

Hangrama Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-06-1994

Reported in : 1995(1)WLC691; 1994(2)WLN206

Judge : Rajendra Saxena and; P.K. Palli, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 152 of 1992

Appellant : Hangrama

Respondent : State of Rajasthan

Judgement :

Rajendra Saxena, J.

1. This jail appeal has been preferred against the judgment dated 31.3.1992 passed by the learned Sessions Judge, Dungarpur, whereby he convicted the appellant for the offences Under Sections 302 & 450 I.P.C. and sentenced him to life imprisonment and a fine of Rs. 2000/-; in default to further under go rigorous imprisonment for one year under the first count and to five years rigorous imprisonment and a fine of Rs. 1000/-; in default to further under go six months rigorous imprisonment for the second count and also directed that both the substantive sentences shall run concurrently.

2. Succinctly stated the relevant facts for the disposal of this appeal are that information P.W. 1 Hakra, deceased Janga, appellant Hangrama and one Ranchhod were the real brothers and their ancestral agricultural land popularly known as Madudi Wala Khet situated in village Sanchia was in their joint tenancy. It is alleged that the appellant wanted to cultivate the said land exclusively for himself and did not permit his brothers to cultivate the same, that few days prior to the alleged incident, which occurred on 10.7.1990, the appellant cultivated that field, that thereafter P.W. 1 Hakra and deceased Janga also ploughed that field, which infuriated the appellant. It is alleged that on 10.7.1990 at about 8 p.m., deceased Janga, his wife Smt. Nathi (P.W. 10) and son Jeeva (P.W.4) aged about 10 years were in their house, that the appellant armed with an axe Article 6 came there and dealt an axe blow on the head of Janga, who was sitting on a cot, that there-upon the latter fell down, the appellant dealt another axe blow on Janga causing extensive injuries on his head, when Smt. Nathi intervened, the appellant also gave an axe blow from its reverse side causing injuries on her right shoulder and her right fore-arm. Thereafter the appellant also gave a kick blow to P.W. 4 Jeeva and ran away. Smt. Nathi raised an alarm and called her brother-in-law (Jath) P.W.1 Hakra, whose house is situated nearby. P.W. 1 Hakra rushed to the house of Janga and saw the appellant running away from Janga's house. Smt. Nathi told Hakra as to what had happened. Hakra found that his brother Janga was profusely bleeding from his head. He inquired from Janga, who informed him that appellant Hangrama had come with an axe and inflicted axe blows on his head. Thereafter Hakra called neighbors including P.W. 5 Thavra, P.W. 8 Nanka, and Veer Ji. A piece of cloth was tied around the head of Janga, who was bleeding. Since there was no means of communication in the night, Janga was kept in his house and next day morning he was taken to Bichhiwada Hospital, where the doctor was not available. Thereupon while Janga was being transported to General Hospital, Dungarpur, he succumbed to his injuries between villages Balwada and Thane.

3. On 11.7.1990, P.W. 13 Shyam Lal Meena, S.H.O., Police Station, Bichhiwada received a Q.S.T. message from Police Control Room, Dungarpur that in an incident, which took place in village Sanchia, one injured person was brought to General Hospital, Dungarpur, who has died. Thereupon, Shyam Lal reached the

General Hospital, Dungarpur, where on the same day at 10.20 a.m., P.W. 1 Hakra gave an oral report to him, which was reduced into writing as Ex. P. 1 and a case Under Section 302 I.P.C. was registered. The said report Ex. P. 1 was sent to Police Station, Bichhiwada, where formal F.I.R. Ex. P. 14 was drawn. Shyam Lal prepared the autopsy report Ex. P. 2 of deceased Jagna, whose body was lying in the mortuary of the Hospital.

4. P.W.9 Dr. Rakesh Verma conducted post-mortem examination on the dead body of Jagna and found the following injuries:

(i) lacerated wound on the left parietal area 4' x 2' x bone deep, covered with blood clots;

(ii) lacerated wound on the right occipital area measuring 1' x 3/4' x muscle deep covered with blood clots;

On opening the body, he found massive haematoma present from both sides of frontal area to both sides of occipital area along with a depressed fracture of left parietal bone measuring 4' x 2' corresponding to injury No. 1. The doctor also found extra dural haematoma in left parietal region 4' x 2' with laceration of dura matter 4' x 2' along with sub-dural & sub-arachnoid haemorrhage in left parietal area measuring 4' x 2'.

There was laceration of brain of left parietal lobe 2- 1/2' x 1-1/2' into substance deep. The doctor prepared post mortem examination report Ex. P. 8 and opined that the cause of death was head injury and that the time since death was within six hours from the time of post mortem examination.

5. Dr. Rakesh Verma also examined P.W.4 Jeeva aged 11 years on the same day at 2 p.m. and found that tenderness was present on his right costal margin (mammary line), but there was no visible external injury.

6. Dr. Rakesh Verma also examined Smt. Nathi on 11.7.1990 at 8.00 p.m. and found following injuries:

(i) abrasion on the back of lower 1/3 of right fore-arm measuring 1/4' x 1/8' covered with blood clots;

(ii) red bruise on the upper part of the right shoulder measuring 3/4' x 1/2'.

All injuries sustained by Jeeva and Smt. Nathi were simple in nature and caused by blunt object.

7. After the autopsy of the deceased. P.W. 13 Shyam Lal rushed to the place of occurrence and reached there on 11.7.1990 at 5.15 p.m. He inspected the site and prepared site-plan Ex. P. 4 and memo thereof Ex. P. 3. He found blood lying below the cot inside the house of deceased Jagna. He also found two blood-stained pieces of cloth, which were used for tying the head injury of the deceased, a blood-stained torn bushirt and a blood-stained baniyan, which the deceased was putting on at the time of the incident vide seizure memo Ex. P. 5. Appellant Hangrama was arrested on 12.7.1990 vide arrest memo Ex. P. 15. It is the case of the prosecution that after his arrest the appellant voluntarily made a disclosure statement Ex. P. 16 and in pursuance thereof got an axe Article 6 recovered, which was stained with blood on its blade, as also on its reverse side and on the handle, from his 'beed', which was enclosed by cacti boundary under-neath Hagra trees, was seized and sealed vide recovery memo Ex. P. 7, Axe. Artals.

8. The sealed packets of blood smeared soil, controlled, soil, bushirt, piece of bushirt, baniyan taken from the house of the deceased and the sealed packets of the axe recovered at the instance of the appellant were sent to the State Forensic Science Laboratory, Jaipur. The Serologist after examination vide his report Ex. P. 10 intimated that the afore-mentioned articles except the controlled soil, were stained with human blood. However, due to disintegration, the blood group of the stains on those articles could not be determined. After completion of the investigation, challan was filed in the court of Additional Munsif & Judicial Magistrate, Dungarpur, who committed the case to the learned Sessions Judge.

9. The appellant pleaded not guilty and claimed trial. The prosecution examined as many as 14 witnesses. The appellant in his plea recorded Under Sections 313 Cr.P.C. pleaded ignorance about the circumstances appealing against him in the

prosecution evidence but asserted that at the time of the alleged incident, he was at his house. He further asserted that he did not want to cultivate their 'Madudi Wala Khet' exclusively. He denied to have made any disclosure statement and the alleged recovery of the axe. He, however, admitted that the police got his thumb impressions affixed on various memos. He did not know as to why the prosecution witnesses deposed against him. He further stated that his brother P.W.I Hakra had illicit relations with P.W.10 Smt. Nathi, that when deceased Jagna protested, she stopped talking to the latter. He further stated that for that reason he and deceased Jagna did not invited P.W. 1 Hakra in the twelveth day ceremonies after the deaths of their father and mother. In his defence, the appellant examined D.W.I Nonji and his wife D.W.2 Smt. Savita.

10. The learned Sessions Judge after trial found the appellant guilty and sentenced him. Hence this appeal.

11. We have heard Shri Suresh Kumbhat, the learned Amicus Curiae for the appellant and Shri B.S. Gehlot, the learned Public Prosecutor for the State at length and carefully perused the record of the lower court.

12. Shri Suresh Kumbhat has strenuously contended that in this case there is an inordinate delay of about 14 hours in lodging the F.I.R., which has not been satisfactorily explained and that the same is fatal to the prosecution. His next argument is that at the time of the alleged occurrence, it was quite dark, hence it was not possible to identify the assailant by P.W.10 Smt. Nathi, P.W.4 Jeeva and P.W.I Hakra. His another contention is that P.W.4 Jeeva is a child witness, who was tutored by P.W. 1 Hakra and as such the learned Sessions Judge has committed a grave error In relying on his testimony. Shri Suresh Kumbhat has submitted that there is variance between the ocular testimony and the medical evidence, because the doctor did not find any incised wound on the head of the deceased, Whereas as per statements of P.W. 10 Smt. Nathi and P.W. 4 Jeeva, the appellant had dealt two axe blows on his head. More-over P.W.9 Dr. Rakesh Verma has consistently maintained that the duration of injuries sustained by deceased Jagna was six hours from the time of post mortem examination, which was conducted on 11.7.90 at 11 a.m. while as per statements of alleged eye-

witnesses the incident had taken place on 10.7.90 at 8 p.m. Therefore, according to him, the prosecution story is surrounded with mystery and the learned trial Judge has misread the evidence and ignored this material inconsistencies. His another argument is that the alleged recovery of the axe is meaningless because it was recovered from an open place and that no blood group of the blood-stains found thereon could be ascertained. According to him Smt. Nathi had illicit relations with her brother-in-law P.W.1 Hakra, that they wanted to eliminate deceased Jagna and therefore the appellant has been falsely implicated.

13. On the other hand, Shri B.S. Gehlot, the learned Public Prosecutor has submitted that delay in lodging the F.I.R. has been well explained, that eye-witnesses Smt. Nathi and Jeeva are reliable witnesses, whose testimony has been substantially corroborated by the statements of P.W.1 Hakra, P.W.5 Thavra and P.W.6 Dalla, who had reached the house of the deceased immediately after the occurrence. According to him there is no conflict or variance between the ocular and medical evidence, because as per contents of the post mortem report Ex. P. 8, the death of Jagna had occurred within six hours from the time of the post mortem examination and that no duration of injuries was mentioned therein. According to him, axe Article 6 was recovered at the instance of the appellant from his 'Deed', which was surrounded by cacti boundary wall and was in his exclusive possession and that the said axe was found to be stained with human blood. The learned Public Prosecutor has also reiterated the reasonings given by the learned trial Judge and supported the impugned judgment.

14. We have given our most anxious and thoughtful consideration to the rival submission made before us. The incident had taken place at about 8 p.m. on 10.7.90 in a hamlet of village Sanchia. P.W.10 Smt. Nathi, P.W.1 Hakra, P.W.5 Thavra and P.W.6 Bala have deposed that during the ill-fated night injured Jagna could not be shifted, because there was no means of conveyance available, that in the morning a taxi was hired, that Jagna was taken to Bichhiwada Hospital, which is at a distance of about 10 kms from village Sanchia, but the doctor was not available there, and therefore they took him to Dungarpur Hospital and that in the way in between villages Balwada and Thane he succumbed to his injuries. They have further stated that they took his dead body to Dungarpur Hospital. P.W. 1

Hakra has deposed that thereafter he made an oral report to the S.H.O., Police Station, Bichhiwada, who had reached there. It is common knowledge that Dungarpur District is a hilly terrain area, inhabited by Adivasis, where means of conveyance are not easily available. The distance from Bichhiwada to Dungarpur is about 40 kms. P.W. 13 Shyam Lal, S.H.O., Police Station, Bichhiwada has stated that he had received a Q.S.T. message, which is an oral message, transmitted by the Police Control Room, Dungarpur to the effect that an injured person of village Sanchia had been brought to the General Hospital, Dungarpur and that since the said information was vague and incomplete, he did not register any case, that he rushed to General Hospital, Dungarpur, where P.W.1 Hakra gave him oral information at 10.20 A.M., which was reduced into writing by him as report Ex. P. 1 and thereupon a case was registered. Thus, the delay in lodging the F.I.R. in this case has been satisfactorily explained.

15. Shri Kumbhat has placed reliance on the case of State of Rajasthan v. Pooran, 1986 R.L.W.-434. In that case, the occurrence took place on 6.3.1977 at 1.30 p.m. and the F.I.R. was lodged on 8.3.77. It was contended on behalf of the prosecution that the information was of tender age, that it was difficult for him to leave his father, who had sustained serious injuries and was on death bed and to rush to the Police Station for lodging the report. From the prosecution evidence, it transpired that P.W. 1 Ram Prasad along with 4-5 other persons had taken the deceased to the hospital. It was also admitted by P.W.1 that his brother Rajendra Prasad, who was a police official posted at Mathura Gate Police Out Post, had also come to the hospital on the day of occurrence in the evening and to whom he had narrated the whole incident. It further transpired from the prosecution evidence that one police man from Mathura Gate had also come to see the condition of the deceased which was corroborated from the entries in the Rojnamcha of the Mathura Gate Police Out Post. The doctor attending the deceased had also sent a letter to the said Police out Post, wherein it was desired that a dying declaration of deceased be recorded immediately. On that letter, a Constable was sent to the hospital, who inquired from the Medical Officer In-charge as to whether the said patient was in a position to give his statement or not. In that case there was also delay in sending the F.I.R. to the Magistrate for which there was no explanation. Therefore, in view of afore- mentioned facts the explanation given for the inordinate delay in lodging

the report was found to be unsatisfactory and it was held that delay was fatal to the prosecution. Admittedly such are not the facts of the case in hand. Here, the delay has been satisfactorily explained. The F.I.R. Ex. P. 14 had also reached the Magistrate at Dungarpur on 11.7.90 at 6.45 p.m. from Police Station, Bichhiwada. Therefore, the facts of Pooran's case (cited supra) are clearly distinguishable and not applicable to the facts of this case.

16. The next case cited by shri Kumbhat on this point is that of Inder Singh v. State of Rqjasthan, 1990 Cr.L.R. (Raj.)-393. In that case, it was alleged that the murder took place at 2 p.m. and the F.I.R. was lodged at 3.45 p.m., but from the prosecution evidence, it was established that the alleged incident had taken place immediately after 12.00 noon and that it was wrongly alleged that the Incident had taken place at 2.00 p.m. It was further held that there was ample opportunity to P.W.s Vijai Singh and Kishan Singh to make consultation. Therefore, it was held that there was unexplained delay of two hours in filing the F.I.R. and as such the F.I.R. could not be utilised to corroborate the statement of witnesses. Again the facts of instant case are at poles apart with the facts of Inder Singh's case. Therefore, this case does not render any substantial assistance to the appellant. In our considered opinion, in the instant case, the delay in filing the F.I.R. has been well explained and the same is not at all fatal to the prosecution case.

17. P.W. 10 Smt. Nathi has deposed that on the fateful day at about 8 p.m., she was in her kitchen, that her husband Jagna was sitting on the cot nearby, that their son Jeeva was also sitting there and that at that time appellant armed with an axe entered in their house. She has deposed that under the same roof of their house, their kitchen room and the place for keeping the cattle folk are situated. She has stated that the appellant dealt an axe blow on the head of her husband, who raised his hands, but sustained injury on his head and fell down from the cot, that thereupon the appellant gave another blow from the axe on his head, and that when she intervened the appellant also inflicted an axe blow from its reverse side on her right shoulder. She has further stated that the appellant also gave a kick to Jeeva and that thereafter he went away with the axe. She has deposed that she raised an alarm, which attracted her Jeth P.W. 1 Hakra, whose house is situated nearby, that thereafter neighbours Hakra, Veer Ji. Valia, Thavra had also reached

there. In her cross examination, she has asserted that at the time of the incident, it was not dark inside her house, on the other had there was light and that she had seen the appellant inflicting axe blows to her husband, to her and to Jeeva. The appellant is the real younger brother of her husband Janga deceased. Thus the appellant was very well known to her. Rather he was a family member. Therefore, there is no force in the argument of Shri Kumbhat that since it was dark, Smt. Nathi Could not have seen or identified the assailant. Smt. Nathi has refuted the suggestion that at the time of the alleged incident, she and her son Jeeva were sleeping and that appellant and her husband Jagna were scuffling with each other and that in that process her husband had sustained injuries from the leg of the cot. From the aforesaid suggestion put to Smt. Nathi on behalf of the appellant, it is evident that the presence of the appellant in the house of deceased at the time of incident has not been seriously disputed, rather it was indirectly admitted. Smt. Nathi has categorically denied the suggestion that she had illicit relations with her Jeth P.W. 1 Hakra for last 10-15 years and that for the reason her husband was annoyed with her. She has also refuted the suggestion that she had sustained injuries by having a fall and not from the reverse side of the axe blow dealt by the appellant and that at the time of the alleged incident her son Jeeva was not in the house. Smt. Nathi's presence in her house at the time of the alleged incident was also natural. More-over, she had also received injuries, which have been well proved by P.W.9 Dr. Rakesh Verma. She has also categorically stated that it was wrong to suggest that she along with P.W. 1 Hakra had committed the murder of Jagna while bringing him to Dungarpur. Smt. Nathi has been cross-examined at length and her testimony has not been shattered. In our considered opinion, she is a reliable witness.

18. P.W.4 Jeeva, as per his M.L.R. Ex. P. 9 was about 11 years of age on 11.7.90, when his injuries were examined by Dr. Rakesh Verma. The learned trial Judge put many questions to this witness to ascertain as to whether he could understand the question put to him and that whether he could give rational answers to the question put to him. This witness also stated that one should speak the truth and that he will state true facts. The learned trial Judge has, therefore, rightly found him as a competent witness Under Sections 118 of the Indian Evidence Act. However, since Jeeva was below 12 years of age, no oath was administered to

him. P.W.4 Jeeva was examined on 4.9.91. He has stated that last year during the rainy season at about 8 p.m., his father was sitting on a cot in his house, that he was also sitting on another cot, while his mother Smt. Nathi was sitting near the 'Chulha', that his uncle appellant Hangrama came there having an axe, that the appellant gave an axe blow on the head of his father and that when his mother wanted to rescue him, the appellant gave an axe blow from the reverse side on her shoulder and also on her right hand. He has further stated that when the appellant inflicted the axe blow on his father, the latter fell down and thereafter the appellant again dealt an axe blow on his head with the result that blood oozed out therefrom. He stated that the appellant also gave a kick blow on the right side below his abdomen, that thereupon his mother raised an alarm, that appellant ran away and that thereafter Hakra, Thavra, Vala came there. In this cross examination, to a question that at the time of the incident it was dark night, he stated that a person could identify another person at that time and that the axe was also visible to him. He has refuted the suggestion that he was awakened by the alarm raised by his mother and categorically stated that at that time he was keeping awake and sitting on the cot. During the cross examination, a question was put to him that he was giving his statement as per the instructions of P.W. 1 Hakra, to which he replied in the affirmative. But to make the things clear, the learned trial Judge put a specific question to this witness as to whether whatever he had stated in his statement was based on the fact that he had actually seen the incident or that he was told by some body else about the incident. Thereupon, the witness thought for some time and thereafter categorically state that he had seen the incident. This witness has also been cross examined at length and in our considered opinion he has valiantly withstood the test of cross-examination. His presence in his house was quite natural. More-over, he had also received an injury, as mentioned in his M.L.R. Ex. P. 9, which has been well proved by P.W.9 Dr. Rakesh Verma.

19. It may also be mentioned here that during trial, the learned Counsel for the appellant had specifically admitted the contents and genuineness of M.L.R. Ex. P. 9 and Ex. P. 10 subject to cross examination. Thus, the presence of Smt. Nathi and P.W.4 Jeeva at the time of the incident in their house has been firmly established. From the answers given by P.W.4 Jeeva, it is abundantly apparent

that he has the capacity to understand the questions put to him and give rational answers to those. Had he been sleeping at the time of the incident, there was no occasion for him to have received injury as mentioned in M.L.R. Ex. P. 9. He also does not appear to be a tutored witness. He appears to have sufficient maturity to understand and to give rational answers to the questions put to him and therefore, he is a competent witness within the meaning of Section 118 of the Evidence Act. Since he did not understand the importance of the oath, he was not administered the oath. It is true that Section 5 of the Oath Act requires that the witness must be examined on oath for affirmation but the Section 13 of the same enactment specifically provides that 'omission to take any oath or make any affirmation or any irregularity in the form of an oath or affirmation, shall not invalidate any proceeding or render any evidence inadmissible.'

20. Shri Kumbhat has placed reliance on the case of Remeshwar Lal & Ors. v. The State of Raj. 1984 Cr.L.R.-650, wherein it has been held that children generally are Innocent, and the court seeks corroboration when there are inconsistencies or infirmities in their testimony and that there is justification in believing what they say, but at the same time the risk of their being easily influenced requires the courts to be cautious to consider their statements after careful scrutiny and that it is for this reason that the court seeks corroboration to the testimony of a child witness either by way of direct evidence or circumstances available on record. It has also been observed in that case that while considering the statement of child, the court should not forget that some times the witness may forget a thing while stating before the police and may recollect the same while standing in the witness-box and that for this reason minor discrepancies and inconsistencies in various statements given by a child witness need not be attached much importance. We respectfully agree with this principle of law enunciated for the appreciation of the testimony of a child witness and we have kept the same in consideration while evaluating the statement of P.W.4 Jeeva. As a matter of fact, in the case in hand the prosecution case does not rest on the sole testimony of P.W.4 Jeeva. On the other hand there is unimpeachable testimony of injured eye-witness Smt. Nathi, which has been duly and substantially corroborated by the testimony of P.W.4 Jeeva. In Rameshwar bed's case the testimony of Sandeep Kumar was held to be unreliable and in absence of any corroboration the same could not be based basis

for the conviction. Evidently such are not the facts of the case in hand. Hence Rameshwar Lal's case does not come to the rescue of the appellant.

21. Shri Kumbhat has also cited the case of *Nawla v. The State of Rajasthan* 1981 WLN (UC) - 17. In that case the child witness was 11 years old. He did neither stick to his previous statement nor explain inconsistencies. There was contradiction about the place from where he had seen the incident from a distance of 336 ft. and in between the places where he stood and the place of occurrence there were scattered shrubs 3 ft. high. In such circumstances, it was held that the testimony of the said child witness was not believable, because he could not see the incident and, therefore, his testimony was not relied upon without corroboration. Apparently the facts of Nawla's case are distinguishable to the facts of the case in hand. Therefore, Nawla's case also does not render any assistance to the appellant.

22. In our considered opinion, P.W.4 Jeeva is a reliable witness, who has substantially corroborated the sworn testimony of P.W.10 Smt. Nathi. Hence the contention of Shri Kumbhat on this count is also without force and substance.

23. Shri Kumbhat has vehemently contended that P.W.9 Dr. Rakesh Verma did not describe the injuries sustained by the deceased in his statement and has simply stated that after examining the dead body of Jagna, he had prepared the post mortem examination report Ex. P. 9, which is written and signed by him. Placing reliance on the case of *Veerasamy Naidu v. State*, reported in 1991 All India Criminal Law Reporter (Madras)-634, Shri Kumbhat has urged that since Dr. Rakesh Verma, who conducted post mortem, did not described the injuries of the deceased in his statement, but has simply stated that he had found the injuries on the deceased as described in the post mortem certificate Ex. P. 8, it is not at all sufficient to base the conviction of the appellant. In that case the Madras High Court has held that a post mortem report is not a substantive piece of evidence and that it can only be used by the witness, who conducted the post mortem examination, as an aid to memory and since the doctor did not depose about the exact injuries received by the deceased, it could not be conclusively held that the death was the direct result of the rash and negligent act of the accused and,

therefore, the accused was given benefit of doubt and acquitted. Again the facts of Veerasamy's case are clearly distinguishable from the facts of the case in hand. Here the learned Counsel for the appellant during trial had admitted the post-mortem examination report Ex. P. 8 subject to the cross examination and that is why the learned trial Judge did not reproduce the injuries detailed in Ex. P. 8 in the examination in chief of P.W.9 Dr. Rakesh Verma. More-over Section 294(1) of the Code of Criminal Procedure., 1973 specifically lays down that where any document is filed before any court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution of the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document. Sub-section (3) of Section 294 further lays down that where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under the Cr.P.C. without proof of the signature of the person to whom it purports to be signed; provided that the court may in its discretion require such signature to be proved.

24. A careful perusal of the above provisions makes it abundantly apparent that Section 294 Cr.P.C. applies to every document, whose genuineness is not disputed. In S.K. Faird's case reported in 1983 Cr.L.J. 487, Full Bench of Bombay High Court has held that the post mortem examination report is admissible even without doctor's evidence.

25. In Saddiq's case reported in 1981 Cr.L.J.-379 the Full Bench of the Allahabad High Court interpreting the provisions of Section 294 Cr.P.C. has held that a post mortem report, if its genuineness is not disputed by the opposite party, can be read as a substantive evidence to prove the signature and correctness of its contents without the doctor concerned being examined. In the case in hand, the prosecution has examined P.W.9 Dr. Rakesh Verma, who has proved post mortem examination report Ex. P. 8 and he has been cross examined at length. During trial the learned Counsel for the appellant also did not dispute the genuineness of post-mortem examination report Ex. P. 8. Therefore, in such circumstances, simply because the doctor has not described the injuries sustained by the deceased in detail, it can not be held that the injuries of the deceased have

not been proved. In Veerasamy's case (supra) the genuineness of the post mortem examination report was not admitted by the appellant. The Madras High Court also did not consider the specific provisions of Section 294(3) Cr.P.C. Therefore, Veerasamy's case does not help the appellant and submission made by Shri Kumbhat in this behalf, is hereby foiled down.

26. Dr. Rakesh Verma has deposed that the injuries sustained by deceased Janga, which are detailed in post mortem examination report Ex. P. 9, could be caused by a blunt object and that those injuries were sufficient in the ordinary course of nature to have caused death. In his cross examination he has stated that the injury on the left parietal region, which also resulted in laceration of the brain of the left parietal lobe, was the cause of his death. He has also stated that since the parietal region a person is a vital part, a person can become unconscious after receiving injury thereon. He has also admitted that the said injury had resulted in extra dural haemorrhage.

27. Shri Kumbhat has submitted that as per statements of Nathi & Jeeva, appellant had inflicted two axe blows on the head of Janga, which ought to have resulted into incised wounds, but the doctor has found two lacerated wounds on the right parietal and right occipital region. Thus, there is a variance between the ocular evidence and the medical evidence and the prosecution story becomes doubtful. We do not find any force in this argument. Firstly as per post-mortem examination report Ex. P. 8, the lacerated wound on the left parietal region measuring 4' x 2' was bone deep while the lacerated wound on the right occipital area measuring 1' x 3/4' was muscle deep. Both these wounds were covered with blood clots. The witnesses have not stated that the appellant had inflicted an axe blow from its blade side. The recovered axe Article 6 had also blood-stains on its reverse side as well as on its handle. Secondly due to the contraction of muscles some times the incised wound looks like a lacerated wound. More-over, these wounds were covered with blood clots. In such circumstances, we do not find any material inconsistency in the ocular evidence and the medical evidence.

28. Another argument of Shri Kumbhat is that P.W.9 Dr. Rakesh Verma has deposed that both the injuries sustained by the deceased were caused within six

hours from the time of post- mortem examination. The post-mortem examination of the deceased was conducted at 11 a.m. on 11.7.90 and on this basis Shri Kumbhat has argued that the prosecution story become doubtful because as per testimony of Smt. Nathi, Jeeva, Hakra and other witnesses the alleged incident had taken place at 8 p.m. on 10.7.90. This argument at first sight appeals to be quite attractive and convincing, but a careful perusal of post-mortem examination report Ex. P. 8, whose genuineness has been admitted by the appellant under Section 294 Cr.P.C., reveals that the doctor has specifically mentioned therein about the duration of death as under:

time since death within six hours from the time of post mortem examination.

It is, therefore, clear that the doctor was confused and instead of stating that the death of the deceased had occurred within six hours from the time of the post-mortem examination, he incorrectly stated that the injuries sustained by the deceased were caused within six hours from the time of post-mortem examination. As a matter of fact after the death of the injured, the doctor can not correctly and conclusively tell about the age of the injury. Of course he can ascertain the duration of death from the time of post-mortem examination. Therefore, we do not find any inconsistency in the ocular evidence and the medical evidence and it can not be held that the injuries were sustained by the deceased within six hours from the time of the post-mortem examination, and the prosecution case can not be thrown over board simply on the basis of this slip of tongue of the doctor, who really meant that the death of the deceased had occurred within six hours from the time of post-mortem examination, as has been specifically mentioned in post-mortem examination report Ex. P. 8.

29. The recovery of the axe Article 6 is also not from an open place. P.W.13 Shyam Lal has deposed that after his arrest, the appellant on 12.7.90 voluntarily made a disclosure statement Ex. P. 16 and that in pursuance thereof he got recovered the axe Article 6, whose blades, reverse side of the blade as well as the handle were blood-stained, from his personal 'Beed' which was bounded by the oacti fencing under-neath the 'Hagra' trees in presence of Motbir P.W.7 Arjun Singh and one Shankar Lal. P.W.7 Arjun Singh has fully corroborated the sworn

testimony of Shyam Lal and stated that the appellant got the blood-stained axe recovered under-neath a Sagwan tree situate near his house. Therefore, it can not be held that the axe was recovered from an open place. On the other hand it stands firmly established that the axe Article 6 was recovered at the instance of the appellant from the 'Beed', which was in his possession.

30. P.W. 13 Shyam Lal has also deposed that all the sealed packets were kept in the Malkhana of the police Station till they were handed over to P.W. 12 Brahmanand, Constable, who carried those sealed packets to the S.P., Office, Dungarpur and thereafter to the Forensic Science Laboratory. P.W. 12 Brahmanand has proved the Malkhana entries Ex. P. 17 and deposed that he carried those sealed packets along with the forwarding letter Ex. P. 11 dated 20.7.90 to the S.P. Office, Dungarpur, and that on the same day the S.P. gave him the forwarding letter Ex. P. 12 for taking those sealed packets to the Forensic Science Laboratory. He has further deposed that on 21.7.90, he had deposited all those sealed packets intact to the Forensic Science Laboratory vide F.S.L. receipt Ex. P. 13. Thus, it stands well proved that all the scaled packets were deposited in the F.S.L. intact. As per F.S.L. report Ex. P. 18, the recovered axe as well as the blood smeared soil and blood soaked bushirt, baniyan and the piece of bushirt of the deceased were blood-stained with human blood.

31. P.W.5 Thavra, P.W.6 Vala and P.W.8 Nanka, who had reached the house of the deceased immediately after the occurrence have deposed that Smt. Nathi had told them that the appellant had inflicted axe blows on the head of Jagna. Therefore, they also corroborate the testimony of P.W. 10 Smt. Nathi and P.W.4 Jeeva.

32. The defence story is palpably false. The appellant in his plea Under Section 313 Cr.P.C. has stated that at the time of the incident, he was in his house. On the other hand his wife D.W.2 Smt. Savita has stated that on the day of alleged incident, the appellant had gone to the in-laws' house of her 'Nanad' and that he was not present in village-Sanchia.

33. There is no dispute that informant P.W.1 Hakra, deceased Jagna, appellant Hangrama were real brothers and that the field know as Madudi Wala Khet was in

their joint tenancy. It has also been well established from, the presecution evidence that a few days prior to the alleged incident, appellant had cultivated the said field alone and that there after P.w.1 Hakra and deceased Jagna had again ploughed the said field. Which infuriated the appellant. Hence is this case the motive for the crime has also been fairly established.

34. In our considered opinion the learned trial Judge has discussed, analysed and evaluated the evidence recorded in this case in right perspective and has not committed any illegality of fact or law in convicting the appellant for the offence Under Sections 450 & 302 I.P.C. and the impugned judgment does not warrant any interference.

35. In the premises of the above discussion, this jail appeal fails and the conviction and sentence of the appellant are hereby maintained.

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