

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. NO. 721 OF 2015

The State of Chhattisgarh, through District Magistrate, Ambikapur
(Sarguja) (C.G.)

... Appellant

Versus

Lakhan Majhwar, S/o Dipna Majhwar, aged about 52 years, Business -
Agriculture, R/o Village - Samania, P.S. - Kamleshwarpur, District -
Sarguja (C.G.)

... Respondent

For Appellant	:	Ms. Madhunisha Singh, Panel Lawyer.
For Respondent	:	Mr. Rishi Rahul Soni, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

26/10/2015

1. The present application has been filed for leave to appeal against acquittal dated 24.3.2015 by the Additional Sessions Judge, Sarguja in Sessions Trial No. 3 of 2014, from the charges under Sections 450 and 302 IPC.
2. Learned Counsel for the State submits that PW-4 Dharam Das, grand-son of the deceased, was sleeping in the same room with the deceased. He has eye-witnessed the assault in the light of a burning oil lamp. Even if he is a child witness, his evidence is completely natural and reliable when he says that he was scared for his life and hid under the bed and only the next morning went and informed his father. There has been recovery of a "*tangi*", Exhibit P-8, on the Respondent's confession, Exhibit P-7 and blood has been found on his clothes, Exhibit P-11. Merely because there may be some minor contradictions in the police statement and court deposition of PW-4, Dharam Das, it was not sufficient to grant acquittal.

3. Learned Counsel for the Respondent opposing the application submitted that the sole evidence is of a child eye-witness. The Trial Judge by careful analysis of the child witness arrived at the conclusion that there were serious contradictions and omissions opining that it would not be safe to rely upon a solitary child witness for conviction. Previous enmity between the Respondent and the deceased is also admitted. If the view taken by the Trial Judge is a possible view, the acquittal may not be interfered with merely because under Section 27 of the Evidence Act there may have been recovery of a "*tangi*" and clothes of the Respondent with blood on it in the forensic report.

4. We have considered the submissions on behalf of the parties.

5. An order of acquittal is not to be lightly interfered with unless we come to a clear finding on basis of the very same evidence that the only conclusion possible was of the Respondent being the assailant. If there are discrepancies in the evidence and the view taken by the Trial Judge is a possible view beneficial to the accused, there is no reason why we should interfere with the order of acquittal. Even though conviction can be founded on the sole evidence of a child witness, but the evidence of a child witness is to be considered with greater scrutiny as the possibility of his being tutored always exists. In any event, there can be no certainty with regard to his statements considering that mental faculties are not fully developed at the impressionable age of 12 years on which PW-4 Dharam Das stood on the date of occurrence.

6. The witness PW-4 Dharam Das stated that he was sleeping with his grand-father in the room. The oil lamp was burning in the verandah. In his cross-examination, the child witness denied having deposed that there was an oil lamp burning in the room. If it had been an occurrence inside the room with an oil lamp burning, the possibility of identification could well have been there. Even so, we find it improbable that a child

of 12 years of age who had gone to sleep at 10 O'clock would wake up at 2:00 a.m. when there is no statement by the witness that the Respondent was making any noise or that the deceased shouted except for stating the fact that the deceased groaning, and which in our opinion may not have been sufficient for a 12 year old child to wake up from deep slumber, applying normal human behavior.

7. Furthermore, the verandah being an open place, the light from an oil lamp would not have been sufficient to witness the Respondent and identify him as the assailant as the light would get dispersed over a wider area. Previous enmity between the deceased and the Respondent is admitted. While in his police statement the child witness talked of a burning oil lamp, in his court deposition he now stated that he identified the Respondent in the light of the torch being flashed by the latter. If the Respondent was flashing a torch light, obviously the direction of the light had to be away from him dazzling the eyes of onlooker and it was not possible for onlooker to identify the person behind the torch light. Furthermore, there was no reference of the Respondent carrying a torch in the police statement of the child witness. The injuries on the head have been found to be caused by a hard-blunt substance. The "*tangi*" seized from the Respondent is a sharp cutting weapon and there are no allegations of any injuries caused by sharp cutting weapon which is also considered a relevant factor by us in the entirety of the evidence.

8. In the entirety of the facts and circumstances of the case and the nature of evidence available from a child witness only which is not considered fully reliable and convincing, we find no reason to interfere with the order of acquittal.

9. The application for leave to appeal is dismissed.

Sd/-

(Navin Sinha)
Chief Justice

Sd/-

(P. Sam Koshy)
Judge