

AFR

HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Appeal No.1123/1994

Ratia Bai

Versus

State of Madhya Pradesh

**Present : Hon. Shri Justice S.K. Gangele, J.
Hon. Shri Justice Anurag Shrivastava, J.**

None present for appellant, even when the case is called in second round.

Shri B.P.Pandey, G.A., for respondent/State.

As none is appearing on behalf of appellant, we have made request to Shri Prakash Gupta, Advocate who is also in the Panel as an Advocate in the Legal Aid to assist the Court. With his assistance we have heard the appeal.

Whether approved for reporting: Yes/No.

J U D G E M E N T
(15.05.2017)

Per Anurag Shrivastava, J.

This is an appeal under section 374(2) of Cr.P.C., against the judgment dated 23.7.1994 passed in Sessions Trial No.140/1990 by Sessions Judge, Mandla, by which appellant has been convicted under section 302 of IPC to undergo sentence of life imprisonment.

2. As per prosecution in the village Barrai deceased Smt.Ramchiriya Bai was living with her husband Murarilal. Appellant/accused Ratia Bai had developed love affair with

Murarilal and she wanted to marry him. Deceased was not inclined to give consent for this marriage, therefore, accused wanted to do away her. On 5.3.1992 accused Ratia Bai went to weekly market in village Sarasdoli with a girl Kaushalya Bai for shopping. In the evening, they were returning home, deceased Ramchiriyai Bai met them, she was also returning home from the market. When they reached near the field of Amru Gond, the accused assaulted the deceased by axe and killed her. Thereafter accused and Kaushalya Bai returned home.

3. It is further alleged by the prosecution that when deceased did not return home, her relatives made a search for her and next day her uncle Bholaram (P.W.7) made a report in Police Outpost, Mehadbani, which is registered as Missing Person Report Ex.P-1. During search of deceased, this fact revealed that the deceased was with accused Ratia Bai when she was returning home from market. When Bholaram and other relatives of deceased inquired about the deceased from the accused, then accused told them about the incident and also informed them about the dead body and axe. Bholaram went to Police Outpost Mehadbani and gave information about the incident. The Police registered FIR Ex.P-2 and after recording Marg intimation the accused was conducted by Sub-Inspector K.B.Singh (P.W.16). He prepared the Panchnama of dead body Ex.P-3, seized the red earth from the spot, prepared spot map and sent the body for postmortem to Primary Health Centre, Mehadbani. During investigation on the memorandum of accused an axe was seized from her house, the statement of witnesses were recorded and after usual investigation chargesheet has been filed.

4. The trial Court has charged the accused for the offence punishable under section 302 of IPC. She abjured guilt and pleaded innocence.

5. The prosecution has examined 16 witnesses, whereas the accused has not adduced any evidence, in her defence.

6. The trial Court on appreciation of evidence found the appellant/accused guilty for commission of murder of deceased Ramchiriya Bai and convicted her under section 302 of IPC and sentenced for life imprisonment.

7. In appeal, it is argued by learned counsel for the appellant that appellant is innocent, the trial Court had recorded conviction only on the basis of statement of child witness. There are material discrepancies in her statement, therefore without independent corroboration her testimony cannot be relied upon. Other eye witnesses relates to circumstance of last seen, which is also not duly proved. Recovery and seizure of axe is also not reliable, therefore, the impugned judgment and order of conviction is liable to be set aside.

8. Heard rival submissions made by the learned counsel for parties and on perusal of record, it appears that this fact is not disputed that the deceased Ramchiriya Bai had died of the injuries sustained by her. Dr.Leeladhar (P.W.16) deposed that 7.3.1992 he had performed the postmortem of deceased Ramchiriya Bai in Primary Health Centre, Mehadbani. On external examination he found following injuries on the person of deceased :

“1. Incised wound 4” x 1 ½” x bone deep on left temporal region, extending to jaws.

2. Incised wound 2” x 1” x bone deep on left side of chin.

3. Incised wound 4½ ” x ¾” x 1” muscle deep on the neck below left ear.

4. Incised wound 3" x ¼ " x 2½ " muscle deep on the neck below injury no.3.
5. Incised wound 3 ¼ " x 1 ½ " muscle deep on the neck below injury no.4.
6. Incised wound 3 ¾ " x ¾" x 1 ¼" muscle deep on the neck below injury no.5.
7. Incised wound 2 ¾" x 1" x 2" right side of back below the neck.
8. Incised wound 1" x ½" on left shoulder.
9. Incised wound 2 " x 1" x bone deep on left forearm.
10. Incised wound 3 " x 1" x bone deep on the left eye extending to temporal region.
11. Incised wound 3 " x ¾" x 1" on left jaw extending to left side of neck.
12. Incised wound 4 " x 1 ¼ " x bone deep below left ear.
13. Incised wound 2" x ¾ " x bone deep on left occipital region.

Internal examination

1. Fracture on occipital bone and left temporal bone caused due to injury no.12 & 13.

It is opined by the Doctor that the cause of death is the profused bleeding and shock caused due to injuries sustained by the deceased. The injuries are ante-mortem caused by hard and sharp object within 48 hours of the postmortem. The injuries can be caused by an axe, which has been sent for examination to witness by the police. The report of witness is duly corroborated by postmortem report Ex.P-16 and query

report Ex.P-14 given by the witness. In cross examination the defence has not challenged the testimony of the Doctor, therefore it is proved that the deceased had died of injuries inflicted to her at the time of incident and this is a homicidal death.

9. Now the question arises that who had killed the deceased. The prosecution has adduced the evidence of an eye witness i.e., Kaushalya Bai (P.W.3) and the other witnesses, who had seen the deceased with the accused while they were returning from the market. The prosecution has further produced the evidence regarding recovery of axe at the instance of accused.

10. Kaushalya Bai (P.W.3) is a child witness aged about 11 years. In her statement she deposed that on the date of incident, she went to market with accused Ratia Bai. In the evening when they were returning home from the market, the deceased Ramchiriya Bai met them, she was also returning home from the market. Thereafter deceased Ramchiriya Bai joined accused Ratia Bai and witness Kaushalya Bai, were coming towards village Barrai. It is further deposed by Kaushalya Bai that on the way in the field accused Ratia Bai took out an axe from her bag and started assaulting the deceased and killed her. Kaushalya Bai got frightened after seeing the incident and she was threatened by the accused not to tell anybody about the incident. After the incident the accused went to river and washed her blood stained feet and slippers and returned home. The witness has not made any contradictory statement and there is no material discrepancy found in her deposition. In her cross examination, the defence has not disputed her presence with the accused when they were returning from the market.

11. It is settled law 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 of such evidence and its reliability bases the conviction by accepting the deposition of the child witness.

12. In the present case, Amarnath (P.W.4) deposed that on the date of incident when he was returning from Sarasdoli market in the evening he had seen accused Ratia Bai with deceased Ramchiriya Bai and a young girl returning from the market. Ansuiya Bai (P.W.5) also corroborates above statement and deposed that in the market she had seen her sister Ramchiriya Bai with accused and a young girl. They were returning home together after marketing. The statement of these witnesses are not challenged in cross examination and there is nothing to disbelieve their testimony.

13. When deceased did not return home, her relatives started making search of her. When it was found that she was returning home from the market with a young girl and the accused, her uncle Bholaram (P.W.7) inquired about the deceased from accused. Bholaram (P.W.7) deposed that on inquiry the accused Ratia Bai confessed before him that she had killed the deceased and also informed about the place where the dead body of deceased was lying. Bholaram immediately reported the matter to Police. This fact is also corroborated by the report lodged by Bholaram (Ex.P-2), which is lodged without any delay.

14. Kaushalya Bai had narrated the incident to Shankar Lal (P.W.6) and Bholaram (P.W.7) also on the next day, when they had inquired about the deceased. Shankar Lal and Bholaram deposed that when they were searching for the deceased they

came to know that deceased was returning home with accused and a young girl, then they inquired about the deceased to Kaushalya Bai and she had stated about the incident.

15. Thus the statement of eye witness Kaushalya Bai (P.W.3) is duly corroborated by statement of Amarnath (P.W.4), Ansuiya Bai (P.W.5), Shankarlal (P.W.6) and Bholaram (P.W.7). Therefore, there is ample corroboration of statement of child witness Kaushalya Bai available on record. It does not appear that she is a tutored witness or she had any enmity with the accused. She is a young girl, therefore, it is quite natural that after seeing a cruel murder and subsequent threatening of the appellant, due to fear she did not told anybody about the incident, when she returned home. But it is evident that next day she had narrated the incident to all. Therefore, her testimony inspires full confidence and is reliable.

16. Hon'ble Apex Court in the case of **State of Karnataka Vs. Shantappa Madivalappa Galapuji** [(2009) 12 SCC 731] = (AIR 2009 SC 2144), while considering the evidentiary value of testimony of a child witness observed in para 7 as under :-

7. In ***Dattu Ramrao Sakhare v. State of Maharashtra, 1997(3) RCR(Criminal) 227 : [(1997)5 SCC 341]*** it was held as follows : (SCC p. 343, para 5):

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must

be like any other competent witness and there is no likelihood of being tutored."

The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

17. Thus in the present case the evidence of child witness Kaushalya Bai was rightly relied upon by the trial Court. There is extra judicial confession before Shankarlal (P.W.6) and Bholaram (P.W.7), the last seen circumstance proved by Amarnath (P.W.4) and Ansuiya Bai (P.W.5) also.

18. In our considered opinion in the face of this overwhelming evidence produced on record by the prosecution, no other inference except that of guilty of appellant can be drawn. The trial Court has therefore rightly held the guilt of appellant to be proved beyond reasonable doubt and sentenced her for the offence punishable under section 302 of IPC.

19. The appeal holds no merit, hence stands dismissed.

(S.K. Gangele)
Judge

(Anurag Shrivastava)
Judge

M.