

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.407 of 2000

Mantari Ram Rawat, aged 19 years, S/o Baisakhu Rawat, R/o Boria,
Thana Gorla, Distt. Rajnandgaon, M.P. (now C.G.)

---- Appellant

Versus

The State of M.P. (now the State of C.G.)

---- Respondent

For Appellant:	Mrs. Savita Tiwari, Advocate.
For State/Respondent:	Mrs. Smita Ghai, Panel Lawyer.

Hon'ble the Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

Per Deepak Gupta, Chief Justice

28/06/2016

1. When the appeal was taken-up for hearing, it was informed by learned counsel for the appellant that the appellant has in fact been released after undergoing the entire period of sentence. However, we propose to dispose of the appeal itself on merits.
2. This appeal is directed against the judgment dated 11-1-2000 passed by the Additional Sessions Judge, Khairagarh, Link Court: Kawardha, whereby the appellant was convicted for having committed the offence punishable under Section 302 of the IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to undergo further RI for three months.

3. The prosecution story, briefly stated, is that on 17-5-1998, the appellant assaulted his sister Jamun Bai with an axe and due to the injuries sustained, his sister died. The incident was witnessed only by Saraswati, aged about 4 years, who is daughter of the deceased. When she was examined in the Court, she did not say a word and kept crying. The trial Court tried to convince the witness to make some statement but to no avail. Thereafter, the trial Court has noted that the minor girl is scared due to some known reasons and is not willing to give any answer to any question and as such, she cannot be examined as a witness in the Court. On the next date, she was again produced and she gave some answers but when a question was put to her whether she was scared, she started crying and biting her finger and kept crying. This question was put 2-3 times but she did not answer. Even though the father of the minor girl was standing behind her, she did not say a word.
4. Conviction of the accused is basically based on the statement of Ramji (PW-4) – husband of the deceased and father of the minor girl, and Dham (PW-2).
5. Ramji (PW-4) is husband of the deceased and father of the minor girl Saraswati who could not be examined as a witness in the Court for the reasons stated herein-above. He was in the village when the occurrence took place and had gone to graze the cows and milk them. He was called by Govind who told him that a fight had taken place between brother and sister. He met

other people also including Dham (PW-2) who told him that Jamun Bai has died. When he reached home, he found large number of people have collected there. He saw his wife. Blood was coming out from her body especially the neck. His daughter was there itself. When he asked his daughter Saraswati, she told him that her 'Mama' (maternal uncle) had killed the mother. Then he went to the police station to lodge the complaint.

6. Dham (PW-2) has stated that he resides in the same village as the deceased and on that day, he was in his house. He heard the sound of children crying. He asked what had happened but received no answer. Then he went out from his house and saw the dead body of Jamun Bai. It was bleeding. He asked Saraswati, daughter of Jamun Bai, as to what had happened and she replied that her 'Mama' had killed her mother.
7. Bankilal (PW-1) states that he is also resident of the same village. He heard the voices of children shouting "Amma Amma", on hearing the sounds he went towards the children and saw that Jamun Bai had died and blood was coming out from her neck. When he reached the spot, Dham (PW-2) had already reached the spot. This witness was declared hostile. In cross-examination, he has admitted that he was examined by the police. He also states that when children of the deceased were crying Amma Amma and he looked at the other side then he saw the accused Mantri Rawat running away with an axe. Though axe has been recovered, witnesses to the recovery have turned

hostile, however, the witnesses have admitted their signature on the recovery memo.

8. The only question which arises is, whether we should believe the statements of Ramji (PW-4) and Dham (PW-2).
9. This is an unusual case where the young girl started crying in Court and though the learned trial Court gave two dates, it could not convince the girl to make a statement. It is not disputed that this girl saw the occurrence taking place. She was about 4-5 years of age at the time when the occurrence took place. She was between 5-6 years when her statement was to be recorded. One cannot imagine the trauma and terror which a small child would undergo when she sees her mother being brutally hacked to death in front of her eyes. One can only sympathize with such a child. Her statement could not be recorded before the Court because the child was not in a mental state to make a statement. That however, does not mean that we should disbelieve the witnesses to whom the child made a statement immediately after the occurrence. Such evidence is in the nature of '*res gestae*'. It is something which was stated immediately after the occurrence and has direct relation to the occurrence. Further more, the child Saraswati has to both these witnesses clearly mentioned that her mama (maternal uncle) killed her mother. This fact is also reflected in the initial documents like FIR etc., wherein the name of the accused is clearly mentioned.

10. The learned trial Court which had the advantage of seeing the demeanour of the witnesses while recording the evidence has believed the statements of Dham (PW-2) and Ramji (PW-4) in this regard. These witnesses have no axe to grind against the accused. The accused is closely related to Ramji (PW-4) and in fact, the accused is his brother-in-law (wife's brother).

11. In these circumstances, we feel that we cannot interfere in the findings recorded by the learned Additional Sessions Judge. We, therefore, find no merit in the appeal and the same is accordingly dismissed.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge