

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRIMINAL APPEAL NO. 1394 OF 1999**

Kawasimasa S/o Budra, aged about 32 years, resident of village Sirhapara, Mundelwal, P.S. Songpal, District Dantewada.

**... Appellant****Versus**

The State of Madhya Pradesh (now Chhattisgarh), through Police Station Songpal, District Dantewada.

**... Respondent**

|                      |   |                                     |
|----------------------|---|-------------------------------------|
| For Appellant        | : | Ms. Smriti Shrivastava, Advocate.   |
| For Respondent-State | : | Mr. Ravindra Agrawal, Panel Lawyer. |

**Hon'ble Shri Navin Sinha, Chief Justice****Hon'ble Shri Justice P. Sam Koshy****Judgement on Board****Per NAVIN SINHA, C.J.****26/08/2015**

1. The Appellant who is the nephew of the deceased stands convicted under Section 302 IPC to life imprisonment with fine of Rs.1000/-, in the event of failure to pay which, he was required to undergo one year further rigorous imprisonment as ordered on 10.3.1999 by the Second Additional Sessions Judge, Dantewada, in Sessions Trial No. 103 of 1998.

2. FIR, Exhibit P-1, was lodged by PW-1 Kawasi Budhra on 1.1.1998 at about 6:35 p.m. The witness was the brother of the deceased and father of the Appellant, stated that the Appellant on account of land dispute had assaulted the deceased with bow and arrow while the latter was sitting near the fire. In the village Panchayat, the Appellant had also made an extra-judicial confession in this regard.

3. Post-mortem of the deceased, Exhibit P-8, was conducted by PW-6 Dr. L.L. Dhankar who found an entry and exit wound on the neck

area opining that the death was caused by hard, sharp pointed cylindrical instrument, homicidal in nature.

4. Learned Counsel for the Appellant submitted that no extra-judicial confession was ever made. PW-5, Madkami Kesha, in cross-examination had acknowledged that the Appellant had never made any confession before the Panchayat. PW-1, Kawashi Budhra, has turned hostile denying having named the Appellant as the assailant. The solitary evidence of PW-2, Kawasi Budhri, wife of the deceased, who was an interested witness, was therefore not sufficient for conviction. PW-3, Kawasi Sukda, had denied that any confession or recovery was effected in his presence and explained that he had signed on the papers because of the asking by the police.

5. Learned Counsel for the State opposing the submission contended that the parties were all related to each other. There was a land dispute. The assault had taken place in the evening on a winter night. PW-2, Kawasi Budhri, wife of the deceased, was also the aunt of the Appellant. No reason has been given by the Appellant why she was falsely implicating her own nephew. She is a fully reliable eye-witness and who would be the most interested to ensure that the real assailant who killed her husband in front of her is brought to book. Even if PW-1, Kawasi Budhra, turned hostile in Court, the evidence of a hostile witness is not to be rejected outright and to the extent it finds corroboration can still be utilised to maintain conviction. PW-5, Madkami Kesha, has deposed in his chief of an extra-judicial confession made by the Appellant before the Panchayat. PW-1, Kawasi Budhra, has also confirmed the holding of a Panchayat. On the confession of the Appellant, the bow and arrow used for the assault have been

recovered. In his defence under Section 313 Cr.P.C., the Appellant offered no explanation except to contend that he had been falsely implicated.

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

**7.** The deceased and the Appellant were uncle and nephew respectively. The informant, PW-1, Kawasi Budhra, was the brother of the deceased and father of the Appellant. PW-2, Kawasi Budhri, is the wife of the deceased. The assault had taken place in her presence while she was sitting with the deceased warming themselves by the fire in the winter evening. In cross-examination, she denied any suggestion of not being an eye-witness. If her husband had been killed in her presence, Counsel for the State has rightly contended that she would be the most interested to ensure that the real culprit was named and brought to book rather than falsely implicating her own nephew merely because of land dispute. She also denied any suggestion that no Panchayat had been called and that the Appellant never made an extra-judicial confession.

**8.** PW-5. Madkami Kesha, the co-villager, in his evidence in chief stated that a Panchayat had been called in which the Appellant confessed his guilt. The fact that in cross-examination the witness may have tried to rescile by stating that the Appellant never made any confession is considered inconsequential in the facts of the case.

**9.** The law does not require the evidence of a hostile witness to be rejected completely. To the extent that it finds corroboration from other evidence, it can also be taken into consideration to form basis of conviction. Significantly, PW-1, Kawasi Budhra, acknowledged having

gone to the police station and lodged FIR, Exhibit P-1. The narration is detailed with regard to the Appellant having assaulted the deceased.

**10.** We are of the considered opinion that it called for a certain amount of courage and fortitude for PW-1, Kawasi Budhra, to name his own son as the assailant, a truth which came out spontaneously as the FIR was lodged soon after the occurrence. The evidence of the witnesses was recorded nearly 8-9 months later giving sufficient time to resile from his own police statement in an effort to protect his son which is quite natural. Yet PW-1, Kawasi Budhra, acknowledged that his brother had been injured in the neck, that he had gone to the police station to lodge a report, that the deceased had sown crops on his share of the lands. The witness also confirmed in cross-examination that at the police station he had stated that his son had killed the deceased.

**11.** In view of the credible eye-witness account given by PW-2, Kawasi Budhri, the corroboration of the same culled out from the admissible evidence of PW-1 Kawasi Budhra in corroboration, the confession and recovery of bow and arrow used for the assault are considered insignificant.

**12.** We therefore find no reason to interfere with the order of conviction. The bail bonds of the Appellant are canceled. He is directed to surrender and/or be taken into custody forthwith for serving out his remaining period of sentence.

**13.** The appeal is dismissed.

Sd/-  
**(Navin Sinha)**  
Chief Justice

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