

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 217 of 2011

- Yogesh Kumar, aged about 17 years, S/o Kartikram Dhirtlahre,
- Sumrit Bai, aged about 57 years, W/o Kartikram Dhirtlahre,
- Damesh Kumar, aged about 16 years, S/o Kartikar Dhirtlahre,

All R/o Village Nawagaon, Thuha, PS Kurud, Distt. Dhamtari (CG).

---- Appellants

In Jail

Versus

- State Of Chhattisgarh through PS Kurud, Distt. Dhamtari (CG)

---- Respondent

For appellants : Shri VK Pandey, Advocate.
For Respondent/State : Shri Ashish Surana, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board by Justice Pritinker Diwaker

14/01/2016:

This appeal arises out of the judgment of conviction and order of sentence dated 23.2.2011 passed by the Additional Sessions Judge (FTC), Dhamtari in S.T.No.58/2010 convicting each of the accused/appellants under Sections 302/34 and 323/34 of IPC and sentencing them to undergo imprisonment for life, pay a fine of Rs.1000/- and RI for 3 years, pay a fine of Rs.1000/- respectively with default stipulations.

02. As per the prosecution case, on 7.5.2010 at about 4 pm a village

meeting was called by acquitted accused Kartikram regarding dispute over construction of boundary wall between his house and that of Rohit Kumar (PW-2). Since the said Rohit Kumar was not in the village as he had gone to Dhamtari, the meeting was attended by his son Abhinav Kumar (PW-1), who requested the villagers to postpone the meeting till return of his parents, on which Kartikram got annoyed. After the meeting, Abhinav returned to his house where boundary wall was being demolished by appellant Sumritbai, whereupon some altercation took place between the two family members and then Sumritbai gave a spade blow on Pushpabai, mother of Abhinav. It is further alleged that when Abhinav intervened, he too was beaten by accused/appellant No.1 Yogesh and other accused persons. After seeing *marpeet*, Pushpabai asked Abhinav to leave the said place. Thereafter, Abhinav reached the house of his uncle Lakhanram (PW-6) and in the meanwhile, the accused persons committed murder of Pushpabai by causing her several injuries. On 7.5.2010 itself at about 7 pm Dehati Nalishi (Ex.P/2) and Dehati Merg (Ex.P/1) were registered at the instance of Abhinav and thereafter merg intimation (Ex.P/20) was recorded. FIR (Ex.P/21) was also lodged on the same evening by Abhinav naming all the accused persons. Based on this FIR, offence under Sections 302, 307, 34 was registered against them. Injured Abhinav was medically examined vide Ex.P/22 on 7.5.2010. Inquest over the dead body was prepared vide Ex.P/13. Thereafter, the dead body was sent for postmortem which was conducted on 8.5.2010 by Dr.Prabhakar Rao (PW-15) vide Ex.P/14 wherein he noticed as many as 10 lacerated wound on her body and opined that the cause of death was hemorrhagic shock and that the death was homicidal in nature.

After investigation charge sheet was filed against the accused persons and accordingly, charges under Sections 302/34 and 324/34 of IPC were framed against them.

03. So as to hold the accused persons guilty, the prosecution examined as many as 22 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, they examined altogether 09 witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting accused Kartikram of all the charges, convicted and sentenced the appellants as mentioned in para-1 of this judgment.

05. Learned counsel for the appellants submits as under:

- (i) that eyewitnesses to the incident have exaggerated their version before the Court and thereby falsely implicated the accused/appellants.
- (ii) that even if the entire prosecution case is taken as it is, the appellants can, at best, be held guilty under Section 304 Part-I of II of IPC as the incident occurred all of a sudden, in the heat of passion, without premeditation on their part.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that there are as many as eight eyewitness to the incident including injured eyewitness Abhinav (PW-1) and all of them have duly supported the prosecution case. He submits

that considering the nature of injuries caused to the deceased and the manner in which she was done to death, conviction of the accused/appellants under Section 302/34 of IPC is in accordance with law.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Abhinav Kumar, son of the deceased and an injured eyewitness, has stated that deceased Pushpabai was his mother. On the date of incident a village meeting was called at the instance of Kartikram and the said meeting was in relation to wall constructed by him and his family members in between his house and that of Kartikram. He has stated that as his father Rohit was not there in the village, the meeting was postponed. He has stated that at the time of meeting, his mother was not at home, she had gone to the house of some other person in the village and upon coming to know about holding of said meeting, she returned to her house and asked Sumritbai as to why she is not allowing them to raise wall when the villagers as well as the police authorities have already permitted them. Thereafter, accused/appellant Sumribai brought spade from her house through accused/appellant Damesh and started demolishing the wall. When his mother Pushpabai was collecting mud, at that time Sumribai assaulted her with spade on her back. He rushed to the spot and tried to intervene, on which he too was assaulted by Sumritbai with spade. Thereafter, all the accused persons came there, appellant Yogesh caused him injury with axe on his left shoulder. He has further stated that his mother asked him to run away from there and then he went to

the house of his uncle Lakhanram. He has stated that all the accused persons assaulted his mother with pickaxe, axe and spade as a result of which she died on the spot. He has stated that the incident was witnessed by PW-6 Lakhanram, PW-12 Amarsingh and PW-8 Ranibai. He has also proved merger intimation Ex.P/1 and Dehati Nalishi Ex.P/2. In cross-examination this witness remained very firm and nothing could be elicited from him by the defence to make his evidence untrustworthy or doubtful, rather he has clarified as to the manner in which the incident had taken place.

09. PW-2 Rohit Kumar Lahre, husband of the deceased and father of Abhinav (PW-1), has stated that on the date of incident he was not in the village as he had gone to some other village where he came to know through telephone about the incident. At about 9 pm when he reached his house, he saw dead body of his wife and there he was informed by his son Abhinav as to the manner in which his mother Pushpabai was done to death by the accused persons and he was caused injuries.

10. PW-3 Savita Daharia is also an eyewitness to the incident. While supporting the prosecution case she has stated as to the manner in which the deceased was done to death by the appellants and Abhinav was assaulted. PW-4 Ku. Kuleshwari Dhritlahre, PW-5 Ku. Yashoda Dhritlahre, PW-6 Lakhanram Dhritlahre, PW-12 Amarsingh Lahre and PW-19 Kanhaiyyalal Lahre, eyewitnesses to the incident, have also supported the prosecution case. PW-7 Pawanbai Dhritlahre, mother-in-law of the deceased, another eyewitness to the incident while supporting the prosecution case has stated that on account of dispute

over raising of boundary wall the accused persons caused injuries to the deceased as a result of which she died.

11. PW-8 Ranibai Lahre, eyewitness to the incident, has not supported the prosecution case and has been declared hostile. PW-9 Sushila, PW-10 Satyabhama and PW-11 Trilochan Lahre are hearsay witnesses. PW-13 Kashiram Sahu is a witness to inquest Ex.P/13 and PW-14 Parmeshwar is a witness to village meeting.

12. PW-15 Dr. Prabhakar Rao conducted postmortem on the body of the deceased on 8.5.2010 vide Ex.P/14 and noticed following injuries on her person:

(i) lacerated wound over neck right side 6" x 3" deep up to cervical vertebra, all major vein and artery and bone are cut,

(ii) lacerated wound over breast left side 2" x 1" fat mat. came out

(iii) lacerated wound over neck below right ear 4" x 2" x 2" vessel are cut,

(iv) lacerated wound over neck in front 6" x 4" deep up to base of tongue, wind pipe cut, oblique in size.

(v) lacerated wound over left side of neck below left ear 6" x 4" deep up to vertebra column, all vessel cut.

(vi) lacerated wound over back of neck 3" x 2" deep up to cervical column vertebra.

(vii) lacerated wound over right scapula 8" x 2" scapular bone cut, oblique.

(viii) lacerated wound over interscapular region obliquely 4" x 2" x 1".

(ix) lacerated wound over right shoulder 4" x 2" x 1" at base.

(x) lacerated wound over left scapular region 6" x 2" deep up to shoulder blade.

In his opinion, cause of death was hemorrhagic shock and that the death was homicidal in nature. He had also examined the spade and axe seized from the appellants and opined that the injuries suffered by

the deceased could be caused by these weapons.

13. PW-16 Devsagar Dhritlahre is a witness to memorandum of appellant Yogesh (Ex.P/4), pursuant to which seizure of spade was made vide Ex.P/6 and witness to memorandum of appellant Sumritbai (Ex.P/5) which led to recovery of spade vide seizure memo Ex.P/7. He has duly proved the memorandums and the seizure. PW-17 Kanwalram Dhritlahre is a witness to spot map Ex.P/17, seizure of articles from the spot Ex.P/16 and inquest Ex.P/13. PW-21 LL Patel recorded merg intimation and FIR. PW-22 Jeevan Nagesh, investigating officer, has duly supported the prosecution case.

14. DW-1 Pyari Ram Dhritlahre is a witness to village meeting. She has stated that the meeting was called by Kartikra, however, Rohit was not there in the village at the time. She has stated that there are two groups in the village, one headed by Kartik and another by Rohit and that is why the incident had taken place. She has not stated anything specific in favour of the accused/appellants. DW-2 Ramnath and DW-4 Gyanilal Dhruv have also not stated anything specific in favour of the defence. DW-3 Yashwant has stated that eyewitness to the incident Amar Singh and Kanhaiyya had told him to ask Kartik to give each of them Rs.1 lac for not supporting the prosecution case. DW-5 Dilip Bharti has stated that it is Abhinav who was carrying axe in his hand and appellant Yogesh had caught him from behind. He is not sure whether deceased Pushpa sustained injuries by spade or axe, however, she fell down and according to him, on account of scuffle deceased Pushpa sustained injuries. He has further stated that it is Abhinav who was trying to cause injuries to appellants Sumritbai and

Yogesh.

15. DW-6 Kartikram, an acquitted accused, has stated that it is Abhinav who was trying to cause injuries and that eyewitnesses Amar Singh and Kanhaiyya had asked for money for not supporting the prosecution case. He has admitted the fact that it is he who had called the village meeting. DW-7 Damesh Kumar Dhritlahre, a convicted accused, has stated that when Abhinav was trying to assault his mother and she was trying to save herself, deceased Pushpabai intervened and in the process, Pushpabai sustained injuries from the axe and spade of Abhinav. He has further stated that his mother also sustained injuries in the said incident. DW-8 Sumritbai, convicted accused, has stated that there was scuffle between her and the deceased, she was assaulted by deceased Pushpa and Abhinav. At that time, Kartik and Damesh were not there. DW-9 Yogesh, convicted accused, has also made similar statement as has been made by other accused and according to him also, it is Abhinav who was trying to cause injuries to them.

16. If statements under Section 313 of Cr.P.C. of the accused persons who have been examined as defence witnesses are compared with their defence evidence, there appears to be material difference between the same.

17. Close scrutiny of the evidence makes it clear that on 7.5.2010 on account of dispute over raising a boundary wall, deceased Pushpabai was done to death by the appellants by causing her injuries with axe, pickaxe and spade leading to her instantaneous death.

Accused/appellants also caused injuries to Abhinav (PW-1). Eyewitnesses to the incident PW-1 Abhinav, PW-3 Savita Daharia, PW-4 Ku. Kuleshwari Dhritlahre, PW-5 Ku. Yashoda Dhritlahre, PW-6 Lakhanram Dhritlahre, PW-7 Pawanbai Dhritlahre, PW-12 Amarsingh Lahre and PW-19 Kanhaiyyalal Lahre, have duly supported the prosecution case and stated as to the manner in which the deceased was done to death and Abhinav was caused injuries. There is no reason for this Court to disbelieve their statements. This apart, their version also stands corroborated from the medical evidence. Thus, on the basis of ocular and medical evidence on record, complicity of the accused/appellant in commission of the offence stands proved beyond reasonable doubt.

18. Now the only question which arises for consideration of this Court is whether in the facts and circumstances of the case and the nature of evidence on record, the case of the accused/appellants is covered by any of the exceptions to Section 300 of IPC i.e. culpable homicide not amounting to murder?

19. Undoubtedly, there was a dispute regarding construction of boundary wall between the family members of the complainant party and the accused/appellants. On the date of incident, a meeting was convened at the instance of Kartik to resolve the said dispute, however, it was postponed as husband of the deceased was not there in the village at that time. The unfortunate incident occurred when deceased Pushpabai had an altercation with appellant Sumritbai regarding the construction of boundary wall, whereupon Sumritbai asked appellant Damesh to bring spade from her house and having got

the same, assaulted Pushpabai with it. When Abhinav tried to intervene he too was assaulted by the accused/appellants. Thus, it is apparent that the incident had taken place without any premeditation, in a sudden fight in the heat of passion upon a sudden quarrel. However, considering the nature of injury, the weapon of offence and the manner in which the appellants assaulted the deceased causing her as many as ten lacerated wounds resulting in her spontaneous death, it is also clear that the appellants assaulted the deceased with intention of causing such bodily injury as was likely to cause her death and as such, they are liable to be convicted under Section 304 Part-I of IPC instead of Section 302 of IPC as has been done by the trial Court. As regards their conviction under Section 324/34 of IPC for causing injuries to PW-1 Abhinav, the same being based on proper appreciation of the evidence on record calls for no interference.

20. In the result, the appeal is allowed in part. While acquitting the appellants of the charge under Section 302/34 of IPC, they are held guilty under Section 304 Part-I read with Section 34 of IPC and sentenced to undergo RI for 10 years. Their conviction under Section 324/34 of IPC and sentence awarded thereunder are hereby maintained. They are reported to be in jail since 7.5.2010, therefore no further order regarding their surrender etc. is required.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(C.B. Bajpai)

Judge