

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 33 of 2012**

- Babulal Mochi S/o. Janakram, R/o. Udiyapara, Thana Bilha, Distt. Bilaspur C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through Thana- Bilha, Distt. Bilaspur C.G.

---- Respondent

For Appellant	:	Shri Abhishek Pandey, Advocate
For State	:	Smt. Fouzia Mirza, Addl. A.G.

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board**17/03/2021****Per Manindra Mohan Shrivastava, J.**

This appeal is directed against impugned judgment of conviction and order of sentence dated 05/11/2011 passed by the First Additional Sessions Judge, Bilaspur, District - Bilaspur (CG) in Sessions Trial No.03/11 whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below -

	<u>Conviction</u>	<u>Sentence</u>
1.	U/s 302 of IPC	Life imprisonment and fine of Rs.200/- (in default of payment of fine, one month additional R.I.)
2.	U/s 323 of IPC	R.I. for two months
All the sentences to run concurrently		

2. Prosecution case is that on 10/12/2010, at about 17:00 hrs., the appellant, with intention to cause death, assaulted Ajuram (the deceased) with the help of Knife and Trishul and caused grievous injuries, due to which, Ajuram succumbed to death. It is also the prosecution case that the appellant also assaulted son of Ajuram i.e. Karan Ratre on his back with the help of Trishul resulting in simple injuries.

3. Rambharos Mochi (PW6) lodged FIR in the police station at about 17:30 hrs. i.e. within half an hour of the incident. After the police proceeded to the place of occurrence, inquest over dead body was prepared and it was sent for post mortem which was conducted by Dr. Pankaj Sahu (PW12), who upon examination of injuries, internal and external both, prepared post mortem report in Ex.P/16 giving opinion that cause of death was excessive bleeding due to cut on vital organs / blood vessels leading to hypoxia and heart fail. On the basis of FIR, as the appellant was named therein, he was taken into custody and further case of the prosecution is that his memorandum was recorded in presence of witnesses and then it is said that from the house of the appellant, Trishul and Knife were seized which was also sent for forensic examination. The FSL confirmed presence of blood on the weapons. Upon completion of usual investigation and recording case diary statements of persons acquainted with the case including eye witnesses, charge sheet was filed. The appellant was charged of offence under Section 302 IPC which was denied and subsequently, the appellant was put to trial.

4. Learned Trial Court, relying upon the eye witness account given by Dhannaram (PW2), Rambharos (PW6), Amrika Bai (PW8) and Dileep Mochi (PW11) as also recovery of blood stained knife and trishul from the house of the appellant held the appellant guilty of murder of Ajuram. Also relying upon the testimony of Karan Ratre, son of Ajuram, that he was assaulted on his back by the appellant, the accused was also convicted under Section 323 IPC for causing simple injuries.

5. As the counsel engaged by the appellant did not appear to argue this old appeal, despite case passed over on number of times, we requested Shri Abhishek Pandey, Advocate to argue the matter.

6. Learned counsel for the appellant extensively argues that though some of the witnesses Dhannaram (PW2), Rambharos (PW6), Amrika Bai (PW8) and Dileep Mochi (PW11) claim to have seen the incident, they were all relatives of the deceased. Where witnesses have admitted in their cross-examination that the incident happened on the road and there were many houses, meaning thereby that there could be natural eye witnesses but no independent eye witness have been examined by the prosecution. Referring to the evidence of Karan Ratre (PW7), it is argued that Karan Ratre, son of the deceased has admitted in the cross-examination that there an old enmity existed between the parties because the appellant suspected that the deceased had been playing witchcraft on the appellant and his family. Therefore, there is clear possibility of false implication. The next contention of learned counsel is that as far as the witness of memorandum and seizure are concerned, Shiv Kumar (PW3) though claims to be a witness of memorandum and seizure, in his cross-examination, he has stated that at the time when memorandum was recorded, he was not present and seizure were made in the police station and documents were put to signature. This means, it is argued, that he is a planted witness. As far as other witness of memorandum and seizure Shrawan Kumar Ratre (PW10) is concerned, in his cross-examination, he has admitted that the documents of memorandum and seizure were signed by him without having read those papers and he claims to be illiterate. Therefore, the evidence of this witness is also doubtful more so when he is one of the relatives of the deceased being son of Rambharos (PW6), brother of the deceased. Learned counsel would further argue that even the weapons were not sent for query to support the prosecution case that the injuries could be caused from the weapons allegedly seized from the house of the appellant.

This is also a serious lacuna in the case of the prosecution. Last, but not the least, it is argued that the accused has come out with a plausible defence that the actual incident which led to injury inflicted on the body of the deceased was witnessed by Kunjbihari (DW1) who is the independent witness and he has stated that he saw that while the deceased was going on road, another person was coming on a cycle from the opposite direction and there was collision with Ajuram. This led to quarrel between him and Ajuram and then he took out a sword like weapon and assaulted Ajuram on his neck, due to which, Ajuram fell down. Thereafter, that person went towards the village and at this stage, members of the family of Ajuram namely Karan Ratre, Amrika Bai etc. reached the spot and took Ajuram to the house. No material fact could be elicited from the cross-examination of this witness to disbelieve this testimony. The accused has taken a defence in his examination under Section 313 CrPC that he was not present at the spot but he was in his house and from his house, he was called and due to enmity, he has been falsely implicated.

7. On the other hand, learned State counsel submits that the prosecution case firmly stands on unshaken testimony of as many as four eye witnesses Dhannaram (PW2), Rambharos (PW6), Amrika Bai (PW8) and Dileep Mochi (PW11). The evidence of these witnesses could not be disbelieved on the ground that they are interested witnesses but their evidence is only required to be scrutinized with care and caution which has been done by the learned Trial Court. It is further argued that even if the evidence of Shiv Kumar (PW3), memorandum and seizure witness is brushed aside, the evidence of Shrawan Kumar Ratre (PW10) with regard to disclosure statement given by the appellant and recovery of weapons from his house cannot be doubted and this only corroborates substantive evidence of memorandum and recovery as stated by the investigating officer of the case, Alok Dutta (PW14). Learned State counsel would further submit that the evidence that absence of query report would not be fatal to the case of the prosecution because once the evidence of

eye witness is found reliable and recovery of weapons from the house of the appellant is proved from the evidence of witnesses of memorandum and recovery and later on, found blood stains as per FSL report, prosecution case is proved with regard to use of weapons seized from the accused. Further submission is that Karan Ratre (PW7) has stated that appellant was suspecting that the deceased and his son had played witchcraft on the appellant and his family and this had become the motive. Therefore, admission of suggestion that the appellant was suspecting that the deceased and his son was playing witchcraft would only prove the prosecution case and supports the statement of eye witnesses. As far as defence witness is concerned, the submission is that he is a planted witness because he, for the first time in the Court, claims to have seen the incident whereas he did not lodge any report in the police station regarding the incident nor disclosed to anybody that he had seen the incident, therefore, his conduct is highly doubtful. Further, he is the resident of another village but he claims to be resident of Bilha and owns agricultural land. He could not disclose number of lands much less any revenue document regarding his title and possession as an agriculturists over agricultural land in Bilha. It is also submitted that an inference that the witness is a concocted witness drawn by the learned Trial Court is well founded because a suggestion was given to Karan Ratre (PW7) that he sustained injury while quarrel was going on between Ajuram and Babulal. Thus, there are contradictions between the defence which emerges from the cross-examination of eye witnesses and what has been stated by the accused under Section 313 CrPC and what has been stated by Kunjbihari (DW1).

8. We have heard learned counsel for the parties and perused the records.

9. Present case of prosecution is based on a prompt FIR which is said to be lodged by Rambharos Mochi (PW6) as early as at 17:30 hrs. in the police station giving report of the incident which had taken place at 17:00 hrs. The evidence of this witness with regard to lodging of FIR and what has been stated by the investigating

officer Alok Dutta (PW14) that this witness lodged FIR, has remained unshaken. The contents of FIR are to the effect that in the incident of assault, the appellant had assaulted the deceased with sharp edged weapon on his neck due to which neck of Ajuram was cut. In the FIR, presence of other eye witnesses namely Dhannaram, Amrika Bai, Dileep Mochi etc. has been mentioned.

10. The post mortem report in Ex.P/16 proves that statement of Dr. Pankaj Sahu (PW12) is not substantially in dispute either with regard to nature of injury or even the cause of death as the doctor has proved that there was a long cut injury on the neck of the deceased caused by sharp edged weapon which led to excessive bleeding and death due to heart failure. Post mortem was conducted much after lodging of FIR. In the FIR itself, the weapons used, part of the body where assault was given and nature of injury which was caused has been clearly stated.

11. Rambharos Mochi (PW6), the FIR informant has clearly deposed in his evidence that the deceased was assaulted with the help of trishul and knife. He has been subjected to detailed cross-examination but no material contradictions or omissions could be elicited with regard to the person who assaulted the deceased, weapons with which assault was given and part of the body where assault was given. The statement of this witness is found to be coherent with what has been stated in the FIR which was reported within half an hour of the incident. The post mortem report which was conducted subsequently only corroborates the testimony of Rambharos Mochi (PW6) because in the post mortem, from the evidence of Dr. Pankaj Sahu (PW12), it is proved that the deceased died of long cut injury on his neck caused by sharp edged weapon. In the FIR and evidence in the Court, Rambharos Mochi (PW6) stated that the deceased was assaulted with the help of knife and trishul and cut injury on the neck of the deceased which was fully corroborated in the medical evidence. Dhannaram (PW2), Amrika Bai (PW8) and Dileep Mochi (PW11) are other eye witnesses of the incident who have supported the

case of the prosecution and on the material aspects with regard to time of incident, place of incident, person who assaulted, weapon with which assault was given and the part of body where assault was given. The evidence of these witnesses are not only coherent with each other but also with the FIR informant Rambharos Mochi (PW6) and what has been stated in the FIR corroborated with the medical evidence.

12. Karan Ratre (PW7), son of the deceased was assaulted by the appellant and he has clearly stated that when he was going to market, the appellant came and assaulted on his back, due to which, he fell down. The incident of assault on this witness is said to have happened at around 5 PM in the evening and that is the time, the accused is alleged to have given assault on Ajuram, father of Karan Ratre (PW7). Therefore, presence of the accused at the spot near and around the house of the deceased and Karan Ratre (PW7) at about 5 PM is fully established.

13. Even if we accept the argument of learned counsel appearing for the appellant that the evidence of Shiv Kumar (PW3) as memorandum and seizure witness is doubtful, we are unable to accept the argument that evidence of another memorandum and seizure witness Shrawan Kumar Ratre (PW10) should be disbelieved only on the ground that he admits in the cross-examination that before signing the documents of memorandum and seizure, he did not read those documents. This would lead to reaffirming the statement regarding disclosure statement given by the appellant with regard to place where weapons were kept. In the examination-in-chief as well as in the cross-examination, Shrawan Kumar Ratre (PW10) has clearly stated that the accused, while making disclosure, had clearly stated that weapons are kept in his house. This having been shown as substantive piece of evidence in the Court, merely because witness did not fully accept, could not, by itself, be made a basis to disbelieve the testimony regarding his statement to the police.

As far as seizure part is concerned, in the present case, not only seizure

witnesses but from the disclosure statement of accused, it is proved that the weapons were seized from the house of the appellant. This evidence constitutes incriminating evidence against the appellant particularly when these weapons were found to be stained with blood in FSL report.

14. The argument that since there existed enmity between the parties admitted by Karan Ratre (PW7), it could possibly be a case of false implication, has to be tested on well known principles of plausibility and possibility of any defence version. But only on this ground otherwise also, reliable evidence of other eye witnesses could not be disbelieved, more so in this particular case, as accused assaulted with weapon and same being found blood stained, is also proved by the prosecution.

15. Learned counsel for the appellant stressed on the submission that other independent witnesses examined as Kunjbihari (DW1) has given completely different story as to how Ajuram sustained injury which shows that Ajuram had entered into quarrel in the morning at 10:00 hrs. and therefore, taking into consideration the admission of existing enmity between the parties, such defence becomes plausible one.

We have carefully gone through the statement of defence witness. He claims to have seen the incident stating that he used to visit village – Bilha as he has agricultural land situated in Bilha. He is the resident near police station – Janjgir which is a different place. Though he claims to own agricultural land in Bilha but he has failed to produce any relevant revenue document regarding agricultural land situated in Village – Bilha and registered in his name. Not only this, he has even failed to disclose khasra number of agricultural land. Further, this witness admits in the cross-examination that he did not disclose the incident nor lodged report in the police station and he has stated regarding the incident when he came to the Court for the first time. This renders the evidence of this witness very very doubtful. The natural conduct of this witness would have been that if he had seen the incident of

assault, he would have reported to the police or anybody else. But then, nothing is disclosed by him to anybody until he appears as defence witness in the Court. Therefore, the evidence of this witness on close scrutiny fails to satisfy even plausibility and possibility of the defence.

16. There is yet another reason why the plausibility of defence version is not established even by standards of preponderance of probability.

The accused has taken three inconsistent defences. In the cross-examination of Karan Ratre (PW7), a suggestion has been given that Karan Ratre (PW7) sustained injury while he was trying to pacify fight going on between the appellant and the deceased. Thus, according to this suggestion emerging from defence side, Karan Ratre sustained injury not by the appellant but because he tried to pacify fight between the appellant and the deceased. That means, according to this suggestion there was quarrel going on between the appellant and the deceased. In 313 CrPC statement, the appellant has stated that he was taking rest at home and from there, he was picked up from the house. The defence witness came out with a third story of defence that while he was going on road, there was dispute going on between the deceased and third person and the deceased was assaulted by the third person. Thus, this contradictory defence taken by the accused at different stages of trial, itself renders the defence version completely an afterthought and that is the reason why sole defence witness has failed to satisfy the Trial Court that he is the resident of Bilha having agricultural land and spot away from his own residence of Janjgir.

17. Where the evidence of the prosecution supported by more than three eye witnesses is found reliable and the defence version fails to satisfy even the testimony of plausibility and possibility, admission of Karan Ratre (PW7) in his cross-examination only proves motive, which otherwise has been stated by Karan Ratre (PW7) in his examination-in-chief also that the appellant was suspecting the deceased and his son Karan Ratre that they were playing witchcraft on appellant and

his family and therefore, he had openly threatened the deceased.

18. In view of above consideration, we do not find any good ground to interfere with the impugned judgment of conviction and order of sentence. The appeal, therefore, fails and is hereby dismissed.

Before parting with the case, we must appreciate valuable and effective assistance rendered to the Court by Shri Abhishek Pandey, Advocate.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge