

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 817 OF 2002**

Girdhari Ram Sahu S/o Bahursingh Sahu, aged about 31 years, R/o village Bhatheli
Police Chowki Bhakhara, P.S. Kurud, Dist. Dhamtari (C.G.)

---- Appellant**Versus**

State of Chhattisgarh through P.S. Kurud Dist. Dhamtari (C.G.)

---- Respondent

For appellant	:	Shri Adil Minhaj, Advocate
For respondent/State	:	Shri Arun Sao, Deputy Advocate General

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board**Per Deepak Gupta, Chief Justice****28/11/2016**

1. This appeal by the accused is directed against the judgment dated 10.7.2002 passed by the Learned Additional Sessions Judge, Dhamtari in Sessions Trial No.190 of 2001 whereby the Learned Sessions Judge has convicted and sentenced the accused-appellant as follows:-

Conviction	Sentence
U/s 302 IPC	Life imprisonment and fine of Rs.1000/-, in default of fine, one year rigorous imprisonment.
U/s 323 IPC	One year rigorous imprisonment and fine of Rs.1000/-, in default of fine, three months rigorous imprisonment.

2. The prosecution case briefly stated is that on 4.3.2001, Budhiyarin Bai (PW-3) was returning to her house from the village pond at about 9.00 am. When she was reached near her house, she was stopped by accused Girdhari Ram Sahu, and verbal altercation took place between them. Then Girdhari Ram Sahu gave a blow with a lathi on the head of Budhiyarin Bai. In the meantime, Pancham, husband of Budhiyarin Bai came towards them to intervene and save his wife. In between, his wife became unconscious. Thereafter, it was alleged that Girdhari Ram Sahu gave lathi blows to Pancham who received serious injuries and expired on account of the injuries received. As far as Budhiyarin Bai is concerned, she was taken to the hospital and it was found that only one injury was caused on her head and the injury was simple in nature.
3. First Information Report (Exhibit P/1) was lodged on the same day at 9.30 am by the Kotwar of the village i.e. Bishat Das Manikpuri (PW-1), who stated that he had been informed by Dhananjay Lal (PW-4) that an altercation had taken place between Girdhari Ram Sahu and deceased Pancham and his wife Budhiyarin Bai and during this altercation, Pancham had been killed.
4. The police investigated the matter, recorded evidence and thereafter charge sheet was filed against the accused-appellant as well as his wife. The wife was acquitted by the trial Court but the appellant has been convicted and sentenced as above.
5. We have heard Shri Adil Minhaj, learned counsel on behalf of the appellant and Shri Arun Sao, Deputy Advocate General on behalf of the State.

6. The main contention of Shri Minhaj is that prosecution has failed to prove its case beyond all reasonable doubt. His submission is that Budhiyarini Bai in her statement herself has stated that she did not see the accused giving any blows to her husband and therefore, no reliance can be placed on her statement to convict the appellant for having committed the offence of murder of the deceased. It is lastly submitted that the FIR was lodged on the basis of hearsay and no reliance can be placed on the same.
7. We have examined the evidence in detail. Budhiyarini Bai (PW-3) in her statement has made a very honest statement. Her statement is truthful. If she was to make a false statement she could have easily said that she saw the accused hitting her husband but she did not say so and fairly submitted that after accused Girdhari Ram Sahu gave a lathi blow on her head, she saw her husband coming towards her but then she became unconscious. She however suspected that the accused had killed her husband because her husband was coming to save her. We see no reason to disbelieve the statement of this witness. This is not a statement of a witness who is telling a lie. If she was to tell a lie, one more sentence was only to be added that she had seen the accused hitting her husband. Believing the statement of this witness, we therefore, hold the accused guilty of having committed an offence under Section 302 IPC.
8. The next question is whether the accused is guilty of offence under Section 302 or not. Dhananjay Lal (PW-4) has turned hostile. In Court, he has stated that in his presence, nothing happens. However, in cross-examination, he stated that appellant, Budhiyarini Bai and Pancham

were fighting but he does not know who hit whom. Therefore, we are of the view that the statement of Dhananjay Lal (PW-4) is not trustworthy and we cannot rely on it either to assist the prosecution or the accused.

9. Next, coming to the evidence of Bishat Das Manikpuri (PW-1), Kotwar of the village. He in his statement stated that after he was coming back after taking a bath, near the house of Pancham and Girdhari, he saw Budhiyarini Bai (PW-3) all covered with blood. Pancham was also lying there covered with blood. Both were unconscious. Blood was coming out of head of both the persons. One iron rod and small axe were lying there. None else was there. Then he went to pan shop and collected the other persons of the village. At that time, Dhananjay Lal (PW-4) who was tenant of Girdhari Ram Sahu informed them that an altercation had taken place between Girdhari Ram Sahu and Budhiyarini Bai and Pancham. He had tried to intervene and his watch had broken at that time. He however had not stated who had hit the Budhiyarini Bai and Pancham.

10. The facts which emerge are that at about 9.00 am, Budhiyarini Bai came back after having a bath. The altercation took place between her and Girdhari Ram Sahu. Girdhari Ram Sahu asked her why she used to abuse his children. She denied that she was abusing his children but she stated that she objected to the children playing in such a fashion that the cow-dung which she was collected was getting damaged. This altercation must have taken five to ten minutes. She then states that Girdhari Ram Sahu attacked her with a lathi and then she fainted. Before fainting she saw that her husband was coming to save her. She gained consciousness much later. The next witness Bishat Das

Manikpuri (PW-1) must have reached the spot within a few minutes of this occurrence. We are saying this because the FIR has been lodged at 9.30 am and the police station is about only 1 Km from the place of occurrence. After he came to the spot, Bishat Das Manikpuri first saw both Budhiyarin and her husband, Pancham then he went to the pan shop to call the other villagers. They then returned to the spot of occurrence and talked to Dhananjay Lal (PW-4). All this must have taken place in 7-10 minutes. Thereafter, they took the motorcycle and went to lodge a report. Even if the police station is only 1 Km, it must have then four or five minutes to reach there.

11. The argument of Shri Minhaj is that nobody has seen the accused giving a blow to Pancham. He submits that the chance of the blows being given by the wife of the accused cannot be ruled out. He also stated that the blow may have been given by Dhananjay Lal (PW-4). He lastly submits that since there is a chance of somebody else having given the blow, the benefit of doubt should be given to the appellant.

12. The law is well settled that the prosecution has to prove its case beyond all reasonable doubt and if there is a chance of the accused being not guilty, the benefit of doubt must be given to the accused. However, the doubt must be a reasonable doubt in the context of the facts of the case. Any fanciful or whimsical doubt cannot be termed a reasonable doubt.

13. In this case, we have already held that the statement of Budhiyarin Bai (PW-3) is truthful. She saw her husband coming to save her and the next thing is that her husband suffered two blows with a blunt object. True it is that nobody saw who gave the blows but one thing is clear that

the wife of the accused was either not present and even if she was present, she was not carrying any lathi. Therefore, accused was the only person who was present and armed with a lathi and in such circumstances, we are of the view that the prosecution has proved its case beyond all reasonable doubt.

14. The last submission of Shri Minhaj is that even if the case is believed, no offence of 302 IPC has been made out. To that extent, Shri Minhaj is right. The occurrence happened on the spur of moment. Even the wife has stated that there was no major enmity between her and the appellant earlier and a slight verbal altercation took place with regard to the cow-dung. Therefore, intention to kill was not there. A lathi is carried by all the farmers and merely carrying a lathi, does not show prior preparation. The deceased has suffered two blows. Unfortunately, the opinion of the doctor is not clear and the dimension of both the blows is shown as ½". There is no mention whether this ½" is width, length or depth. It cannot be said that there was intention to kill. Knowledge to this effect also cannot be attributed to the accused.

15. In view of the above, the appeal is partly allowed. We convert the conviction of the appellant from one under Section 302 IPC to one under Section 304 IPC and convert the sentence of life imprisonment to rigorous imprisonment for 10 years with fine of Rs.10,000/-. In default of payment of fine amount, the accused would have to undergo further rigorous imprisonment for one year. Fine if deposited shall be paid to Budhiyarin Bai.

16. It is stated that the appellant is on bail. He is directed to surrender forthwith to undergo the remaining part of sentence. If he does not surrender within 15 days, the Learned Trial Court shall ensure that warrant is issued to execute the sentence imposed on the accused.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE