

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1039 of 2013**

- Bodhan Mankipuri S/o . Mohar Das Manikpuri Aged About 40 Years R/o. Near Pump House, Korba Distt. Korba C.G., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through P.S. Chauky Rampur, P.S.Kotwali Korba C.G., Chhattisgarh

---- Respondent

For Appellant	: Shri B.M.K.Bajpai, Advocate
For Respondent/State	: Shri Anil Pillai, Dy.AG

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment on Board by Manindra Mohan Shrivastava,J.

09/10/2018

This appeal is directed against the judgment of conviction and order of sentence dated 27.09.2013 passed by Additional Sessions Judge, Korba in ST No. 12/2013 whereby and whereunder the appellant has been held guilty for commission of the offence under Seciton 302 IPC and sentenced to imprisonment for life with default sentence.

2. The prosecution story is that in the intervening night of 24th December 2012 between 11 p.m. -12.00 am. the appellant came to the

house of deceased Sangita Sidar and killed her by strangulating with the help of a scarf.

3. The information was received in the police station Rampur through Saroj Bai (PW-6) that as her son-in-law Jaisingh is her next door neighbour and he left for night duty at 9.30 p.m. in the night of 24.12.2012 and thereafter, at about 12.15 in the night her grand sons namely Sourabh and Shubham have informed that the appellant had come in the bicycle and quarrelled with their mother Sangita and thereafter strangulated her to death. The said information was recorded in Ex.P-12 as informed of sudden untimely death. The same was also treated as merg intimation. Later on, FIR Ex.P-13 was recorded by the police. After reaching the place of occurrence inquest of dead body was prepared. Dead body was sent for postmortem. Seizures were made and statements of persons appearing to be acquainted with the incident were recorded. Upon completion of investigation, charge sheet was filed before jurisdictional magistrate and it was committed for trial to the sessions court. Learned trial court framed charge against the appellant alleging that on 24.12.2012 between 23-24.00 hrs. he strangulated Sangita Sidar to death and thereby committed the offence under Section 302 IPC. The offence of committing criminal trespass was also charged against the appellant. Appellant abjured guilt and he was put to trial.

4. Prosecution examined as many as 13 witnesses. Appellant was examined under Section 313 Cr.P.C. In his examination, the appellant denied all the incriminating evidence and circumstances as stated by the prosecution witnesses and stated that he is innocent and has been falsely implicated. No defence witness was examined. Relying upon

the prosecution evidence, the trial court held the appellant guilty of committing the offence.

5. Assailing correctness and validity of the judgment of conviction and order of sentence, counsel for the appellant argued that the prosecution case rests on highly doubtful and unreliable evidence of child witness (PW-5) Sourabh Sidar, aged about 7 years. He would argue that though, in the examination-in-chief, this witness states that his mother was killed by the appellant, in para 9 of his cross-examination he says that when he woke up he found his mother lying dead in blood bath and at that time, he did not see the appellant or anybody else. It is submitted that it clearly shows that he is a planted witness on which no reliance can be placed. Next submission is that his elder brother Shubham (PW-3) states in his examination-in-chief that he was informed by his brother Sourabh regarding appellant strangulating his mother with the help of scarf, this witness in his cross-examination, gave a different statement and said that his brother did not inform this fact to him but it was informed to him by his grand mother Saroj Bai (PW-6). Though in examination-in-chief, Saroj Bai (PW-6) she has stated that she was informed by her grand sons regarding the act of the appellant, in cross-examination, she admits that when the two grand sons had come to her they only informed that their mother was lying dead and bleeding and that in their knowledge, nobody had come. On other evidences, it is submitted that it does not incriminate the appellant because the recovery does not connect the appellant with the alleged commission of offence, therefore the entire case of prosecution is highly doubtful and the witnesses are not at all reliable and, therefore, the appellant may be acquitted by granting benefit of doubt.

7. On the other hand, counsel for the State submits that, though, there may be some discrepancies in the testimony of eyewitnesses Sourabh Sidar who happens to be the child witness, it is unlikely that he would falsely implicate the appellant and try to save the real culprit. It is further argued that this witness has clearly stated in his examination-in-chief regarding quarrel and the appellant strangulating his mother to death which is also supported from the evidence of PW-5, PW-6 and PW-1 that the said incident was reported by the eyewitness Sourabh Sidar (PW-5) to his brother, grand mother as also the father. Therefore, discrepancy, if any, are not of such a material nature as to completely reject the prosecution case.

8. Learned counsel for the State also argues that upon medical examination of the appellant, some scratches were also found on her body which also supports the prosecution case as in all likelihood, while strangulating, the deceased in order to save herself must have also reacted and tried to save herself. These injuries have not been explained by the appellant. Therefore the impugned judgment of conviction may not be interfered with.

9. We have heard counsel for the parties and perused the records.

10. The entire case of the prosecution rests on the testimony of so called eyewitnesses Sourabh Sidar (PW-5). Sourabh Sidar, aged 7 years, is the son of the deceased. In para 2 of his evidence, this witness states that on the date on which the incident happened, he and his brother were sleeping in the other room and he saw that the appellant and his mother were quarreling. He further states that the appellant tied a scarf around the neck of his mother and tightened it up

whereafter, his mother died and then the appellant Bodhan went away. He further deposes that this incident was narrated by him to his grand mother and he had also informed his brother by waking him up. In para 8 of his cross-examination, he states that after his father left he and his brother slept on one bed and the mother slept on another bed. He admits that he does not know at what time, Bodhan came to his house. In para 9 of his evidence, this witness states that when he woke up he saw that his mother was lying flat on the bed. He also admits that at that time blood was oozing out from her mouth and at that time he did not see Bodhan Manikpuri (Appellant) or any other person. He further states that thereafter he woke up his brother also and then, thereafter, they went to wake up their grand mother and informed her that the mother is lying on the bed and she may come and see.

What has come in the cross-examination of this child witness renders evidence of this witness extremely doubtful and unreliable because while in his examination-in-chief he states that there was a quarrel between the appellant and his mother and the appellant tied her neck with scarf and tightened up, in his cross-examination, he says that when he woke up, he saw his mother lying flat and bleeding and at the spot neither there was appellant nor anybody else.

11. His brother Shubham (PW-3) aged 11 years has deposed in his examination-in-chief in para 2 that in the night of 24.12.2012, he saw that blood was oozing out from the nostril and mouth of his mother and she did not get up and he gathered that she is dead. He further states that his younger brother Sourabh Sidar (PW-5) informed that Bodhan Uncle had come and he tied up the scarf around the neck of his mother and thereafter, both of them went to inform their grandmother. However,

in his cross-examination, he states that he along with his brother and mother were all sleeping in the same room though he was sleeping on a separate bed and at about 12.15 in the night, he was woken up by his brother and he saw his mother was lying on the bed. His brother told him that mother is not speaking and only lying on the bed and therefore grand mother should be now called and thereafter both of them went to call their grand mother. In para 6 of his evidence this witness denies suggestion that his brother did not inform regarding arrival of the appellant, tying scarf around the neck of his mother. He then states that when his brother informed grant mother that Bodhan had come and tightened the scarf around her neck then he heard about this matter. Importantly, he further states that before this, his brother did not inform that Bodhan uncle had come and had strangulated his mother with the help of scarf.

12. This evidence of the witness in cross-examination is contradictory to what he has stated in his examination-in-chief that after he was woken up by his brother, he was informed by him that the appellant had quarreled and strangulated his mother. The evidence of this witness thus also becomes highly doubtful.

13. According to the aforesaid two witnesses, Sourabh Sidar (PW-5) and Shubham Sidar (PW-3) , however when they went to inform their grand mother Saroj Bai (PW-6), this witness deposed in para 2 of her chief that about 12.15 -12.30 in the night her two grand sons Shubham Sidar and Sourabh came and informed that Bodhan had strangulated their mother with the help of scarf and she was bleeding. But then, in her cross-examination, this witness gives a contradictory statement that when the two grand sons came in the night they only informed that

blood is coming out from the nostril of their mother and on such disclosure she thought that she might have fallen down and came running to the house of her daughter.

14. It can, thus, be seen that even this witness have given contradictory statement on the most material aspect regarding information given by two grand sons Sourabh and Shubham regarding alleged quarrel and strangulation of their mother by the appellant. Obviously, when this witness states that she gathered an impression that her daughter might have fallen, this clearly means that the two grand sons did not give any specific information as to how the deceased sustained injury and was bleeding.

15. Sourabh Sidar (PW-5) is the younger son aged 7 years whereas Shubham (PW-3) is the elder one aged about 11 years. According to these witnesses, they all were sleeping in the same room along with their mother, however, Shubham Sidar, the elder brother does not say that he had seen the incident. If any quarrel or scuffle was going, so much so that his mother is done to death, it is most unlikely that son aged about 11 years would not know about it.

This evidence of so called eyewitness PW-5 and that of PW-3 and PW-6, because of serious contradictions in their statement in examination-in-chief and cross-examination on most material aspect with regard to the overt act of the appellant, their presence is found to be extremely doubtful.

16. The recovery which have been made from the appellant did not connect him with the alleged commission of the offence because it is not the case of the prosecution that from the clothes of the appellant

blood stains containing group and origin of the deceased were found. We do not find that there was any serological report received from the FSL in this regard. It is not even the case of the prosecution that the cycle which is alleged to be seized from the appellant was seen in the night in the house of the deceased or that the appellant was found coming to the house of the deceased in the night.

17. Thus, the entire case of the prosecution becomes highly doubtful and in such a case appellant has to given benefit of doubt. In the result, we are unable to uphold the impugned judgment of conviction and sentence, the same is set aside. Appellant is acquitted of the charges. Appellant be released forthwith and set free.

Sd/-[

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge