

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 2312 of 1999**

Shashikant Singh Son of Tribhuwan Nath Singh, aged 24 years, resident of Camp Tataline, Qtr. No. 14, P.S. Cantt, Distt. Durg, Madhya Pradesh (Now Chhattisgarh).

---- Appellant

**Versus**

State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

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For Appellant : Shri C.R.Sahu, Advocate.  
For Respondents : Smt. Smita Ghai, Panel Lawyer.

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

**Judgment On Board****Per Navin Sinha, Chief Justice****27/04/2015**

1. The Appellant stands convicted under section 302 IPC to life imprisonment alongwith fine of Rs. 5000/-, in the event of failure to pay which, he was required to undergo six months further rigorous imprisonment as ordered on 5.8.1999 by 3<sup>rd</sup> Additional Sessions Judge, Durg in Sessions Trial No. 8 of 1996.

2. The deceased Dr. Nawal Kishore Singh son of Sukh Sagar Singh is alleged to have been done to death by Shashikant Singh son of Tribhuwan Nath Singh. The evidence reveals that they were cousins. The occurrence is stated to have taken place on 1.4.1995 at about 3 p.m. inside the compound of the house of the deceased. Dehatinalishi, Exhibit P-14 was lodged the same

day by PW-8, Ashish Kumar, the son of the deceased aged about 13 years. The witness stated that after lunch he was sitting with his father alongwith his with mother Braj Kishori Devi, PW-11 and mother of Mehandi Hasan. He heard the noise of motor-cycle stopping at his door and after looking out told his father that his uncle, the Appellant, had come. There were three other persons with him. The Appellant pointed towards the deceased saying that he had to be killed. One of them assaulted his father on the face, other picked up a chair and assaulted while the Appellant pulled out a knife from his pocket and assaulted the deceased in the stomach and chest two-three times. All of them then went away on the motor-cycle. He could recognize the assailants who had come on two Hero-Honda motor-cycles and one Yezdi motor-cycle. One person additionally was sitting on each motor-cycle but did not get off the same.

3. FIR (Exhibit P-15) was also lodged the same day to the same effect. The post-mortem of the deceased (Exhibit P-4) was done the next day by PW-2, Dr. S.A. Mangdey, who found the following injuries on the deceased:

- "a. Stab wound left side chest laterally to the nipple size 5cm x 1.9 cm and deep upto lung.
- b. Stab injury on the right side of the chest near Sternum size 2.5 cm x 1.5 cm and deep upto lung / in direction.
- c. Incised wound on the left thigh laterally 3 cm x 1.5 cm x 1 cm, oblique in direction.
- d. Abrasion 3 cm x 1.2 cm on the right upper arm. "

Exploration of injury No. 1 of left lung showed 1 cm x 0.5 cm x 0.2 cm incised wound and exploration of injury No. 2 showed incised wound on right lung 1.5 cm x 5 cm x 0.3 cm. Death was opined to have been caused by Syncope due to extensive haemorrhage in pleural cavity due to injury in the lung and time expired since death 24 hours.

4. Learned Counsel for the Appellant submitted that there were total of six accused of whom five have been acquitted. The allegations were common and therefore, the Appellant is entitled to be acquitted also for the same reasoning. The Appellant is alleged to have assaulted suddenly and not in a pre-meditated manner and therefore in the alternative, he is entitled to lesser punishment under Section 304 Part II IPC. The witnesses are all related and interested. There is no independent eye-witness available even though according to the prosecution witnesses themselves, the house is situated in a crowded area but no explanation has been offered why no independent witness was examined. PW-8, Ashish Kumar and PW-10, Akhilesh Kumar Singh, sons of the deceased were both aged about 13 and 14 years respectively. Being child witnesses their evidence cannot be completely and safely relied upon excluding the possibility of tutoring. That leaves the single evidence of Braj Kishori Devi, PW-11, it shall not be safe to uphold the conviction on a solitary eye-witness account. The prosecution has not suggested any motive for the assault.

5. Opposing the appeal, Learned Counsel for the State submitted that the Appellant was a relative of the deceased. He has been identified by the sons and wife of the deceased. His clothes were seized and sent for forensic examination which has confirmed presence of blood on them, duly put to the Appellant under Section 313 CrPC, to which he has offered no explanation. Blood was also found on the earth sample seized from the place of occurrence. Motive is not an essential element always necessary to sustain the conviction. It was lastly submitted that nobody would be speaking the truth more than the children and wife of the deceased about who the real assailant was. Mere absence of an independent witness even if it was a crowded locality cannot be detrimental as independent witnesses are generally reluctant to depose out of fear or harassment by the police.

6. We have considered the submissions on behalf of the parties and examined the evidence on record also.

7. PW-8, Ashish Kumar and PW-10, Akhilesh Kumar are the minor sons of the deceased, aged about 13 and 14 years, respectively. PW-11, Braj Kishori Devi is wife of the deceased. The FIR (Exhibit P-15) was lodged by PW-8, Ashish Kumar. All three of them are eye-witnesses to the occurrence. PW-8 has described the occurrence in vivid detail stating specifically that the Appellant told the others who came with him pointing to the deceased that he was to be killed. The acquitted accused Jitendra assaulted the deceased on the nose after which the Appellant took out a knife and the acquitted accused Ramesh and Haroon held his father while the Appellant assaulted the deceased on the chest, stomach as also on the thigh. The accused also assaulted PW-11, Braj Kishori Devi with an iron chair after which the witness went to the police station alongwith his mother and sister and proved lodging of Dehatinalishi (Exhibit P-14). He vividly described that the assailant had come on two Hero-Honda motor-cycles and one Yezdi motor-cycle. The test identification parade of the other accused is not considered relevant for discussion in view of their acquittal and also that the case of the Appellant stands on a different footing. The witness further stated that PW-10, Akhilesh Kumar, his elder brother and his sister Aruna were at the house of Kamlakant watching TV and they came running on hearing him shouting for help. Likewise, PW-10, Akhilesh Kumar stated that he was watching TV at the house of Kamlakant with his sister Aruna when he heard PW-8 shouting for help. On stepping out, he saw that the Appellant was running away after having assaulted his father and his mother, PW-11, Braj Kishori Devi was trying to catch the Appellant when the acquitted accused Haroon threw the chair which hurt the witness. The MLC of the witness, Exhibit P-1 has been proved by Dr. R.N.Turrey (PW-1) who in cross-examination specifically

deposed that the injuries could not be a result of self-infliction or due to simply falling down.

**8.** There is no invariable rule of criminal jurisprudence that a minor witness cannot be relied upon for conviction. The Court is only required to be more cautious and circumspect while examining the evidence of a child witness to ensure that it is convincing, reliable and that the child witness is able to communicate that he understand what he is speaking. Both the child witnesses have been cross-examined thoroughly but have remained consistent and firm in their deposition for the manner in which the occurrence has taken place and the Appellant being the assailant. We find no reason to doubt their evidence or to consider non-acceptability of it only because they were child witnesses.

**9.** PW-11, Braj Kishori Devi, wife of the deceased also specifically named the Appellant as the assailant who came alongwith others on three motor-cycles. Acquitted accused Haroon and Jitendra held the deceased while the Appellant is stated to have assaulted in the stomach, chest and thigh of the deceased. The Appellant tried to assault the witness also but she managed to step aside. She further deposed that they all went to the police station before going to the hospital and from there, she proceeded to Durga Hospital with the deceased who had been injured while PW-8 stayed at the police station for lodging the report.

**10.** Even if the prosecution has not alleged any motive, it cannot lead to an inescapable conclusion of the innocence of the Appellant. Motive is not always necessary to be proved. It may be relevant in a case of circumstantial evidence as an additional factor but when eye-witnesses are present and the medical report corroborates the ocular evidence, motive is not considered very relevant. In the present case, the eye-witnesses are the sons of the deceased and his wife. The prosecution has not offered any explanation why

the witnesses were falsely implicating the Appellant letting go free the real or suspected assailant of the deceased. The witnesses have stated that the deceased did not have enmity with any one. To our understanding, no one would be more interested than the sons and wife of the deceased that the real assailant of the deceased is brought to book and not allowed to go free by an imagined accused without any substance for imagination.

**11.** The fact that there are no independent witnesses in a crowded locality is considered irrelevant as the occurrence has taken place inside the compound of the house of the deceased. It will be the family members who will be the natural available witnesses. Even if there had been commotion, neighbours may or may not come as they are reluctant to be witness for the manner in which the police investigates, the trial proceeds and the fear of retribution from the accused.

**12.** The fact that PW-7, Pati Ram Bareth, the Patwari may not have got the spot map signed by the witnesses or mentioned the presence of witnesses for identification of the place of assault, are not considered very relevant in view of the nature of ocular evidence available which has been found consistent and credible. We find it difficult to hold that the Appellant acted in a grave and sudden provocation. On the contrary, it shows complete pre-meditation on his part when he came armed with a knife alongwith with five other persons, astride three different motor-cycles, identified the deceased as the person to be killed, assaulted the deceased and left thereafter. The acquittal of the other accused cannot inure to the benefit of the Appellant as his case is completely distinguishable. The Appellant is the only assailant of the deceased who stabbed him more than once. Any benefit of doubt given to the other accused who may have come alongwith the Appellant cannot lead to a conclusion that the Appellant was not the assailant of the deceased when the entire evidence available conclusively points towards him as the only assailant of the

deceased.

**13.** Last but not the least, his clothes i.e. Ganji, Shirt and Trousers seized from him by the police, marked Article E-2, E-3 and E-4 have been found to have contained blood in the forensic report (Exhibit P-25) for which the Appellant has offered no explanation considering that presence of blood on his clothes was not a normal and routine event.

**14.** We therefore find no merit in the appeal. The bail bonds of the Appellant are cancelled and he is directed to be taken into custody and / or surrender forthwith for serving out the remaining period of sentence

**15.** The appeal is dismissed.

Sd/-  
(Navin Sinha)  
**CHIEF JUSTICE**

Sd/-  
(P.Sam Koshy)  
**JUDGE**