

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 2600 OF 2000

Deendayal, S/o Tiharu, age 40 years, R/o Village Pendri, P.S. Pamgarh,
Tahsil Janjgir, District Janjgir-Champa (C.G.)

... Appellant

Versus

The State of M.P. (now C.G.), through Police Outpost Pamgarh, Tahsil
Janjgir, District Janjgir-Champa (C.G.)

... Respondent

For Appellant	:	Mr. Rajesh Jain, Advocate.
For Respondent-State	:	Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

22/01/2016

1. The Appellant, husband of the deceased, stands convicted under Section 302 IPC to life imprisonment with fine of Rs.500/-, in the event of failure to pay which he was required to undergo six months further rigorous imprisonment, ordered on 22.7.2000 by the Additional Sessions Judge, Janjgir, in Sessions Trial No. 284 of 1998.
2. The deceased was assaulted at 6:30 a.m. on 19.3.1998 while she was returning accompanied by her mother, PW-1, Ramha Bai, after answering the call of nature. The Appellant chased them with a 'farsa' in his hand. Both mother and daughter ran for safety. The deceased was assaulted and fell down. PW-3, Dilharan on hearing the commotion came running and saw the Appellant running away. PW-8, Kalaram, son of PW-1, Ramha Bai reached after the Appellant had run away. The FIR lodged by PW-1, Ramha Bai was marked Exhibit P-1. The deceased died the next day during treatment. The MLC, Exhibit P-8, of the deceased was conducted and proved by PW-6, Doctor D.C.

Chaudhary who found an incised wound on the frontal area of the head, 6.5" x 1" x 1/4" with fracture of the bone, opining that it was caused by a hard-blunt substance. The post-mortem, Exhibit P-12, of the deceased was conducted by PW-9, Doctor V.K. Khetrapal who found 6.5" long wound bone deep with incision on the parietal and frontal bone and the brain tissue was visible. Death was opined due to head injury.

3. Learned Counsel for the Appellant submitted that he had been married for 20 years to the deceased and had three children. PW-3, Dilharan had vouched for the good character of the Appellant and that the Appellant had good relations with his in-laws. PW-1, Ramha Bai has also deposed that the Appellant had never asked her to give him their entire lands, after he was permitted to build a house upon the same. The reference to fights between the Appellant and the deceased was but a normal incidence of married life. PW-1, Ramha Bai has herself stated that her daughter did not want to make an issue out of it. No motive therefore existed for the Appellant to kill his wife. PW-10, Mahaldas has stated that the Appellant lived happily with his in-laws. PW-1, Ramha Bai did not state in the FIR or her police statement that the Appellant suspected the character of the deceased and therefore assaulted her, but sought to introduce this story for the first time in the Court to create a motive for assault. The witness had stated that the Appellant had covered himself with a shawl. Therefore obviously identification was not possible. Sunrise had not taken place and identification of the Appellant in the darkness cannot be said with certainty for conviction.

4. PW-3, Dilharan was not an eye-witness and had been declared hostile. He has made contradictory statements in his evidence-in-chief and cross-examination. It will therefore not be safe to rely upon him for

identification to sustain conviction. PW-1, Ramha Bai stated that the Appellant was wearing a brown colour shawl but PW-3, Dilharan stated that the shawl was of yellow colour. The recovery of the shawl has not been from the Appellant but from the house of his brother-in-law, Kalaram. PW-3, Dilharan has further stated that he did not see the Appellant assaulting the deceased which obviously was because of darkness at that hour. If there are conflicting versions of PW-1, Ramha Bai and PW-3, Dilharan with regard to the source of light for identification at the time of occurrence, that favourable to the accused should be accepted.

5. Likewise, PW-4, Itwari was also declared hostile and made contradictory statements in his evidence-in-chief and cross-examination. He has also stated that the assailant had his face covered and therefore he did not recognize the person.

6. PW-6, Doctor D.C. Chaudhary or PW-9, Doctor V.K. Khetrapal never stated that the injury was dangerous to life. The fact that it may be grievous, may invite conviction under Section 326 IPC if at all, but Section 302 IPC can have no application. The possibility that the deceased died the next day due to improper treatment cannot be ruled out, the benefit of which has again to be given to the Appellant.

7. PW-8, Kalaram is not an eye-witness in view of the statement by PW-1, Ramha Bai in the FIR itself that he came after the Appellant had run away on seeing PW-3, Dilharan and others coming. PW-1, Ramha Bai did not state to the contrary on this aspect in her court deposition.

8. Relying on the defence witnesses, DW-1, Parasmani and DW-2, Chintamani, the sons of the Appellant, it was submitted that the Appellant had retired and had given Rs.2 Lacs to PW-1, Ramha Bai for safekeeping and he had been falsely implicated so that they would not

have to return the money. The witnesses had further stated that the Appellant was with them at the time of occurrence, a plea not properly considered. They had also deposed that relations between the deceased and the Appellant were cordial. In his defence under Section 313 Cr.P.C., the Appellant had also stated that he has been falsely implicated so that his in-laws did not have to return Rs.2 Lacs that he had kept with them. These aspects have not been considered appropriately in defence.

9. Referring to the confession and recovery of the farsa allegedly used for assault, Exhibit P-3, stated to have been proved by PW-2, Ram Khilawan, it was submitted that recovery was from a nullah which is an open public place and it cannot be said to have been concealed, not visible to others, to attribute recovery exclusively to confession alone. The blood on the farsa has not been confirmed by a Serologist report as human blood. The FSL report, Exhibit P-18, is therefore by itself not conclusive as this question was not put under Section 313 Cr.P.C., also.

10. It was lastly submitted that there are no allegations for having made a repeated assault. There was only one assault. If the Appellant had the intention to kill, nothing prevented him from assaulting the deceased more than once to ensure that she would not survive. Even if PW-1, Ramha Bai is held to be a reliable eye-witness, in the nature of assault made, the possibility that the Appellant was only venting his ire against the deceased in view of the statement of PW-1, Ramha Bai herself that there used to be regular skirmishes between the Appellant and the deceased, that he only wanted to teach her a lesson but never intended to kill her. The manner of assault was relevant to discover what the intention may or may not have been. It shall not be safe to

convict the Appellant on the sole testimony of one related and interested eye-witness alone. The offence may therefore fall under Section 326 IPC and at best either under Section 304 Part-I or Part-II IPC but certainly not under Section 302 IPC.

11. Learned Counsel for the State has opposed the appeal and submitted that the Appellant was the husband of the deceased. PW-1, Ramha Bai is the mother of the deceased and mother-in-law of the Appellant. She is a completely reliable eye-witness. The defence that the Appellant was falsely implicated so that PW-1, Ramha Bai would not have to return the money kept in her safe custody is a fanciful and frivolous defence as both DW-1, Parasmani and DW-2, Chintamani have not been able to establish that any loan was given. The Appellant in his defence stated that he wanted to lead evidence but did not do so in support of this plea except for merely saying so.

12. Even if there was no sunlight at 6:30 a.m. certainly in the month of March, dawn had broken and visibility is clear even before sunrise. PW-1, Ramha Bai has specifically denied any suggestion with regard to darkness and asserted having recognised the Appellant as the assailant. Considering that the Appellant was married to the deceased 20 years ago, the credibility of PW-1, Ramha Bai in recognising her own son-in-law is but natural and high. Conviction can well be sustained on her evidence alone. There is no principle of criminal jurisprudence that conviction cannot be sustained on basis of a single eye-witness merely because of being related to the deceased, if the witness was otherwise reliable and convincing. The evidence of PW-3, Dilharan and PW-4, Itwari that they did not see the assailant is inconsequential so long as it can be culled out from their evidence that there was a person in the

fields chasing the deceased with a farsa in his hands, and whose identity stands corroborated by PW-1, Ramha Bai.

13. PW-6, Doctor D.C. Chaudhary and PW-9, Doctor V.K. Khetrapal have both established the grievous nature of the injury on a sensitive part of the body causing fracture of the skull bone. PW-9, Doctor V.K. Khetrapal has deposed that the injury was capable of being caused by a farsa.

14. PW-12, K.N. Sharma, the Investigating Officer, has described the measurement of the farsa which tallies with the injury on the head of the deceased. Merely because there may have been no repetition of the assault, it cannot be said that the injury was not dangerous to life. It is not necessary that there must always be a repeat blow before Section 302 IPC can be attracted. A single blow with great intensity by a deadly weapon, as in the present case can suffice to cause death. It will all depend on the weapon of assault, the part of the human body where the assault is made, the intensity of the assault and which have all to be considered cumulatively to ascertain the intention if it was that very injury which was intended to be caused. The Appellant consciously used the sharp edge and not the blunt side or the wooden handle. If these factors stand established, Section 302 IPC is attracted automatically.

15. We have considered the submissions on behalf of the parties and perused the evidence on record.

16. The Appellant was married to the deceased for 20 long years and had three children. He was living with his in-laws and who had permitted him to build a house upon the same. The fact that the Appellant may not have specifically made a demand to PW-1, Ramha Bai, his mother-in-law, for the lands of his in-laws is not considered very

relevant, so long that the witness has deposed that the Appellant had made the demand to her husband and who had declined the same. No question was asked in this regard during cross-examination. Equally, the daily skirmish of married life between the Appellant and the deceased, in our opinion, cannot constitute sufficient motive for such a heinous assault. Motive, however, is more relevant in cases of circumstantial evidence as an additional factor. If there is credible, cogent and reliable eye-witness account, motive becomes irrelevant. Existence of motive or absence of motive, in any event, cannot be a basis by itself for conviction or acquittal.

17. There is no principle of criminal jurisprudence that conviction cannot be based on the evidence of a single eye-witness or that the single witness was related to the deceased and therefore an interested witness. The phrase interested witness carries a connotation for false implication. The defence of the Appellant was that his in-laws did not want to return his money. But, if the defence witnesses or the Appellant himself failed to lead evidence in support of his having kept money with his in-laws, the plea of an interested witness automatically fails. The fact that the sole eye-witness may be related to the deceased cannot be a ground by itself to doubt the credibility of the witness. In fact, being the mother of the deceased, there would be no other more interested in ensuring that the real assailant seen by the witness was actually booked. The maternal instinct will prevail even at the cost of naming her own son-in-law with all its attended consequences.

18. In (2012) 7 SCC 646 (Shyamal Ghosh v. State of W.B.) it was observed :-

“52.Furthermore, this Court has also taken the view that no doubt when the Court has to appreciate the evidence given by the witnesses who are closely related to

the deceased. It has to be very careful in evaluating such evidence but the mechanical rejection of the evidence on the sole ground that it is that of an interested witness would inevitably relate to failure to justice (*Brathi*).....”

19. We have not found anything in the evidence or cross-examination of PW-1, Ramha Bai to doubt that she is an eye-witness. Not a whisper of a suggestion was given in the cross-examination to the very genesis of the occurrence that both mother and daughter were returning in the morning after answering the call of nature. The witness specifically denied lack of identification due to darkness. The Almanac Calendar of 19th of March, 1998 shows that the sun had risen in the State of Chhattisgarh on that day at 06:09 am and set at 18:14 pm. It was therefore not dawn but day light. Identification of the Appellant by PW-1, Ramha Bai therefore stands conclusively established.

20. There can never be direct evidence of intention. It has to be culled out from all surrounding circumstances. The Appellant was carrying a farsa concealed in his shawl at that early hour. There is no evidence that he had his face covered. Even if the evidence of PW-4, Itwari is considered, obviously he threw off the shawl to take out the farsa and chased the deceased. The size of the farsa deposited by PW-12, K.N. Sharma, was 11¼" x 2½" x 6" on the blade. One assault only was made with such intensity that it caused an incised wound 6½" deep. The Appellant then ran away. Nothing prevented the Appellant to assault with the blunt edge or handle of the farsa if he did not intend to cause death. The absence of any specific statement either by PW-6, Doctor D.C. Chaudhary or PW-9, Doctor V.K. Khetrapal that it was sufficient in the ordinary course of nature to cause death is considered inconsequential in the nature of injury on a sensitive part of the human body. It is the nature of the injury caused which is relevant and not the

number of the assaults made. At times, repeated assaults on the legs or hands would invite a different consideration than a single assault with great intensity on the head. The nature of weapon, the hour of assault and intensity of assault is sufficient to hold that the Appellant had the intention to cause the very injury with intention to cause death as laid down in AIR 1958 SC 465 (Virsa Singh v. State of Punjab).

21. That a single assault with great intensity on the head with a sharp cutting weapon made without any provocation would be sufficient to hold for conviction under Section 302 IPC was considered in (2013) 14 SCC 246 (Som Raj v. State of Himachal Pradesh) observing as follows:-

“16.2A perusal thereof would leave no room for doubt that the appellant-accused had chosen the sharp side of the *darat* and not the blunt side. The ferocity with which the aforesaid blow was struck clearly emerges from the fact that the blow resulted in cutting through the skull of the deceased and caused a hole therein, resulting in exposing the brain tissue. When a blow with a deadly weapon is struck with ferocity, it is apparent that the assailant intends to cause bodily injury of a nature which he knows is so imminently dangerous, that it must in all probability cause death.”

22. The fact that the shawl may have been of a brown colour or yellow colour is considered too trivial an issue. PW-8, Kalaram was not an eye-witness. The evidence of PW-3, Dilharan and PW-4, Itwari even if they have been declared hostile and have given conflicting versions in their evidence-in-chief and in cross-examination, leaves no doubt that at the time of occurrence a person was seen with a farsa chasing the deceased. No suggestion has been given by the Appellant with regard to the presence of any other. The identity of the person chasing the deceased with a farsa as the Appellant alone stands conclusively corroborated and established by the unimpeachable evidence of PW-1, Ramha Bai.

23. There is no evidence led by the defence that the deceased died on account of lack of proper treatment and that she could have been saved had proper treatment been made available. Explanation 2 to Section 299 IPC provides that where death is caused by bodily injury the person causing the injury shall be deemed to have committed culpable homicide even if proper treatment could have saved the injured. Section 300 IPC provides that in such even it shall amount to murder if the assault was made with intention to cause death or if the intention was to cause that very nature of injury sufficient to cause death to the knowledge of the offender.

24. A specific question was put to the Appellant under Section 313 Cr.P.C. with regard to the recovery of the farsa on his confession and the forensic report with regard to the same.

25. Learned Counsel for the Appellant had submitted that he has remained in custody for 7½ years before being released on bail. No useful purpose is going to be served by sending him back in custody at this stage considering that he was not a hardened criminal but was an illiterate tribal who may have acted impulsively. We regret to accept that submission. If Section 302 IPC creates an offence, sympathy cannot be a ground to decide what appropriate sentence would be. Even if relations between the husband and wife were normal with minor skirmishes and no motive may have existed, the intensity of the assault leaves us in no doubt that it is precisely that injury which has been caused that the Appellant intended to cause. The sentence therefore calls for no interference. Reference may appropriately be made to the observations in (2003) 8 SCC 13 (State of Madhya Pradesh v. Ghanshyam Singh) as follows :-

“12. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.....”

26. In conclusion, we find no reason to interfere with the conviction of the Appellant.

27. The bail-bonds of the Appellant are cancelled and he is directed to surrender forthwith and/or be taken into custody for serving out the remaining period of his sentence.

28. The appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge