

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 86 of 2015

Putul Majhi @ Beshra

Versus

The State of West Bengal

For the Appellant : Mr. Moinak Bakshi, Adv.
Ms. Roma Roy, Adv.

For the State : Mr. Ashok Das, Adv.

Heard on : 13.07.2023

Judgment on : 27.07.2023

Ajay Kumar Gupta, J:

1. This appeal has been filed by the convict/appellant assailing the judgment and order dated 27.11.2014 passed by the learned Additional Sessions Judge, 3rd Court, Purulia in Sessions Trial No. 20 of 2013 arising out of Sessions Case No. 234 of 2013, whereby convicting the appellant punishable under Section 302 of the IPC and sentenced him to suffer rigorous imprisonment for life and also to pay a fine of Rs. 5,000/- with a condition that if he fails to pay the fine amount, he further suffered simple imprisonment for two months and if he paid the fine amount in full then 1/4th of the fine amount to be paid to the wife of deceased after due identification and verification.

Facts of the Case :

2. One Bindu Majhi lodged a written complaint to the effect that on 29.04.2013 in the night at about 2 a.m., Putul Majhi, the youngest son of his uncle Rupai Majhi attacked his own eldest brother Kanglu Majhi with an axe while he was sleeping. When the family members of Kanglu came to rescue him, Putul Majhi fled away from the spot. Victim Kanglu Majhi was removed to Balarampur Hospital for his treatment. But after primary treatment, he was again shifted to Purulia Sadar Hospital for better treatment. He ultimately succumbed to his injuries. On the strength of the

said written complaint, Balarampur Police Station Case No. 22 of 2013 dated 29.04.2013 under Section 302 of the Indian Penal Code was registered against the appellant, Putul Majhi and the investigation commenced.

3. During investigation, I.O. visited the P.O., prepared a rough sketch map with index, recorded the statement of witnesses, seized alamats, collected injury reports and post-mortem report. On completion of investigation, I.O. submitted charge-sheet against the appellant under Section 302 of the Indian Penal Code and same was committed to the Court of Sessions for trial.

4. Charge was framed under Section 302 of the Indian Penal Code against the appellant which he pleaded not guilty and claimed to be tried. In the course of trial, prosecution has examined altogether 19 witnesses and recorded their oral evidence and produced documents which were marked as Exhibits 1 to 17 and Material Exhibits I to III. After conclusion of evidence, an opportunity was given to the defence but appellant did not prefer to adduce defence witnesses. However, during examination under Section 313 of the Cr.P.C., the appellant denied the case of the

prosecution and claimed himself as innocent and further took a plea of false implication.

Findings of the Trial Court :

5. After thorough scanning and assessing the oral and documentary evidences and hearing the parties elaborately, the Trial Judge came to the conclusion that wife, son and son's wife of victim Kanglu being eye witnesses have proved beyond reasonable doubt that the appellant had committed murder of his own elder brother Kanglu Majhi with an Axe and had fled away from the spot by dropping the weapon (Axe). Other local inhabitants appeared just after the occurrence at the P.O. and came to know that the appellant had committed murder of Kanglu Majhi. Trial Court opined that no one would falsely implicate their own family member for doing such a heinous crime and let the real culprit to go scot free. Another witness, namely, Lagan Majhi who is younger brother of the deceased also saw Putul Majhi running to Kuli Rasta after the incident. Trial Judge finally came to the conclusion that the prosecution has been able to prove its case beyond any shadow of doubt. Hence, Trial Judge finally by impugned judgment and order dated 27.11.2014 convicted and sentenced the appellant, Putul Majhi as aforesaid.

ARGUMENT ON BEHALF OF THE APPELLANT:

6. Learned counsel appearing on behalf of the appellant vehemently argued that the prosecution case suffers from improbabilities as there was no eye-witness because alleged incident occurred at night. No one was present at the spot and saw with their own eye that the appellant had assaulted the victim by an Axe. Learned counsel further submitted that even the victim who suffered injuries did not say anything before the doctor or anybody else though he was alive for quite some time. There is no direct evidence. Prosecution case is based on circumstantial evidence which requires to be proved a complete chain to warrant conviction. The prosecution has failed to prove the case against the appellant beyond reasonable doubt. Version of the prosecution that the witnesses have seen Putul Majhi fleeing away from the spot throwing the offending weapon at the spot is a manufactured story. Prosecution also failed to prove motive to commit murder of his own brother. Evidences of alleged eye witnesses regarding the manner of incident are contradictory and inconsistent. No sufficient or cogent evidence has transpires, thus benefit of doubt must go in favour of the appellant. He ought to be acquitted from this case.

ARGUMENT ON BEHALF OF THE STATE:

7. Per contra, the learned counsel appearing on behalf of the State strenuously submitted that prosecution has not left any doubt to prove the case punishable under Section 302. There are several eye-witnesses i.e. P.Ws. 3, 4 and 5. P.W. 7 saw the appellant running away through Kuli Rasta at night. P.Ws. 3, 4 & 5 are family members. They were present in their house and saw the appellant assaulting the victim with an axe. When they went to rescue the victim, appellant fled away throwing the offending weapon i.e., an axe at the spot. If one goes through the injury reports of the doctor who attended the victim Kanglu Majhi on 29.04.2013 one would find several injuries on his person. Medical evidence supports the prosecution case that the appellant had assaulted the victim with a deadly weapon, an axe. He could have possibly died at the spot. Finally, he contended that this is the case where direct evidences are available and prosecution witnesses have proved the case without any reasonable doubt. So, question of acquittal does not arise. Victim's wife was sleeping with him and saw the incident with her own eye. Even the Court cannot discount other reliable eye witnesses because they were also in the same precincts and saw the incident on the fateful day. Appellant is victim's own younger brother as such there is no chance of false implication by the family members. Thus, the trial Judge rightly convicted the appellant.

Discussion and findings of this Court on the basis of oral and documentary evidence as well as argument advanced by the parties :

8. Having heard the arguments and submission of the parties elaborately and on perusal of the record, I would like to say, at the very outset, that this case is based on direct evidence. So, question of circumstantial evidence as raised by the defence does not arise at all because there are so many eyewitnesses in the instant case. There are three eye witnesses i.e. P.Ws. 3, 4 and 5. They were very much present in the house, where the victim was assaulted. All the witnesses stated in unison without any contradiction and/or any inconsistency.

9. P.W. 3 is the widow of Kanglu Majhi who stated she lived in the house of her father-in-law Rupai Majhi in the village Majhi-Kadamdih under Balarampur P.S. She narrated in her deposition that her husband was killed by his own brother Putul Besra @ Majhi on 14th day of Baishakh. On that day at about 2 a.m. in the night, she was asleep in their hut. Her husband, Kanglu was also sleeping under the same roof, her head was towards the north while her husband's head was towards the east, and she suddenly woke up hearing the screams of her husband. On waking up, she saw Putul had cut down her husband with an axe.

Putul cut her husband's neck, shoulder, head and left hand by numerous blows of the axe. She raised an alarm on which Putul dropped the axe and ran away. Hearing her screaming, her son Haradhan Besra, her dewar Lagan Besra also woke up. She told them what had happened. After some time, Bindu Majhi, her eldest Bhasur also arrived at the spot and she told him about the incident. Thereafter, Kanglu was taken in a vehicle to Banshgarh hospital by Bindu. She also accompanied them along with Haradhan. After primary treatment at Banshgarh, her husband was referred to Purulia Sadar Hospital. Bindu and Lagan took him to Purulia while she returned home from Banshgarh. Her husband died. She came to know of his death from Bindu. She further stated her husband used to work as labour at Fusro. Putul constantly follows her and makes indecent proposals. She refuses his proposals. She had narrated about Putul's activities to her husband on his return from work. Both have decided to leave for Fusro on Monday morning but Putul assaulted her husband before leaving their house at night. Her statement was recorded under Section 164 of Cr.P.C. marked as Exhibit 3.

10. Another eyewitness i.e. P.W. 4, Haradhan Majhi, son of Kanglu Majhi stated he lived at Village Majhi Kadamdih. His father is no more and his father was killed by his uncle Putul Majhi. On 29.04.2013, at about

2.00 am they were all asleep in the Anggina of their hut, when he woke up hearing the screaming of his father. He saw his Kaka Putul Majhi repeatedly assaulting his father with an axe, on his head, neck, shoulders causing severe bleeding injuries. When he tried to catch hold of his Kaka to prevent the assault, his Kaka fled away from that spot. When they raised the alarm their relatives, who reside in the nearby houses, like Bindu Majhi, Lagan Majhi, Gurucharan Soren, Nabin Majhi, Kanju Majhi arrived at the spot. They arranged for a vehicle, on which he took his father to Banshgarh P.H.C., where the Doctor administered primary treatment but seeing the deep-cut wounds on the head, referred his father to Purulia Sadar Hospital. At Purulia Sadar Hospital, doctors treated his father but seeing the grievous injuries, referred him to Tata for better treatment. However, on their way to Tata, his father expired and they brought him back to Purulia Sadar Hospital at about 11.30 am in the morning. He returned to his village with his father's dead body at about 3.00 pm in the afternoon.

11. P.W. 5, Ratmoni Majhi, stated she married to Haradhan Besra and resided with him at his house in Village Majhi Kadamdih. His father-in-law was Kanglu Majhi. He is no more. She also narrated the incident as resemble as P.Ws. 3 and 4. She narrated on 29.04.2013, she was sleeping

with other inmates of their house in the Anggina of their hut, when at about 2.00 am she woke up hearing the screaming of her father-in-law and she saw her Kaka-Sasur Putul Majhi assaulting Kanglu with an Axe. Haradhan and her mother-in-law Mihi Majhi tried to catch hold Putul Majhi but Putul Majhi dropped the Axe and fled away. Thereafter, Kanglu was taken by her husband and others to hospital. Later she came to know that Kanglu died. She proved her statement recorded under Section 164 of the Cr.P.C. marked as Exhibit No. 6 and her signature marked as Exhibit 6/1.

12. P.W. 1, Bindu Majhi @ Besra deposed that after hearing shouts from the house of Rupai Majhi he went there and found Kanglu Majhi lying on the floor of courtyard with numerous bleeding injuries and Kanglu's wife Mihi Majhi, his son Haradhan Majhi and son's wife were told that Putul has assaulted Kanglu with an Axe and when they tried to stop Putul he dropped the Axe and fled away. He went to Balarampur P.S. and lodged a complaint against Putul Majhi. Gobardhan Majhi of his village wrote the complaint. His signature marked as Exhibit No. 1/1. Police has seized the Axe, blood stain earth etc. he has signed on seizure list marked as Exhibit No. 2/1. He denied that Putul and Kanglu had any existing

land dispute. During evidence he identified the said Axe (Kural) marked as Mat Exhibit - I.

13. P.W. 2, Gobardhan Majhi deposed on hearing shouting from Rupai's house he went there and found Kanglu Majhi lying on the ground with bleeding injuries and crying banchoo, banchoo. He saw Bindu Majhi, Ganesh Majhi, Sokha Majhi, Haradhan, Mihi and Lagan. Bindu and Ganesh told him that Putul Majhi assaulted Kanglu with Axe and he also saw an Axe lying by the side of Kanglu. He has further told that at about 8/8.30 a.m. Bindu called him to his house and as per his version he wrote the complaint in Bengali, read out and thereafter Bindu put his signature. Written complaint marked as Exhibit No. 1 and his endorsement and signature marked as Exhibit No. 1/2. However, he denied during cross examination that he deposed as tutored by Kanglu's family members.

14. P.Ws. 6, 8, 9, 10, 11 and 12 are neighbours. They also supported the case of prosecution by saying in a similar manner that on 29.04.2013 at about 2.00 am they woke up hearing shouts and went to Kanglu Majhi's house. On reaching his house, they found him lying in the Anggina with bleeding injuries to his head, neck and shoulders and he

also saw Axe lying by his side. They further came to know that Putul had assaulted Kanglu with that Axe and fled away.

15. P.W. 7, Lagan Majhi stated he is the younger brother of Kanglu Majhi. Kanglu Majhi is no more and he was killed on 15th day of Bengali calendar month of Baishakh (corresponding to 29th April, 2013). On that day, sometime during the night he woke up hearing shouts and came out from his house and saw Putul @ Putla, his younger brother, running away through the Kuli Rasta. Thereafter, he went to Kanglu's house and saw Kanglu lying on the ground with bleeding injuries to his head and he saw an axe lying by his side. Haradhan told him that he had seen Putul assaulting Kanglu with an Axe. Sometime thereafter other villagers like Bindu Majhi, Nabin Majhi, Gobardhan Majhi, Ganesh Majhi, and Kunju Majhi arrived at the spot. Kanglu was removed by him and others to Banshgarh hospital. After some primary treatment, Kanglu was referred to Purulia Sadar Hospital and he accompanied him to Purulia. At Purulia Sadar Hospital Kanglu was admitted but the Doctors told them it would be better to take him either to Bankura or Tata. They started journey taking Kanglu to Tata. However, midway Kanglu died as such they returned to Purulia Sadar Hospital.

16. P.W. 14, Dr. Subrata Mondal, Medical officer deposed that on 29.04.2013, he was posted in the same post. On that day, in the morning at about 4.20 am he was present at the C.H.C. and had examined on Kanglu Majhi, male/45 who was brought to his centre in a disoriented state by Haradhan Majhi of village Kadamdih.

The patient party reported history of physical assault by a known person with a sharp-cutting weapon at the house of the patient at about 2.30 am on 29.04.2013. On examination, he found the patient disoriented, pulse was 70 per minute and blood pressure was 90/50, creaps was present.

On further examination he found the following injuries: -

- 1. Incised wound, 5' X 1' on occipital region.*
- 2. Incised wound 4' X 2' on posterior aspect of neck on the left side.*
- 3. Incised wound 3' X 1' posterior aspect of left shoulder.*
- 4. Three more incised wounds, 2' X 1' each, on left temporal region.*
- 5. One lacerated wound and fracture on left thumb.*

These wounds were fresh and there was active bleeding from all the cut wounds. The patient's condition was critical. He prescribed I.V. fluids, injections and dressing of the wounds and referred the patient at Purulia

Sadar Hospital for better management. He has prepared injury report and referral card i.e. marked as Exhibit 9 and Exhibit 9/1. He has opined that these injuries could have been caused by an Axe with sharp blade. In cross-examination, he admits on report that he has not mentioned about nature of injuries, specifically length, breadth or depth of the injuries and history of assault.

17. P.W. 15, Dr. Prabal Kanti Mondal was also posted at Banshgarh CHC on 29.04.2013 and at about 4.20 am he examined Kanglu Majhi. His evidence is more or less similar as deposed by P.W. 14.

18. P.W. 13, Dr. Amal Nath stated he is a Medical Officer (Medico-legal) posted at Purulia Sadar Hospital. On 29.04.2013, he was in the same post. On that date, he conducted autopsy on the dead body of Kanglu Majhi, male/45 years, who was brought and identified by C/677 Syed Julhaque Ali of Purulia (T) P.S. in connection with Purulia (T) P.S. U.D. Case No. 114/13 dated 29.04.2013. From the hospital record it also revealed that the deceased was brought dead at their emergency on 29.04.2013 at 10.30 am. There was a history of assault by Kural (Axe) as per inquest report.

On examination he found: -

1. *Black eye, left side.*
2. *Stitched wound, incised sharp margins, 3' long on left parietal region.*
3. *Stitched wound, incised sharp margins, 3' long on left temporal region.*
4. *Stitched wound, incised sharp margin, 2' long on front of left ear.*
5. *Stitched wound, incised sharp margin, 4' long on left side of occipital region.*
6. *Stitched wound, incised sharp margin, 4' long on left side of neck.*
7. *Incised wound sharp margin 1' X ½' X bone deep at the base and middle of left thumb.*

After dissection, he found:

1. *Sub-cutaneous hematoma, on left side of the scalp.*
2. *Extensive intra-cerebral haemorrhage was present.*

According to him, these injuries were caused by heavy sharp-cutting substance. He has opined that death was due to shock and haemorrhage, due to the aforesaid injuries, which were all ante-mortem and homicidal in nature. He has also proved the P.M. Report marked as Exhibit 7. He has further told that from the injuries, death was inevitable and there was no possibility to survive. These injuries could certainly have been caused by an Axe with sharp blade. In cross-examination he found that lengths of wounds have been mentioned but not breadth and depth. The injuries were caused within 24 hours before P.M. examination. He has also opined injuries were ante-mortem and time of assault was around 3.00 am.

19. P.W. 16, Arun Kumar Roy, constable is seizure witness of wearing apparel and blood stain earth. He signed on the said seizure list. Signature of the witness on seizure list is marked as Exhibit 11.

20. P.W. 17, Nikhil Pratap Singh deposed as per instruction of O/C Purulia Town P.S. went to death room of Purulia Sadar Hospital on 29.04.2013. He has prepared inquest report over dead body of Kanglu Majhi in presence of witnesses which is marked as Exhibit 4. Thereafter, sent the dead body for P.M. examination through constable Julhar Ali with dead body challan marked as Exhibit 13. He further deposed that after P.M. examination, constable brought wearing apparels of deceased and he seized it under seizure list i.e. Exhibit 11/1 and Mat Exhibit II. Thereafter, he sent message to O/C Balarampur P.S. and got information for starting a Specific Case and after collection of P.M. report, it sent to Balarampur P.S.

21. P.W. 18, Constable Uttam Bouri was posted at Balarampur P.S. on 13.04.2013 and O/C of P.S., S.I. Jal Kumar Mandi sent him before ASI of Police Nikhil Pratap Singh i.e. P.W. 17 who handed over the alamats of

U.D. case to him and he handed over the same to S.I. Jalkumar Mandi who seized under seizure list and he signed on it marked as Exhibit 14.

22. P.W. 19, Jal Kumar Mandi was posted as S.I. of Police at Balarampur P.S. and Dipankar Sarkar was O/C of Balarampur P.S. who started this Balarampur P.S. Case No. 22 of 2013 under Section 302 of I.P.C. on 29.04.2013 and endorsed him this case for investigation.

He further deposed that on that day he left P.S. at about 9.40 hours for Kadamdih village. Prepared rough sketch map of P.O. with index marked as Exhibit 16. Seized one blood stains Kural, blood stain earth, and control earth from P.O. i.e. Mat Exhibits I to III under seizure list marked as Exhibit 2. Thereafter, he examined available witnesses and recorded their statements namely Mihi Majhi, Ratmoni Majhi, Rupai Majhi, Lagan Majhi, Amar Majhi and complainant Bindu Majhi. He also interrogated other villagers and recorded their statements namely Nabin Majhi, Kunja Besra, Gurucharan Besra and Ganesh Besra.

He held raid and arrested accused Putul Majhi and brought him at P.S., interrogated him and on next day sent to Court. Thereafter, he made prayer before the Court for recording statement of witnesses under Section

164 of the Cr.P.C. namely Mihi Majhi, Ratmoni Majhi and Haradhan Besra. Collected injury report, S.C.D. of U/D case, seized alamats but could not collect F.S.L. report and finally submitted charge sheet. Later F.S.L. report was received and marked as Exhibit 17.

23. Carefully perusing the entire evidence and considering the arguments made by the parties, it appears prosecution has clearly established the murder of Kanglu Majhi. P.W.13, Autopsy Doctor opined that death was due to shock and haemorrhage as well as due to the injuries suffered by the victim, which were all ante-mortem and homicidal in nature. P.W. 13 and P.W. 14, Medical officers have opined injuries suffered by the victim could have been caused by an Axe with sharp blade.

P.W.14 found the following injuries: -

- 1. Incised wound, 5' X 1' on occipital region.*
- 2. Incised wound 4' X 2' on posterior aspect of neck on the left side.*
- 3. Incised wound 3' X 1' posterior aspect of left shoulder.*
- 4. Three more incised wounds, 2' X 1' each, on left temporal region.*
- 5. One lacerated wound and fracture on left thumb.*

These wounds were fresh and there was active bleeding from all the cut wounds. The patient's condition was critical.

At the same time Autopsy Doctor on examination found following injuries on the dead body of victim.

1. *Black eye, left side.*
2. *Stitched wound, incised sharp margins, 3' long on left parietal region.*
3. *Stitched wound, incised sharp margins, 3' long on left temporal region.*
4. *Stitched wound, incised sharp margin, 2' long on front of left ear.*
5. *Stitched wound, incised sharp margin, 4' long on left side of occipital region.*
6. *Stitched wound, incised sharp margin, 4' long on left side of neck.*
7. *Incised wound sharp margin 1' X ½' X bone deep at the base and middle of left thumb.*

After dissection, he found:

1. *Sub-cutaneous hematoma, on left side of the scalp.*
2. *Extensive intra-cerebral haemorrhage was present.*

24. The aforesaid injuries found by the P.Ws. 13 and 14 on the body of Kanglu clearly shows the victim suffered injuries on his head, neck and left side of his body and the said injuries were caused by an Axe (Kural) which was seized from the place of occurrence i.e. courtyard of hut of Kanglu Majhi. Putul Majhi repeatedly attacked Kanglu Majhi at night at about 2.00 am. This fact is corroborated by P.Ws. 3, 4 and 5 (wife, son and son's wife). His wife was sleeping with the victim and corroborated by her by saying they were sleeping under the same roof. Her head was

towards the north while the head of her husband was towards the east. She further stated that she woke up hearing screams of her husband and saw Putul was cutting down her husband with an Axe. She specifically stated that Putul cut her husband's neck, shoulder, head and left side by numerous blows of Axe. Not only her wife but other two eye witnesses also corroborated the said incident. They further corroborated that when they tried to catch him he dropped the Axe and ran away. So, there is no doubt about the presence of appellant Putul Majhi at the spot. He had assaulted the victim Kanglu Majhi with an Axe a number of times causing grievous injuries. Finally, victim succumbed to his injuries.

25. Learned advocate appearing on behalf of the appellant argued that there was no eye-witness and case is based on circumstantial evidence. That submission is not at all convincing because the eye-witnesses were very much present in their residence where the victim was sleeping. There is every possibility that a person who was sleeping near the victim would wake up at the time of assault. His wife, P.W. 3 woke up by hearing the screams of the victim as she was sleeping near to him. That apart, another witness i.e. P.W. 7 also saw Putul, his younger brother running away through Kuli Rasta when he woke up hearing the shouts coming out from

the house. When he reached the spot he found Kanglu lying on the ground with bleeding injuries. He also saw an Axe lying by his side.

26. Next point argued by the learned Advocate for the appellant that family members were not seen the appellant assaulting the victim. It is the clear case of the prosecution that his wife was sleeping with the victim where the incident occurred. Another argument is that the victim did not make any statement before the doctor or anybody else though he was alive for quite some time. But the injuries as suffered and evidence of the doctor clearly establishes that the victim's condition was critical. He was disoriented. In such a situation, it is unlikely that he could have spoken. The version of the eye-witnesses cannot be thrown away on this score. All the witnesses are consistent in their version that Putul repeatedly assaulted the victim with an Axe on his head, neck, shoulder and when they tried to catch hold him, and the latter fled away throwing the Axe at the spot. An Axe was seized by the I.O. from the spot. The said Axe was identified by P.W. 1.

27. Other post occurrence witnesses i.e. P.Ws. 6, 8, 9, 10, 11 and 12 being the neighbours also corroborated the prosecution case by deposing that on 29.04.2013 at about 2.00 am they woke up hearing shouts from

the house of Kanglu Majhi and when they reached the house, they found him lying in the courtyard with bleeding injuries to his head, neck and shoulder. They also saw an Axe lying by his side and they came to know about the assault by Putul Majhi. Putul fled away when P.Ws. 3, 4 and 5 tried to catch hold him. I do not find any patent inconsistency or contradictions in the oral evidence of eye witnesses as contended by the Learned Advocate for the appellant. It is natural that trustworthy witnesses could make minor variations while deposing but these variations cannot be treated as contradictions or inconsistencies which strike at the root of the case.

In this regard, I would like to rely on the following judgments of the Apex Court:

1. Bharwala Bhoginbhai Harjibhai v. State of Gujarat¹ in Paragraph 5 as hereinunder:

“5. We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned counsel for

¹ (1983) 3 SCC 217

the appellant. Over much importance cannot be attached to minor discrepancies. The reasons are obvious:

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess

work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time- sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him-Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with

undue importance. More so when the all-important "probabilities-factor" echoes in favour of the version narrated by the witnesses".

2. State of U.P. V. M.K.Anthony² in Paragraph 10 as hereinunder:

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives

² (1985) 1 SCC 505

evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.”

3. State of U.P. V. Naresh reported³ in Paragraph 25 as hereinunder:

“25. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.”

28. P.W. 7 also corroborated the facts that he saw Putul Majhi, his own younger brother, was running away through the Kuli Rasta. That apart, P.Ws. 3, 4, 5 and 7 are close relatives of the appellant. They would be the last person to screen the real accused and implicate the appellant without any sufficient reason. Their presence at the place, where the

³ (2011) 4 SCC 324

incident occurred is natural. Furthermore, their version remained unshaken during cross-examination. No major discrepancy has been pointed out in the testimony of P.Ws. 3, 4, 5 and 7.

29. It is true that the incident occurred at night on 29th April, 2013 but there is no any doubt about the identification because appellant is a family member of the deceased and witnesses. He is the younger brother of victim. The victim and his wife were sleeping in the courtyard which was accessible to all and surrounded by open space. There was no boundary wall in and around the place of occurrence as per the sketch map marked as Exhibit No. 16. Hence, there is every possibility that she could see the appellant at the spot even, if there was no electricity.

30. It was rightly noted by the trial Judge why all family members would falsely implicate another family member for doing such a heinous crime permitting the real culprit to go scot free. On the other hand, Defence is unable to make out a case that there was any dispute between brothers regarding land matters though they have tried to make such suggestion during cross-examination but no iota of evidence was brought on record to probabalise such defence. So, question of false implication is remote and improbable in general sense. Therefore, in my considered view

there is no any shadow of doubt that the offence was committed by Putul Majhi. The prosecution has established its case beyond reasonable doubt.

31. That apart, adequacy or absence of alleged motive has no significance where reliable eye witnesses are available. Prosecution is able to prove the motive of murder to the some extent because as per evidence of P.W. 3, wife of victim, her husband used to work as labour at Fusro. Putul constantly followed her and gave indecent proposal. She refused his proposals. She had narrated about Putul's activities to her husband on his return from work. Both have decided to leave for Fusro on Monday morning but Putul assaulted her husband at night.

32. In the light of the aforesaid discussion and findings, I hold prosecution case against the appellant has been proved beyond reasonable doubt.

33. Consequently, C.R.A. 86 of 2015 is dismissed with the above observations. Conviction and sentence awarded by the Trial judge is hereby affirmed.

34. Lower Court Records along with copies of this judgment are to be sent down at once to the learned Trial Court for information and necessary compliance.

35. Photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all formalities.

I Agree.

(Joymalya Bagchi, J)

(Ajay Kumar Gupta, J)

P. Adak (P.A.)