

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**  
**Criminal Appeal No. 1926 OF 2000**

1. Bodhlal S/o Devanand Chouhan, aged 35 year's, occupation Labour, R/o Vill-Navapara "B" P.S. Pusour, Distt. Raigarh (M.P.)
2. Moharsai S/o Makhan Sidar, aged 52 year's, Occupation Agriculturist, R/o Vill-Jiladi, P.S. Pusour, Distt.-Raigarh (M.P.)
3. Gajendra S/o Pyari Garha, aged 30 years, Labour, R/o Singhpuri, P.S. Pusour, District Raigarh (M.P. )

---- Appellants

**Versus**

State of Madhya Pradesh (now State of Chhattisgarh)

---- Respondent

|                      |   |                                    |
|----------------------|---|------------------------------------|
| For Appellants       | : | Smt. Savita Tiwari, Advocate       |
| For Respondent/State | : | Mr. Arun Sao, Dy. Advocate General |

**Hon'ble Shri Deepak Gupta, Chief Justice**  
**Hon'ble Shri Sanjay Agrawal, J.**

**Judgment on Board**

**Per Deepak Gupta, Chief Justice**

**20/12/2016**

1. This appeal by the convicted persons (accused) is directed against the judgment dated 04/07/2000 delivered by the Second Additional Sessions Judge, Raigarh in Sessions Trial No. 50 of 99 whereby he convicted all the appellants of having committed offences punishable under Sections 302 read with Section 34 of the I.P.C. and sentenced them to life imprisonment and to pay fine of Rs. 500/- each and in default of payment of fine, each of the appellants were directed to undergo further R.I. for six months.

2. The prosecution story briefly stated is that the three accused murdered the deceased Bodhanlal on the evening of 01/01/1999. The conviction of the accused is based on the statement of two eyewitnesses, namely, Videshi @ Tedhu (PW2) and Tunu (PW3).
3. The sole issue which arises in this appeal is whether the statements of these two witnesses are reliable or whether these two witnesses were introduced by the police later on and were not actual eyewitnesses.
4. It is contended by Smt. Savita Tiwari that no reliance can be placed on the statements of these two witnesses because these two witnesses were apparently not present on the spot and have been introduced by the police later on.
5. The first intimation regarding the occurrence was given to the police on 02/01/1999 at 10.15 a.m. by Ashish Kumar (PW1). The information is only to the extent that about 6 a.m. in the morning on 02/01/1999 when Ashish Kumar was warming himself near the fire, Premlal, Secretary of the Village Panchayat came to him and informed that a body of an unidentified person is lying near the Government land on the side of the road. He further asked the witness to inform the police as the Kotwar was not present in the village. After this report in the form of merg intimation (Ex.P.1) was lodged, the police officials went to the spot and lodged Dehati Nalshi (Ex.P.23) at the spot itself on 02/01/1999 at about 3.00 p.m. The only difference between the merg intimation (Ex.P/1) and the Dehati Nalshi (Ex. P/23) is that in this Dehati Nalshi, the deceased has been identified to be Bodhanlal son of Padum and it is also clear that he had been murdered because there were injuries caused on the beard and neck with a sharp edged weapon. On the basis of this, FIR

(Ex. P/28) was lodged and Investigation was carried out. It is alleged by the prosecution that while the matter was being investigated, statements of two witnesses were recorded and these two witnesses had actually witnessed the occurrence and were eye-witnesses to the occurrence. These witnesses are Videshi @ Tedhu (PW2) and Tunu (PW3). The statement of Videshi (PW2) under Section 161 is reported to have been recorded on 02/01/1999 itself. However, the statement of Tunu is not on record.

6. The issue is whether we should believe the statements of these two witnesses or not. Therefore, we shall refer to the statements of these two witnesses in detail. Videshi (PW2) states that he knows both the accused and the deceased. According to him, on the occasion of Puspuni (Purnima) at about 4.00 p.m. he was at his house. Bodhan (deceased) had come to his house. After sometime, accused Bodhlal, Gajendra and Moharsai (accused) also came to his house. Bodhlal was armed with an axe (Tangiya). Bodhlal asked Bodhan for some Ganja and thereafter there was verbal altercation between the two. After some time all the persons, i.e., the deceased and all the accused left his house and went away. In his presence the accused did not say anything to the deceased.
7. The witness (PW2) further states that after some time he went towards river to defecate. It was about sunset. He saw that Bodhlal was hitting Bodhan with the axe near the school situate on the Changhori to Singpuri road. The other two accused, i.e., Gajendra and Moharsai had caught hold of Bodhan. According to this witness, he got scared and ran away to his house. When the police came to investigate the matter, he

informed the police about what had happened. In cross examination, he admits that his house is the last house situated near the river in the village. His house is at a distance of 30 to 37.5 ft. from the river. He also admits that when he was going towards the river it was already becoming dark. He states that when he was easing himself he heard noise coming from the side of the school. He further states that first he did not go near the school. He also admits that when he heard the noise from the side of school it was dark and he could not see anything. He could not see any of the persons in the school.

8. We shall now refer to the statement of Tunu (PW3). He also states he knows all the accused as well as the deceased. He states that he used to work in village Siha. He was going to his home in Changhori carrying some articles. At about sunset he was near Singpuri school and he saw four persons there i.e. deceased Bodhan and accused persons Bodhlal, Gajendra and Moharsai. Gajendra and Mohasai had caught hold of the Bodhan and Bodhlal was giving blows with the axe on the person of Bodhan. According to him, Bodhlal also threatened him with the axe and then he ran away. He did not inform anybody about the incident. He did not even inform the police about the same. He however, states that after some time when police questioned him, then he told them about the incident. From the cross examination it is clear that this witness is totally uneducated. He does not know his date of birth. He does not even know the date of birth his children. He could not even give the date on which he was examined. He admits that when he was going to his house in village Changhori it was already dark. He states that he could not give the description of the clothes which the three accused persons and the deceased were wearing at the time of incident. He states that the

distance from his village Changhori to the school at Singpuri would be about 5 kms. Then he states that it may be less than 5 kms. Most importantly he states that if one has to proceed towards village Changhori from the village Siha, village Singpuri would not fall on the way. He also admits that the school where the alleged incident took place would not fall on the way. He states that he did not inform any person about the occurrence in village Changhori. He also did not inform any person in village Siha. He also did not inform any of his family members. He did not even inform about the occurrence to his employer. He also states that he did not report the matter to the police. In his cross examination, he further states that two or three days after the occurrence the police came to his village for making investigation. When asked where the accused Bodhlal had given blows to Bodhan, his answer was that he did not know. He also did not know where and how the other two accused persons had caught hold of Bodhanlal.

9. On examination of the statements of these two witnesses, we have no hesitation in coming to the conclusion that these two witnesses are not actually eyewitnesses nor they witnessed any occurrence. It is apparent that they have been introduced by the police at a later stage. As far as Videshi @ Tedhu (PW2) is concerned, no doubt, his statement is alleged to have been recorded on 2nd January, 1999 by the police, i.e., some time after Dehati Nalshi was recorded at about 6.00 p.m. There is no explanation by Videshi @ Tedhu (PW2) why he kept quiet from the previous evening i.e., 6.30 p.m. till the next day. For about 24 hours this witness did not tell anybody about the occurrence. It is important to note that the body of the deceased was lying next to the road but was only discovered at about 6.00 a.m. next morning. Therefore, the body must

have been brought there only after dark. The witness has, in cross-examination, admitted that he could not recognise the persons involved. His statement does not appear to be true at all.

10. We have gone through the site map (Ex. P/2) prepared on the spot by the Investigating Officer on 2nd January, 1999. The Basti is depicted just next to the river. Even as per the statement of this witness, his house was the house closest to the river at a distance of 30 to 37.5 ft. away from the river. When we examine the map (Ex.P.2), the village *Abadi* is in such a place that there would be no occasion for this witness to have gone anywhere near the school if he was going to the river. There are many other houses between the river and the school. If there had been such a loud noise which was heard by this witness near the river, then some of the other villagers would have also heard the noise. If this witness had gone from his house to the river side to defecate, the place marked in the map where the body has been found would not have been visible from the river because the school building would come directly between that place where body was found and the river. This witness could not have witnessed the occurrence from the river side. He himself stated that it was already dark that he could not identify the people who were there near the school. Therefore, we fail to understand how the learned Trial Court could have relied upon this witness.

11. As far as Tunu (PW3) is concerned, his statement is even more unreliable than that of the statement of Videshi (PW2). As already observed by us above, he could not even give the date on which he was examined. He also admits in his cross examination that neither the village Singpuri nor the school in village Singpuri fall on the way while

walking from village Siha to village Changhori. This witness states that after completing his work in village Siha and after buying certain household articles he was coming from village Siha to village Changhori. Since village Singpuri does not fall on the way, this witness should have given some explanation as to how he landed up to village Singpuri. He has not given any explanation whatsoever in this regard. This witness states that the accused Bodhlal threatened him with the axe. If that had been so, this witness may have run away from the spot, but immediately on going home he would have normally told his wife and other family members about what had happened. He would have also told the village Kotwar of his village and other villagers that he had been threatened by Bodhlal. It is not believable that any person, who has been threatened in such a manner, would not seek protection of the family members or friends. He does not even inform his employer with whom he is working about such occurrence. His statement was recorded many days later and there is nothing on record to show as to how the police came to know that he has witnessed the occurrence. If this witness had not informed anybody that he had seen the occurrence, then how would Investigating Officer knows that this witness who belongs to village Changhori, which is 5 kms. away from the village Singpuri, has witnessed the occurrence. Even the Investigating Officer had not given any explanation in this regard.

12. On 17.01.1999, the Patwari Ghasiram Rathiya (P.W.14) prepared another site map (Ex.P.20), on the basis of the statement made by Tunu (P.W.3). Surprisingly, if we go through this map, it totally contradicts the map (Ex.P.2) prepared by the Investigating Officer. In the map prepared by the Investigating Officer, the dead body of the deceased is shown on

the left side of the road whereas in the map prepared by the Patwari, the dead body was shown on the right side of the road. Another important factor is that, according to the P.W.3 Tunu, he only saw the deceased being beaten up and thereafter he ran away, then how could he identify the place where the dead body was found.

13. We are, therefore, of the considered view that the statement of Tunu (P.W.3) is also not reliable. If we discard the statements of the two alleged eye witnesses, then nothing remains in the prosecution case. We, therefore, hold that the learned trial Court totally misdirected itself in relying upon the statements of these two witnesses.

14. Accordingly, the appeal is allowed. The impugned judgment is set aside. The appellants are acquitted of the charges framed against them.

15. The appellants are on bail. The bail bonds of the appellants shall remain effective for a period of 6 months, in view of the provisions prescribed under Section 437-A of the Code of Criminal Procedure, 1973.

Sd/-  
(Deepak Gupta)  
**CHIEF JUSTICE**

Sd/-  
(Sanjay Agrawal)  
**JUDGE**