

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.2069 of 2000**

Balram Mehar, aged about 24 years,
S/o Neelkanth Mehar, by occupation
Agriculturist, R/o Virendra Nagar,
Police Station, Sahaspur, Lohara,
District Rajnandgaon (CG)

---- Appellant

Versus

State of Madhya Pradesh
(Now State of Chhattisgarh)

---- Respondent

For Appellant:	Smt Kiran Jain, Advocate.
For Respondent/State:	Shri Neeraj Kumar Mehta, PL.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board**Per Navin Sinha, Chief Justice****19/06/2015**

1. The Appellant stands convicted under Section 302 IPC to rigorous life imprisonment with fine of Rs.1,000, in the event of failure to pay which, he was required to undergo six months further rigorous imprisonment as ordered on 31.7.2000 by the Additional Sessions Judge, Khairagarh, Distt. Rajnandgaon in Sessions Trial No.172/1999.
2. The deceased Balla, a bus conductor was assaulted on 14.9.1999 at about 18.45 hours by the Appellant. Bharat Tiwari, PW-1, the driver of the bus lodged F.I.R at about 22.15 hours, the same day, that they had reached Virendra Nagar. In absence of any facility for tyre repairs he proceeded to Ranvirpur while the deceased stayed behind. While the witness was getting ready to return, Chiranjeev @ Banti, PW-5, came

and informed him that the deceased had been killed by the Appellant. The witness reached the place of occurrence and found the dead body. Dr. Chennahu, father of Chiranjeev @ Banti, PW-5, Nawab Khan, PW-9, Kotwar etc. were present who also informed the witness of the assault by the Appellant. The Appellant was alleged to have boarded the bus near the Silhatti forest barrier and had offered to pay the fare on reaching the destination after which, he paid only Rs.10/- to the deceased having taken it from Nawab Khan, PW-9 who was at his shop. The deceased was asking for the full fare. The witness suspected that the Appellant, agitated with the deceased for that reason had killed him.

3. The postmortem of the deceased, Exhibit P-10, was conducted by Dr. Vineet Shrivastava, PW-8, who found the following injuries:-

- (a). Lacerated wound, single 3 ½ x ½ over occipital parietal region of the head with the comminuted fracture of the occipital parietal bone of the left side with the fracture of left middle posterior fossae of the bone of the skull, the brain matter had sloughed away with the extensive bleeding.
- (b). Lacerated wound, single 3 x ½" over right side of the occipital parietal region of head with the comminuted fracture of the right occipital parietal bone of the skull with the fracture of the right middle posterior fossae of the bone of the skull, the brain matter sloughed away with extensive bleeding from the wound.
- (c). Abrasion single in number, 1 x ½" over back of right shoulder joint.
- (d). Abrasion single in number 1 x 1" over back of the trunk below the right shoulder joint.

All the injuries were opined to be caused by hard, blunt substance and the cause of death was due to fracture of the skull bone involving the brain and excessive hemorrhage from the wound.

4. Learned Counsel for the Appellant submitted that Chiranjeev @ Banti, PW-5 is not an eyewitness. According to the prosecution case, Nawab Khan, PW-9, is also an eyewitness but the former does not refer to the presence of the latter and neither does the latter refer to the presence of the former. Additionally, PW-9, Nawab Khan has stated that PW-7, Munna was present at his shop and both had gone to the place of occurrence. PW-7, Munna has not supported the witness. PW-9, Nawab Khan therefore also cannot be considered to be an eye witness. It was next submitted from the evidence of Chiranjeev @ Banti, PW-5, that he reached the place of occurrence after the assault and only saw the deceased lying on the ground. Likewise, the evidence of Nawab Khan, PW-9 was also tainted. A specific defence was taken under Section 313 Cr.P.C that the Appellant was being falsely implicated by PW-9, Nawab Khan due to the fact that he had taken goods on credit from the shop of the witness and had not repaid it. Furthermore, Nawab Khan, PW-9, has not mentioned any specific nature of assault on a particular part of the body but has generally talked of an assault which makes it again doubtful that he was an eyewitness. The Appellant, according to Nawab Khan, PW-9, is alleged to have assaulted with a "sabbal" while according to Chiranjeev @ Banti, PW-5, the Appellant was standing with a lathi next to the body of the deceased. No blood stain has been found on the "sabbal" alleged to have been recovered on the confession of the Appellant, in the forensic report, Exhibit P-18 which supports the innocence and false implication of the Appellant. It was lastly submitted that two defence witnesses have deposed that they had heard that the deceased had been killed in a hit and run road accident. Dr. Vineet Shrivastava, PW-8, in cross-examination has also opined that the injury could be possible in a

