

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 852 of 2013**

- Rohit Kumar, S/o Goverdhan Banjare, Aged About 20 Years, R/o Village Kherdha, PS Jamul, Distt. Durg, Chhattisgarh

**---- Appellant****Versus**

- State Of Chhattisgarh through SHO, Police Station Jamul, Distt. Durg, Chhattisgarh

**---- Respondent**

---

For Appellant  
For Respondent

Ms. Savita Tiwari, Advocate  
Ms. Fouzia Mirza, Addl. AG

---

**Hon'ble Justice Shri Prashant Kumar Mishra****Hon'ble Justice Shri Gautam Chourdiya****Order On Board by Shri Prashant Kumar Mishra J.****08/11/2019**

1. Appellant has been convicted for committing murder of deceased Nurbai and has been sentenced to undergo life imprisonment.
2. As per FIR (Ex-P-20) lodged by the deceased herself at about 17:20 hours, she was sitting inside the house at about 4 pm on 23.10.2011 when the accused entered her house with an axe in his hands and started abusing and assaulting her over her head due to old enmity. She informed the Police that the residents of the locality have seen the incident and that hearing the commotion, her husband and the residents of the locality reached her home and the accused ran away. The deceased was

immediately taken to hospital where her MLC was conducted by PW-9 Dr. Rachna Dave. Her condition being serious, she was referred to Durg District Hospital but she was taken to Sector 9 Hospital, Durg where she was treated, but she succumbed to death at about 9:30 pm. In course of investigation, the appellant's memorandum statement was recorded vide Ex-P-6, consequent to which blood stained axe and clothes were recovered from him vide Ex-P-7. The articles were sent for FSL examination, the report whereof was submitted vide Ex-P-30 finding presence of blood over both the articles. On the basis of evidence collected during the investigation, charge sheet was filed against the appellant for commission of offence under Section 302 of IPC. The appellant abjured the guilt.

3. In course of trial, the prosecution examined as many as 16 witnesses to bring home the charges. The Trial Court has convicted the appellant, which is challenged on submission that the projected dying declaration in the presence of PW-1 Gaukaran and PW-2 Reena is an afterthought. The FIR carries overwriting as to the time of incident and there being different mention of the time of incident on different documents filed by the prosecution, the complete prosecution story is doubtful. There being no eye witness to the crime, the conviction is not sustainable on the basis of discredited evidence.
4. Learned State counsel would support the impugned judgment on submission that the discrepancies are very minor without affecting the basic prosecution case.

5. The FIR (Ex-P-20) carries overwriting at two places, firstly while mentioning crime number and secondly while mentioning the time of the incident. It appears to the naked eye that initially the time of the incident was mentioned as 12:00 hours, which was later on made as 04:00 hours. The time of receiving information in the Police Station is mentioned as 17:20 hours. If this time is mentioned in hours and not by mentioning am or pm, the time of the incident mentioned as 04:00 hours should have been written as 16:00 hours.
6. The above mentioned overwriting in mentioning the time of incident in the FIR assumes significance when the medical papers of the deceased are scrutinized. In the pre MLC of the deceased vide Ex-P-14 and the MLC report (Ex-P-15) while mentioning the place and time of the incident, PW-9 Dr. Rachna Dave has mentioned that the injured sustained assault at about 12:00 pm and the injured was unconscious at the time of examination at 6 pm. The patient was brought to the PHC by one constable Ganesh Yadav (not examined).
7. PW-1 Gaukaran is the husband of the deceased, whereas PW-2 Reena is her daughter. As per the statement of PW-1, no other family member was present in the house at the time of incident. According to him, he returned to his house at 5:30 – 6 pm and saw his wife injured in a pool of blood lying unconscious. He further states that when his wife regained some consciousness, he asked as to how it has happened, she informed that the accused has run away after assaulting her. He would further state

that he took the deceased to the hospital on motorcycle, however, in cross examination, he admits that he does not know how to ride a motorcycle. He further states that the deceased was first taken to Police Station in a jeep and from there she was taken to hospital. PW-2 Reena had not gone to the school, as the school was closed due to Deepawali vacation. According to her version, she saw the accused sitting on the platform in front of her house, but when she returned she saw the accused running away after assaulting her mother. She says that it would have taken 5-10 minutes time to visit the local Kirana shop where she was sent by her mother for purchasing some articles. However, presence of this witness has not been mentioned by her father PW-1 Gaukaran. Neither the FIR mentions the presence of either PW-2 Reena or immediate arrival of PW-1 Gaukaran at about 5:30 pm. Here again the timing of the recording of FIR and reaching of PW-1 Gaukaran to his house is contradictory, because if the FIR was recorded at 5:20 pm, it is unbelievable that PW-1 Gaukaran reached to his house at 5:30 – 6 pm, saw her wife in pool of blood, thereafter arranged motorcycle or jeep to take her to Police Station and thereafter to the hospital. During this entire act, he must have taken not less than half an hour or 45 minutes, but the FIR is registered at 5:20 pm. In this view of the discrepancy in the evidence regarding timing of the incident and registration of FIR together with the overwriting in the FIR, it appears, the timing of the incident has been changed in the FIR so as to demonstrate arrival of PW-1 Gaukaran and presence of PW-2 Reena at the place of incident. It is also to be seen that

name of either PW-1 Gaukaran or PW-2 Reena is not mentioned in the FIR, as the person who reached the place of occurrence at 5:30 – 6 pm or that PW-2 Reena has seen the deceased running away from the place of occurrence. If both these witnesses have enquired from the deceased about the person who has committed the crime, there was no reason why this fact was not mentioned in the FIR lodged by the deceased herself. She could have easily informed the Police that immediately after the incident, her husband and daughter reached the place of occurrence.

8. As per the postmortem report (Ex-P-33), the deceased sustained depressed fracture with multiple pieces in 12 x 8 cm area on right side of occipital parital bone with collection of clots and blood. Meningitis torn in 5 x 3 cm area through which brain matter coming out and haematoma present on both cerebral hemisphere, cerebellum, pons and medulla. With such serious injury, it is very suspicious as to how the injured was fit enough to give her oral dying declaration to the witnesses or to lodge FIR at 5:20 pm. As per the statement of PW-2 Reena, when she reached the house, the deceased had already oozed one bucket of blood. If this amount of blood had already oozed out from the body of the deceased, it was difficult for her to remain conscious.
9. Even though PW-4 Santosh Banjare has proved the memorandum statement and the seizure of axe and clothes, the same having not been found to have traces of human blood, such recovery is of no legal significance.

10. For the foregoing, we are of the considered view that the incident did not happen at about 4 pm and there is overwriting in the FIR, therefore, the whole prosecution story about commission of crime by the present appellant becomes doubtful and more so when the statement of PW-1 Gaukaran and PW-2 Reena as to the dying declaration given by the deceased also lacks credence.
11. Resultantly, we are satisfied that the appeal preferred by the appellant deserves to be and is hereby allowed. The impugned judgment of conviction and sentence is set aside. The appellant is in jail since 24.10.2011. He be released forthwith, if he is not required for any other offence, on his furnishing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the Trial Court. The bail bond shall remain in operation for a period of 6 months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the Higher Court as and when required.

Sd/-  
Prashant Kumar Mishra  
Judge

Sd/-  
Gautam Chourdiya  
Judge