

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2033 of 1998**

Vijay Uraon S/o Telgu Uraon, age 25 years, Resident of village Lavkushpur, P.S. Kusmi, District Sarguja, Madhya Pradesh (Now Chhattisgarh).

---- Appellant

Versus

The State of Madhya Pradesh (Now Chhattisgarh) Through PS Kusmi, District Sarguja, Madhya Pradesh (Now Chhattisgarh).

---- Respondent

For Appellant	:	Shri Shakti Raj Sinha, Advocate.
For Respondent	:	Shri Vinod Deshmukh, Deputy Government Advocate.

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

Judgment on Board**Per Navin Sinha, Chief Justice****27/07/2015**

1. The Appellant stands convicted under Section 302 IPC to life imprisonment and fine of Rs. 200/-, in the event of failure to pay which he was required to undergo further one month imprisonment as ordered on 30.7.1998 by the Additional Sessions Judge, Surguja in Sessions Trial No. 150 of 1997.

2. The deceased Dukhi Bai was killed on 26.5.1997 at about 12:00 pm while returning from her daughter's house. PW-1, Biramsai, the husband of the deceased lodged FIR (Exhibit P-1) on 27.5.1997 at 7:00 am stating that he had stayed back at his daughter's house when PW-2, Ujir came running and informed him that the Appellant had killed his wife. PW-1 went to the place of

occurrence with Ujir. His wife was breathing her last. He brought water from the house of Rupu. At this time, the Appellant assaulted PW-1 also when PW-2 and Rupu separated them. PW-1 further stated that three years earlier also, the Appellant had an altercation with him as he suspected that the wife of the witness was practicing witchcraft and because of which he had strangled her.

3. The postmortem (Exhibit P -3) was conducted on 27.5.1997 at 4:00 pm. The tongue was found protruding, frothy fluid was coming out from the nose and mouth, bruise injury was present on the neck measuring 7x5cm. The cause of death was opined as asphyxia due to strangulation, homicidal in nature, about 12-24 hours earlier.

4. Learned Counsel for the Appellant submitted that Rupu has not been examined in Court even though his police statement had been recorded. No reason has been given by the prosecution why he has not been examined. PW-2, Ujir is a solitary eye-witness. In his defence under Section 313 CrPC, the Appellant took a specific plea that PW-2 was enemical towards him and was falsely implicating him. Two-three years ago also, he had tried to falsely implicate the Appellant and spoil his life. It was therefore wholly unsafe to base the conviction on the evidence of a solitary eye-witness especially when a plea of false implication and previous enmity was taken with regard to the witness. The Court should have sought corroboration of PW-2, Ujir by independent evidence. Reliance was placed on (2003) 2 SCC 401 (Lallu Manjhi v. State of Jharkhand). It was next submitted relying on (2003) 1 SCC 465 (Joseph v. State of Kerala) that a witness may be reliable, unreliable or he may be partly reliable and partly unreliable. Referring to the deposition of PW-2, Ujir during cross examination that he never saw the assault but merely the dead body of the deceased lying on the road and did not call or inform anybody but simply went back to his house, read with his police statement

and the rest of his deposition and cross-examination, he cannot be called a wholly reliable witness. Referring to Joseph (*supra*), it was submitted that it shall not be proper to uphold the conviction on the evidence of a partly reliable and partly unreliable witness.

5. It was next submitted that the conduct of the Appellant was completely incompatible with the allegations of being an assailant. In reply to question No. 21 under Section 313 CrPC, the Appellant had stated that he was present on the road and had seen the wife of PW-2 over there. Likewise, PW-4, Rajo Bai wife of PW-2, Ujir stated in her chief that she saw the Appellant standing on the road. If the Appellant was the assailant, as alleged, his conduct was totally incompatible with the same as in that event, after having committed the assault, he would have run away from the place rather than kept standing to ensure his arrest, false implication and other problems for himself.

6. Learned Counsel for the State submitted that in the FIR itself, PW-1, Biramsai, the husband of the deceased had stated that the Appellant assaulted him when he went to the aid of his wife even while she was lying on the ground and had to be separated by PW-2 and Rupu. This was repeated by PW-1 in his Court statement also but no question was asked in cross-examination with regard to the same. Likewise, PW-1 in cross-examination stated that the Appellant was quarreling with the witness even earlier. No suggestion to the contrary was given in the cross-examination. Under Section 313 CrPC, the question was specifically put to the Appellant also and he gave an answer that he did not press the neck of the deceased evading the question that he had to be separated from PW-1. Additionally, the defence he took under Section 313 CrPC was that he had no dispute with PW-1, Biramsai but the dispute was with PW-2, Ujir. Despite a Court question if he wanted to lead any evidence, he declined to do so by leading any evidence in support of the previous enmity or previous occurrence between him and Ujir (PW-2). The

taking of a false defence under Section 313 CrPC is itself an incriminating factor.

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

8. The aspect of law that conviction can be based on the evidence of a solitary eye-witness if otherwise reliable, convincing and inspiring confidence need not detain us in view of the discussion contained in Joseph (supra) relied upon by the Appellant himself. It is not the quantity but the quality of evidence that matters. Section 134 of the Indian Evidence Act provides that no particular number of witness shall be required for proof.

9. The question for consideration before us would primarily be whether PW-2, Ujir was a reliable eye-witness or not. Alternately, was he partly reliable and partly unreliable. To appreciate the fact, in the nature of occurrence and evidence available, we will be required to take a holistic view of the entire evidence to arrive at any conclusion.

10. The occurrence took place on 26.5.1997 at 12:00 pm. The FIR was lodged with promptness on 27.5.1997 at 7:00 am by PW-1, Biramsai, the husband of the deceased. He stated that the Appellant was enimically disposed towards him because he suspected the deceased to be practicing witchcraft. His police statement was recorded on 27.5.1997. In his Court statement, recorded six months later, he substantially reiterated the same sequence of events as in his police statement. The witness is not required to make a photographic reproduction of his police statement and merely because the aspect with regard to the Appellant suspecting the deceased to be practicing witchcraft has not been mentioned, does not lead to any belief by us that the witness is not reliable. This view being taken by us is further fortified by the fact that in his Court statement PW-1 specifically stated that

when he went to aid of his wife, the Appellant assaulted him. No question has been asked in this regarding during cross-examination. The narration in the FIR of the Appellant harbouring animosity since past because of his suspecting the deceased of practicing witchcraft was materially also replied in cross-examination by PW-1 when he referred to the past dispute without mentioning of the word 'witchcraft' specifically.

11. PW-2, Ujir a star witness recorded his police statement also on 27.5.1997 itself. He stated that he saw the Appellant pressing neck of the deceased. Having got scared, he called out to Rupu who came out. The witness then ran to the house of the daughter of PW-1 and told the latter of the occurrence on the way, the giving of water to the deceased brought from the house of Rupu and the assault by the Appellant on PW-1, Biramsai while he was trying to give water to his wife. In his Court deposition also, the witness remained substantially and materially consistent.

12. Learned Counsel for the Appellant stressed upon the deposition of PW-2, Ujir in cross-examination at paragraph 6 to submit that the witness stated not having seen the assault and not having told anyone but having gone back to his house. The witness further acknowledged that it was a day of festival and everybody was drunk. On basis of the same, it was contended that if PW-2 was making vacillating statements in his chief and cross-examination, he was not a wholly reliable witness, drawing support from Lallu Manjhi (supra).

13. We regret our inability to concur with the submission made on behalf of the Appellant. The Court statement was recorded nearly six months later. Human memory is short. It is too much to expect any witness to make a photographic reproduction of what he may have said in his police statement. After the witness was declared hostile, in view of his statement made in paragraph 6, in cross-examination by the public prosecutor, he immediately

corrected himself by explaining that he had not followed the question properly. No further evidence is required that he was a wholly reliable and convincing eye-witness. He also denied any suggestion with regard to likelihood of his not being able to recognize the Appellant properly because of the darkness and consumption of alcohol. The witness in reply specifically stated that the Appellant was a co-villager and therefore the question of not recognizing him in the darkness did not arise. This is fully in consonance with the judicial view reiterated from time to time about the ocular vision capacity of rural village folk not used to incandescent light.

14. In Lallu Manjhi (supra), the facts were entirely different. The star witness PW-9 substantially departed from his earlier version of the incident as made in the FIR. It was in the facts of that case that PW-9 was classified as neither reliable nor wholly unreliable. In criminal law, no straitjacket formula of any legal proposition can be laid down and it will always vary from facts of one case to another.

15. PW-4, Rajo Bai, wife of PW-2, Ujir has also confirmed the presence of the Appellant at the place of occurrence. If it was the day of festival and everybody was inebriated. The possibility that the Appellant may also have consumed alcohol and therefore felt emboldened to stay on at the place of occurrence cannot be ruled out. In any event, in view of the reliable eye-witness account by PW-2, Ujir coupled with the Appellant taking false defence under Section 313 CrPC, we are not convinced to grant him benefit of acquittal merely because he may have continued to stand at the place of occurrence and did not run away. There will have to be a difference between a person who is scared after committing the assault and another who is so emboldened that he does not consider it necessary to run away from the place of occurrence and has no qualms about standing by at the relevant time with regard to the occurrence that he may have committed.

16. PW-5, the Investigating Officer has adequately proved the FIR (Exhibit P-1), preparation of spot map (Exhibit P-7) as being on the road side and the house of PW-2, Ujir being at the distance of 15-20 steps from the place of occurrence.

17. On consideration of entirety of the materials, we are satisfied that conviction of the Appellant calls for no interference. His bail bonds are cancelled and he is directed to surrender forthwith or be taken into custody to serve out the remaining period of sentence.

18. The appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge