

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1566 of 2000**

Mainu Ram, Son of Jungle Ram, aged about 52 years, R/o Village Chichgaon,
P.S. Bhanupratappur, District Kanker, Chhattisgarh.

---- Appellant**Versus**

State of Madhya Pradesh (Now Chhattisgarh) Through P.S. Bhanupratappur.

---- Respondent

For Appellant	:	Smt. Indira Tripathi and Shri Wasim Miyan, Advocates.
For Respondent	:	Shri B. Gopa Kumar, Deputy Advocate General

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

Judgment on Board**Per Navin Sinha, Chief Justice****09/07/2015**

1. The Appellant stands convicted under section 302 IPC to life imprisonment for murder of his cousin Rainuram, ordered on 8.4.2000 by Additional Sessions Judge, Kanker, in Sessions Trial No. 92 of 1999.

2. The FIR (Exhibit P-8) was lodged by Peelaram (PW-6), son of the deceased on 21.12.1998 at about 1:15 pm with regard to an assault upon the latter between 10:30 to 11:00 am, the same day. The witness stated that his brother Shyamlal had told him that their father had been killed. The deceased was lying dead on the road near the cremation ground. PW-4, Haresh Kumar told him having seen the Appellant assaulting the deceased with a "Tangiya". The witness suspected that the Appellant had killed the deceased because of a dispute between them with regard to lands and crops standing on the same.

3. The post-mortem of the deceased (Exhibit P-11A) was conducted by PW-9, Dr. A.R.Gota who found the following injuries on the person of the deceased:

"1. Incised wound present on left side of neck below the left mastoid process behind the left ear, placed horizontally. Margins are clear cut, clotted blood present in and around the wound muscles and vessels beneath the wound. Cut transversely. Size 2 3/4"x1/2"x3/4".

2. Incised wound present on left side of chest just below the medial end of left clavicle, placed horizontally. Margins are clear cut clotted blood present in and around the wound. Size 2"x1/2"x1/2".

3. Incised wound present on lateral aspect of left arm (mild deltoid region) placed horizontally margins are clear cut clotted blood present in and around the wound. Left humerus bone fractured (comminuted) at and above the surgical neck. Size of wound is 2"x1/2"x1/2".

Carotid artery vein was cut, injury No. 1 was primarily responsible for the death. The left humerus bone was fractured and in the opinion of the doctor, death occurred due to syncope resulting in excessive external hemorrhage from cut of carotid vessel beneath the injury No. 1. The time elapsed since death was opined to 6-12 hours approximately.

4. Learned Counsel for the Appellant submitted that PW-2, Pramesh, a child witness aged about 12 years was not an eyewitness to the assault. Being the grandson of the deceased and the allegation of a land dispute between the Appellant and the deceased, false implication by a related witness cannot be ruled out. If he is the solitary child eye witness it shall not be safe to convict in absence of independent corroboration. Reliance was placed on (2003) 2 SCC 401 (Lallu Manjhi v. State of Jharkhand) and AIR 1971 SC 1064 (Bharvad Bhikha Valu v. The State of Gujarat). If PW-2, Pramesh had actually eye witnessed the assault, his conduct thereafter was highly unnatural in not having rushed home to inform others considering that the deceased was his grandfather. Instead the witness proceeded to school in the usual manner, stayed there till noon and came back at about 2:00 pm after school according to his daily routine and then told his father, PW-6. Further, the witness stated in his deposition that he had informed his teacher PW-7, Abdul Sajid Khan on reaching the school. But PW-7 did not state in his deposition that PW-2, Pramesh had told him anything. On the contrary, PW-7, Abdul Sajid Khan

stated that he was informed by students Rameshwar @ Ramesh and Chaitram, students of class IV and V about the killing of the deceased. PW-2, Pramesh never deposed having told either of the two children of having seen the occurrence. Both Rameshwar@ ramesh and Chaitram have not been examined by the prosecution. PW-6, Peelaram lodged the FIR at 1:15 pm even before PW-2 had returned home at 2:00 pm. The police statement of PW-2, Pramesh was recorded three days later which gives enough time for thinking and embellishment. The evidence of PW-2, Pramesh therefore is not reliable at all to base a conviction.

5. PW-3, Leelabai claimed to be an independent eyewitness. Her conduct was also very unnatural that having eye-witnessed the assault in the morning at around 10:00 am she did not tell anybody the whole day and quietly went home. She narrated the incident to her husband and in-laws only after they returned at 5:00 pm. The normal human reaction would have been tell co-villagers or neighbors or any other that she may have met on the way home.

6. PW-5, Krishna who proved the seizure of "Tangiya" and Shirt of the Appellant is also of no help to the prosecution. Even if blood has been found on the "Tangiya" in the FSL report there is no serologist report that it was the blood of the deceased. No blood has been found on the shirt of the Appellant in the FSL report.

7. The last submission was that there was a land dispute between the parties according to the prosecution itself which may have given provocation to the Appellant for the assault. He did not have any intention to cause death but only wanted to teach a lesson to the deceased with regard to the land dispute and if in the course of assault death has occurred, the Appellant can only be attributed the knowledge that the death may have been caused making the offence punishable under Section 304-II IPC. The maximum punishment for the same is 10 years. The Appellant has already remained in custody for

approximately over 8 years and the conviction may therefore be altered to the period already undergone.

8. Learned Counsel for the State opposing the appeal submitted that there are no contradictions or omissions in the evidence of PW-2, Pramesh, who is otherwise reliable and convincing as an eyewitness. There is no reason to doubt his capacity to depose only because he was a minor aged approximately 12 years. The Trial Court had put pertinent questions to understand his capacity to depose. The deceased was his grandfather. The police statement of the child witness and deposition in the Court substantially corroborate each other and trivial omissions, if any, cannot vitiate the same. There is nothing unnatural if the child continued to school. He informed PW-7, Abdul Sajid Khan the teacher. Chaitram, the other student named in the deposition of PW-7, Abdul Sajid Khan is also mentioned by PW-2, Pramesh in his police statement as accompanying him to school. Likewise, there is nothing unnatural in the conduct of PW-3, Leelabai an independent eyewitness to the assault. No explanation has been given by the Appellant why she was speaking falsehood to wrongly implicate him. In a rural environment there was nothing unnatural for a woman of having gone home and later informing her husband and in-laws, who either may not have been at home due to agricultural occupation, or the witness herself may have been dumb struck after having witnessed a murderous assault.

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

10. The assault on the deceased took place between 10:30 to 11:00 am. PW-2, Pramesh, grandson of the deceased was on way to school and witnessed the assault. Shyamlal, brother of PW-6, Peelaram, was a hearsay witness. His source of information was also not mentioned in the F.I.R. The non-examination of Shyamlal cannot be said to have caused any prejudice to the Appellant. The failure of PW-4, Haresh Kumar to support the prosecution

case is also of no benefit to the Appellant in view of the otherwise credible eye witness account by PW-2, Pramesh and PW-3, Leelabai along with other corroborative evidence. The police statement of PW-2, Pramesh was recorded three days later on 24.12.1998. The witness stated he was on way to school about 10:30 am along with his classmate Chaitram. PW-7, Abdul Sajid Khan, the teacher, has deposed that Chaitram informed him of the killing and looked scared. PW-2, Pramesh saw the deceased going on a bicycle. He also saw the Appellant on the way holding a "Tangiya". The witness did not see the first assault but when the deceased shouted and he turned around, the witness saw the Appellant making two to three assaults on the deceased with the "Tangia". The witness proceeded to school and told PW-7, Abdul Sajid Khan, the teacher, of the occurrence. Despite being a child witness, he has remained consistent in his Court deposition on all material aspects. The witness stated that he got scared and proceeded to school and informed his father after returning from school at noon.

11. PW-2, Pramesh was a child witness, grandson of the deceased, aged about 12 years. The Trial Court satisfied itself of his capacity to recapitulate and depose. There is no invariable principle of criminal jurisprudence that the evidence of a child witness cannot form the basis of conviction and the Court must necessarily be satisfied by independent corroboration of the same. The reliability of a child witness and the need to seek corroboration will depend on facts of a case coupled with all other available surrounding circumstances. It is trite law that it is not the quantity of the evidence but the quality of the evidence that matters. Applying the test in *Lallu Manjhi* (supra) relied upon by the Appellant, with regard to a solitary eyewitness we are of the considered opinion that PW-2, Pramesh falls in the third category and is a wholly reliable witness. There is nothing in his cross-examination to suspect his capacity to understand, depose, narrate and contains no major contradictions.

12. Section 118 of the Evidence Act provides that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease, whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. If after careful scrutiny of the evidence given by the child witness the Court comes to the conclusion that there is element of truthfulness and reliability, the Court can well accept the evidence of the child witness. Summarising the principles with regard to a child witness culled out from judicial precedents it was observed in (2011) 4 SCC 786 (State of M.P. v. Ramesh) as follows :-

“4. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.”

13. The capacity of PW-2, Pramesh the child witness to depose and the reliability of the same is manifest from the substantial recapitulation of his police statement nearly a year earlier in Court deposition. In (2000) 6 SCC 269 (State of Maharashtra v. Damu) the witnesses were nine and eleven years old. Disbelieved by the High Court holding it was not possible for them to remember events so old acquittal on benefit of doubt was set aside by the Supreme Court. We also find nothing unusual in the conduct of PW-2, Pramesh in having continued to school and not rushing back home to inform. A land dispute between the parties existed. He may have been apprehensive that the Appellant may accost him and that it was not safe to return home

which may have been at a longer distance than the school. Different persons may react in different ways after witnessing a murderous assault. In (2009) 6 SCC 712 (Himmat Sukhadeo Wahurwagh v. State of Maharashtra) it was held that it was not an unusual conduct if the two child witnesses aged eleven and thirteen years hid themselves after witnessing the murder of their father and grandfather respectively, and did not inform anyone immediately. In (2010) 12 SCC 545 (Balaji v State) the father of the ten years old witness was killed on 23.10.1999. She did not tell anybody till 3.11.1999 when her grandfather came visiting to her house. The Supreme Court rejected the challenge to the conviction on the ground that it was highly unnatural conduct of the witness to have kept quiet for ten days.

14. PW-2, Pramesh, in his police statement had said he was going to school with his classmate Chaitram. The witness further stated that on reaching school he informed PW-7, Abdul Sajid Khan, the teacher. PW-7 deposed that Chaitram looked scared and told him of the occurrence. The contention of the Appellant that PW-2 in his Court statement said he did not inform anyone except PW-7 and therefore there was no occasion for Chaitram to know of the occurrence merits no consideration. Chaitram was accompanying the witness to school at the time of occurrence as mentioned in the latter's police statement. The difference of timing in PW-2 stating he came back from school at 2:00 pm and told his father after which the F.I.R was lodged while it was lodged earlier at 1:15 pm is a triviality not affecting the prosecution case materially. The characters were rural folks and it is not the case of the Appellant that they all wore watches.

15. PW-2, Pramesh is not the sole eye witness. The corroboration that the Appellant seeks is found in PW-3, Leelabai an independent eyewitness. No defence has been taken by the Appellant why she was stating falsehood to implicate him and why. Considering that she was a women from rural background, we find nothing unusual in her quietly having gone home and

informed her husband and in-laws only in the evening. The witness herself stated that she was scared, a perfectly natural human reaction after having witnessed a murderous assault. Learned Counsel for the State has rightly submitted that she may have been dumb struck and was not able to react as a human being till 5:00 pm. Furthermore, PW-3, Leelabai also witnessed the assault at about 10:00 am like PW-2, Pramesh. She further deposed that there was another boy going on the road at that time and whose evidence had been recorded before her which is but a obvious reference to the presence of PW-2, Pramesh during the assault.

16. PW-2, Pramesh specifically deposed of assault with “Tangiya” which is a sharp cutting weapon. The postmortem report is of three incised wounds caused by sharp cutting weapon. PW-9, Dr. A.R.Gota also stated that the injuries could well have been caused by a weapon like “Tangiya”.

17. PW-5, Krishna proved the inquest report Exhibit P-3. He also deposed that there was a bi-cycle at the place of occurrence. The police statement of PW-2, Pramesh stated that the deceased was going on a bicycle at the time he was assaulted. The blood stained earth samples seized was marked as Exhibit P-5. The FSL report did not state that there was no blood in the sample, but that it was disintegrated because of which the origin could not deciphered. So long as blood was found on the items seized from the place of occurrence proved by the spot map Exhibit P-10 proved by PW-8, Pancham Singh, the fact that there was no mention in the report of it being human blood as urged on behalf of the Appellant is considered inconsequential. The “Tangiya” was recovered on the confession of the Appellant, marked Exhibit P-6 along with his shirt signed by PW-5, Krishna. The seizure as aforesaid was also supported by PW-8, Pancham Singh. Blood has been found on the “Tangiya”. The fact that blood may not have been found on the shirt of the Appellant does not lead to any inevitable conclusion in the entirety of the facts and evidence available that he is entitled to acquittal on the basis

of the same by grant of benefit of doubt.

18. PW-10, A.S.Khan, Officer-in-Charge has adequately proved the seizure and recovery based on confession and having sent the seized items for forensic report.

19. Bharvad Bhikha Valu (supra) relied upon by the Appellant does not lay down any absolute principle that under all circumstances corroboration must be sought if the eyewitness was a child.

20. Intention is to be gathered from all the surrounding circumstances including the nature of weapon used and the manner of assault. The Appellant assaulted the deceased with repeated blows by a “Tangiya”. The FIR mentions a land dispute which may well have been the motive. There is no evidence of any immediate provocation by the deceased and the Appellant assaulting on the spur of the moment unable to control himself. On the contrary, the entire evidence suggests that the Appellant waylaid the deceased and assaulted him in a manner which he was fully aware would inevitably lead to death. We therefore find it very difficult to consider the alternate submission on behalf of the Appellant that the conviction in the facts of the case may be altered to one under Section 304 Part II IPC.

21. We therefore in conclusion find no merit in this appeal. It is dismissed.

22. The Appellant is on bail. His bail bonds are cancelled and he is directed to surrender forthwith and/or be taken into custody for serving out the remaining period of sentence.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE