

**HIGH COURT OF CHHATTISGARH, BILASPUR**

CRA No. 78 of 2020

- Sukhiram Nishad

---- Appellant

Versus

- State of Chhattisgarh, Through The Station House Officer, Police Station-Shyang, District- Korba, Chhattisgarh.

---- Respondent

For Appellant : Mr. K.P. Sahu, Advocate.
For State/respondent : Mr. Vikram Sharma, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri, J. &**Hon'ble Shri Justice Sanjay Kumar Jaiswal, J.****Order on Board****Per Hon'ble Shri Justice Goutam Bhaduri,****Date - 19/06/2023**

Heard.

1. This appeal is preferred against the judgment dated 19.11.2019 passed by the learned Sessions Judge, Korba, District - Korba (C.G.) in Sessions Trial No. 59/2019, wherein the appellant has been convicted under Section 302 of IPC and sentenced as under:-

Offence Under Section	Sentence
302 of IPC	Life Imprisonment and fine of Rs. 1000/-, in default of payment of fine amount additional imprisonment for 3 months.

2. Brief facts of this case are that on 05.05.2019 deceased Jahaniram went to collect leaves in the forest wherein in between 9:00 to 9:05 am., the accused assaulted the deceased by way of an axe, on his neck. The report having been made, the investigation started and it revealed two witnesses namely Rajsingh and Harun Manjhwari who accompanied the deceased had seen the incident. Thereafter, the accused/appellant was apprehended and on his memorandum the



weapon used in the offence i.e. axe was recovered. Since the death was homicidal in nature after thorough investigation the charge-sheet was filed before the judicial Magistrate who in turn committed the same to the sessions Court.

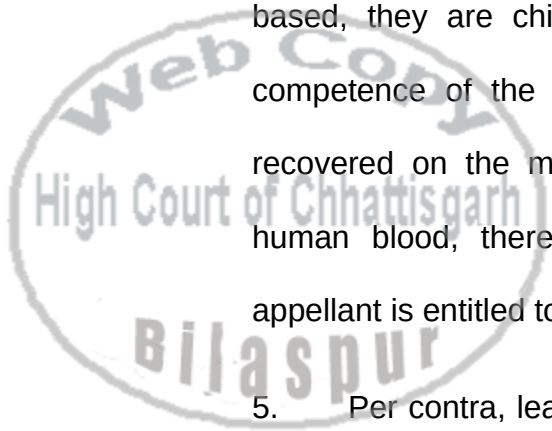
3. During the course of trial, the appellant abjured his guilt and claim to be tried. The prosecution on their behalf examined as many as 11 witnesses. After evaluating the evidence and statements the appellant was convicted for the offence as mentioned aforesaid. Being aggrieved by such order the accused/appellant filed this appeal.

4. Learned counsel for the appellant would submit that the statements of the witnesses PW-7 (Raj) and PW-8 (Harun Singh) on which the entire conviction is based, they are child witnesses and there is nothing on record to test the competence of the same. He would further submit that the axe which was recovered on the memorandum of the accused/appellant did not contain the human blood, therefore the entire conviction becomes doubtful, hence the appellant is entitled to be acquitted.

5. Per contra, learned State counsel would submit that the statements of eye witnesses PW-7 and PW-8, though were child witnesses, were competent to depose and no ambiguity can be attached to disbelieve such statement. He would further submit that the recovery of weapon was made at the instance of the accused. The statement of the prosecution witness would go to show that the appellant/accused had a chequered history and also suffered conviction on the earlier occasion. Therefore, the learned trial Court after taking into all the aspects have rightly come to a conclusion of commission of the offence. Therefore, the judgment and conviction passed by the learned Court below is well merited, and therefore do not call for any interference.

6. We have heard learned counsel for the parties at length and perused the statements and the evidence adduced by the prosecution.

7. The name of the deceased was Jahaniram Manjhar who met to death on





05.05.2019, which was reported vide Ex.-P-1, so the merg was registered after the receipt of the report. The panchnama was prepared vide Ex.-P-6 and was sent for postmortem. Dr. T. Singh (PW-10) conducted the postmortem Ex.-P-17, the following injuries were found on the body of the deceased:

(i). Incised wounds were found in the right part of the throat, both the ends of the wound were sharp, which started from the cervical area to the right ear. The cervical vertebra of the deceased and the lower jaw was broken, which was 13 cm in length, width 6 cm and depth 12 cm in the middle.

(ii). Incised wounds were found in the back of the right shoulder, both the ends of the wound were sharp, which had a length of 6 cm, width 2.5 cm and depth was inside the muscle.

(iii). The right and occipital area of the head had a torn wound with a size of 3 x 2 cm, to the depth of the scalp.

8. According to the doctor's report, the cause of death was shock and coma due to massive bleeding from the injured wounds and was homicidal in nature. In the postmortem report it was stated that death occurred approximately 24 hours prior to the autopsy. Since the death was homicidal in nature whether it can be attributed to accused is required to be examined. The supreme Court in the case of **Ratansingh Dalsukhbhai Nayak Vs. State of Gujarat**, reported in **(2004) 1 SCC 64** reiterated the view of the earlier case law in the case of **Dattu Ramrao Sakhare V. Stated of Maharashtra**, reported in **(1997) 5 SCC 341**, wherein it was held that when a child witness was found competent to depose to the facts and reliable one such evidence could be the basis of conviction. The Court further observed that even in absence of oath, the evidence of a child witness can be considered under Section 118 of the Evidence Act which provide that such witness is able to understand the questions and able to give rational answers thereof. Primarily this was the note of caution which the Court should bear in mind while assessing the evidence of a child witness to be a reliable one. The Section 118 of Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the



questions put to them or from going rational answers to the questions, because of tender years or old age or disease. Therefore the child of tender age can be allowed to testify, if he has intellectual capacity to understand the questions and give rational answers. The proposition to evaluate the statement of child witness was stated in the case of **Wheeler v. United States, 159 US 523**, wherein it was held that the evidence of child witness is not required to be rejected *per se*, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction.

9. The prosecution had examined two eye-witnesses. One is PW-7 (Raj) who was a minor of 7 years and another one is PW-8 (Harun Singh) aged about 14 years. Statement of eye-witness PW-7 would show that before he was examined as eye-witness his intellect was tested by the Court whether he had the intelligence primacy. Before he was examined, the trial court put him with certain questions and came to a conclusion after noticing the manners and the intelligence and thereafter having satisfied of fact he can depose before the Court proceeded to record his statement.

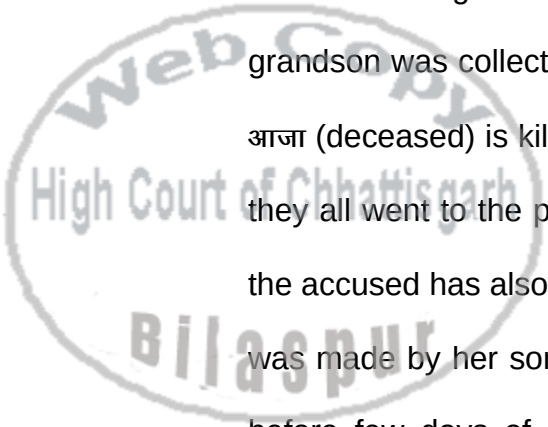
10. Reverting back to the statement of the child witness PW-7, he states that he had gone to the forest to collect leaves and the deceased (आजा) was at a distance of about 15-20 feet from him, he states that thereafter Sukhiram-accused/appellant assaulted by way of axe on the head and neck of deceased whereby deceased fell down. Thereafter he went to his आजी (wife of deceased) and came there with other relatives. He also states that he witnessed the assault which was made by the accused/appellant to the deceased thereafter the police enquired from him. The suggestion which was given to PW-7 in the cross-examination that since it was a dense forest as such he had not seen the incident, was denied. Further suggestions given to witnesses that he had been tutored were also denied.



11. The similar statement was made by one more witness PW-8 (Harun Singh) who was aged about 14 years. PW-8 states that on the date of incident he also went to the forest to collect leaves along with his parents and the deceased was also collecting leaves there on the other side of the road. He states that accused-Sukhiram came abusing the deceased -Jahaniram and assaulted him on his neck and out of fear he ran inside the forest. PW-8 in his cross-examination states that the police had only told him that in which court he has to depose which would mean to infer he was not tutored.

12. The relevancy of these eye-witnesses is corroborated by PW-6 (Mangali Bai) the wife of the deceased. PW-6 states that she went to collect the leaves in the forest along with her husband and grandson - Raj (PW-7). She stated that her grandson was collecting *Mahua*. At about 9:00 O'clock her grandson shouted that आज्ञा (deceased) is killed by Kenvta (केंवटा), thereafter she shouted for her son and they all went to the place of incident. PW-6 further states that before the incident the accused has also assaulted one Samaruram by way of an axe, report of which was made by her son Jaykumar (PW-1) and the appellant was lodged in jail and before few days of incident he was released. Jaykumar (PW-1) deposed that about 3 months prior to the said incident they went to collect the leaves in the forest, he heard voice of his mother that his father is killed by Sukhiram then he went along with his wife – Bahalo Bai and saw that his father was lying on the ground. He also states that the incident was seen by PW-7 and PW-8. In his cross examination he has not eliminated the presence of witnesses PW-7 and PW-8.

13. Cumulative reading of the statements of PW-7 and PW-8, the eye-witness who disclosed the fact immediately to PW-6 who was also present in the spot in the forest and PW-1 – son of the deceased corroborates each other to draw the credibility of truthful approach. The comparison of the statement of the witnesses would show that there is no exaggeration and the witnesses have stuck to their statements made during the investigation in material particulars.





14. The examination of accused under Section 313 of Cr.P.C. would show that specific allegations were put to the accused during his examination under Section 313 of Cr.P.C. The statement of child witnesses have been corroborated by the statement of PW-6 and PW-1 and that of a doctor (PW-10) wherein the cut was found on the neck, shoulder and on the head which eventually caused the death of Jahaniram. The reading of the statement of witness in the entirety do not reflect that child witness was tutored. Consequently, for the reason of corroboration and counter support by the witness and the medical evidence, postmortem report, the same can be relied upon.

15. The memorandum witnesses are PW-2 and PW-4. The memorandum is marked as Ex.-P-7 and on the basis of memorandum the axe and clothes were recovered vide Ex.-P-8. Statement of PW-4 would show that before that incident he was also attacked by way of an axe by the accused but he could survive as he closed the doors. Thereafter accused had assaulted one Samaruram by way of an axe for such act he was lodged in jail and before 20-22 days of the said incident he was released from jail. The statement of past conduct also remains unrebutted and would be relevant for the reason that earlier Samaruram was attacked by way of axe for which the accused suffered jail sentence. The injured Samaruram Manjhwari was nephew of Jahaniram (deceased herein) and after accused was released from jail, accused extended threat to Jahaniram (deceased) and Samaruram, therefore the motive of accused was also established by the prosecution by the statement of PW-2 and PW-4.

16. In view of the aforesaid discussion, and the overall assessment of the evidence, we are of the view that no interference is called for in the order passed by the learned Court below. In the result the appeal fails and is accordingly dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(Sanjay Kumar Jaiswal)
Judge