hit and run accident case also. The prosecution case therefore not having been proved beyond reasonable doubt, the Appellant is entitled to the benefit of doubt and acquitted.

5. Learned Counsel for the State submitted that Chiranjeev @ Banti, PW-5, is an eyewitness. He reached immediately after the incident and saw the deceased lying on the ground bleeding and the Appellant standing next to the body with a lathi in his hand. In his cross-examination, the witness reiterated the presence of the Appellant at the place of occurrence. The evidence of Nawab Khan, PW-9, is natural and convincing. There is no reason to disbelieve him. Reliance was also placed on the extra judicial confession made by the Appellant to Vijay Rajput, PW-4 that he had killed the deceased because of the dispute with regard to the dues of the bus fare ticket. The order for conviction calls for no interference.

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

7. Bharat Tiwari, PW-1, was the driver of the bus and the deceased was the conductor. It is not the case of the Appellant in his defence that he was not traveling in the bus on the fateful day. His presence in the bus along with the witness and the deceased is thus an established fact. Likewise, the Appellant in his cross-examination has not put any suggestion that he had purchased a valid ticket and there was no occasion for him to have dispute with the deceased conductor with regard to the ticket dues.

8. The evidence of Bharat Tiwari, PW-1 is quite natural and convincing that he proceeded to Ranvirpur for having the flat tyre

repaired and the deceased conductor stayed back. It is not the case of the Appellant that facilities for tyre repairs were available at Virendra Nagar and therefore, there was no occasion for the witness to go to Ranvirpur. The place of occurrence stands established by the crime detail form Exhibit P-14.

9. The witness stated that he was informed of the assault by Chiranjeev @ Banti, PW-5. The latter witness was a friend of the Appellant, a fact not denied by the Appellant. No plea has been taken by the Appellant why his own friend was deposing falsely against him. It is not the case of the Appellant that there was any animosity between him and the witness because of which the witness was falsely implicating him. PW-5, Chiranjeev@ Banti stated that he was 50-60 meters from the place of occurrence when he heard a shout and went near the place of occurrence. He saw the deceased lying on the ground bleeding and the Appellant was standing beside the deceased with what looked like a lathi in his hand. It was a rainy night. Obviously, vision was not clear in spite of availability of lights from the shops and if the witness saw the Appellant from a distance, not much can be read into the fact that Nawab Khan, PW-9 talks of an assault by an iron rod. Both of them clearly suggest that the Appellant was holding a weapon of assault in his hands. If the Appellant was present next to the body with a weapon of assault in his hands, and fresh blood was still oozing out it is difficult to accept the submission that he was not an eyewitness. The post mortem report clearly reveals more than one assault on the deceased. Having witnessed a murderous assault, we find nothing unusual in his conduct that he did not tell anybody but went home and informed his father Dr. Chennahu, who went to the place of occurrence. The presence of the

father of the witness is affirmed from the deposition of Nawab Khan, PW-9. Not much can be read into the absence of any reference by Chiranjeev@Bunty, PW-5, to the presence of Nawab Khan, PW-9 and vice versa. The former arrived first and left after which the latter came in quick succession is a distinct possibility in the facts of the case.

