

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 831 of 1997

1. Lachchhan Bai W/o Amar Chand Satnami, aged about 25 years, occupation – Nil, Resident of Tarbahar Gali No.15, Bilaspur, Police Station- Tarbahar, Distt. Bilaspur (C.G.)
2. Soncharan, S/o Samay Lal Satnami, aged about 50 years, Occupation – Labourer, Resident of Tarbahar Gali No.15, Bilaspur, Police Station- Tarbahar, Distt. Bilaspur (C.G.)
(died & deleted)

--- Appellants

Versus

State of M.P. (now State of C.G.)

– Respondent

For Appellant	:	Shri Amit Tiwari, Advocate
For Respondent / State	:	Shri Suryakant Mishra, P.L.

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Passed on : 06/07/2015

- 1) Challenge in this appeal is to the judgment of conviction & order of sentence dated 05.04.1997 passed by the Additional Sessions Judge, Bemetara in Sessions Trial No.174 of 1989, whereby and whereunder, learned Special Judge, after holding the appellants guilty for causing hurt by means of poison and in furtherance of common intention, convicted them under Section 328/34 of the IPC and sentenced them to undergo R.I. for five years.
- 2) During the pendency of appeal, appellant – Soncharan, who was father of appellant – Lachchhan Bai, has died and appeal filed on behalf of appellant – Soncharan has been abated vide order dated

21.02.2014. Now the appeal remains only for consideration of appellant – Lachchhan Bai.

- 3) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
- 4) As per case of prosecution, co-accused Soncharan (deceased) was the father of appellant – Lachchhan Bai. On 29.02.1988, Soncharan went to the house of his married daughter Lachchhan Bai at village Chandnu. He wanted to invite his daughter on the occasion of Holi festival, but the family members of his daughter's husband – Amarchand Satnami refused to send along with her father. Soncharan had given some seeds of Stramonium (*Dhatura*) to her daughter – Lachchhan Bai. After mixing it in the sauce (*chutney*), Lachchhan Bai served the same with food to Amardas, who is younger brother of Amarchand. After consuming the same with food, he fainted. The matter was reported to the Police and FIR was lodged.
- 5) During the course of investigation, complainant Amardas was sent for medical examination and treatment to Primary Health Centre, Bhatapara. Accused Lachchhan Bai and her father Soncharan were taken into custody. Grindstone and one bowl (*katori*) with seeds of stramonium were seized from the spot, seizure memo vide Ex.P/3 was prepared. Soil contained vomit was also seized from the spot, vide Ex.P/4. Spot map was prepared vide Ex.P/2. Sealed articles were sent to FSL, Sagar, vide Ex.P/10, report of which had been received vide Ex.P/11 & P/12. Bed-head ticket and MLC report have

been received vide Exs.P-6 & 8 and query report had also been received vide Ex.P/7.

- 6) Statements of the witnesses were recorded under Section 161 of the Cr.P.C.
- 7) After completion of investigation, charge-sheet was filed before the Court of Judicial Magistrate First Class, Bemetara, who committed the case to the Court of Sessions Judge, Durg ,from where Additional Sessions Judge, Bemetara received the case on transfer for trial.
- 8) In order to prove the guilt of the accused/appellant, the prosecution examined as many as ten witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.
- 9) After providing opportunity of hearing to the parties, the trial Court convicted & sentenced the appellant as aforementioned.
- 10) I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 11) Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on circumstantial evidence. Prosecution has not been able to prove its case beyond reasonable doubt and that there is no sufficient evidence against the appellant that she only mixed the stramonium seeds in sauce and there is no sufficient evidence that she served food to Amardas.

- 12) On the other hand, learned Panel Lawyer for the State opposes the appeal and while submitting that the prosecution has proved its case beyond reasonable doubt, which is sufficient to prove the guilt of the appellant.
- 13) In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the parties.
- 14) In the present case, case of the prosecution is based on circumstantial evidence & extra judicial confession. Complainant – Amardas is a younger brother of Amarchand and Lachchhan Bai (appellant) is wife of Amarchand. Amardas (PW-1) stated that co-accused Soncharan (deceased) came to their house for taking his daughter Lachchhan Bai along with him on the eve of Holi festival. In the night Lachchhan Bai served him food and after taking the same, he had become unconscious. Villagers brought him to police station, where he reported the incident vide Ex.P-1, thereafter, he was brought to the hospital. He further stated that after taking food he felt dizziness, at that time Lachchhan Bai confessed that her father Soncharan told her to mix the poison in the food, therefore, she had mixed the poison in his food. In his cross-examination, he admits that he vomited after taking food and police has seized that vomited particles.
- 15) Samaru Ram (PW-5) is grand-father of Amardas, who stated that at about 8.00 p.m. he had gone to the house of Amardas, where he saw Lachchhan Bai serving food to Amardas and after taking that food Amardas felt dizziness and his physical condition was deteriorated, at

that moment, Lachchhan Bai disclosed that she had grinded *Dhatura* on grinding stone (*Sil-pathar*) and mixed with food meant for serving the same to Amardas. She also disclosed that *Dhatura* was given to her by her father, Soncharan.

- 16) Shyam Bai (PW-6) is mother of Amardas. She stated that Soncharan had come for taking her daughter Lachchhan Bai along with him. Lachchhan Bai had been grinding something in *Sil-batta*. In the night Lachchhan Bai served food to Amardas, thereafter, physical condition of Amardas was deteriorated. She further stated that Soncharan had disclosed that he brought Stramonium (*Dhatura*) and Lachchhan Bai grinded it on grinding stone (*sil-pathar*).
- 17) Amar Singh (PW-7) stated that he visited the house of Amardas in the evening, where he saw Lachchhan Bai and Soncharan were in shivering condition and on being asked Lachchhan Bai disclosed that she has mixed poison in the food.
- 18) Dr. S.M. Tripathi (PW-8), who has examined Amardas after the incident, stated that on 01.03.1988 he had examined Amardas, he was in conscious and in normal condition; tongue was dried; skin was hot; eyeballs were dilated and were not reflecting towards light. After examination, he noticed that aforesaid symptoms were found because of consuming poison. Amardas was admitted in the hospital and discharged on 02.03.1998. He has proved his examination report vide Exs. P-6 & P-8.
- 19) Investigating Officer B.R. Singh (PW-10) has stated that on 03.02.1988, he has seized one steel bowl, one *sil*, one *batta* (grinding stone) from the possession of accused Lachchhan Bai vide seizure

memo Ex.P-3. Soil containing vomit from the spot was also seized vide Ex.P-4. Seized articles were sent to FSL, Sagar for chemical examination and received examination report, which shows that all the sent articles were found Alkaloids of Stramonium except one article, the plain soil.

- 20) Defence has cross-examined the prosecution witnesses Amardas (PW-1), Samaru Ram (PW-5), Shyam Bai (PW-6) and Amar Singh (PW-7) at length, but has not been able to elicit anything in their cross-examination to discredit their testimonies. FIR was timely lodged mentioning the name of the accused. Medical report and FSL report also reveals and indicates that served food contained poisonous substance and that food was administered by the appellant to Amardas.
- 21) On the basis of evidence, while convicting the appellant under Section 328/34 of the IPC, the trial Court has not committed any illegality. I do not find any ground for interference in the conclusion of the Court below. Therefore, conviction of the appellant Lachchhan Bai is hereby affirmed.
- 22) As regards question of sentence, appellant / accused is a lady, she has been facing judicial trial since 15.03.1988 and incident was taken place on 29.02.1988 and that she was in custody for about 2½ months.
- 23) Considering the long period of the prosecution, which was launched way back in the year 1988 and the fact that the appellant being old lady, her age and the fact that she had committed the offence under some pressure of her father Soncharan (deceased co-accused) and

the circumstances show that appellant was not the main culprit, her father was main culprit and she was only assisting him, I am of the opinion that the sentence awarded by the trial Court is modified and instead of R.I. for five years she is sentenced to undergo imprisonment for the period already undergone by her.

- 24) Consequently, the appeal is partly allowed as above. Appellant is on bail. Her bail bonds shall continue for a further period of 6 months as per requirement of Section 437-A of the Cr.P.C.

Sd/-
(I.S.Uboweja)
JUDGE