary alleged eye witness, especially if she was a minor and the evidence is belied by the medical report. The occurrence has taken place in a public lane, but there is no independent eye-witness account available and Shyam Sunder Sharma has also not been examined for which

the prosecution has offered no explanation. With regard to the other eye-witness, PW-6 Harishchand, it is submitted that he has stated being accompanied by PW-10 Shekhar. But the latter has denied having seen anything. It was lastly submitted that the father of the deceased was an Assistant Sub-Inspector of Police. He did not approve the friendship between the Appellant Tanmaypal and the deceased. The Appellant has therefore been falsely implicated. With regard to the Appellant Dropadibai, it was submitted that the ingredients of Section 201 IPC do not stand satisfied to sustain her conviction. She did not cause disappearance of the weapon of assault with any intention to screen her son and neither did she give any false evidence. On the contrary, she voluntarily produced the weapon of assault when the police came to her house. Her conviction is therefore also not sustainable.

4. Learned Counsel for the State submitted that the occurrence was in broad light. Even if the occurrence was in a public place, mere absence of independent witness cannot discredit the reliable eye-witness account given by PW-4, Gulabo Dewangan, a class mate of the deceased. Independent witnesses may not be forthcoming for a variety of reasons. Criminal jurisprudence does not prohibit conviction on basis of a single witness account if otherwise the Court is satisfied. PW-6 Harishchand has also given an eye-witness account and no question was asked to him in cross-examination or to PW-10 Shekhar that the place of occurrence could not be seen from the urinal. Appellant Dropadibai picked up the knife used for assault by the Appellant Tanmaypal from the place of occurrence and took it home obviously with the intention to cause disappearance of evidence to save her son. Her conviction also calls for no interference.

5. We have considered the respective submissions and examined the evidence on record also.

6. PW-4 Gulabo Dewangan, aged about 16 years, was a classmate of the deceased accompanying her at the time of assault and is therefore a natural

eye-witness. She deposed that the two were walking to school together when in the lane opposite the Gayatri Mandir, the Appellant Tanmaypal accosted them and assaulted the deceased with a knife in the stomach. That PW-4, Gulabo Dewangan was an eye-witness to the assault was specifically put to Appellant Tanmaypal under 313 Cr.P.C. He did not deny her presence. An evasive answer was given that he did not know. In cross-examination also no suggestion was given to the witness that she was not present at the time of occurrence and was deposing falsely. No defence has been furnished why the witness was deposing falsely to implicate the Appellant Tanmaypal much less the existence of any previous dispute or animosity between them as the motive for the same. We are of the considered opinion that the evidence of PW-4, Gulabo Dewangan is consistent, credible, fully reliable and inspires confidence in the Court.

7. In our opinion the number of injuries on the person of the deceased is ample evidence with regard to the intention of the deceased to cause her death. The fact that PW-4, Gulabo Dewangan stated of an assault on the stomach but the post-mortem report found injuries on the back and none on the stomach is not considered very relevant. The deceased was wearing a white blouse. The blood naturally trickled down to the front around the abdomen area leading the witness to presume an assault in that area. The witness has credibly stated that the Appellant Tanmaypal came from behind, turned the deceased around and assaulted her. The witness was a 16 years old school girl. Her reaction at that tender age as an eye-witness to a murderous assault has to be appreciated. Obviously she would have been in a state of shock and it is apparent that she ran away from the place immediately.

8. PW-6 Harishchand, aged 19 years, also deposed being an eye-witness from near the Gayatri Mandir to the murderous assault. The witness is very natural when he says that he was going with his friend PW-10 Shekhar to watch a movie but after witnessing the murderous assault he was shaken up

and came back home without going to the movie. Under 313 Cr.P.C. a question was specifically put to the Appellant Tanmaypal that the witness saw him with a knife. No question was put to the witness in cross-examination questioning his presence at the place of occurrence. PW-10 Shekhar a friend of PW-6 Harishchand also aged 19 years had gone hostile stating he saw nothing but that does not discredit the otherwise un-rebutted evidence of PW-6, Harishchand.

9. PW-9 Constable Parmanand proved taking the Appellant Tanmaypal for his MLC though there is no report on record. The witness along with PW-21 Asanu Khan proved seizure of the clothes of the Appellant Tanmaypal marked Exhibit P-3. PW-12 Rajesh Kumar Tiwari and PW-13 Anand Agrawal proved the inquest report, Exhibit P-7. PW-15 Ramsewak proved the spot map Exhibit P-8. PW-22 R.K. Dubey, Sub-Inspector of Police proved recovery of the knife from the house of the Appellant Tanmaypal produced by his mother marked Exhibit P-11 and also the blood stained earth marked Exhibit P-10. PW-25 D.K. Sharma, officer in-charge of the police station deposed seizing the clothes of the Appellant Tanmaypal. The FSL report Exhibit P-26 has confirmed presence of blood on the knife and clothes of the Appellant Tanmaypal and the earth sample collected from the place of occurrence.

10. The fact that Shyam Sunder Sharma has not been examined and no explanation has been furnished with regard to the same by the prosecution is not considered very relevant to discredit the prosecution case in view of the reliable eye-witness account of PW-4, Gulabo Dewangan. The fact that no independent eye-witness account is available despite the occurrence having taken place in a public lane is again not considered sufficient to discredit the prosecution case. Judicial notice can be taken of the fact that generally people unconnected with the family or person of the victim are hesitant to come forward to depose for various reasons including the dilatory process of a criminal case and also a fear of retribution by the accused if they depose. It is the quality of evidence that is relevant and not the quantity of evidence.

Criminal jurisprudence does not prohibit conviction on basis of a solitary eye-witness. It may be advisable in the given facts of a case to seek corroboration. The present is not one such case.

11. We therefore find no reason to interfere with the conviction of the Appellant Tanmaypal. He has already remained in custody for approximately 9 years. In view of his being declared a juvenile, he has already undergone the maximum period of custody that could have been imposed. He is held entitled to the benefit of being a juvenile and is not entitled to undergo further sentence consequent to our upholding his conviction.

12. We are however unable to sustain the conviction of the Appellant Dropadibai. Section 201 IPC requires the person concerned to commit an act that leads to disappearance of evidence. It has to be done with an intention of protecting the offender from punishment or giving of any information regarding an offence knowing or believing it to be false. Had the Appellant Dropadibai picked up the knife from the place of occurrence with the intention to cause disappearance of evidence undoubtedly she would not have handed it over to the police when they came to her house. Nothing prevented her from throwing it away at any secluded place or denying having picked up the knife from the place of occurrence. Her conduct is clearly incompatible with any such intention on her part. On the contrary, she picked up the knife and took it home but promptly handed it over to the police when they came to her house. She did not give any misleading statement to the police either. No attempt was even made by her to wipe off the blood stain in the knife to erase and cause disappearance of evidence.

13. In (2007) 7 SCC 502 (Sukhram v. State of Maharashtra), the essential ingredients to bring home a charge under section 201 IPC was noticed as follows :-

“18....To bring home an offence under Section 201 IPC, the ingredients to be established are: (i) committal of an offence; (ii) person charged with the offence under Section 201 must have the knowledge or reason to believe that an offence has been committed; (iii) person charged with the said offence should

have caused disappearance of evidence; and (iv) the act should have been done with the intention of screening the offender from legal punishment .or with that intention he should have given information respecting the offence, which he knew or believed to be false. It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home an offence under Section 201 IPC, a mere suspicion is not sufficient. There must be on record cogent evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused has caused the evidence to disappear in order to screen the offender, known or unknown.”

14. In the result, Criminal Appeal No.2738 of 1998 is dismissed with modification of sentence. Criminal Appeal No.2584 of 1998 is allowed subject to the conditions contained in Section 437-A Cr.P.C.

(Navin Sinha)
Chief Justice

(P. Sam Koshy)
Judge