

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.89 of 2001**

1. Chintamani @ Chintaram son of Paharu, aged about 50 years,
 2. Gangaram son of Awadhram, aged about 41 years,
 3. Malikram, son of Awadhram, aged about 35 years,
- All residents of Bhalukhondhra, P.S. Lalpur,
District Bilaspur (Chhattisgarh)

---Appellants**versus**

The State of Chhattisgarh

---- Respondent

For Appellants	:	Ms. Ranjana Jaiswal, Advocate
For State/Respondent	:	Ms. Smita Ghai, Panel Lawyer

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

CAV Judgment**Per Navin Sinha, Chief Justice****2/2/2016**

1. The Appellants stand convicted under Section 302/34 IPC to life imprisonment with fine of Rs.1,000/- each, in the event of failure to pay which, they were required to undergo six months further rigorous imprisonment as ordered by the Additional Sessions Judge, Mungeli in Sessions Trial No.149 of 1998 dated 16.1.2001.
2. FIR 109 of 1997, Exhibit P-16 was lodged on 7.12.1997 at about 16:00 hours by PW-8, Faguram stating that at about 11:00 in the morning he and his brother were carrying wheat bags on their bullock cart. The witness was walking ahead of the cart while his deceased brother was a few steps behind the cart. The Appellants along with Awadhi Satnami accosted them near the house of Fulu Satnami. Appellant No. 1 was armed with a 'Kudri' (a small hoe), Appellant No. 2 carried a Tabbal and

Appellant No. 3 a Lathi. They started to abuse his brother regarding drainage of water from the fields. The witness and the deceased were chased by the Appellants. Appellant No. 2 assaulted the deceased on the head with the Tabbal after which the other Appellants assaulted also. The Appellants chased the witness also who ran for his life, went home and informed his mother Angan Bai (PW-7), father Mangna (PW-19). The three of them came back to the place of assault accompanied by the Sarpanch and found the deceased lying dead on the ground.

3. The postmortem (Exhibit P-8) was conducted by PW-6, Dr. Smt. M.P.Minj. There was an incised wound 4X1cms bone deep on the left cheek below the left eye, another incised wound 3.5X2cms bone deep with fracture of the mandible of lower left side, further incised wound 4X1cms with fracture on right temporal bone, another incised wound 6X2cms with fracture of left parietal bone with the brain matter spilling out and intra cerebral haemorrhage, a lacerated wound 6.5X2cm with fracture of occipital bone with torn brain material intra cerebral haemorrhage, another lacerated wound 3cmsx1cm bone deep over right temporal region with fracture 2cms behind 3rd injury. In addition there were nine contusions on different parts of the body. The incised wounds were caused by sharp object and the latter by hard and blunt object. All the injuries were ante-mortem in nature. Death was opined to be due to shock and intra cerebral haemorrhage caused by head injury leading to fracture of the skull.

4. Learned Counsel for the Appellants submitted that PW-8, Faguram was not an eyewitness to the occurrence. Referring to the evidence of PW-5, Bhajiharin and the child witness PW-13, Rukmani Bai it was submitted that the latter two also claimed to have reached the place of occurrence on hearing commotion but have not mentioned the presence of PW-8, Faguram. The deceased and PW-8 were brothers. The deceased was unmarried. PW-8 wanted to grab his share of the property and therefore had assaulted him in isolation. PW-7, Angan Bai has

deposed that the deceased had left home alone with the bullock cart. The evidence of PW-5, Bhajiharin and PW-13, Rukmani Bai cannot be safely relied upon because they are both related to the deceased and PW-8, Faguram. Moreover, their police statements were recorded on 24.12.1997 nearly 17 days later giving enough time for thoughtful statements and false implication. PW-20, S.P.Singh, the Investigating Officer has given no explanation for this delay in recording their police statements. The witness has also stated that Awadhi, father of the Appellants was not present at the place of occurrence. The whole family has been falsely implicated because of the dispute regarding drainage of water from the fields between the parties. The Appellant took the defence under Section 313 Cr.P.C of false implication and in support of the same also stated that Awadhi was a bed ridden man and there was no question of his being present or assaulting the deceased. Therefore he had not even been made an accused. PW-13, Rukmani Bai stated that another police statement was recorded earlier, but it has not been exhibited. Therefore, the witness cannot be believed. There are several contradictions and omissions in the evidence of PW-8, Faguram. He claimed to have stated in his police report that his mother was walking behind his brother which was denied by PW-20, S.P.Singh, the Investigating Officer. Likewise, he claimed to have stated in his police statement that Awadhi was instigating the others while the Investigating Officer PW-20, S.P.Singh, deposed that Awadhi was not present at the place of occurrence. If PW-8, Faguram ran away from the place of occurrence, he could not be relied upon as an eye witness describing the manner of assault. He was therefore a completely unreliable witness on whose deposition conviction could not be based. PW-5, Bhajiharin could not recognize persons in the Court room at a distance of 20 feet acknowledging her weak eyesight but claimed to recognise the Appellants from a distance of 50 to 60 feet. She was therefore stating falsehood. PW-13, Rukmani Bai was a child witness and

not much credibility can be given to her for sustaining conviction for more than one reason including the delay in recording her police statement. She was also cousin of the deceased and grand-daughter of PW-5, Bhajiharin.

5. Learned Counsel for the State submitted that PW-8, Faguram is a completely reliable eyewitness. Merely because he was the brother of the deceased, his evidence cannot be considered tainted and interested to be rejected as suspicious. The defence has led no evidence of any assault or of any earlier disputes between them in support of the theory that the witness wanted to kill his own brother to grab his share in the property. PW-8 stated that when the first assault was made on the deceased, he stopped it with a whip used for controlling the bullocks which was found broken at the place of occurrence corroborated by the seizure witness PW-2, Kamal. Motive for the assault existed because of the dispute regarding drainage of water from the fields between the Appellants and the deceased. The absence of any reference to PW-8, Faguram at the place of occurrence by PW-5, Bhajiharin and PW-13, Rukmani Bai stands fully explained when the witness stated that he asked the Appellants desist from assault and was chased by them and he ran away for his own safety and informed his family and other villagers after which they returned to the spot together followed by lodging of the FIR. Even if PW-5, Bhajiharin cannot be relied upon due to her poor eye sight, yet it leaves the evidence of PW-13, Rukmani Bai to corroborate PW-8, Faguram. A bare perusal of the questions put to her by the Court displayed that being 12 years of age she was able to understand questions, was consistent in her statements and answered all the questions properly. Her evidence was perfectly natural when she states that she was playing with two of her friends and on hearing the commotion went near the place of occurrence and saw the Appellants, describing the weapons in their hands similar to that mentioned by PW-8, Faguram. There has been no unreasonable

delay in recording of her police statement. The Appellants were taken into custody on 8.12.1997 and on their confession, the weapons of assault, their blood stained clothes were recovered which were all marked Exhibits. They were sent for forensic examination to the Laboratory which has confirmed presence of blood on all of them by Exhibit P-36 and the Serologist report Exhibit P-37 has confirmed that it was human blood. The spot map Exhibit P-29 prepared by PW-20, S.P.Singh, the Investigating Officer has also not been challenged. The seizure has also been proved to the satisfaction of the Court even though the seizure witness Sarpanch Rakesh Tiwari, PW-11 attempted to turn hostile that no seizure was made in his presence even while acknowledging his signature. There is no evidence placed by the defence that Awadhi was bed ridden. Even if there was any exaggeration by the witness in the background of the drainage dispute it does not falsify the entire evidence of PW-8, Faguram. In their defence under Section 313 Cr.P.C., the Appellants took the defence that Awadhi suffered paralysis in 1996 but led no evidence in support of the same. It was their further defence that they were in their own fields harvesting crops but no evidence was led in support of their plea of alibi even though they had stated that they wanted to lead evidence in support of their defence. The conviction therefore calls for no interference.

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

7. The motive for the assault existed because of the drainage dispute. But motive alone cannot be sufficient for conviction. It may not be very relevant for conviction in a case where there is direct cogent reliable eye witness account of the assault. It will not be the quantity of evidence but the quality that will matter. Merely because the eye witness may be the brother of the deceased it cannot lead to any conclusion that he was unreliable and it is compulsory to lead independent evidence to corroborate the same. It has been taken judicial notice of that other

unrelated witnesses prefer to stay away and generally it is left for the relatives of the deceased to pursue matters and lead evidence. The corroborative evidence of a child witness cannot be easily discredited and its acceptability would depend on variety of reasons to the satisfaction of the Court, though the Court must be careful while examining the evidence of such a witness. Even if there was more than one eyewitness to the incident and some of them may be disbelieved or were embellishing or there existed minor contradictions or omissions it cannot lead to any conclusion that the prosecution story itself was false.

8. The fact that Awadhi, father of Appellants No.2 and 3 was named in the FIR as exhorting the Appellants to kill but has not been made an accused cannot lead to any conclusion that the entire prosecution allegations were false and that because of enmity the whole family was sought to be implicated. The eye witness account by PW-8, Faguram independent of the same with regard to the assault by the Appellants is cogent, convincing and reliable. The Appellants in their defence under Section 313 Cr.P.C. contended that Awadhi was bed-ridden, but led no evidence in support of the same despite having said that they wished to lead evidence, making it a false defence which is but another incriminating factor against them. It was observed in (2003) 7 SCC 749 (Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble) that the maxim "*falsus in uno falsus in omnibus*" has no application in India and the witnesses cannot be branded as liars.

9. PW-8, Faguram was walking ahead of the bullock-cart and his brother, the deceased was a few steps behind the cart. The Appellants were armed with Tabbal, small hoe and Lathi. The witness specifically stated which one of the Appellants was possessed of what weapon and named Appellant No.2 as having made the first assault with the Tabbal on the head after which the others assaulted. The witness asked them to desist from the assault when Appellant No.1 threatened to assault the

witness. The fact that the witness ran away for his own safety is considered a very natural human reaction considering that his brother had already fallen down due to the assault. Faced with three persons who were armed and determined to kill, we see nothing abnormal in the conduct of the witness having run away to the village and informing his parents and others and then returned to the place of occurrence to find his brother dead. The witness stated that the deceased had tried to resist the assault with a wooden stick which broke confirmed by PW-2, Kamal, who was a witness to the recovery of the same from the place of occurrence. Blood has been found on the earth from the place of occurrence and some broken teeth of the deceased with blood on them marked Exhibit P-4 was also recovered, also proved by PW-2. The Trial Judge has rightly disbelieved that PW-7, Angan Bai, mother of the deceased was not an eye witness in view of the evidence of her husband PW-19, Mangna, that she was home. The omission in the police statement is therefore inconsequential as there are other sufficient materials to uphold the conviction on basis of ocular and material evidence. The alleged omissions and contradictions sought to be highlighted between the police statement and Court deposition of PW-8, Faguram to create doubts about the credibility of the witness are considered minor and trivial in nature and of no consequence. The evidentiary value of minor embellishments not affecting credibility of the prosecution case including trivial omissions and contradictions was noticed in (2012) 7 SCC 646 (Shyamal Ghosh v. State of W.B.) observing as follows :-

“68.....Every omission cannot take the place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or

creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contradistinction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the prosecution.”

10. We therefore find no substance in the contention of the Appellants that PW-8, Faguram was not an eyewitness but had left the place of occurrence on seeing the Appellants even before the assault started. The witness specifically denied any suggestion of the Appellants that he had killed his own brother to grab his share of the property as the latter was unmarried. No evidence was led by the Appellants of any previous animosity or occurrence between the witness and the deceased regarding the properties. The reliance by the Appellants on the evidence of PW-13, Rukmani Bai to contend that PW-8, Faguram was not an eyewitness therefore merits no consideration as obviously she arrived on hearing the commotion after the witness had left the place of occurrence.

11. PW-13, Rukmani Bai, was a child witness aged about 12 years. We have examined the answers given by her to the Court questions and her deposition. It reveals an understanding and we are of the considered opinion that her evidence is reliable and can be safely accepted. The witness stated that she was playing nearby and on hearing the commotion reached the place of occurrence where she saw the Appellants assaulting the deceased. The narration of weapons possessed by the Appellants is the same as that made by PW-8, Faguram even though the latter was not present and had left by then. The fact that the police statement of PW-13, Rukmani Bai may have been recorded 17 days later is not considered such an abnormal delay for which there must be an explanation and which alone will make the evidence doubtful. The Investigating Officer, S.P. Singh, PW-20 has already deposed that during investigation he learnt

of the witness having seen the occurrence and then recorded her statement. We are not satisfied that any prejudice has been caused to the Appellants because of the same. In (2000) 6 SCC 269 (State of Maharashtra v. Damu) accepting the evidence of a nine year old child it was observed that the horror of such occurrences would remain etched in the mind of the child to be vividly recalled especially if the victim was a relative.

12. PW-5, Bhajiharin could not have witnessed the crime due to poor eye sight from 50 to 60 feet.

13. The Appellants were taken into custody and on their confession the weapons of assault were recovered and their clothes had blood stains. The nature of the injuries found on the deceased indicates the intensity of the assault and the doctor on examination of the weapons of the assault has confirmed that they could have caused the injuries. The FSL report confirms presence of blood on the weapons of assault and the clothes of the Appellants. They have not offered any explanation with regard to the blood on their clothes which is certainly an abnormal thing. The Serologist report has also confirmed that it was human blood.

14. The aforesaid discussion leads to the conclusion that the conviction of the Appellants calls for no interference. The appeal is devoid of merit. It is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE