Alagupandi @ Alagupandian vs State Of Tamil Nadu on 8 May, 2012

Equivalent citations: AIR 2012 SUPREME COURT 2405, 2012 (10) SCC 451, 2012 AIR SCW 3479, AIR 2012 SC (CRIMINAL) 1083, (2012) 2 CHANDCRIC 31, 2012 CRILR(SC&MP) 552, 2013 (1) SCC (CRI) 1027, (2012) 114 ALLINDCAS 23 (SC), 2012 (5) SCALE 595, 2012 (114) ALLINDCAS 23, (2012) 2 CURCRIR 440, (2012) 2 ALLCRIR 1751, 2012 CRILR(SC MAH GUJ) 552, (2012) 2 KER LJ 717, (2012) 3 MAD LJ(CRI) 680, (2012) 52 OCR 662, (2012) 3 RECCRIR 729, (2012) 5 SCALE 595, (2012) 2 DLT(CRL) 820, (2012) 78 ALLCRIC 272, (2012) 3 ALLCRILR 188

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Bench: Swatanter Kumar, A.K. Patnaik

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1315 OF 2009

Alagupandi @ Alagupandian … Appellant

Versus

State of Tamil Nadu … Respondent

J U D G M E N T

Swatanter Kumar, J.

1. The present appeal is directed against the judgment of the Madras High Court, Madurai Bench dated 28th February, 2007, affirming the judgment of conviction and order of sentence dated 19th July, 2004 passed by the Principal Sessions Judge, Madurai holding the accused/appellant guilty of an offence under Section 302 IPC and awarding sentence of life imprisonment and also to pay a fine of Rs. 2,000/-, in default, to undergo rigorous imprisonment for one year.

2. The facts necessary for disposal of the appeal can be stated as follows:-

> Tamilarasi, the deceased, was the second wife of one Karuppaiah. After the death of her husband, she was residing at Sikkandarchavadi and was enjoying the properties left by her deceased husband and collecting the rent from the properties. Accused Alagupandi is the son of Karuppaiah, from his first wife. Accused, after the death of his father, used to demand money from his step mother for which there used to be quarrel between them.

3. On the midnight of 13th / 14th January, 2002, when the deceased was sleeping with her two sons namely Prabakaran, PW7, and Vinothkumar, PW8, the accused entered into the house with a knife and caused injuries on her stomach, chest and thigh. Because of this assault, Tamilarasi died on the spot.

4. PW-1, P. Selvaraj, is the brother of the deceased and lived at Theni Village. He was staying with the deceased (his sister) and was working as a cleaner in the lorry. On the fateful day, he was sleeping on a rock stone outside the house when he heard the distressing cry of his sister. When he went inside the house, he saw the accused coming out of the house with a knife in his hand. The accused ran towards the western side. Thereupon, he went inside the house and saw his sister lying in a pool of blood. PW-1 then proceeded to the village headman and also to the village Panchayat President. Then, he was directed to go to the police station. He went to the police station, gave the complaint Ext. P-1 to Sub-Inspector of Police, PW-11. On the basis of this complaint, the Police registered a case being Cr. No. 6/2002 under Section 448 and 302 IPC. The FIR Ext. P-10 was registered and sent to the Court. The Inspector of Police, PW-16 took up the investigation and proceeded to the scene of occurrence, made investigations in presence of the witnesses, prepared the Observation Mahazar Ext. P-4 and sketch, Ext. P-15. Thereafter, the dead body was sent for autopsy. Dr. Alavudeen, PW-14 attached to the Government Hospital, conducted the post mortem upon the body of the deceased and gave the post mortem report, Ext. P-12, wherein he opined that the deceased would have died due to shock and haemorrhage because of injuries sustained by her. Upon his arrest, the accused also made a confessional statement in presence of the witnesses vide Ext. P-17. On the basis of this statement, M.O.6., knife and M.O.7., blood stained shirt were also recovered vide Ext. P-18. All the material objects were sent for chemical examination by the forensic department which issued two certificates, Exts. P-8 and P-9, the chemical examination report and the Serological report, respectively.

5. It may be noticed at this stage itself that PW-7 and PW-8, the two minor children of the deceased had seen the incident, but their examination was not permitted by the trial court as is evident from the judgment of the trial court and the evidence produced before the Court.

6. The accused was committed to the Court of Sessions for trial under Sections 448 and 302 IPC and finally vide judgment dated 19th July, 2004, he was convicted and sentenced to life imprisonment and fine, as afore- noticed.

7. Upon appeal preferred by the accused, the High Court sustained the findings of the Trial Court and dismissed the appeal of the accused vide its judgment dated 28th February, 2007, giving rise to the present appeal.

8. The learned counsel appearing for the appellant has contended that :-

> a) PW-1 is the sole witness on whose statement the courts have returned the finding of conviction against the accused. PW-1 being an interested witness and himself being an accused in another murder case, it is not safe to rely upon the statement of such witness as, it is neither reliable nor truthful. Thus, the judgment of conviction is liable to be set aside.
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> b) The courts below have failed to appreciate the evidence in its correct perspective. The prosecution has not been able to prove its case beyond reasonable doubt. A number of witnesses had turned hostile and there is no corroboration to the statement of PW-1. Even the confessional statement recorded by the police is inadmissible. There exists serious doubt as to the very presence of PW-1 at the place of occurrence. Resultantly, the appellant is entitled to the benefit of doubt.

9. First and foremost, we may deal with the contention as to the presence of PW-1 at the place of occurrence and whether the statement of the said witness is reliable and can form the basis of conviction of the accused. According to PW-1 and as per the case of the prosecution, the occurrence had taken place after 12 a.m./midnight on 13th/14th January, 2002. The FIR, Ext. P-10 was registered on the basis of the statement of PW-1. As per the details given in the said Exhibit, it was registered at 0130 hrs. on 14th January, 2002. Thus, at best, there is nearly one hour gap between the time of occurrence and registration of the FIR. The presence of PW1 at the house of his sister can hardly be doubted. If PW1 was not present there, then it could not have been possible for him to see the accused running away after stabbing his sister and also he could not have met the Sarpanch of the village and then the Police Officer within a short period of occurrence, which facts have been proved from the evidence placed on record. PW-1 stated the entire facts before PW-11, the Sub-Inspector, whereupon the FIR was registered. According to PW-1, he was staying at the house of his sister and was working as a cleaner in a lorry. Keeping in view the close relationship between the parties, we do not see any reason to disbelieve PW-1 in this regard. Firstly, there is no delay in lodging the FIR and even the delay of 1 and 1½ hour is fully explained by the conduct of PW-1.

10. As far as his presence at the place of occurrence is concerned, the learned counsel appearing for the appellant has not been able to refer to any evidence that could create even a reasonable doubt as to the presence of PW-1 at the place of occurrence. In fact when PW-1 was cross-examined by the accused, any suggestion of this kind was not even put to him in the cross-examination.

11. PW-1 also stated that on hearing the noise, he ran towards the house of his sister and thereupon the neighbors Rajammal, Radha, Murugan, Palanimuthu and Muthaiah had also come there. It is correct that Rajammal and Murugan had not been examined by the police, while Radha, PW-4 and Muthaiah, PW-2 did not speak favorably for the prosecution and were declared hostile with the leave of the court.

12. Palanimuthu, was examined as PW-3 and he stated that he was living near the house of Tamilarasi, the deceased. She had cried loudly and then he went and saw that some people had

come there and the deceased was bleeding from her injuries. The police had come and they collected the earth from the spot and he signed Exts. P-4 and P-5.

13. Nothing adverse came on record in the cross-examination of this witness. PW-3, thus, has not only supported the case of prosecution, but even provided due corroboration to the statement of PW-1. When accused was taken into custody, he made a statement on 17th January, 2002 and stated that when he was five years old, there was a quarrel between his mother and father and his father had brought him to Sikkandarchandi. When he was 10 years old, his father contracted a second marriage with the deceased. He stated the complete history of his family and about his bitter relationship with the deceased. He also stated that he had stabbed the deceased. Then, he proceeded to say that he had hidden the knife with which he had committed the offence on the side of the local tank situated at Sikkandarchavadi and he could get the same recovered. In furtherance to this statement, the knife, M.O.6, was recovered. Out of the witnesses to this confession statement, one attesting witness, P.Rajendran, was not examined, however, the other witness M. Solaimuthu, was examined as PW-15.

14. The courts, relying upon the admissible part of the statement of the accused, held that the recovery of knife had been effected in accordance with law. Importantly, we may notice the injuries found on the person of the deceased by Dr. Alavudeen PW-14, who conducted the post-mortem upon the body of the deceased. The injuries on the person of the deceased were described by the said witness as follows:-

> "1. An oblique stab wound on left breast 5 cm below and medical to the left nipple 3 cm x 1 cm. both ends pointed with regular margine. On dissection the wound passes obliquely backwards and upwards and inwards, piercing the underlying intercostals muscles, vessels and nerves and left ventricle 2 cm x 0.5 cm entering into cavity.
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> 2. An oblique stab wound on left hyppchondrium 5 cm below the left costal margin 4 cm x 1 cm x entering into abdominal cavity through which the loops of small bowel found protruding out. Both ends pointed with regular margin. On dissection the wound passes obliquely, backwards and inwards.
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> 3. An oblique stab wound 3 cm x 1 cm x entering into abdominal cavity on the right side of upper abdomen 4 cm below the right costal margin through which loops of small bowel found protruding out, both ends pointed with regular margins. On dissection the wound passes obliquely downwards, backwards and medially.
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> 4. A vertical oblique stab wound 3 cm x 1 cm on the outer aspect of the left thigh 13 cm from left anterior superior liiac spine. Both ends pointed, margins regular. On dissection the wound passes backwards, medially and upwards, piercing the underlying muscles, nerves and vessels and ends as a point.
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> 5. An oblique stab wound on the back of left side of abdomen 3 cm above the left ilisc crest 3 cm x 1 cm. both ends pointed with regular margins. On dissection: the wound

passes upwards, forwards and medially piercing the underlying tissues, entering the peritoneal cavity.

6. An oblique out injury on the back of left forearm 6 cm above the wrist 3 cm x 1 cm x bone deep cutting the underlying muscles, vessels, nerves and bones.

7. An oblique out injury on the front of left forearm 10 cm above the wrist 8 cm x 2 cm x bone deep cutting the underlying muscles, vessels, nerves and bones.

8. An oblique out injury on front of left forearm, 3 cm below injury No. 7 – 8 cm x 2 cm x bone deep cutting the underlying muscles, vessels and nerves."

15. The case of the prosecution clearly indicates that the present case is, to a very limited extent, based upon circumstantial evidence and largely there exists ocular and documentary evidence to support the case of the prosecution. The statements of PW1, PW6, PW14 as well as the report of the chemical examination and the serology report, Exts.8 and 9, respectively, clearly establish the material facts that lead to the irresistible conclusion that the accused had committed the murder of his step-mother, Tamilarasi.

16. We are not impressed with the contention that PW1 is the sole and interested witness and, therefore, his statement cannot be relied upon by the Court for returning the finding of conviction. It is a settled principle of law that the Court can record a finding of guilt while, entirely or substantially, relying upon the statement of the sole witness, provided his statement is trustworthy, reliable and finds corroboration from other prosecution evidence. In the case of Govindaraju @ Govinda v. State of Sriramapuram P.S. & Anr., [Crl. Appeal No. 984 of 2007 decided on March 15, 2012], this Court held as under:

"11. Now, we come to the second submission raised on behalf of the appellant that the material witness has not been examined and the reliance cannot be placed upon the sole testimony of the police witness (eye-witness). It is a settled proposition of law of evidence that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses. In the case of Lallu Manjhi and Anr. vs. State of Jharkhand (2003) 2 SCC 401, this Court had classified the oral testimony of the witnesses into three categories:-

a. Wholly reliable;

b. Wholly unreliable; and c. Neither wholly reliable nor wholly unreliable.

12. In the third category of witnesses, the Court has to be cautious and see if the statement of such witness is corroborated, either by the other witnesses or by other documentary or expert evidence. Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with

> caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eye-witness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty. Reference in this regard can be made to the cases of Joseph v. State of Kerala (2003) 1 SCC 465 and Tika Ram v. State of Madhya Pradesh (2007) 15 SCC 760. Even in the case of Jhapsa Kabari and Others v. State of Bihar (2001) 10 SCC 94, this Court took the view that if the presence of a witness is doubtful, it becomes a case of conviction based on the testimony of a solitary witness.

There is, however, no bar in basing the conviction on the testimony of a solitary witness so long as the said witness is reliable and trustworthy.

13. In the case of Jhapsa Kabari (supra), this Court noted the fact that simply because one of the witnesses (a 14 years old boy) did not name the wife of the deceased in the fardbayan, it would not in any way affect the testimony of the eye-witness i.e. the wife of the deceased, who had given graphic account of the attack on her husband and her brother-in-law by the accused persons. Where the statement of an eye-witness is found to be reliable, trustworthy and consistent with the course of events, the conviction can be based on her sole testimony. There is no bar in basing the conviction of an accused on the testimony of a solitary witness as long as the said witness is reliable and trustworthy."

17. In view of the settled position of law, we find that the statement of PW1 inspires confidence and is truthful and reliable. His statement does not suffer from any material contradictions. On the other hand, it gives a correct eye-version of what this witness saw. If PW1 intended to lie, nothing prevented him from saying that he was also an eye-witness to the scene of stabbing of the deceased by the accused. He only stated that this crime was witnessed by the two minor children of the deceased and he had merely seen the accused running out from the house of the deceased with a knife in his hand. Where a sole witness has stated exactly what he had actually seen and the said statement otherwise fits into the case of the prosecution and is trustworthy, the Court normally would not be inclined to reject the statement of such sole witness. Furthermore, it is contended that the statement of PW-1 cannot be relied upon by the Court also for the ground that he is an interested witness. This argument is equally without merit. The presence of PW1 at the house of his sister is natural. He was working as a cleaner and was staying with his sister in the same village. He was sleeping outside the house of the deceased and went towards the house upon hearing her screams. Every witness, who is related to the deceased cannot be said to be an interested witness who will depose falsely to implicate the accused. In the present case, the accused is also related to PW1 and there could be no reason for PW1 to falsely implicate the accused.

18. We have already discussed that the statement of PW1 is worthy of credence. In the case of Mano Dutt & Anr. v. State of U.P. [Crl. Appeal No. 77 of 2007 decided on 29th February, 2012], a Bench of this Court held that it is not the quantity but the quality of the evidence which would bring success to the case of the prosecution or give benefit of doubt to the accused. Statement of every related witness cannot, as a matter of rule, be rejected by the Courts. This court, in the aforesaid case, held as under:

"19. Another contention raised on behalf of the accused/appellants is that only family members of the deceased were examined as witnesses and they being interested witnesses cannot be relied upon. Furthermore, the prosecution did not examine any independent witnesses and, therefore, the prosecution has failed to establish its case beyond reasonable doubt. This argument is again without much substance. Firstly, there is no bar in law in examining family members, or any other person, as witnesses. More often than not, in such cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. Those alone are the people who take the risk of sustaining injuries by jumping into such a quarrel and trying to defuse the crisis. Besides, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the prosecution, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was family member or interested witness or person known to the affected party. There can be cases where it would be but inevitable to examine such witnesses, because, as the events occurred, they were the natural or the only eye witness available to give the complete version of the incident. In this regard, we may refer to the judgments of this Court, in the case of Namdeo v. State of Maharashtra, [(2007) 14 SCC 150]. This Court drew a clear distinction between a chance witness and a natural witness. Both these witnesses have to be relied upon subject to their evidence being trustworthy and admissible in accordance with the law. This Court, in the said judgment, held as under:

> "28. From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eyewitness, therefore, has no force and must be negatived.
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> 29. It was then contended that the only eyewitness, PW 6 Sopan was none other than the son of the deceased. He was, therefore, "highly interested" witness and his deposition should, therefore, be discarded as it has not been corroborated in material particulars by other witnesses. We are unable to uphold the contention. In our judgment, a witness who is a relative of the deceased or victim of a crime cannot be characterised as "interested". The term "interested" postulates that the witness has

some direct or indirect "interest" in having the accused somehow or the other convicted due to animus or for some other oblique motive."

20. It will be useful to make a reference of another judgment of this Court, in the case of Satbir Singh & Ors. v. State of Uttar Pradesh, [(2009) 13 SCC 790], where this Court held as under:

"26. It is now a well-settled principle of law that only because the witnesses are not independent ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witnesses and no cogent reason has been shown to discredit their statements, a judgment of conviction can certainly be based thereupon. Furthermore, as noticed hereinbefore, at least Dhum Singh (PW 7) is an independent witness. He had no animus against the accused. False implication of the accused at his hand had not been suggested, far less established."

21. Again in a very recent judgment in the case of Balraje @ Trimbak v. State of Maharashtra [(2010) 6 SCC 673], this Court stated that when the eye-witnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The Court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same."

19. It will now be appropriate to refer to the statement of PW14, the doctor, who performed the autopsy upon the body of the deceased. According to this witness, he had found multiple injuries on the person of the deceased and that too, at the vital parts. We have already noticed the injuries caused, in some detail. The accused inflicted injury on the breast of the deceased wherein it pierced into the left ventricle of the heart. Another stab injury was caused by him on the left side of the rib through which the samall intestine had protruded out. Still, another injury was caused on the right side of the rib through which also the small intestine had come out. This is besides the injuries he caused on the left hip, wrist and stomach of the deceased. This clearly shows that the deceased had come to the house of the deceased with the definite intention to kill her. The accused, by inflicting these multiple injuries on vital parts of her body, ensured that she died instantaneously. There appears dual motive for the accused to commit the crime. Firstly, the deceased was his step-mother, whose behaviour towards him was not acceptable to the accused. Secondly, the entire properties left by the father of the accused and husband of the deceased, were being enjoyed by the deceased herself. Furthermore, every time the accused had to ask for money from the deceased and more often than not, she refused to give him the money. These circumstances emerging from the record clearly show reason for some kind of animosity and ill-will on the part of the accused towards the deceased. Existence of a motive for committing a crime is not an absolute requirement of law but it is always a relevant factor, which will be taken into consideration by the courts as it will render

assistance to the courts while analysing the prosecution evidence and determining the guilt of the accused.

20. Statement of PW1, supported by the statements of PW11, PW6, PW14 and the recovery of the weapon of crime vide Exhibit M.O. 6, upon disclosure statement of the accused, completes the chain of events as stated in the case of the prosecution. Except the part of the disclosure statement of the accused which led to the recovery of the said knife, the rest of the statement of the accused would be inadmissible in evidence as per Section 27 of the Indian Evidence Act, 1872.

21. Still, there is another very vital aspect of the case of the prosecution on which the discussion is necessary. It has come in evidence in the statement of the Investigating Officer, PW-16, the Sub-Inspector who recorded the complaint of PW-1, PW-11 and the witness to the recovery, PW-6 that blood-stained earth was collected from the place of occurrence and was subsequently sent for chemical examination to the Forensic Science Laboratory.

22. According to PW-16, after the arrest of the accused, the accused had taken the police to Sikkandarchavadi where he got recovered the wooden- handled bloodstained knife M.O.6, and the bloodstained shirt worn by him, M.O.7, hidden in the bushes. They were taken into custody by the Investigating Officer in presence of the attesting witnesses. The recovered items, along with blood stained blue, green and white check shirt which the accused was wearing at the time of commission of offence, were sent to the Director, Regional Forensic Science Laboratory, Madurai for examination vide Ext. P-7. The serological report, Ext. P-9, was submitted to the Court by the laboratory. This report provided the result of MO-7 (the said shirt) at serial No.8 of the report. As per the report, it contained human blood of group 'A'. It has come in evidence that the blood group of the deceased was 'A'. The same blood group was also found on the saree, jacket and gunny bag which were seized by the Investigating Officer from the place of occurrence. This clearly connects the accused with the commission of crime. This is a very material and significant piece of evidence and was put to the accused during his statement under Section 313 CrPC, but except vague denial, the accused said nothing more.

23. This is clinching evidence against the accused which fully supports the case of the prosecution. PW-7 and PW-8 are said to be child witnesses who had seen the occurrence. They are sons of the deceased. When they appeared before the Court, the Court put certain questions to both these witnesses to form an opinion whether they would be able to depose. It granted the permission to PW-7, but his statement was not recorded. The Court declined permission for examining PW-8. As such, the statement of both these witnesses was not recorded. It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The Court in such circumstances can safely rely upon the statement of a child witness and it can form the basis for conviction as well. Further, 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 reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a

conviction can be allowed to stand but as a rule of prudence the Court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. (Ref. Dattu Ramrao Sakhare v. State of Maharashtra [(1997) 5 SCC 341] and Panchhi v. State of U.P. [(1998) 7 SCC 177].

24. This aspect of the case need not detain us any further, inasmuch as the Trial Court did not permit recording of statement of these witnesses being child witnesses. Legality or correctness of this direction of the Trial Court was not questioned either by the State or by the accused in their appeal before the High Court and even before this Court.

25. No arguments have been addressed even before us by either party that these two child witnesses should have been examined and that it has caused any prejudice to any of the parties in the present appeal.

26. According to PW-1, these children had seen the accused murdering their mother. Despite this statement if these witnesses have not been examined and parties have not raised any objection in that regard, we see no reason to record any findings on this aspect of the case.

27. The concurrent findings of fact recorded by the Courts below, based upon proper appreciation of evidence clearly prove the guilt of the accused. The statement of PW-1 is fully corroborated by other witnesses, expert evidence and the medical evidence.

28. In these circumstances, we see no reason to interfere with the finding of guilt as the well as the order of sentence. Resultantly, the appeal is dismissed.

.....J. (A.K. Patnaik) .....J. (Swatanter Kumar) New Delhi, May 8, 2012