

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 752 of 2011

Judgment Reserved on 4-8-2017

Judgment delivered on 1-9-2017

- Indal Uraon s/o. Chandan Uraon, aged about 30 years, resident of village Jalhalpara, Limpani, District Korba (CG).

---- Appellant

Versus

- State of Chhattisgarh through the District Magistrate Korba, District Korba (CG).

---- Respondent

For Appellant	:	Mr. Sunil Sahu, Advocate.
For Respondent/State	:	Ms. Smita Ghai, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 30-8-2011 passed by the Additional Sessions Judge, Katghora, Sessions Division Korba (CG), in Sessions Trial No.135 of 2010 whereby the trial Court after holding guilty the appellant for committing murder of one Ratan Singh, convicted under Section 302 of IPC and sentenced him to undergo imprisonment for life and fine of Rs.500/-, with default stipulations.
2. As per the prosecution case, name of the deceased is Ratan Singh. Dehati Nalsi (Ex.P/1) was lodged by his wife Smt. Sukwara Bai on 12-10-2010 at about 3.10 pm at Police Station Pali, stating that she is a labourer and her husband Ratan Singh was Devbaiga and the appellant Indal had threatened her husband three years

ago for committing his murder for the reason that he suspected the deceased that he was doing the magic (witch-craft) and due to his act daughter of Baijnath was sick and she acted like insane and on 10-10-2010 daughter of co-accused Baijnath died. On 11-10-2010 Sukwara Bai along with her husband Ratan Singh went to village Jalapur for selling some thathra (used as tatiya) and sold the same to one Ramal and at that time the appellant and co-accused Baijnath met them and when they were returning to their village, on the way at Thakurmunda forest appellant and co-accused Baijnath reached there from back side, co-accused Baijnath caught hold Ratan Singh saying that he had committed magic to his daughter as a result of which she died. Thereafter, appellant caused vital injury by battle-axe/Fharsa on the neck of the deceased and when Sukwara Bai tried to intervene, the appellant threatened her and she ran away from the spot and went to the house of Amar Singh and thereafter lodged Dehati Nalsi against the appellant and co-accused Baijnath on the basis of which the Police swung into action. The case under Section 302 read with Section 34 of the IPC was registered and the matter was investigated.

3. During investigation, the statements of the witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, charge-sheet was filed before the court of Judicial Magistrate First Class, Katghora, who in turn committed the case to the court of Sessions where the appellant was charge-sheeted under Section 302 read with Section 34 of the IPC to which he did

not plead guilty and tried for the said offence. After recording the evidence of prosecution witnesses, the statement of the appellant was recorded under Section 313 of the Cr.P.C., the trial Court found guilty for the offence and sentenced him as mentioned above.

4. Learned counsel appearing for the accused/appellant submits as under:

- (i) That the conviction of the appellant is based on sole testimony of Sukwara Bai (PW/1) but her version is not supported by the version of Amar Singh (PW/5) and her evidence is not reliable.
- (ii) That the incident took place at about 7.00 pm, but Sukwara Bai did not inform to any one about the incident and the report was not lodged on the same day, but it was lodged on next day, therefore, her conduct is not natural;
- (iii) That PW/2 and PW/5 have not supported the case of prosecution, therefore, conviction cannot be sustained on testimony of Sukwara Bai which is not reliable.
- (iv) That both Sukwara Bai (PW/1) and deceased were in drunken condition and the deceased was also armed with axe, therefore, there is possibility that due to dispute Sukwara Bai caused injury to husband;
- (v) That on the basis of same set of evidence, the trial Court acquitted co-accused Baijnath and there is no material on record to establish that the appellant had committed murder of the deceased. The trial Court has not considered the omissions and contradictions in the evidence of Sukwara Bai (PW/1) in which she denied her statement under Section 161 of the Cr.P.C
- (vi) That the incident took place in the evening and in dark and Sukwara Bai did not state that she identified the appellant

Learned counsel for the appellant has placed reliance on the judgment of Hon'ble Apex Court of India in the matter of **Babuli vs. State of Orissa, reported in AIR 1974 SC 775**, wherein the witness had stated some other name as assailant before Police while in Court he deposed different name.

5. *Per contra*, State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.
6. We have heard counsel for the parties and perused the material on record.
7. To substantiate the charge, prosecution has examined as many as eight witnesses. In rebuttal the defence has not examined any witness.
8. As per first information report (Ex.P/15) lodged by Sukwara Bai (PW/1), time of incident is 7.00 p.m wherein it is mentioned that the appellant cut the throat of the deceased Ratan Singh by battle-axe/Fharsa and thereby committed murder. Dr. C.L. Ratre (PW/4) conducted autopsy of the deceased on 13-10-2010 at Community Health Centre, Pali and found the following injuries on the body of the deceased.
 - i) Incised injury in the size 28x4x8cm over back of upper neck is extended from right ear to left side of mandible
 - ii) Lacerated wound over left side of temporal bone with underlying temporal bone with fracture in the size 8x3.5x2cm;
 - lii) Lacerated wound in front of neck (above the thyroid) with underlying muscle, vessels, esophagus, trachea and spinal cord is sharply cut out and head is adherent to back of skin of neck in the size of 31x10x11cm;
 - iv) Lacerated wound over left side of cheek with premolar and molar teeth broken in the size of 5x2x4cm
 - v) Two lacerated wounds over right shoulder in the size of 7x2x1cm & 8x6x2cm;
 - vi) Multiple abrasion over left knee

He reported that injury Nos..1 to 5 are caused by sharp and hard object and injury No.6 is caused by hard and blunt object and duration of injury since autopsy is 20 - 48 hours. He opined that cause of death was neurogenic shock due to cutting of spinal cord and death of the deceased was homicidal in nature. Version of Dr. C.L. Ratre (PW/4) is unshaken during cross examination. Nothing could be elicited in cross examination and there is no other expert's opinion in the record contrary to the report of this witness.

9. Looking to the injuries it can be safely inferred that the deceased was brutally murdered. Sukwara Bai (PW/1) who is wife of the deceased is only eye-witness of the incident and deposed that she went to the market along with her husband to sell some goods and while returning from the market at about 7.00 pm reached near Thakurmunda forest, appellant Indal assaulted her husband by Tabbal. She deposed that she fled away from the spot to save her life and informed Amar Singh about the incident and they were fearful in the night, therefore, she did not take any action at night and on the next day morning, she visited the spot with some villagers and thereafter made report as per Ex.P/1. In her cross examination she denied the suggestion that she was not able to see the assailant due to dark and her version is remained unshaken during cross examination and nothing could be elicited to rebut the version stated in examination-in-chief. Her version is supported by the version of Investigating Officer (PW/8) Shyam

Sidar. (PW/2) Somnath deposed about seizure of Fharsa and lungi from the appellant and the same is supported by the version of PW/8 Shyam Sidar. From the evidence of Sukwara Bai (PW/1) and Dr. C.L. Ratre (PW/4), it is established before the trial Court that the appellant had assaulted the deceased and due to his assault, deceased was almost beheaded and died instantaneously. Looking to the injuries it can be safely inferred that the injuries were sufficient in the ordinary course of nature to cause death.

10. It is submitted by the learned counsel for the defence side that Sukwara Bai (PW/1) deposed that after the incident she went to the house of Amar Singh and narrated the story to him, but Amar Singh has not supported the version of Sukwara Bai, therefore, her version is not reliable. In our view, Amar Singh (PW/5) is not the witness of the incident and he has not stated that Sukwara Bai informed him just after the incident but he deposed that people of the village have asked Sukwara Bai about the incident and she was telling about the incident but he did not listen, it means, Sukwara Bai was telling the story in presence of Amar Singh and she lodged the report on assumption that Amar Singh had also heard the story. From the statement of Amar Singh, it appears that he did not hear the story, but he has not stated that Sukwara Bai was not telling the story before the people of the village, it means Sukwara Bai had informed the people of the village about the incident. Therefore, the version of Sukwara Bai is very clear on the point of informing the others about the incident and if

Amar Singh had not heard the story, the same is not damaging the prosecution.

11. It is further contended on behalf of the defence side that on the date of incident Neither Sukwara Bai informed to anyone about the incident nor lodged report at Police Station at Pali, therefore, her conduct is not natural. In our view Sukwara Bai (PW/1) is wife of the deceased and incident happened in the forest area and distance of Police Station Pali is 30 km., from the place of incident. From her statement it is clear that due to fear she was not in a position to lodge the report immediately, because she was isolated at the time of incident and after gathering with some people of the village, they visited the place of incident and thereafter report was lodged. Looking to the distance of Police Station and looking to the fear of the appellant first information report lodged on the next day cannot be treated to be delayed first information report. Explanation offered by the witness is convincing and satisfactory and it does not make prosecution case improbable. Even otherwise, information to the Police with all its vivid details and post-mortem report gives assurance regarding truth of its version. When the testimony of this witness is not impeached in cross examination, her version cannot be termed as unnatural.
12. It is also argued on behalf of the appellant that witness Somnath (PW/2) and Amar Singh (PW/5) have not supported the version of the prosecution, therefore, the version of the prosecution becomes doubtful. In our view both witnesses are not the

witnesses of the incident and Somnath (PW/2) is a witness of seizure who supported the factum of seizure from the appellant. Amar Singh (PW/5) is also not the real witness of the incident and their version cannot affect the version of Sukwara Bai (PW/1). There is nothing on record to substantiate the possibility regarding dispute between Sukwara Bai and her husband, therefore, the argument advanced on this count is not sustainable. It is also contended on behalf of the appellant that co-accused has been acquitted on the same set of evidence and there is no material against the appellant. In our view, case of the prosecution is based on sole testimony of PW/1 Sukwara Bai and her version from day one of the incident is firm regarding assault by the appellant and right from investigation to deposition before the court she is consistent in her version and the same is not shaken by any adverse circumstance.

13. Hon'ble the Apex Court in the matter of **Kartik Malhar vs. State of Bihar, reported in 1996(1) SCC 614** has held as under:

“Conviction can be recorded on the basis of the statement of a single eyewitness provided his credibility is not shaken by an adverse circumstance appearing on the record against him and the court, at the same time, is convinced that he is a truthful witness. The Court will not then insist on corroboration by any other eyewitness particularly as the incident might have occurred at a time or place when there was no possibility of any other eye-witness being present. Indeed, the courts insist on the quality, and, not on the quantity of evidence. It is open to the courts to

record a conviction on the basis of the statement of a single witness provided the evidence of that witness is reliable, unshaken and consistent with the case of the prosecution. The case of the prosecution cannot be discarded merely on the ground that it was sought to be proved by only one eye-witness”.

14. In the instant case, only wife of the deceased was present at the time of incident and case of the prosecution is based on the statement of that witness alone. There is nothing on record to impeach the same and the trial Court was right in recording the judgment of conviction and awarded minimum sentence to the appellant. The case law cited by the defence side is distinguishable on the facts and circumstances of the present case.
15. Thus in the aforesaid view of the matter this Court is of the considered opinion that the findings recorded by the Court below do not suffer from any legal flaw warranting inference in this appeal. Resultantly, the appeal being without any force is liable to be dismissed and it is dismissed as such with the affirmation of the judgment impugned. As the appellant is already reported to be behind the bars, no further order for arrest etc is necessary.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Ram Prasanna Sharma)
JUDGE

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