10. Nawab Khan, PW-9 was the shopkeeper near the place of occurrence who went to the place of occurrence when he heard the shout by the deceased after the assault. Prior to the same, the deceased had come to the shop of the witness and made purchase as also the Appellant had done so when he had also borrowed Rs.10/- to pay the deceased towards bus fare at about 5:00 p.m. The Appellant having purchased a tooth paste returned and paid Rs.3/- to the witness towards arrears and promised to pay Rs.7/- later. The witness appears perfectly natural that he ran when he heard the cry of the deceased. The witness clearly stated that he saw the Appellant assaulting the deceased. In the nature of the injuries found in the postmortem report, it is evident that the deceased was assaulted more than once. The fact that he may have shouted in the first assault after which the witness reached and saw the repeated assaults being made, is therefore a distinct possibility and cannot be left to be considered as imaginative. The defence under Section 313 Cr.P.C that the witness was falsely implicating the Appellant because of the money dues is falsified from the statement of witness in cross-examination that the Appellant would often take goods on credit from the witness but would repay the same. If the Appellant was always repaying his dues and even on the fateful day, came and returned Rs.3/-, a part of Rs.10/- borrowed from the witness, it is difficult to accept the

submission on behalf of the Appellant that the witness was deposing falsely motivated by the money due to him.

11. Once the evidence of Nawab Khan, PW-9, has been found convincing and reliable, the fact that Munna, PW-7, may have been present in the shop of Nawab Khan, PW-9, for repairs of his torch and went along with Nawab Khan, PW-9, to the place of occurrence, but turned hostile later denying having witnessed any assault, is considered irrelevant in the facts and circumstances of the case in view of the convincing evidence of Nawab Khan, PW-9 corroborated by that of Chiranjeev @ Banti, PW-5.

12. An extra judicial confession normally speaking by itself may not be substantive evidence for conviction. But, in the facts and circumstances of the present case, it is certainly a convincing corroborative evidence. Vijay Rajput, PW-4 had deposed that the Appellant had voluntarily made the confession, the same night to him. In the cross-examination, he has further reiterated having made that disclosure to the police also in his police statement. The fact that he may not have told strangers about the extra judicial confession made by the Appellant is not considered very relevant to completely doubt the voluntary nature of the confession as the witness states that he went home and informed his family members. In the cross-examination, no suggestion was given that the Appellant was never a passenger in the bus on the fateful day and therefore, there was no question of any dispute with regard to the ticket for traveling. The extra judicial confession has been made voluntarily without any undue pressure and/or coercion and no such suggestion has even been made in the cross-examination. There is no denial by the Appellant that he never

made any extra judicial confession. In (2013) 3 SCC 322 (R. Kuppusamy v. State) it was observed as follows :-

“11. It is unnecessary, in the light of above pronouncements, to embark upon any further review of the decisions of this Court on the subject. The legal position is fairly well settled that an extra-judicial confession is capable of sustaining a conviction provided the same is not made under any inducement, is voluntary and truthful. Whether or not these attributes of an extra-judicial confession are satisfied in a given case will, however, depend upon the facts and circumstances of each case. It is eventually the satisfaction of the court as to the reliability of the confession, keeping in view the circumstances in which the same is made, the person to whom it is alleged to have been made and the corroboration, if any, available as to the truth of such a confession that will determine whether the extra-judicial confession ought to be made a basis for holding the accused guilty.”

13. In the nature of the evidence available against the Appellant, it was for the defence witnesses to lead necessary prima facie evidence with regard to the hit and run accident story. Not only is their evidence based on hear-say only but not a whisper is there with regard to the nature of the vehicle which had hit the deceased, whether it was a light motor vehicle or a heavy motor vehicle. The opinion of Dr. Vineet Shrivastava, PW-8, in cross-examination that the injuries could be possible in a hit and run case also, was mere expression of a general opinion and cannot be considered as substantive evidence that the deceased was not assaulted by a weapon especially in view of the eyewitness account of Chiranjeev @ Banti, PW-5 and Nawab Khan, PW-9. The contradiction in the defence by the Appellant under Section 313 Cr.P.C. of false implication due to money dispute and that stated by the defence witnesses of a hit and run accident is an additional incriminating factor against the Appellant.

14. In the entirety of the evidence as available, we find no reason to interfere with the order of conviction and sentence.

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

16. The appeal is dismissed.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE