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IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CRIMINAL APPEAL NO. 1620 OF 1998

APPELLANT:
(IN JAIL)

Mehattar Lal S/o Judawan Nishad,
Aged 35 years, Resident of Mukta,
Police Station- Mal Kharoda,
Distt. Bilaspur (M.P.)

VERSUS

RESPONDENT:

State of Madhya Pradesh

11381

Filed on 21.7.98

by Shri. Sameer Singh

Advocate

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL
PROCEDURE, 1973.

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HIGH COURT OF CHHATTISGARH : BILASPUR

Single Bench: Hon'ble Shri Manindra Mohan Shrivastava, J.

Criminal Appeal No.1620 of 1998

APPELLANT

Mehattar Lal

Versus

RESPONDENT

State of Madhya Pradesh (now
Chhattisgarh)

Present: - Shri P.P. Sahu, counsel for the appellant.

Smt. Shobha Kashyap, Dy. Govt. Advocate for the State.

J U D G M E N T (oral)

(Delivered on 17th March, 2015)

1. This appeal is directed against the judgment of conviction and order of sentence dated 14th July, 1998 passed by learned 2nd Additional Sessions Judge, Raipur in S.T. No.262/95, whereby and whereunder, the appellant has been held guilty of commission of offence under Section 304 Part-I read with Section 34 of the IPC and sentenced to undergo R.I. for 10 years and fine of Rs.1000/-, in default of payment of fine, additional R.I. for 6 months.

2. According to the prosecution story, Fagni Bai, the deceased, step-mother of other accused Salik and Basnat was suspected as playing witchcraft on Padmni Bai, sister of Basnat and Salik. According to prosecution version, Padmini was taken to one *baiga* (Priest) in village- Rawa for treatment. It is said that Fagni was also taken to Rawa in a temple where Priest was there and treating Padmni and there, suspecting that it was Fagni who was playing witchcraft, she was bitterly beaten by *baiga* and other accused

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namely- Basant, Salik and Mohan Lal. Fagni returned to her house after one day. She was not provided any food for 3 days and she became weak and also sustained injury. On that date, it is alleged, Basant co-accused shunted her out of the house and in the midnight, Ram Narayan (P.W.9) and Chandrika (P.W.10) son and the daughter of Fagni saw her hanging in the courtyard of the house. Dead body is said to have been removed and taken to funeral ground and cremated in haste by Basant and Salik. Upon receipt of information in the police station regarding the incident of death of Fagni and cremation of dead body recorded in police diary (rojnamcha sanha) under No.50 on 2.3.1995 at 11:45 hrs., the police proceeded to place where the dead body was cremated, dehati merg intimation was recorded, followed by recording of merg intimation in the police station and inquiry thereon. A prima facie case of murder being made out, FIR in Ex. P-15 was recorded in Police Station -Rajim on 5.3.1995 at 10:30 hrs. against Basant and Salik Ram for alleged commission of offence under Sections 302, 201, 506 B and 120 B of the IPC.

3. The appellant was also involved in the alleged commission of offences along with the other accused, as according to the prosecution, the baiga (Priest) who had given a fist blow on the face of Phagani Bai (the deceased) was the appellant-Mehattar Lal. Upon completion of usual investigation, charge sheet was filed and charges were framed against the appellant and other accused persons. The appellant was also charged of having committed offence under Sections 302, 120-B of the IPC. Appellant, having abjured guilt, was put to trial. Relying upon the evidence led by the prosecution, learned trial Court held the appellant and other three accused guilty of commission of offence under Section 304 Part-I read with Section 34 of IPC and sentenced to undergo rigorous

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imprisonment for 10 years. Aggrieved by the aforesaid judgment of conviction and order of sentence, the appellant has filed this appeal.

4. Submission of learned counsel for the appellant -Mehattar is that in so far as this appellant is concerned, the prosecution has failed to prove beyond reasonable doubt that it was the appellant who had given fist blow on the face of Fagni Bai. He submits that Ram Narayan (P.W.9) clearly stated in para 11 of his evidence that *baiga* (Priest) who had given blow on the face of Fagni Bai was an elderly person and he has categorically denied the presence, much less any overt act of the appellant. It is next contended by learned counsel for the appellant that from the surrounding circumstances established from the evidence of Ram Narayan (PW 9) and Chandrika Bai (PW 10) both, the limited role alleged to have been played by the appellant was towards giving some kind of treatment to remove the effect of witchcraft and only allegation against the appellant is that he gave a fist blow on the face of Fagni Bai, resulting in bleeding from her nostril . But, thereafter, Fagni Bai had returned her home, she stayed there and the evidence of Ram Narayan (PW 9) and Chandrika Bai (PW 10) proves that she was pushed out of the house by Basant Sahu and in the mid-night, her dead body was found in the courtyard. This second stage of episode does not involve the appellant anywhere. Therefore, in the absence of any clinching evidence led by the prosecution with regard to cause of death of the deceased, at the most, appellant could be held guilty of commission of offence under Section 323 IPC and no more.

5. On the other hand learned State counsel supports the judgment of conviction and order of sentence. He submits that the evidence of Ram Narayan (PW 9) and Chandrika Bai (PW 10) proves that Fagni Bai was taken to Rawa village where Padmini Bai was receiving treatment by Priest- Mehattarlal, the appellant. There,

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Fagni was bitterly beaten and assaulted by appellant Mehattarlal and other accused due to which she sustained grievous injury. She was not provided food for 3 days. When she returned home, she was critically ill. Thereafter, her dead body was found hanging in the courtyard of the house. Therefore, the appellant is also liable for commission of offences along with other accused and has been rightly convicted.

6. I have considered the rival submissions made by learned counsel for the parties and perused the records.

7. The involvement of the appellant in the incident is based on the prosecution story of appellant playing the role of Priest and giving a blow on the face of Fagni Bai. The entire evidence with regard to Fagni Bai being taken to Rawa village and subjected to beating, returning back to her village and then found dead and hanging in the courtyard of her house is contained in the testimony of Ram Narayan (PW 9) and Chandrika Bai (PW 10), who are the son and the daughter of deceased Fagni Bai.

8. Veer Singh (PW 7) has stated in his evidence that the appellant is a Priest in 'Shiv temple' of village -Rawa. He further states that Mahtterlal distributes ashes with a claim to treat ailing people.

9. Ram Narayan (PW 9) has stated in his evidence that his mother Fagni Bai was taken to Rawa village where Padmini, sister of Basant Sahu was receiving treatment from a *baiga* (Priest). In para 5 of his evidence, he has stated that the Priest, who was an elderly person, gave a fist blow on the nose of his mother and she started bleeding, He has also stated that for two days, his mother was not

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provided food and water. According to this witness, at the place where Padmini Bai was being treated, Fagni Bai was badly assaulted by other accused. His further evidence is that his mother had returned from Rawa village to Torla village and after her return, he had given her some medicines and thereafter co-accused Basant came in and insisted to throw Fagni Bai out of the house. This witness has further stated that in the mid-night, door was opened and he saw that his mother Fagni Bai was hanging in the courtyard and later on, her dead body was pulled down by Basant and then she was taken to funeral ground and cremated. In para 11 of his cross-examination, Ram Narayan (P.W.9) has clearly stated that a *baiga*, who had assaulted his mother, was an aged person and not the one who is present in the Court. He further deposes that he had informed his sister that one who assaulted the mother is not present in the Court. Thus, according to Ram Narayan (PW 9) appellant was not the concerned priest who had assaulted Fagni Bai.

10. Chandrika Bai (PW 10), however, has stated that at the spot where Padmini Bai was being treated and where her mother Fagni Bai was taken, she was assaulted by Priest and according to this witness, the appellant was the concerned Priest who has assaulted her mother. In para- 22 of her cross-examination, she has admitted that in village Rawa, there are two-three Priests and the appellant-Mehttarlal is known as *Chhota Baiga* and other is known as *Budha Baiga*. She has admitted in her further cross-examination that when she was sitting in the hotel, the incident was told to her by Ram Narayan (PW9) and a suggestion has been given to her that she herself had not seen the incident, but has been deposing as stated by Ram Narayan (PW 9).

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11. The evidence of both these two witnesses, Ram Narayan (PW 9) and Chandrika Bai (PW10) is that after given beating in village Rawa, Fagni Bai had returned to her village -Torla. Ram Narayan (PW 9) states that she had come back to village Torla but she was in critical condition and not able to speak properly. She was also not able to walk properly. When he asked his mother as to how she has sustained injury, she stated that she was assaulted by Basant Sahu. She also stated that she was not provided food, therefore, she had become weak and then he gave her medicine. This witness has further deposed that for the whole night, his mother (Fagni Bai) was kept out of the house which was locked from outside and then, it is stated, that in the morning he saw the dead body of the mother hanging in the courtyard, which was pulled down by him. Basant Sahu, asked him to call relatives, but before he could return, Basant and Salik had taken the dead body to funeral ground and there dead body was cremated. Similar is the evidence of Chandrika Bai (P.W.10), who has also deposed that after the incident, her mother had come back to village. She had sustained injury. She has described the injured condition of her mother in Para 8 of her evidence and has further deposed that when she returned after making arrangement of money from Champaran, her mother informed that she was not given food and water for three days. Thereafter, she had given her a cup of tea and then Basant Sahu arrived and shunted her mother out of the house. In the night when she came out, she saw that Basant Sahu had hanged her mother in the courtyard and locked the house from the outside. From the evidence of these two witnesses, it is revealed that the allegation against the appellant is that when Fagni Bai was taken to village Rawa, in the course of treatment of removing the effect of witchcraft, the Priest gave a fist blow on the face of Fagi Bai, due to which blood started oozing out from her nostril. However, thereafter,

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Fagni Bai returned her house, stayed there and it was only in the mid-night that her dead body was found hanging in the courtyard of her house. Thus, the overt act alleged to have been played by the appellant is only to the extent of giving the deceased a fist blow that too, three-four days before her death. Fagni Bai had returned from village Rawa and she was found dead in suspicious circumstances in her own house after three days of the fist blow alleged to have been given by the appellant.

12. Taking into consideration, the aforesaid evidence on record, even if the evidence of Chandrika Bai (P.W.10) is to be believed that the appellant was involved, the only overt act alleged to have been played by the appellant is giving a fist blow to Fagni Bai and nothing more. There is no evidence on record, led by the prosecution to connect the cause of death with the assault given by the appellant. Therefore, the conviction of the appellant under Section 304 Part-I can not be sustained in law and is set aside. The appellant, instead, is convicted under Section 323 of the IPC. The records speak that the appellant had remained in jail for about two months. Considering the totality of the facts and circumstances and the role of the appellant, the appellant is awarded sentence for the period already undergone. The appellant is on bail. Bail bonds stand discharged.

13. The appeal is accordingly partly allowed.

Praveen

Sd/-
Manindra Mohan Shrivastava
Judge