

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 978 of 2011

1. Smt. Mate alias Moti Bai alias Sukhdeyee W/o Ishwar Mandawi, aged 32 years, Resident of village Bagmohlai Kote Kamapara, PS Bhanpuri, District Bastar, CG

---- Appellant

Versus

1. State of Chhattisgarh through Police Staion Bhanpuri, District Bastar, CG

---- Respondent

For Appellant: Shri Azad Siddiqui, Advocate
For Respondent/State: Shri Ashish Surana, PL

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice I.S. Uboweja

Judgment on Board by Pritinker Diwaker, J

03/03/2016

This appeal has been filed against the judgment of conviction and order of sentence dated 24.05.2011 passed by Additional Sessions Judge, Bastar (Jagdalpur), in Sessions Trial No. 127/2010 convicting and sentencing the accused/appellant as under:

Conviction	Sentence
U/s 302 IPC for committing the murder of Subati	Imprisonment for life and fine of Rs. 300/- plus default stipulation.
U/s 302 IPC for committing the murder of Gaytri	Imprisonment for life and fine of Rs. 300/- plus default stipulation
U/s 307 IPC for assaulting Sushila	Rigorous imprisonment for seven years with fine of Rs. 200/- plus default stipulation.

2. As per the case of prosecution, marriage of the

accused/appellant herein with Ishwar (PW-1) was solemnized about 10 years prior to the date of incident and from the beginning itself she is said to have been short-tempered by nature and on petty matters she used to damage the house-hold articles and beat her children. It is alleged that in the intervening night of 8/9.8.2010 injured Sushila – the minor daughter of the accused/appellant aged about 6 years was sleeping with her father namely Ishwar (PW-1) whereas the accused/appellant was sleeping in the veranda with her other daughters namely Subati aged about 3 years and Gaytri aged about 5 years as well as minor son Kartik (PW-10) aged about 10 years. Further case of the case is that in the night itself the accused/appellant took Sushila also with her and then at about 3 AM Kartik (PW-10) came to his father Ishwar (PW-1) running and told him that his mother (accused) was beating them. Immediately thereafter, Ishwar (PW-1) rushed to the other room and found the accused lying there in an injured condition whereas his daughters Subati and Gaytri were dead. Mergs Ex. P-1 and P-2 were recorded on 9.8.2010 at 9.00 and 9.15 AM respectively at the instance of Ishwar followed by registration of FIR at 9.30 AM under Sections 302 and 307 IPC. Vide Ex. P-18-A injured Sushila was medically examined by Dr. K.S. Penkara which has been proved in the Court by Dr. Ravindra Netam (PW-13). Accused/appellant was also medically examined by Dr. K.S. Penkara vide Ex. P-19-A which too has been proved by Dr. Ravindra Netam (PW-13). Postmortem examination on the bodies of deceased Gaytri and Subati was conducted by Dr. K.S. Penkara vide Ex. P-24 and Ex. P-25 respectively which have also been proved by Dr. Ravindra Netam (PW-13). After completion of investigation, charge sheet was filed against the accused/appellant under Sections 302 and 307 IPC and

then the charges were also framed under the same sections.

3. To hold the accused/appellant guilty the prosecution has examined 13 witnesses in support of its case. Statement of the accused/appellant has also been recorded under Section 313 of the Code of Criminal Procedure in which she has denied the allegations made against her and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellant as detailed in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits as under:

- (i) that a very improbable story has been put forth by the prosecution where it has been alleged that the accused/appellant has committed the murder of her two daughters Gaytri and Subati and caused injuries to the other daughter Sushila and then to herself as well;
- (ii) that the incident had taken place in the dark night and therefore the question of Kartik (PW-10) witnessing the same and identifying the accused to be the author of the crime in question does not arise;
- (iii) that though Sonaru (PW-8) was also present in the house but nothing was disclosed to him by Kartik (PW-10) which casts doubt in the story developed by the prosecution.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the Court below has been justified in recording the conviction on the basis of material available on record and there is no infirmity in the same. He

submits that right from the beginning the accused/appellant was a short-tempered woman and being in the grip of anger has committed the murder of her two daughters and caused injuries to other daughter Sushila, and then to herself also in order to commit suicide. He submits that Ishwar (PW-1) and Kartik (PW-10) have duly supported the case of the prosecution and their evidence being very fully reliable and trustworthy cannot be discarded. According to the State counsel, it is not the case of the defence that some third person has caused injuries to the accused and her daughter Sushila and committed murder of her two other daughters Gyatri and Subati as in her statement recorded under Section 313 of the Code of Criminal Procedure no such defence has been taken by her. He submits that Sonaru (PW-8) has also supported the case of the prosecution to whom the incident was disclosed by Ishwar (PW-1) and Kartik (PW-10) immediately after it occurred.

7. Heard counsel for the parties and perused the material on record.

8. Ishwar (PW-1) has stated that on the date of incident after taking meals he was sleeping in his room along with his daughter Sushila whereas the accused was sleeping in the veranda with his other children. After some time the accused/appellant came to him and took Sushila with her. When he went to the place where the accused was sleeping, she started abusing him and then he got back to his room and fell asleep after bolting the door from inside. At about 3.00 AM his son Kartik who was sleeping with his mother (accused) came to him crying, on which he got up, lit the earthen lamp and saw the bleeding injuries on the neck of his daughters Subati, Gaytri and Sushila and his wife (accused) was also lying there. On hearing his cries, his father who was guarding the paddy

nearby came there and by that time Gyatri and Subati were dead and Sushila being alive was taken to the hospital. This witness has further stated that it is the accused/appellant who had killed the children by causing injuries with knife which was purchased by her from the market. He has stated that even at the time when he saw the incident the accused was holding the knife. On being informed about the incident by his father, Sonaru, Pardeshi and also the other persons from the village had also come to the place of incident. This witness has further stated that his son Kartik (PW-10) informed him that he too was chased by the accused for being assaulted but somehow he managed to escape. As the accused was not talking to this witness, he has stated to be unaware of the reason as to why the accused opened the assault. This witness however admits that the incident took place in the dark night. In cross-examination also this witness remains firm and has reiterated the things stated by him in the examination-in-chief. Kartik (PW-10) – a child witness aged about 10 years has stated that on the date of incident at about 3 AM when he and his sisters were sleeping, the accused/appellant had inflicted knife injuries on the neck of his sisters Gyatri, Subati (both dead) and Sushila (injured) and had chased him also in order to kill but somehow he managed to escape, went to the room of his father and informed him about the incident. On being informed by him, his father and grandfather went inside the room but by that time Gyatri and Subati had died but Sushila was alive. According to this witness, at the relevant time his mother (accused) was also lying there holding knife in her hand which was pulled off by his father and kept somewhere else. According to him, as he gave evidence in the Court in a liquor related case, his mother got angry and opened assault on them.

Though this witness has admitted that the incident took place in the night hours but has denied that at that time it was complete dark rather some light was there. Son Sai (PW-11) – father-in-law of the accused/appellant has stated that on hearing the cries of his son Ishwar when he came to his house, Ishwar and Kartik told him that the accused had killed Subati and Gyatri and caused injuries to Sushila. Thereafter, he went inside the room and found Subati and Gyatri dead and Sushila was in a semi-conscious position. According to him, the accused/appellant was also lying on the ground holding knife in her hand which was pulled off by Ishwar and kept elsewhere. Thereafter, he went to the house of Pardeshi (PW-5) and Sonaru (PW-8) and informed them about the incident who then came to the spot. According to him, previously also there used to be dispute between the accused and his son Inshwar. Hidma (PW-2) is the witness to inquest Ex. P-6 and P-7 and that of seizure of knife made under Ex. P-8 and blood stained and plain soil made under Ex. P-9. Teksingh Thakur (PW-4) is the Patwari who prepared spot map Ex. P-10. Pardeshi (PW-5) has stated that in the early morning Son Sai (PW-11) came to him and informed that the accused had killed her children. Thereafter, when he went to the spot, he saw Gyatri and Subati dead and Sushila alive. On being asked, Ishwar (PW-1) and Kartik (PW-10) informed him that it is the accused/appellant who was the the author of the crime in question. He is also the witness to seizure of knife made under Ex. P-8. Sukhdev (PW-6) has not supported the case of the prosecution and has been declared hostile. However, in the cross examination he has stated that he reached the spot after the incident had taken place where he was informed by Kartik (PW-10) that on hearing the cries of his mother when he got up, she had caught hold of him in

order to kill but somehow he got rid of her, went to his father and grand father and informed them about the act of accused and when they went to the spot Gyatri and Subati were found to be dead and Sushila being injured was taken to the hospital. This witness has further stated that the accused/appellant used to make liquor. Kamlu (PW-7) is the witness to inquest Ex. P-6 and P-7. Sonaru (PW-8) is the witness to whom the incident was disclosed by Son Sai (PW-11). Dr. K. Vinay Kumar (PW-9) is the witness who medically examined Sushila and found three injuries on her neck caused by sharp edged weapon. S.N. Shukla (PW-12) is the investigating officer who has duly supported the case of the prosecution. Dr. Ravindra Netam (PW-13) is the witness who has proved the postmortem reports Ex. P-24 and Ex. P-25 given by Dr. K.S. Penkara who had conducted the postmortem examination on the bodies of the deceased Gyatri and Subati. He has also proved the report Ex. P-18-A given by Dr. K.S. Penkara who had medically examined injured Sushila. According to postmortem reports Ex. P-24 and Ex. P-25, there was an incised wound on the left side of the neck of deceased Gyatri and Subati in the size of 2"x1/2"x2" and the cause of death was shock with complication of injury on neck and the death was homicidal in nature. Likewise medical report Ex. P-18-A of Sushila shows that there were two incised wounds, first in the size of 1 & 1/2" x 1/2" x 3/4" on the left side of neck and the second one in the size of 1/2" long on the left side of neck which were caused by sharp cutting weapon.

9. In the statement recorded under Section 313 of the Code of Criminal Procedure the accused/appellant has not offered any explanation as to how she herself and her daughter Sushila suffered injuries in spite of question Nos. 82, 83, 101 and 102 being put to

her. She has also not explained as to how and by whom her daughters Gyatri and Subati were killed. She has also not made any allegation that it is her husband who was involved in the commission of the offence except stating that he had hatched the conspiracy for killing her two daughters and causing injury to other daughter Sushila though no evidence to this effect has been adduced by the defence.

10. Minute examination of the evidence available on record thus goes to show that the accused - a short-tempered woman turned furious on the date of incident and committed the murder of her two daughters Gyatri and Subati and caused injuries to other daughter Sushila with the help of knife purchased by her from the market. Kartik (PW-10) - son of the accused who at the relevant time was sleeping with her has categorically stated that it is she who has killed his sisters Subati and Gyatri and caused injuries to Sushila and then to herself also. According to this witness, the accused/appellant chased him also in order to kill but somehow he managed to escape and went to his father Ishwar (PW-1) and informed him about the act of the accused. Ishwar (PW-1) the husband of the accused/appellant has also stated that on the date of incident when he was sleeping in his room along with his daughter Sushila, accused came there and took Sushila with her and thereafter at about 3 AM his son Kartik (PW-10) came to him crying and told that his mother (accused) was beating him. Thereupon, he went to the place where accused was sleeping and found his two daughters Subati and Gyatri dead with injuries on their neck. He also found injuries on the neck of Sushila, and the accused was lying on the ground holding the knife in her hand. Son Sai (PW-11) has also stated that on being called by his son Ishwar

and grandson Kartik he went to the spot and found Subati and Gyatri dead and Sushila in an injured condition and that he was informed by Kartik that it was the accused/appellant who had killed Subati and Gyatri and caused injuries to Sushila. According to him also, the accused/appellant was lying on the ground holding axe in her hand. It is not the case of the prosecution that some other person killed Subati and Gyatri and caused injuries to Sushila and the accused because nothing like this has been stated by the accused/appellant in her statement recorded in the Court under Section 313 of the Code of Criminal Procedure. Furthermore, the knife was seized from the spot under Ex. P-8 which was stained with blood as is evident from the FSL report Ex. P-C-1.

11. This Court finds no substance in the argument of the counsel for the accused/appellant that at the time of incident it was completely dark and therefore the question of Kartik (PW-10) seeing the appellant opening assault does not arise. Kartik (PW-10) has categorically stated in his evidence that he was sleeping with the accused and it was not completely dark. This apart, Kartik is the son of accused, not the stranger, who had spent his ten year long span with her and therefore it could not have been a problem for him to identify the accused having taken note of her activities even in the absence of proper light.

12. Thus the aforesaid factual discussion if seen in the light of the evidence adduced by the prosecution establishes the complicity of the accused in eliminating her two daughters Gyatri and Subati and causing injuries to other daughter Sushila, beyond reasonable doubt. The Court below has been fully justified in holding the accused/appellant guilty under Sections 302 and 307 IPC and the findings so recorded are based on correct appreciation of the

evidence on record.

13. Accordingly, the appeal being without any substance is liable to be dismissed and it is dismissed as such. Findngs recorded by the Court below in its judgment which is under challenge in this appeal are hereby affirmed. Appellant is already in jail and therefore no further order regarding her surneder etc is required to be passed.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(I.S.Uboweja)

Judge