

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1190 of 2000**

Ramlal Son of Dayaram Aged about 53 years, Resident of village Joor, P.S.H. Surajpur, Chauki Basdei, District Surguja.

---- Appellant

Versus

State of Madhya Pradesh (Now Chhattisgarh) Through P.S.H. Officer, P.S.H. Surajpur (Chauki Basdei), District Surguja (Madhya Pradesh).

---- Respondent

For Appellant	:	Smt. Meena Shastri, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, PL

Hon'ble The Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Judgment on Board****Per Navin Sinha, Chief Justice****08/05/2015**

1. The Appellant stands convicted under Section 302 IPC to life imprisonment with fine of Rs. 1000/-, and in the event of failure to pay fine he was required to undergo five months further imprisonment, as ordered on 19.4.2000 by the Additional Sessions Judge, Surajpur, in Sessions Trial No. 360 of 1998.

2. The deceased Injoriya Bai alias Newarhin was the first wife of the Appellant. He had solemnized a second marriage during the subsistence of the first. A child was also born to the Appellant from the deceased. It is the case of the prosecution that relations between the Appellant and the deceased were estranged since approximately two decades. The deceased had obtained lands from the Appellant for her

survival and was in cultivating possession of the same. She lived at her parental home but would come to her matrimonial home for supervising cultivation on the lands. The deceased had come to the matrimonial home two days before the occurrence on one such visit.

3. Merg, Exhibit P-1 was recorded on 13.7.1998 at 23:05 hours by PW-2, Shivram son of PW-3, Bhagmen Bai that the deceased was assaulted earlier in the day at about 12:00 pm by the Appellant with legs and fists causing injuries on her head and body. After she died, the Appellant had run away. PW-3, Bhagmen Bai and PW-4, Tara Bai wife of PW-2 had witnessed the assault. Formal FIR was registered on 14.7.1998 at about 2:15 pm on basis of the same stating that the front door to the room was locked from inside and that the witness and others entered the room from the rear door and found the deceased lying dead on the ground.

4. The inquest report was marked Exhibit P-7. The post-mortem Exhibit P-12, was conducted by PW-8, Dr. Indrajeet Gupta. A lacerated wound 3"x½" skin deep was found on the upper right part of the head near the parietal bone area. There were bruise on the right cheek, chest, shoulder, scapula, stomach, knee and neck. Internal examination revealed fracture of the 2nd to 8th rib on the left side. The sternum bone was broken along with the 2nd and 5th rib on the right side. The right lung had been pierced by 1"x½" and the left lung 1"x1". The liver was also pierced 4"x3". The doctor opined that the injuries were caused by hard and blunt substance sufficient in the ordinary course of nature to cause death. Death was opined due to shock caused by the aforesaid injuries and excessive bleeding.

5. Learned Counsel for the Appellant submitted that the alleged eye-witnesses PW-3, Bhagmen Bai and PW-4, Tara Bai have turned

hostile and denied that they were home or had witnessed the assault. There is thus no eye-witness to the assault. The entire case of the prosecution rests on circumstantial evidence alone. Even if the deceased was killed inside her own house, the initial onus lies on the prosecution to establish a prima facie guilt of the Appellant as being the assailant. Only thereafter can the onus shift to him under Section 106 of the Evidence Act. The prosecution has failed to discharge the initial onus. The only material relied upon by the Trial Court to convict the Appellant is his alleged conduct in having run away to another village after the occurrence. PW-2, Shivram, PW-3, Bhagmen Bai and PW-4, Tara Bai have all deposed that the Appellant had gone to the house of his in-laws in village Dumariya two days earlier and was not present at home on the date of occurrence. PW-2, Shivram who is alleged to have lodged the 'Merg' and the FIR has deposed that his signatures were obtained on a plain paper which suggests that the story as built up by the prosecution was a figment of imagination by the police who may not have been unable to find the real assailant of the deceased. The mere seizure of the *lathi* pursuant to an alleged confession of the Appellant or the seizure of his *ganji* with alleged blood stains is inconsequential in absence of any forensic report confirming presence of blood on the same. There is no evidence led by the prosecution that the injuries on the head and body of the deceased could be caused only by *lathi* and not by fists and legs. There is also no FSL report available with regard to the soil allegedly seized from the place of occurrence by PW-9, Maheshwar Singh Paikra, the Investigating Officer, that it contained blood.

6. It was lastly submitted that if the relations between the deceased and the Appellant as husband and wife was estranged for approximately two decades, the Appellant had more than sufficient

opportunity and time to kill the deceased if he intended to do so. Even if the prosecution version be accepted, the Appellant did not have any intention to kill the deceased but may at best have only vented his ire on the deceased because of the estranged relations.

7. In a case of circumstantial evidence, it is for the prosecution to establish the chain of circumstances and that all links in the chain being complete leading to the only possibility of the guilt of the accused. The prosecution witnesses have stated that the Appellant had gone to the house of his in-laws two days earlier. No evidence has been led to the contrary that he had not gone and therefore it cannot be said that the Appellant was home on the date of assault. Hence there was no need for him to run anywhere. The entire reasoning of the Trial Court is based on assumptions of suspicion with no proof. Reliance has been place on (2014) 10 SCC 264 (Sangili alias Sangathan v. State of Tamil Nadu).

8. Learned Counsel for the State submitted that the deceased was the first wife of the Appellant with whom he had an estranged relationship. She had obtained lands from the Appellant and while staying at her parental home, would come for cultivation and stay at the matrimonial home. She had come to the matrimonial home two days earlier to the assault. If the wife of the Appellant has died inside the house, and the prosecution has prima facie proved that she was assaulted and died as a result of the same, the front door of the house was locked from inside and the prosecution witness entered from the back door, the onus shifts to the Appellant under Section 106 of the Evidence Act to establish and prove the circumstances in which his wife died an unnatural death inside the house. The Appellant has failed to discharge this onus. The Appellant raised no plea of alibi in his defence under Section 313 CrPC and did not take any defence for

the manner in which the deceased may have died inside the house or that she may have been assaulted by any other intruding into the house, a possibility that must be ruled out because the front door was locked from inside. The Appellant has not lodged any police report of any intruder in his house. An intruder in all probability after the assault would have run away from the front door itself. A *lathi* has been seized from the house. The medical opinion is that the injuries were caused by hard and blunt substance. The *ganji* of the Appellant was also suspected to contain blood. The evidence of PW-2, Shivram that his signatures have been obtained on a blank papers on which the 'Merg' and FIR may have been drawn up stands falsified by the evidence of PW-9, Maheshwar Singh Paikra, the Investigating Officer, who both in his chief and cross-examination asserted that he had recorded statement of witnesses exactly as narrated by them. It was lastly submitted that the first rendition of events immediately after the occurrence by PW-2, Shivram in the 'Merg' and FIR is same as his statement under Section 161 Cr.P.C recorded the next day after the assault. Likewise, the previous statement of PW-3, Bhagmen Bai and PW-4, Tara Bai was also recorded the very next day of the occurrence. The witnesses at this time were speaking the truth narrating the events exactly as it took place. Their deposition in the Court was one year later giving sufficient time for them to think and retrospect in an effort to save the Appellant who was their own relative. The evidence of a hostile witness is not to be discarded completely and can also be relied upon to sustain conviction if it otherwise is corroborated from other surrounding evidence.

9. We have considered the submissions on behalf of the parties and also the evidence on record.

10. That the deceased was the first wife of the Appellant is not in dispute as also the fact that the relationship between them was estranged for approximately two decades. The deceased therefore resided at her parental home and would occasionally come to the matrimonial home for the purpose of cultivating the lands which she had obtained from the Appellant for her own existence.

11. PW-3, Bhagmen Bai and PW-4, Tara Bai have stated consistently in their statement under Section 161 Cr.P.C that the deceased had come to her matrimonial home two days earlier to the assault for cultivating her own lands. They were eye-witness to the occurrence whose statements were recorded the very next day of the assault. Both the witnesses have stated very clearly that at about 12'o'Clock in the afternoon, a fight started between the Appellant and the deceased. The Appellant assaulted the deceased with legs and fists. PW-3, Bhagmen Bai sought to intervene and separate them. She went and called the Kotwar. Likewise, PW-4, Tara Bai also stated under Section 161 Cr.P.C that the Appellant and the deceased started to fight at 12'o' Clock in the noon and the Appellant assaulted her with legs and fists after which the witness left for the fields and when she came back, the deceased was lying dead. Both the witnesses in their Court deposition denied that they had given any statement to the police under Section 161 Cr.P.C. PW-9, the Investigating Officer in his evidence-in-chief specifically stated that he had recorded the statement of both the witnesses on 14.7.1998 exactly as narrated by them. In cross-examination he denied any suggestion that the statements were not recorded correctly. It is therefore obvious that PW-3, Bhagmen Bai and PW-4, Tara Bai were stating falsehood when they contended in Court that their police statements were never recorded.

12. The reason why they were trying to turn hostile is not difficult to understand. PW-3, Bhagmen Bai was the wife of the brother of the Appellant, while PW-4, Tara Bai was the daughter-in-law of PW-3, Bhagmen Bai and wife of PW-2, Shivram. They were all residing together in one house, though in separate rooms and were related to each other. In their Court deposition they made a complete somersault and sought to churn out a new story that they were not at home and that the deceased was a women of loose character who would entertain men at home and consume liquor with them. We find it difficult to accept this story spun by PW-3, Bhagmen Bai and PW-4, Tara Bai for the first time in Court. If the deceased was the wife of the Appellant, it stands to reason that the Appellant would not have allowed her to come back to the matrimonial home and persist in continuous behaviour of entertaining men outside the marriage and consuming liquor inside her own matrimonial home over a period of time. Such a serious objection with regard to conduct of the deceased has very surprisingly not been raised by the Appellant who was the husband, in his defence under Section 313 Cr.P.C either. It is apparent that PW-2, Shivram and PW-3, Bhagmen Bai have therefore deliberately tried to go hostile and were seeking to embellish their evidence with falsehood in an effort to save the Appellant who was their relative. The two witnesses did not deny that the deceased was killed in side the house and the dead body was also lying inside the house. They have offered no explanation with regard to how the deceased died inside their house. They have admitted that the Appellant had estranged relationship with his wife and had given lands to her for cultivation. The contradictions in the evidence of the two witnesses are glaring. The deposition in Court was an afterthought

realizing that speaking the truth would lead to conviction of the Appellant.

13. PW-2, Shivram, the son of PW-3, Bhagmen Bai who lodged 'Merg' and the FIR, likewise was consistent in his police statement under Section 161 Cr.P.C recorded the next day of the occurrence that PW-3, Bhagmen Bai and PW-4, Tara Bai were eye-witness to the assault who told him of the manner in which the assault was made after he came back home from the fields. He too, in his Court deposition 1 ½ later sought to urge that he had signed blank papers which was drawn up as an FIR. No cross-examination was done by him of PW-9, Maheshwar Singh Paikra, the Investigating Officer, on this aspect when the latter proved recording of the 'Merg' and the FIR and the police statement of the witness on 14.7.1998. Likewise, in cross-examination a suggestion was sought to be made on behalf of the witness that his statement had not been recorded correctly which was specifically denied by the Investigating Officer stating that the narration had been recorded correctly. No question was put to the Investigating Officer that he had obtained signatures on any blank papers. The witness again was therefore trying to spin out a story to save the Appellant while deposing in the Court. There are very major contradictions in the Court deposition as compared to his earlier statement in the 'Merg', FIR and statement under Section 161 Cr.P.C. The statement made in the latter was soon after the occurrence, fresh in his mind while that made in the Court was 1½ years later after thinking realising that if he stood by his earlier statement, the Appellant would stand convicted. The witness sought to deny that any child was born to the Appellant from the marriage with the deceased. This was in teeth of the statement by the Appellant under Section 313 CrPC that he had a child from his wedlock with the deceased. The witness

likewise admitted that relationship was estranged between the two of them and sought to spin the same story of the deceased allegedly consuming liquor and entertaining men in her matrimonial home already rejected by us.

14. We but cannot lose sight of the fact that PW-2, Shivram, PW-3, Bhagmen Bai and PW-4, Tara Bai being related witness, realizing that their evidence could lead to conviction of the Appellant acted in a concerted and planned manner to deliberately go hostile unsuccessfully unable to wriggle out their earlier statement to the police during investigation. In (2012) 8 SCC 450 (State v. Sanjeev Nanda) the malady of prosecution witnesses going hostile for various reasons was noticed and the duty of the Court considered as follows :-

“99. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law, thereby eroding people’s faith in the system.

100. This Court in *State of U.P. v. Ramesh Prasad Misra* held that it is equally settled law that the evidence of a hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In *K. Anbazhagan v. Supt. of Police*, this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, it may after reading and considering the evidence of the witness as a whole, with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it.....”

15. The deceased was the wife of Appellant, who died inside her own matrimonial house. The front door was locked and the prosecution witness entered from the rear door. If the deceased died in

her own matrimonial home, and the prosecution has been able to establish that she did not die a natural death, but it was homicidal, the Appellant owed a duty to at least take some defence for the reason and manner in which the deceased may possibly have been assaulted by another intruding into the house in his absence or that the death was either natural or accidental. The original statement of witnesses is that he ran away after the assault. One and half years later, in the Court, the witnesses who are related and interested to secure acquittal of the Appellant put forth a plea of alibi when the Appellant himself did not raise any such defence under Section 313 Cr.P.C. The witnesses did not even hesitate to state falsehood that their statement was never recorded by the police during investigation.

16. Not much turns in favour of the prosecution on the basis of the seizure of *lathi* and *ganji* in absence of any medical report that the injuries caused to the deceased could have been caused only by a *lathi* and the absence of any FSL report with regard to blood on the *lathi* or *ganji* or the blood stained earth seized from the place of occurrence.

17. In the facts of the case, the onus lay on the Appellant under Section 106 of the Evidence Act as a fact specifically within his knowledge how the deceased died an unnatural death inside his house. The Appellant has failed to discharge this burden. In (2007) 10 SCC 445(Dnyaneshwar v. State of Maharashtra) it was observed :-

“10. It has not been disputed before us that the deceased was murdered in her matrimonial home. It is not the case of the appellant that the offence was committed by somebody else. It is also not his case that there was a possibility of an outsider to commit the said offence. One of the circumstances which is relevant is that when the couple was last seen in a premises to which an outsider may not have any access, it is for the husband to explain the ground for unnatural death of his wife....”

18. Sangili (*supra*) sought to be relied by the Appellant is completely distinguishable on its own facts with regard to the principles of circumstantial evidence which are not in dispute commencing from the law laid down in (1984) 4 SCC 116 (*Sharad Birdhichand Sarda v. State of Maharashtra*). It was not a case where the deceased was related to the Appellant and died in suspicious circumstances inside the matrimonial home. The judgment sought to be relied upon was a case of blind murder leading to certain recoveries on the confessional statement of the accused and therefore is completely distinguishable.

19. But from the evidence brought on record we are also satisfied to hold that the Appellant never had the intention to kill his wife. Had that been so, he had more than sufficient time and opportunity to do so over approximately two decades. The relationship between the two being estranged, it appears that when the deceased came back to the matrimonial home two days earlier, an argument developed between the two leading to the Appellant assaulting her with legs and fists on the spur of the moment. No weapons have been used for assault and the prosecution has not been able to establish that even a *lathi* was used for assault. We are of the opinion that in absence of any intention to kill and the failure of the prosecution to establish that the assault was by any weapon, the conviction under Section 302 IPC is difficult to sustain. There is no material for us to even hold that he had the knowledge that death was likely to be caused by the assault with legs and fists. The Appellant obviously was only venting his ire and wanted to teach a lesson to the first wife. The medical report that the injuries were caused by hard and blunt substance can include kicks by legs and fists. The injury on the head was only skin deep which could possibly have been caused when the deceased fell down due to the assault by the Appellant. The ribs of the deceased could well have

been broken due to the assault by legs and fists and perforated the liver and lungs. The injury to the lungs and liver were not a direct result of assault but a consequence of the breaking of the ribs. In (2005) 9 SCC 714 9 (Khuman Singh v. State of Madhya Pradesh) it was observed as follows :-

“10..... It is, no doubt, true that they assaulted the deceased in such a manner that the deceased suffered several fractures, but the injury which caused the death of the deceased was the one suffered by him on account of the rib bone puncturing the liver. We are convinced that this injury was not intended by the appellants, and the injury suffered by the deceased on his liver was at best accidental....”

20. Section 320 of the IPC reads as follows:

"320. Grievous hurt. - The following kinds of hurt only are designated as 'grievous'-

Eightly- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits"

21. Section 325 IPC reads as follows:

"325. Punishment for voluntarily causing grievous hurt. - Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

22. In AIR 1958 Patna 452 (V 45 C 145) (Rambaran Mahto v. The State) the deceased was dashed to the ground and the appellant sat upon his stomach dealt him severe blows with his fists with the result that some of his ribs were fractured, his spleen was ruptured, he was rendered senseless and died after some hours. Similar injuries were found on the forehead and side of chest. The 8th, 9th, 10th and 11th ribs were fractured. The Doctor had opined that the injuries were caused by some hard and blunt substance and one of the injuries was caused by hard and strong compression on the chest side. The death was

caused by shock and hemorrhage as a result of the injury. Charge had been framed under Section 302 IPC, but the sentence was passed under Section 325 IPC to undergo rigorous imprisonment for five years. In the facts of the case and considering relationship of the parties, the sentence was reduced from 5 years to 1 year in appeal.

23. In 1985 Cri.L.J 1903 SC (Mohinder Singh v. State (Delhi Administration)), it was alleged that the appellant assaulted with an iron rod on the face and nose. Medical evidence showed that no iron rod was used and the blows were by Lathi. According to the postmortem report, internal injury corresponding to the injury on the forehead was a fatal blow. Medical examination of the deceased had not indicated any external injury on the forehead, and the evidence given by the prosecution did not clearly indicate a blow on the forehead. Same is the case presently. The Trial Court had held the appellant guilty of murder under Section 302 IPC. The High Court altered the conviction to one under Section 304 Part II IPC. The conviction was altered to one under Section 325 IPC by the Supreme Court and noticing that the appellant had already suffered imprisonment of 3½ years, it was opined that the custody undergone was adequate punishment.

24. In 1993 CriLJ 208 (Bombay High Court) (Rajesh Anantram Thakur v. The State of Maharashtra), the conviction was under Section 304 Part II IPC. The appellant assaulted with kicks and fist blows on various parts of the body during the scuffle between the parties when the deceased fell down on the ground. Death was stated to have occurred within 16 hours of the assault. It was held that the assault with kick and fist blows could not be said to have been done intentionally or with knowledge that it was likely to result in causing death to attract Section 304 Part II IPC. Accepting that the death was homicidal, it was opined that it was the outcome of a sudden quarrel

on the spot. The appellant had not come armed with any weapon and there is no previous history of the incident. Ordinarily, the appellant could not know that giving hand and fist blows, would result into causing death of the deceased. It was observed at paragraph 11 as follows:

"11. Section 325 of the Indian Penal Code provides punishment for voluntarily causing grievous hurt. In the absence of any intention on the part of the appellant to cause death or knowledge that his act was likely to result in causing death, yet having regard to the nature of the injuries that were found to have been suffered by the deceased, the conclusion is inevitable that by giving fist and kick blows the appellant had voluntarily caused grievous hurt in as much as the hurt caused endangered the life of the deceased and therefore he would be guilty for committing offence punishable under S. 325 IPC. I am, therefore, inclined to alter the conviction from offence punishable under S. 304, Part II to offence punishable under S. 325, IPC. "

25. In the facts and circumstance of the case, the relationship between the Appellant and the deceased, the estranged relations for over two decades and that he never intended to kill the deceased and also cannot be attributed the knowledge that death was likely to be caused, we are satisfied to hold that the assault committed by the Appellant comes under the category of grievous hurt under Clause "Eighthly" of Section 320 IPC punishable under Section 325 IPC. In Mohinder Singh (supra) the conviction was altered from Section 304 Part II IPC to Section 325 IPC and sentence of 3½ years imprisonment was held sufficient.

26. We regret our inability to accept the submission on behalf of the Appellant that the incident is very old and today, he would be approximately 72 years of age and therefore, the sentence be reduced to the period already undergone.

27. The Appellant has undergone custody for approximately a little less than two years. His bail bonds are cancelled. He is directed to surrender forthwith and/or be taken into custody for completing full four years of custody including the period already undergone, under Section 325 IPC. The conviction and sentence is modified accordingly from that under Section 302 IPC.

28. The appeal is allowed in part.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE