

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 25/10/2016****Judgment Delivered on : 15/11/2016****Criminal Appeal No. 2983 of 1999**

1. Paleshwar S/o Chhotelal Aghariya, Aged about 21 years, R/o Nirtu, PS Seepat, District Bilaspur.

2. Vijay Kumar S/o Janki Pd. Sahu aged about 21 years, R/o village Sankar, PS Akaltara, District Bilaspur, (M.P.) (Now C.G.)

---- Appellants**Versus**

The State of Madhya Pradesh, (Now Chhattisgarh), Through the District Magistrate Bilaspur (M.P.) (Now Chhattisgarh).

---- Respondent

For Appellant	:	Ms. Sharmila Singhai and Shri Azad Siddique, Advocate
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Sanjay Agrawal, J.****C.A.V. Judgment****Per Deepak Gupta, Chief Justice**

1. This appeal by the convicted Accused/Appellants is directed against the judgment dated 23.09.1999 delivered by the learned 6th Additional Sessions Judge, Bilaspur in Sessions Trial No. 156 of 1999 whereby she has convicted both the Accused/Appellants for having committed an offence punishable under Section 302 and 323 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life and rigorous imprisonment for six months, respectively. They have also been directed to pay fine of Rs. 2000/- each. It was further ordered that in default of payment of fine, they would undergo simple imprisonment for a period of one year each.

2. The prosecution story, briefly stated is that in the night intervening 04/05.02.1999, the two Appellants-Paleshwar and Vijay Kumar alongwith two other co-accused persons namely Om Prakash and Manharan entered into the house of the deceased Ved Kunwar Bai @ Kapanhin Gautin at about mid night. Om Prakash (acquitted Accused) is the son of Ved Kunwar Bai and it is alleged that all four of them in furtherance of their common intention, murdered the deceased.
3. The indisputed facts are that the deceased was an elderly lady. She also belonged to one of the richest families of the village and was respectfully called "Gautin".
4. Kundiya Bai (PW-11) used to sleep in the house of the deceased and on the fateful day, her grand-daughter namely Dev Kumari (PW-12) accompanied her. They are alleged to be the eyewitness to the occurrence. Merg intimation (Exhibit P/1) was lodged at 09:50 am on 05.02.1999 and on the basis of which FIR (Exhibit P/2) was lodged on the same day at the instance of Gorelal Patel at about 10:00 am. He states that he is the Sarpanch of village Nirtu, though the fact is that his wife was the Sarpanch of the village. In any event, his version is that at about 02:00 am, Mohanlal (PW-4) came to his house and complained that his mother Kundiya Bai (PW-11) and his niece, Dev Kumari (PW-12) had gone to the house of the deceased to spend night there. Appellant-Paleshwar alongwith Sahu Doctor and one another person knocked on the door of the house of Gautin at about midnight and asked the deceased to open the door which she did. Then they entered the house and asked the deceased to prepare tea for them. When she started preparing tea, they started beating her up and these two persons pressed her neck and killed her. When Kundiya Bai (PW-11) intervened, then her throat was also pressed and blood came out of her mouth. Then his mother Kundiya Bai

(PW-11) and his niece (PW-12) came back to the house and informed Mohan Lal (PW-4) who in turn informed the Sarpanch of the village. Thereafter, the villagers went to the house of the deceased and found her lying dead on a cot and the same story was told to them by PW-11.

5. On the basis of the aforesaid FIR, investigation was conducted and the accused were charged for having committed an offence under Sections 302 and 323 IPC. After trial, two of the accused namely Om Prakash and Manharan have been acquitted and the present two Appellants-Paleshwar and Vijay Kumar have been convicted and sentenced, as aforestated.
6. We have heard learned counsel for the parties and have carefully gone through the records.
7. It is urged on behalf of the Accused/Appellants that when the learned trial court on the basis of same evidence has acquitted two of the Accused persons namely Om Prakash and Paleshwar, conviction of the present Appellants on the same evidence cannot be sustained. It is secondly submitted that the statement of Kundiya Bai (PW-11) and Dev Kumari (PW-12) are full of contradictions. It is lastly submitted that both PW-11 and PW-12 have made substantial improvements in their statements made in the Court and hence, they are not reliable witnesses and conviction of the Accused/Appellants cannot be based on their evidence.
8. The entire case of the prosecution is based on the statement of Kundiya Bai (PW-11) and Dev Kumari (PW-12). The case of the prosecution is that PW-11 used to go and sleep regularly in the house of the deceased-Gautin with a view to give her company at night. From the statements of these two witnesses, it is apparent that Gautin used to sleep inside the house and these two witnesses were sleeping in the *Parchhi* (verandah) of the house. It is also apparent that the kitchen was not inside the house but in the other side of the courtyard. PW-11 states that at about 01:00 am

