

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL NO. 1 OF 2001**

Sukaloo son of Anjori Satnami, aged 40 years, resident of Village Khujha, P.S. Mungeli, Tahsil Mungeli, District Bilaspur (C.G.)

... Appellant**Versus**

State of Chhattisgarh, through: P.S. Mungeli.

... Respondent

For Appellant	:	Mr. Shashi Kumar Kushwaha, Advocate.
For Respondent-State	:	Mr. Neeraj Mehta, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Judgment on Board****Per NAVIN SINHA, C.J.****04/09/2015**

1. The present appeal filed in the year 2001, arises from a First Information Report (FIR), Exhibit P-9, lodged on the day of occurrence, 8.8.1998, culminating in Sessions Trial No. 421 of 1998 and conviction of the Appellant on 11.12.2000 under Section 302 IPC to life imprisonment with fine of Rs.1000/-, in the absence of which, he was required to undergo six months further rigorous imprisonment, by the Additional Sessions Judge, Mungeli. On 1.7.2004, the Appellant was released on bail in appeal with condition for marking attendance. On 23.8.2005, it was noticed that he was not marking attendance leading to issuance ofailable warrants, after which he again appeared.

2. Shri U.K.S. Chandel, Advocate, whose name figured in the order-sheet dated 12.8.2014, 15.9.2014, 27.10.2014 appeared before us and submitted that he had no further instructions in the matter.

3. Considering these aspects, we were satisfied that at this late stage it would serve no useful purpose to notice the Appellant to show cause as to why his bail be not cancelled for non-appearance and for not taking interest in the appeal by proper representation after having been released on bail. In view of the observations contained in (2014) 14 SCC 222 (Surya Baksh Singh v. State of Uttar Pradesh), we thought it proper to request Shri Shashi Kumar Kushwaha, Advocate, who is also on the panel of the High Court Legal Services Committee and happened to be present in the Court to assist us in the matter. Both Shri Shashi Kumar Kushwaha, learned Legal Aid Counsel and learned State Counsel together have placed all the materials and evidence from the paper-book before us which has helped us to decide this appeal today.

4. FIR, Exhibit P-9, was lodged by PW-5 Sukhlal, an eye-witness and husband of the deceased, regarding the assault the same day at 1:00 p.m. The confession of the Appellant, Exhibit P-6, was recorded consequent to which seizure of the "*tangia*", Exhibit P-7, was made signed by the Appellant, PW-4 Bhagwanta and PW-7 Nanua Ram. Post-mortem of the deceased, Exhibit P-11, was conducted by PW-10 Dr. R.K. Bhattacharya, who found four incised wounds on the left neck bone deep cutting into the carotid and jugular veins, left earlobe, left face and the left forearm along with abrasions on the left shoulder and left arm, opining that death was a result of shock and hemorrhage due to injuries, homicidal in nature.

5. Learned Counsel for the Appellant submitted that the occurrence has taken place in broad day light at 1:00 p.m. in a public place, the village square. Significantly, it was the day of 'Rakhi' festival when normally people would have been milling around in the village. Yet there

is no independent witness available. All the witnesses who either saw the Appellant running away from the place of occurrence or allegedly assaulting the deceased are related to the deceased. There are vital contradictions between their police statements and deposition in Court. PW-4 Bhagwanta and PW-7 Nanua Ram have not supported the confession and seizure. The only alleged eye-witness to the occurrence is PW-5 Sukhlal, the husband of the deceased. His conduct was highly unnatural as an eye-witness to the assault on his wife which lasted for about 20-25 minutes in a public place. Even if he was physically handicapped and for that reason could not walk fast, it stands to reason from normal human behaviour when his wife was being assaulted in front of his eyes and it continued for some time, he would not have withdrawn himself to facilitate the assault. On the contrary, despite his physical handicap, he would have made some effort to try and prevent the assault if not physically by verbally requesting. It is highly unusual that if the assault continued for 20-25 minutes and the witness was shouting for help at the village square on the day of 'Rakhi' and nobody came forward to help. Previous enmity existed and therefore the possibility of false implication cannot be ruled out. More than one prosecution witness has admitted that they were neighbors and that the passage was common and therefore the presence of the Appellant was but natural. It will not be safe in the facts of the case to uphold the conviction on the basis of a solitary alleged eye-witness whose conduct was not natural and was closely related to the deceased. If the Appellant was physically handicapped and was unable to walk along with his wife and has admitted that he was lagging behind, the possibility that he was also not an eye-witness cannot be ruled out and

has named the Appellant only on the information given to him by PW-11 Urmila Bai who was minor aged 13 years and turned hostile during deposition. With reference to the FSL report, it was submitted that there is nothing to suggest that blood on the '*tangia*' was that of the deceased.

6. Learned Counsel for the State opposing the appeal submitted that PW-5 Sukhlal is an eye-witness. He was physically handicapped and had difficulty in walking. The witness is very natural when he states that he was unable to keep up with his wife while walking. Even if he saw the assault on his wife and was himself physically handicapped and was faced with a scepter of two of the assailants possessing with a '*tangia*' and axe accompanied by a third who was holding the deceased, there is little that the witness could have done either to defend himself or his wife and therefore his hiding himself by not walking up to the place of occurrence was a fully understandable and natural conduct. He has proved lodging the FIR. The absence of any villager at the time of occurrence has been adequately explained by the witness during cross-examination that the villagers had gone to the fields to work. This explanation is perfectly natural and normal where village folk normally go to work in the fields early in the morning and return late in the afternoon. Merely because PW-5 Sukhlal was the husband of the deceased, his evidence cannot be seen with suspicion for that reason alone. Conversely, if his wife had actually been assaulted in front of his eyes by the Appellant, the witness would be the most interested to ensure that the real culprit is brought to book rather than naming fictitious persons for reason of any alleged animosity allowing the real assailants to go scot-free. Referring to the evidence of PW-11 Urmila

Bai, the daughter of the brother of the deceased, it was submitted that the witness has admitted that she ran away after witnessing the assault which finds corroboration from the FIR when PW-5 Sukhlal says that PW-11 Urmila Bai came running to him shouting. PW-4 Bhagwanta and PW-7 Nanua Ram, the seizure list witnesses, have not denied their signatures/thumb impressions. It is not their case that they signed on a blank paper or that they had signed any papers at the police station much less under any threat or coercion. The explanation by PW-7 Nanua Ram that he signed the papers on asking by the police in good faith, on the contrary is itself evidence of the falsity of his statement as in every day life no one places such blind trust in the police to sign on any paper which the police may request. The '*tangia*' which was recovered on the confession of the Appellant is confirmed to have blood on it in the FSL report, Exhibit P-30. If human blood has been found on it, it is not very material whether any Serologist report was available that it was the blood of the deceased alone. The Appellant has offered no explanation with regard to the presence of human blood on '*tangia*', an agricultural instrument.

7. We have considered the submissions on behalf of the parties and examined the evidence on record meticulously with the assistance of learned Legal Aid Counsel as also the learned State Counsel.

8. The only eye-witness to the occurrence is PW-5 Sukhlal, the husband of the deceased. Criminal jurisprudence does not mandate that the evidence of a related witness is to be rejected outright. It may call for greater scrutiny to rule out any false implication and if the Court is satisfied with regard to its reliability and genuineness, it can safely be relied upon. Likewise, the availability of solitary eye-witness account

also cannot be reason to view with suspicion. Again if the Court is satisfied that the evidence was convincing and truthful, it can be relied upon to sustain conviction. Likewise, even if the occurrence took place in the village square on the day of 'Rakhi' and still there was no eye-witness available, by itself cannot create suspicion against the evidence of PW-5 Sukhlal to doubt the same for that reason. Time and again, judicial precedents have noticed that in cases of such murderous assault even if made in broad day light in a public place, general public is reluctant to come forward and involve themselves for various reasons including the dilatory criminal justice system and fear of retribution from the accused.

9. PW-5 Sukhlal was the husband of the deceased and not just any other relative. We find no reason that merely because there may have existed animosity between the parties due to petty village disputes, he would falsely implicate the Appellant letting go the real assailants of his wife, when he was an eye-witness to the same. According to our understanding of normal human behavior, he would be the person most interested, on the contrary to ensure that the real assailants were brought to book. The witness was physically handicapped and had difficulty in walking. He has stated that he was walking behind his wife. He saw the assault on his wife from a distance of barely 30ft. The Appellant who was the son of the deceased Appellant, Anjori, both had '*tangia*' and axe in their hands and were assaulting his wife. Because of his being physical handicapped, obviously PW-5 Sukhlal must have taken time to reach the place of occurrence and for that reason he explained that he witnessed the assault for some time. It does not mean that he stood there as a bystander watching the assault. We find

nothing unusual in his conduct when he says that he got scared and did not say anything. It stands to reason that if he saw one person holding his wife and two of them assaulting her with '*tangia*' and axe, he must have been stunned and would have become tongue tied unable to react and decide what to do next given his own physical disability. The witness has adequately elaborated that being noon time, the villagers were away in their fields working. It has rightly been submitted that it is normal common practice in the villages that the village folk go to the fields early in the morning and return by late afternoon. Therefore, we find nothing abnormal or unusual in the evidence of PW-5 Sukhlal that he kept shouting for help but nobody came forward. He has vividly described the assault that the deceased Appellant, Anjori made the first move after which the Appellant assaulted next. The wife of the Appellant, Sona Bai, was pulling the deceased by her hair at the time of assault.

10. The place of occurrence has been identified from the spot-map, Exhibit P-19, and the blood stained soil seized from the place of occurrence was marked Exhibit P-20. Inquest report was signed by PW-12 Bhagbali.

11. The seizure of the '*tangia*', Exhibit P-7, on the confession of the Appellant, stands proved by PW-4 Bhagwanta and PW-7 Nanua Ram. They have signed and put their thumb impressions respectively. Both of them have not denied the same and have not explained how their signatures/thumb impressions came to be imprinted in the seizure list. It is not their case that it was obtained by the police under duress at the police station or that they signed on any blank papers. The deposition of PW-7 Nanua Ram that he signed the papers in good faith at the request

of police having full trust in them is preposterous. Once the seizure of the '*tangia*' on the memorandum of the Appellant is proved and presence of human blood on it has been established by the FSL report, Exhibit P-30, and the Appellant offered no explanation how blood came to be present on an agricultural instrument, in the entirety of the facts and circumstances of the case and the evidence collected, we are satisfied that the order of conviction calls for no interference.

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

13. The appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge