

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1805 OF 2000

Bhaduram S/o Deva Gound,
aged about 38 years,
R/o – Vill – Nayapara, Dantewada,
Distt – Dantewada

... Appellant

Versus

The State of M.P.

... Respondent

For Appellant	:	Ms. Kiran Jain, Advocate.
For Respondent-State	:	Ms. Smita Ghai, Panel Lawyer.

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

Judgement on Board

Per NAVIN SINHA, C.J.

15/06/2015

1. The Appellant stands convicted under Section 302 IPC to life imprisonment by the First Additional Sessions Judge, Bastar, in Sessions Trial No. 78 of 2000, dated 2.6.2000, for having caused the death of one Vishambhar Singh.

2. The Appellant is alleged to have assaulted the deceased on the head twice with a *lathi* from behind on 3.11.1999. The deceased was taken to Dantewada Hospital and from there to the Maharani Hospital. He died during the course of treatment on 6.11.1999. Merg was lodged on information from the Hospital after which formal FIR, Exhibit P-5, was registered on 17.11.1999 by PW-8 Anant Pandey, the Investigating Officer. Postmortem of the deceased found subdural haematoma and the Doctor opined that the death was occasioned due to coma as a result of acute head injury sufficient in the ordinary course of nature to cause death.

3. Learned Counsel for the Appellant submitted that the origin of the dispute was trivial in nature. The Appellant was an Iron Smith. He had been asked to prepare an iron harness for agricultural animals which he allegedly

was delaying. The Appellant was agitated because of the deceased pestering him and therefore intended only to teach a lesson to the deceased. He did not have any intention to cause death. The conviction therefore deserves to be altered to one under Section 304 Part-I IPC.

4. Without prejudice to the above it was submitted that in absence of any corroborative material, the assault having taken place in the darkness of the night without any source of light, it was not safe to uphold the conviction on basis of a solitary eye-witness account. The deceased is alleged to have disclosed the name of the Appellant to his wife but the latter has not been produced as a prosecution witness, all of which create doubt for false implication.

5. Learned Counsel for the State opposing the Appeal submitted that the conviction calls for no interference. The eye-witness account of a solitary witness, if otherwise reliable, can also be the basis for conviction. The intention of the Appellant is evident from the manner in which he came running from behind, took the deceased by surprise and assaulted him on the head with a *lathi*, not once but twice. Identification of the Appellant cannot be doubted since PW-1 Padmani, the eye-witness, has clearly stated in her cross-examination that the Appellant was shouting while he was running to assault the deceased from behind, and by which she identified the Appellant.

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

7. There is no invariable rule in criminal jurisprudence that conviction cannot be maintained on the evidence of a solitary eye-witness. It is not the quantity but the quality of evidence that matters. If a solitary eye-witness is consistent, convincing and appears to be stating the truth, conviction can be maintained on basis of a solitary eye-witness. The statement of PW-1, Padmani, under Section 161 Cr.P.C. and that during deposition in Court are consistent.

8. The occurrence is stated to have taken place in the open field at about 9:30 p.m. PW-1, Padmani, identified the Appellant by voice as he was shouting and running. In 1998 SCC (Criminal) 907 (Kedar Singh v. State of Bihar) it was observed as follows:-

“3.It has also to be observed that even on a full dark night there is never total darkness. There can be other means to identify another through the shape of the body, clothes, gait, manner of walking etc.,etc. Identification is possible by voice too....”

9. Similarly in (2001) 8 SCC 311 (Ram Gulam Chaudhary v. State of Bihar) with regard to the ocular vision of rural folk it was observed as follows:-

“34. We see no substance in this submission also. It must be remembered that the incident had taken place in a village. As has been held by this Court in the case of *Kalika Tiwari v. State of Bihar* the visibility capacity of urban people who are acclimatised to fluorescent lights or incandescent lamps is not the standard to be applied to villagers whose optical potency is attuned to country-made lamps. It has been held that the visibility of villagers is conditioned to such lights and hence it would be quite possible for them to identify men and matters in such light. Also the appellants were from the same village and were known to PW 3 and PW 4.”

10. Identification by voice is therefore possible in the darkness. PW-1 Padmani has clearly stated that she identified the Appellant because of the fact that he was shouting while running behind the deceased before assaulting him. Had the Appellant taken any specific defence for false implication under Section 313 Cr.P.C., the question of any doubt with regard to identification by voice may or may not have arisen. In absence of any such defence, we are not inclined to accept the submission that in absence of any source of light, identification of the Appellant was not possible.

11. Intention has to be gathered from the surrounding circumstances and there will hardly be direct evidence available. Had the assault been made during the course of an altercation between the Appellant and the deceased for the delay in preparation of the iron brace, matters may have been different. The assault was made much later, at night, with the Appellant coming from behind, taking the deceased by surprise followed by two assaults on the head. It shows a premeditated design and state of mind. The submission that he only intended to teach a lesson and did not intend to

cause death does not appeal to us. The deceased was assaulted not once but twice on the head, a sensitive part of the human body. Merely because there may not have been any external fracture visible and the injuries caused due to the assault may be internal, it cannot be urged that there was no intention to cause death or that the injuries were not sufficient in the ordinary course of nature to cause death. PW-7, Dr. Sanjay Basak has clearly opined that the internal injury caused on the head was sufficient in the ordinary course of nature to cause death. We therefore find no reason to interfere with the conviction of the Appellant.

12. In 2010 (15) SCC 702 (Moses Arulananthan Vs. State of Tamil Nadu), injuries were internal in nature leading to death. The Court for that reason declined the prayer for converting the conviction from one under Section 302 IPC to 304 Part II IPC.

13. The Appeal is dismissed.

14. The Appellant is directed to surrender forthwith for undergoing the remaining period of sentence.

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

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