

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 314 of 2010**

1. Ramesh Baghel

---- Appellant

Versus

1. State of Chhattigarh

---- Respondent

For Appellant	:	Mr. R.N.Jha, Advocate
For Respondent/State	:	Mr. Roshan Dubey, P.L.

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgment by T.P.Sharma, J.**31/03/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 15.04.2010 passed by the Sessions Judge, South Bastar Dantewada in Sessions Trial No. 134 of 2008 whereby and whereunder after holding the appellant guilty for causing homicidal death of his wife – Jalandei Bai, the Court below convicted the appellant under Section 302 of the I.P.C. and sentenced him to life imprisonment with fine of Rs.500/- and in default to undergo additional RI for six months.

2. Conviction is impugned on the ground that without there being any iota of evidence against the appellant, the Court below convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, on fateful day of 12.05.2008 at about 03.30 pm, the appellant assaulted his wife – Jalandei Bai at Bullock Market (*Bile market*). Thereafter, he took his injured wife towards shrubs. On the same day at about 05.10

pm, C.M.O. Nagar Panchayat, Geedam noticed the dead body lying behind Bullock Market. Merg was recorded vide Ex.P.3.

4. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P.6, inquest over the dead body was prepared vide Ex.P.8. Spot map was prepared vide Ex.P.7. Photographs of the dead body were taken vide Ex.P. 4 & P.5. F.I.R. was registered vide Ex.P.10. Patwari prepared spot map vide Ex.P.13. Appellant was taken into custody on 16.05.2008. Dead body was sent for autopsy to Community Health Center, Geedam vide Ex.P.9A. P.W.5 Dr. V.S.Thakur conducted autopsy vide Ex.P. 12 and found following injuries:

- i. Lacerated wound with clotted blood over left temporal region of 1" x 1/2".
- ii. Lacerated wound with clotted blood over occipital region 1/2" x 1/2".
- iii. Bruise linear abrasion with black colour over left scapular region of 1" x 1/2".
- iv. Lacerated wound towards right side neck with blood clotted.
- v. Multiple injuries over right lateral of neck of 1/2 cm x 1/2 cm.
- vi. On dissection, it was found that trachea bone was fractured.

Mode of death was Asphyxia as a result of throttling and death was homicidal in nature.

5. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

6. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Dantewada, who in turn committed the case to the Court of Sessions South Bastar, Dantewada.

7. In order to prove the guilt of the appellant, prosecution examined as many as 6

witnesses. Accused person was examined under Section 313 of the Code wherein he denied the circumstances appearing against him and innocence and false implication in crime in question was claimed.

8. After providing an opportunity of hearing to the parties, learned Sessions Judge convicted and sentenced the appellant as aforementioned.

9. We have heard learned counsel for the parties and perused judgment impugned including record of trial Court.

10. Mr. R.N.Jha, learned counsel for the appellant, vehemently argued that conviction of the appellant is based on the evidence of P.W.3 Panchuram Sahu, whose evidence does not inspire confide and trustworthy. As per evidence of P.W.6 Bholanath Shaha, Patwari, who prepared spot map Ex.P.13, at the time of incident, there was no scrap shop of P.W.3 Panchuram Sahu near the place of incident and it was opened after the incident, therefore, there is no propriety of the presence of witness Panchuram Sahu at the time of incident on the spot. This evidence by itself is sufficient to disbelieve the evidence of P.W.3 Panchuram Sahu. He further submits that even otherwise the appellant assaulted his wife but not with intent to kill his wife. Therefore, his act squarely falls within the purview of Section 304 Part-II of the I.P.C.

11. On the other hand, Mr. Roshan Dubey, learned counsel for the State, opposed the appeal while submitting that evidence of P.W.3 Panchuram Sahu, P.W.5 Dr. V.S.Thakur, autopsy report Ex.P. 12 and P.W.6 Bholanath Shah is sufficient to prove the guilt of the appellant. On the basis of the evidence adduced on behalf of the prosecution, the trial Court has rightly convicted and sentenced the appellant as aforementioned.

12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the present case, homicidal death as a result of fatal injuries found over the body of deceased

Jalandei Bai has not been substantially disputed on behalf of the appellant, but, on the other hand also established by the evidence of P.W.1 Phulobai, P.W.2 Shyambihari Gupta, P.W.3 Panchuram Sahu, F.I.R. Ex.P.10 P.W.5 Dr. V.S.Thakur and autopsy report Ex.P.12 and death of deceased was homicidal in nature.

13. As regards complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of P.W.3 Panchuram Sahu. As per his evidence, on the date of incident at about 03.30 pm, he was present near his scrap shop situated at Bullock Bazaar, Geedam. He saw the appellant causing injury to one woman, due to which, she became unconscious, then he provided water to her but she did not regain consciousness. Appellant took out the injured woman and took her towards *Besharm* shrubs. Between 6.00 – 7.00 pm he heard that dead body of one woman is lying inside the *Besharm* shrubs, whereupon, he also went to the spot where he saw one dead body of naked woman lying inside the *Besharm* shrubs. The body of woman was the body of woman, who was assaulted by the appellant at the time of incident occurred near his scrap shop. Defence has cross-examined this witness at length. In his cross-examination, he has specifically deposed that he knew the appellant as he has seen the incident from close distance and one other person was also present along with appellant. The appellant and that person took the deceased towards drainage and the appellant assaulted on her legs, stomach and back badly. Thereafter, this witness heard that a dead body of one woman was lying near the *Besharm* shrubs.

14. Although P.W.6 Patwari Bholanath has deposed in para 6 that at the time of incident Panchuram's shop was not in existence and he opened his shop, but, defence has suggested P.W.4 M.R. Sadul, Assistant Sub-Inspector, who investigated the offence, in para 8 that he has visited near the shop of P.W.3 Panchuram Sahu and asked his workers working in the shop of P.W.3 Panchuram Sahu. This suggestion by itself is sufficient to prove that at the time of incident scrap shop of Panchuram Sahu was functional. Statement of P.W.3 Panchuram has been recorded by the

Investigating Officer on 16.05.2008, i.e., after 3 – 4 days of the incident but nothing was asked to show that he was not present on the spot or did not witness the incident. Presence of Panchuram Sahu (P.W.3) near the incident, that too, on the very date was natural. Recording the statements of persons residing near the place of incident was also not unnatural. Evidence of P.W.3 Panchuram Sahu inspires confidence and trustworthy, which clearly revealed that appellant assaulted his wife badly and within two hours of the incident her dead body was lying near the *Besharm* shrubs. The appellant has taken the injured towards shrubs. The appellant has failed to offer any explanation that who has killed his wife. Even he has not lodged any F.I.R. regarding his wife's death.

15. After appreciating the evidence available on record, the Court below, based on the evidence of P.W.3 Panchuram Sahu, has convicted and sentenced the appellant aforementioned. On close scrutiny of the evidence, we also do not find any illegality and infirmity in the judgment impugned.

16. Consequently, the appeal, being devoid of merit and substance, is liable to be and is hereby dismissed.

(T.P.Sharma)

JUDGE

(I.S.Uboweja)

JUDGE