in the night, the Accused-Paleshwar and Appellant-Vijay Kumar knocked at the door and asked for the door to be opened. Gautin opened the door. These two persons asked Gautin as to how much rice she has harvested. They also asked how much rice was left with her. They also asked her whether she had got the roof of the house plastered and Gautin replied that she had collected sand and cement and would soon get it plastered. Thereafter, the Accused-Paleshwar and Appellant-Vijay asked Gautin to prepare some tea for them. Then Gautin went to the kitchen to prepare tea and at that time, these two persons caught hold of Gautin and dragged her to the courtyard. At that time, the Accused-Om Prakash and Manharan throttled Gautin with a rope. When she and her grand daughter (PW-11) raised an alarm, the Accused also beat both of them up. Thereafter, she and her grand daughter (PW-11) came home and told about the entire event to their son Mohan (PW-4). Then the villagers gathered together and she told them about the occurrence.

9. In cross-examination, this witness (PW-11) admits that after the occurrence, her eye-sight has become poor. She also states that the deceased used to reside alone in her house and that is why she used to go to sleep in her house. This witness has been confronted with her statement made to the police wherein number of facts with regard to the details of rice, plastering of roof etc. are missing. She also admits that before she went to sleep, she had blown out the lantern which was burning. According to her, on hearing the knocking on the door, she got up. She however denied the fact she could not recognize who was outside before the door was opened. She denied the fact that the Appellants, Vijay and Paleshwar did not enter the house of the deceased. According to her, she had told the police about the role of Om Prakash and Manharan. According to her, she does not have any explanation as to

why this fact has not been not recorded in the statement made by her to the police.

10. A suggestion has been put to Kundiya Bai (PW-11) that she has made a false statement at the asking of son-in-law of the deceased who is a lawyer practicing at Bilaspur. The suggestion put to her is that because of undue influence put by this lawyer, she has wrongly involved the son of the deceased. In cross-examination, she also states that when the deceased was talking to the Accused persons at the door, she was sitting on the cot. She states that there were three or four rooms in the house of the deceased. She states that she was sleeping in the *Rengan* (Verendah/corridor) and after that is the kitchen. She also states that she never entered the kitchen. She also states that the deceased lit a kerosene lamp when she went to the kitchen. She also admits that the courtyard was in darkness.

11. Dev Kumari (PW-12) aged about 12 years, states that she knows all the Accused. She also states that her grand-mother Kundiya Bai (PW-11) used to go and sleep in the house of the deceased and on the date of occurrence, she had accompanied her grandmother (PW-11). At about 11 pm, Doctor @ Vijay and Paleshwar came to the house of Gautin. They asked her many questions with regard to production of rice etc. Thereafter, Doctor @ Vijay asked Gautin to prepare tea. When Gautin went to prepare tea, Doctor @ Vijay and Paleshwar caught hold of Gautin and strangulated her with a rope. Thereafter, they both tried to strangle and kill her grand-mother (PW-11) also. They beat her up also. She further states that after the occurrence, all the four accused ran away. Then she brought her grandmother (PW-11) to her own house and told their family members about the occurrence. She admits in cross-examination that when the two Appellants knocked at the door, she and

her grandmother were asleep. However, she states that when Gautin opened the door, they also got up. She also states that they had blown out the lantern before sleeping. According to her, when the Accused shouted at the door, then Gautin lit a small lamp and prior to that, the place was in darkness. She denied the suggestion that the two Appellants never entered the house of Gautin. She admits that she herself has not seen the Accused/Appellants putting the rope around the neck of the deceased. She however denied the suggestion that being scared, she had hidden under the bed-sheet. She also admits that she has not seen the Accused-Om Prakash and Mahnaran at the place of occurrence. She also states that her grand-mother (PW-11) cannot see very well and therefore she used to hold the hand of her grand-mother.

- 12.** The main argument on behalf of the Appellants is that there are omissions in statement of these witnesses and the statement of these witnesses are totally unreliable. There is no manner of doubt that there are some omissions in the statement of these two witnesses especially with regard to the presence of the Accused-Om Prakash and Manharan. As point out earlier, in the FIR (Exhibit P/2) only the two Appellants have been named and there is mention of a third unidentified person present at the spot. Om Prakash and Manharan were not named. Both PW-11 and PW-12 admit that they know both Manharan and Om Prakash. If Om Prakash and Manharan had been present at the spot, then they would have named them at the initial stage itself. They have not named them at the initial stage and therefore, we have no hesitation in coming to the conclusion that the learned Trial Court was justified in holding that the statement of these witnesses especially Kundiya Bai (PW-11) with regard to the presence and role of Om Prakash and Manharan is totally legal and valid.

13. It appears that after the incident took place, the police and some of the relatives tried to falsely implicate the Accused-Om Prakash and Manharan as being the main culprit. There is no evidence against the Accused-Om Prakash and Manharan.
14. The question is whether we should disbelieve the entire statement of Kundiya Bai (PW-11) and Dev Kumari (PW-12) only because of this reason. While appreciating the evidence, one cannot lose sight of the fact that these two witnesses are rustic villagers and belong to the poorest sections of the society. They could be easily pressurized by the police and influential persons. The main issue is should we totally discard their evidence or try to ascertain the truth by separating the grain from the chaff. The role of the Court is always to try to find out the truth.
15. The principle "*falsus in uno falsus in omnibus*" is not applicable in India. Just because the witness has told one line does not mean that the entire evidence of the witness should be discarded. Therefore, we have scrutinized the evidence in detail and we find that Kundiya Bai (PW-11) and Dev Kumari (PW-12) are partly telling the truth insofar as the role of the present Appellants are concerned. The version of Kundiya Bai (PW-11) with regard to the role of Om Prakash and Manharan may be false. Dev Kumari (PW-12) is a young girl aged about 12 years. She has very honestly admitted that she did not see the Accused-Om Prakash and Manharan at the scene of occurrence. With regard to the identification of the Accused, it is apparent that both these Accused persons were known well not only to the deceased but also to PW-11 and PW-12. They knocked at the door. Gautin was sleeping inside and got up on hearing the knocking on the door. It is obvious that if Gautin who was sleeping inside the house woke up on hearing the knocking on the door, then these two witnesses who were sleeping outside in the verandah would also hear

the knocking and get up. The version of Dev Kumari (PW-12) is very believable. An elderly lady would not get up in the middle of the night to open the door without having some light with her. Even assuming that there was no light at this stage, it stands proved from the record that when the deceased went to the kitchen for preparing tea, she lit a lamp in the kitchen. PW-11 and PW-12 could have easily identified the Accused/Appellants. Even if we have to discard the evidence of PW-11, because she being a grown up lady should have told the truth in the Court, we cannot discard the statement of Dev Kumari (PW-12) because she, in the Court has given an entirely truthful version of the occurrence and as far as her version is concerned, that is totally consistent with the prosecution story as stated in the FIR.

16. We are clearly of the view that on carefully analysing the statements of Kundiya Bai (PW-11) and Dev Kumari (PW-12), the prosecution has proved beyond reasonable doubt that the murder of the deceased-Gautin was committed by none else than the Appellants-Paleshwar and Vijay Kumar. The Appellants cannot be given the benefit of acquittal of two other co-accused who were either falsely implicated by the police or for the incompetence of the police in properly investigating the matter. The learned Trial Court was fully justified in convicting the Accused/Appellants and we find no error in the judgment of the trial Court.

17. In view of above discussion, the appeal is dismissed. The Appellants are on bail. They are directed to surrender within a period of 15 days from today or be taken into custody to serve out the remaining part of the sentence.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE