

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.228 of 2011

Saradhuram, S/o Pandaruram, aged about 46 years, Caste Madia, R/o Alwa Pandarupara, P.S. Kodenar, District Bastar (Chhattisgarh)

---Appellant

versus

State of Chhattisgarh through P.S. Kodenar, District Bastar (Chhattisgarh)

---- Respondent

For Appellant	:	Shri L.C. Dash, Advocate
For State/Respondent	:	Smt. Smita Ghai, Panel Lawyer

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

Judgment on Board

Per Navin Sinha, Chief Justice

20/1/2016

1. The Appellant who is the father of the deceased minor girl aged 10 years stands convicted under Section 302 IPC to life imprisonment with fine of Rs.500/-, in the event of failing to pay which he was required to undergo one month further simple imprisonment as ordered on 25.1.2011 by the Sessions Judge, Bastar in Sessions Trial No.117 of 2009.
2. First Information Report (Exhibit P-2) was lodged on 28.8.2009 at 9:45 am by PW-1, Fagnuram on information given by PW-5, Budhu, elder brother of the Appellant, naming the Appellant as the assailant. The assault was made inside the house at 5:00 am. The post mortem of the deceased (Exhibit P-13) was conducted by PW-7, Dr. T.S. Nag. Two penetrating injuries were found on the person of the deceased, 1"x0.3"x4" on the right back near the tenth rib and 0.7"x0.2"x2.5" on the left back near the seventh rib. The first injury was considered sufficient for death. The informant also stated that the Appellant had told him that his daughters were not giving him

food and therefore he had made the assault.

3. The inquest report was marked Exhibit P-4. The confession of the Appellant was marked Exhibit P-7. The recovery of the knife used for assault in pursuance thereof was marked Exhibit P-8 and the clothes of the deceased seized was marked Exhibit P-9. Blood was alleged to be present on the knife and the clothes which were sent for forensic examination but no FSL report was received.

4. Learned Counsel for the Appellant submitted that the conviction is based only on his extra judicial confession. The two daughters of the Appellant, PW-2 and PW-3, Pakli and Monti, aged 20 and 22 years respectively in cross-examination had declined having eye-witnessed any assault. PW-4, Chaituram deposed that the knife used for assault was taken away from the Appellant and handed over to the Kotwar. The prosecution story of recovery from him of the knife marked Exhibit P-8 on confession is therefore false and evidence of false implication. There is no reason why he will stab his own minor daughter. The prosecution has not put-forth any reason. In absence of any FSL report with regard to the knife and the clothes, it cannot be said to have been established that the Appellant was the assailant. PW-6, Nani, who was also the son of the Appellant had also deposed that the knife had been given to the Sarpanch. In his cross-examination, he deposed that the room was dark and if anybody assaulted and had gone away, the person could not be seen in the darkness.

5. Learned Counsel for the State opposing the appeal submitted that PW-2, Pakli and PW-3, Monti were the daughters of the Appellant. They were sleeping in the room along with the deceased. In their evidence-in-chief, they have specifically named the Appellant as the assailant. That part of the evidence has not been demolished in cross-examination. The

vacillating statements in cross-examination were but only an attempt by them to somehow save their father considering that the sister was already dead. It does not demolish the weight or evidentiary value of the evidence-in-chief that the Appellant was the assailant. PW-5, Budhu, the elder brother of the Appellant, deposed that the latter was hiding inside the room and the witness was scared to go inside lest he be assaulted also. There is nothing in his cross-examination to doubt his evidence-in-chief. PW-6, Nani, son of the Appellant specifically named his father as the assailant and that the Appellant was in an intoxicated condition. The merciless manner of assault is evident from the post mortem report. Even if there was no light inside the room in absence of any denial of the Appellant that he was not present in the room himself or that his three daughters were not sleeping together in the same room becomes irrelevant. In his defence under Section 313 Cr.P.C., he took a plea of a land dispute with PW-1, Fagnuram, but placed no evidence in support of the same making it a false defence which is a further incriminating factor against him.

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

7. The occurrence is stated to have been taken place at 5:30 am inside the house of the Appellant. Naturally the primary witnesses had to be the inmates of the house. The deceased was only ten years old. The three primary witnesses are the Appellant's two daughters PW-2, Pakli aged 20 years and PW-3, Monti aged 22 years and the son PW-6, Nani aged 24 years. PW-5, Budhu, the elder brother of the Appellant has corroborated the evidence of PWs-2, 3 and 6 with regard to the fact that the assault on the deceased had taken place inside the house in the room where all the three sisters were sleeping together. Reading the evidence of PWs-2, 3 and 6 cumulatively it is revealed that when the Appellant made the first assault, the deceased screamed. PW-2 and PW-3 sleeping with her woke-up. PW-

2, Pakli has deposed of an assault on the back corroborated in the post mortem report. Likewise, PW-3, Monti specifically spoke of two assaults made by the Appellant corroborated in post mortem report. The Appellant had a knife in his hand and had gone to the adjacent room. The witness further stated that her father was a drunkard and would often beat her mother also because of which she had gone away to her parental home a week ago. The previous night the Appellant had consumed two bottles of alcohol and he would invariably beat them after consuming alcohol. PW-6, Nani deposed that when he heard his sister's screaming, he went and saw the deceased lying dead. PW-2 and PW-3 told him that the Appellant had assaulted their sister. He went and called PW-5, Budhu and PW-1, Fagnuram. After which the knife was taken from the Appellant and handed over to the Sarpanch. The witness also stated that the Appellant was in an intoxicated condition. In his cross-examination, the witness further deposed that the Appellant would not do any work and was an alcoholic.

8. There is nothing in the cross-examination of PW-2 and PW-3 to demolish the convincing and reliable statements made by them naming the Appellant as the assailant in their evidence-in-chief. PW-3, Monti described that she was sleeping in the middle and the deceased was sleeping on her right while PW-2, Pakli was sleeping on her left. The door of the room was not locked. She denied lack of identification of the Appellant because of darkness and specifically stated that a chimney was burning. It is normal in the village that people leave a chimney burning all night. Even otherwise, we see no reason to doubt the evidence of the daughter identifying her own father inside the room for which we do not think any light is necessary looking to the relationship of the parties and close proximity to each other coupled with the time. It is not the case of the Appellant that any intruder had entered his house. The denial in cross-examination that she learnt of the assault after the Appellant confessed in front of others is clearly

understandable as an attempt to save her father considering that her sister had gone and could not be brought back to life. PW-3, Monti, in her cross-examination, specifically stated having told the police that she had seen her father assaulting the deceased twice. Likewise, PW-2, Pakli also attempted vacillating statements in her cross-examination without retracting her evidence-in-chief.

9. The recovery of the knife on confession of the Appellant is considered irrelevant in view of the evidence that the knife was seized from him and handed over to the Sarpanch by the villagers who had collected. Likewise, in the facts of the case, the absence of any forensic report with regard to blood on the knife or the clothes is considered irrelevant in view of clear and clinching eye-witness account available. PW-5, Budhu, in no uncertain terms, stated that his brother was hiding inside the room when he came. His brother called out to him but he was scared to go inside lest he be assaulted also. The fact that in his cross-examination, he stated that he did not go inside the room only corroborates his evidence-in-chief.

10. In view of the ocular evidence of PW-2, Pakli and PW-3, Monti, the daughters of the Appellant, combined with that of his son PW-6, Nani and PW-5, Budhu, his elder brother, we are satisfied that the prosecution has clearly established the guilt of the Appellant beyond all reasonable doubt that he alone was the assailant of his minor daughter inside the house. The fact that he may have been in an intoxicated condition is considered irrelevant as it is not the case of the Appellant that he was not in his senses because of alcohol, which in any event cannot be a defence. The Appellant did no work and was an alcoholic. His wife and children were the victims of his ire. The killing was the venting of his anger on a helpless minor child who had reposed trust in him and whom the Appellant was bound to protect and nurture. He was caught on the spot at the place of occurrence after the commotion by the villagers and his own family members. His arrest memo

was signed by PW-6, Nani. His defence of false implication due to land dispute with PW-1, Fagnuram has turned out to be a frivolous and becomes an incriminating factor due to his failure to lead any evidence in support of the same. In view of the cogent ocular evidence, the seizure of the knife and clothes coupled with absence of FSL report become irrelevant.

11. We find no merit in the appeal. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE