

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1292 OF 2002

Sitaram Ghasiya, S/o Vishnu Ghasiya, aged about 31 years, occupation- Agriculturist, R/o Village Sontarai, Tikrapara, Police Station-Sitapur, District Surguja (C.G.)

... Appellant

Versus

State of Chhattisgarh, through Police Station Sitapur, District Surguja (Ambikapur) (C.G.)

... Respondent

CRIMINAL APPEAL NO. 1293 OF 2002

Shankar Ghasiya, S/o Vishnu Ghasiya, aged about 27 years, occupation- Agriculturist, R/o Village Sontarai, Tikrapara, Police Station-Sitapur, District Surguja (C.G.)

... Appellant

Versus

State of Chhattisgarh, through Police Station Sitapur, District Surguja (Ambikapur) (C.G.)

... Respondent

For Appellants	:	Ms. Ranjana Jaiswal, Advocate.
For Respondent-State	:	Ms. Madhunisha Singh and Mr. Vaibhav Goverdhan, Panel Lawyers.

Hon'ble Shri Deepak Gupta, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

C A V Judgment

Reserved on : 22.09.2016

Delivered on : 28.09.2016

Per P. Sam Koshy, J.

1. Since both these appeals arise out of the same incident and same impugned judgment dated 3.10.2002 passed by Sessions Judge, Surguja in Sessions Trial No. 55 of 2002, they are being decided by this common order.

2. By impugned judgment, Appellant Sitaram stands convicted under Section 302/34 and sentenced to undergo life imprisonment with fine of Rs.500/- and in default of payment of fine to further undergo additional 10 days of rigorous imprisonment. Further, for the offence

under Section 323 of IPC he has been convicted to undergo rigorous imprisonment for one month. Similarly, Appellant Shankar also stands convicted under Section 302 of IPC to undergo life imprisonment with fine of Rs.500/- and in default thereof to further undergo additional 10 days of rigorous imprisonment, and for the offence under Section 323 of IPC he has been convicted to undergo rigorous imprisonment for one month.

3. Brief facts as per the prosecution case are that on 15.11.2001 on account of Diwali festival, the complainant Sudeshi Ram Ghasiya along with his family members consisting of his wife Simitra, daughter-in-law Jaspurhin @ Basanti, Sugri Bai @ Silmahin and Purkelhin @ Manbasia had decided to go to his younger son Tivar Ram's residence for lunch. After having the lunch, at around 6 O'clock the complainant came back to his home and a little later his son Sagar also came and he informed that the ladies of the house had gone to the house of Appellant Shankar as he had invited them to his house. After a while, the daughter-in-law of the complainant, namely, Jaspurhin @ Basanti, came running to the house and informed that Appellant Shankar had assaulted the complainant's wife with a *tangi* and also assaulted Sugri Bai @ Silmahin. She informed that Simitra had fallen down on the road whereas Sugri Bai @ Silmahin had run away from the spot. The complainant along with his son Sagar and daughter-in-law Jaspurhin @ Basanti immediately rushed towards the house of Shankar and they found en route Simitra lying on the road with grievous injuries. Sugri Bai @ Silmahin had by that time ran away from the scene. They picked Simitra up and brought her to the house and laid her on a cot but after some time she succumbed to the injuries.

4. Merg Intimation, Exhibit P-3, dated 15.11.2001, was lodged by complainant Sudeshi Ram Ghasiya on the basis of which an FIR, Exhibit P-4, was registered at around 10 O'clock in the night on the same day. Thereafter, the body of the deceased Simitra was sent for postmortem. Dr. N.R. Beck, PW-12, who conducted the postmortem gave a report vide Exhibit P-25. While conducting the postmortem, the Doctor found that the deceased Simitra had a big incised wound at scalp and the wound was so severe that the brain fronto parietal parts had come out. In addition, there was a lacerated wound on the elbow joint of the right hand with blood clot. The Doctor also gave an opinion that the death was due to shock and coma resulted from intracranial to brain right fronto parietal; the nature of death being homicidal, and the time of death was about 12 to 24 hours from the time of postmortem.

5. On the basis of the FIR, a charge-sheet was filed against the Appellants under Sections 302, 323/34 of IPC before the Court of Judicial Magistrate First Class, Ambikapur from where the case was committed to the Sessions Court at Surguja for trial and the matter was registered as Sessions Trial No. 55 of 2002. During trial, charge under Section 302/34 of IPC for the attack made on Simitra and also under Section 324 for the assault made on Sugri Bai @ Silmahin was framed against Appellant Sitaram. Similarly, against Appellant Shankar charge under Section 302 of IPC for the murder of Simitra and also the charge under Section 323 of IPC for assaulting Purkelhin @ Manbasia by throwing stone on her was framed. The charges were read over to the Appellants who abjured their guilt.

6. During trial, the prosecution in order to establish its case examined as many as 12 witnesses. Thereafter, statements of the Appellants were recorded under Section 313 of CrPC in which they

denied the circumstances appearing in evidence against them and pleaded innocence. In defence, they did not examine any witness. After conclusion of the trial, the Sessions Court found Appellant Sitaram guilty for the offence under Sections 302/34 and 323 of IPC and Appellant Shankar was found guilty for the offence under Sections 302 and 323 of IPC.

7. Now based upon the prosecution story itself it clearly reflects that there has to be three eyewitnesses to the incident; namely, Jaspurhin @ Basanti, Sugri Bai @ Silmahin and Purkelhin @ Manbasiya.

8. Learned Counsel for the Appellants assailing the impugned judgment submitted that so far as Appellant Sitaram is concerned, his name is not reflected either in the FIR or in the Merg Intimation which itself creates a doubt on the prosecution story as far as his presence at the place of incident is concerned. It was also argued that there is no evidence whatsoever of him to have played any role on the assault that was made on Simitra. According to the Counsel for the Appellants, as the entire prosecution witnesses themselves have taken the stand that it was the assault made by Appellant Shankar alone who had caused the death of Simitra and, therefore, the conviction of Appellant Sitaram under Section 302/34 of IPC is not based on any strong evidence and deserves to be set aside. Likewise, So far as offence under Section 323 of IPC is concerned, Counsel for the Appellants submits that the injured Sugri Bai @ Silmahin has not been examined at all by the prosecution and in the absence of evidence of injured person, the entire case of the prosecution collapses and the Appellant Sitaram cannot be convicted for the offence which has not been established before the Court below by the injured victim herself. Thus, the Counsel for the Appellants has sought for acquittal of Appellant Sitaram of the charge under Section

323 of IPC, and prayed that the appeal so far as Appellant Sitaram is concerned may be allowed and he may be acquitted of the charges.

9. As regards the appeal on behalf of Appellant Shankar is concerned, learned Counsel for the Appellants submits that the entire perusal of the charge-sheet as well as the evidence which has come on record would establish that the incident occurred during the Diwali festival and there is ample evidence on record that all the persons including the members of the complainant's family as well as family members in the Appellants' house all had drinks together to celebrate Diwali. According to the Counsel for the Appellants, it appears that under the influence of alcohol some altercations took place between Appellant Shankar and the deceased Simitra and injured Sugri Bai @ Silmahin as also Purkelhin @ Manbasiya and therefore it cannot be said to be a case of a culpable homicide amounting to murder so as to bring home the offence under Section 302 of IPC. It was further contended that there was no previous enmity whatsoever between the two families and that they are all relatives. In addition, the prosecution has not been able to establish the motive or mens rea on the part of the Appellants in assaulting the deceased as well as the injured persons. Learned Counsel for the Appellants further submits that since there was no motive or mens rea on the part of the Appellants, it cannot be a case under Section 302 of IPC and, at best, it would be a case that may fall under Section 304 of IPC as the act on the part of the Appellant Shankar would not fall within the definition of culpable homicide amounting to murder but is culpable homicide not amounting to murder. Thus, prayed for the modification of the sentence awarded to Appellant Shankar.

10. Learned Counsel for the State however opposing the appeals submits that it is an open and shut case for the prosecution as there is sufficient evidence which has been led by the prosecution to substantiate its case beyond all reasonable doubts. According to the Counsel for the State, the prosecution has been able to adduce evidence of the two main eyewitnesses; namely, Basanti @ Jaspurhin (PW-7) and also Purkelhin @ Manbasia (PW-8) who have in their statements in categorical terms established the case of the prosecution that there being no omission and contradiction in their statements as compared to their statement that they had made during the course of investigation. Likewise, Counsel for the State also submitted that it is a case where the other witnesses other than the eyewitnesses also have supported the case of the prosecution. Thus, prayed for the rejection of both the appeals.

11. Having heard the rival contentions put forth on either side and on perusal of the records what is clearly reflected is the fact that on 15.11.2001 after having the lunch in the house of Tivar Ram when the lady members of the house of the complainant were returning, en route the ladies of the house of Appellant Shankar is said to have invited them for having some food and drinks on the occasion of Diwali which the lady members accepted to and had gone there. Thereafter, as per the prosecution, Appellant Shankar became violent and started using abusive language and when the ladies started to leave his house it is said that Appellants Shankar and Sitaram started pelting stones on the ladies on account of which Purkelhin @ Manbasia received some injuries on her feet and later it is said that both the Appellants went and brought *tangi* and first assaulted Simitra and later also tried to assault Sugri Bai @ Silmahin.

12. From the statements of the two eyewitnesses; namely, Basanti @ Jaspurhin (PW-7) and Purkelhin @ Mabasias (PW-8), what is clearly spelt out and which is common is that they had been invited to the house of Appellant Shankar and after some time it is said that Shankar started using abusive language against the deceased Simitra and other lady members accompanying her, to which the ladies objected and then it is said that Appellants Shankar and Sitaram is said to have gone inside and brought a *tangi*. All the witnesses have accepted the fact that Simitra was assaulted with a *tangi* by Appellant Shankar and there is no evidence in respect of Appellant Sitaram making an assault on Simitra. Both these eyewitnesses have specifically stated that the attack with a *tangi* on the deceased was only made by Appellant Shankar. Both these witnesses also have categorically stated that Appellant Sitaram had assaulted Sugri Bai @ Silmahin. From this vital piece of evidence of the two eyewitnesses what is culled out is that Appellant Sitaram has not played any role in the death of Simitra. Likewise, Sugri Bai @ Silmahin who is said to have been assaulted by Appellant Sitaram has not been examined and in the absence of her evidence the charge for having assaulted her is not made out at least on Appellant Sitaram.

13. Thus, this Court has no hesitation in reaching to the conclusion that so far as the conviction of Appellant Sitaram under Section 302/34 of IPC for the assault made on Simitra is not sustainable. So also in the absence of evidence of the injured Sugri Bai @ Silmahin the charge under Section 323 of IPC for the injury sustained to Sugri Bai @ Silmahin also does not stand proved and established and, thus, Appellant Sitaram deserves to be and is acquitted of the charges levelled against him and the appeal so far as Appellant Sitaram is concerned the same stands allowed.

14. So far as Appellant Shankar is concerned, undoubtedly, all the witnesses have supported the case of the prosecution during the course of evidence which has come on record in the Court. The defence has not been able to bring out any sufficient piece of evidence in the cross-examination, by which the deposition of the prosecution witnesses more particularly the two eyewitnesses have to be doubted. Further, the statements of these eyewitnesses are matching with the statements that they had made at the time of investigation and, thus, there is no contradiction, omission or discrepancy in their statements. As far as the argument of Appellant Shankar being under influence of alcohol is concerned, the said ground cannot be sustained for the reason that it is a case where Appellant Shankar if at all was under the influence of alcohol he had voluntarily consumed it and it is not a case where he was made to drink. If he had voluntarily consumed the liquor he may not be granted the advantage of conversion of sentence from Section 302 of IPC to one under Section 304 of IPC.

15. Further, from the depositions what is clearly reflected is the fact that initially as per the prosecution story and also the version of the eyewitnesses, Appellant Shankar had only used abusive language and had also thrown some stones upon the deceased and the other ladies accompanying her, but it is later on that Appellant Shankar is said to have gone and brought a *tangi* and is said to have assaulted the deceased on the forehead frontal parietal region. The impact of the injury from the postmortem itself is reflected that the brain matters had also come out from the fronto parietal region. This act on the part of Appellant Shankar itself is sufficient to bring home the offence under Section 302 of IPC and it would not fall in any of the *Exceptions* of Section 300 of IPC. Thus, this Court does not have any hesitation in

holding that so far as Appellant Shankar is concerned the prosecution has been able to prove the case beyond all reasonable doubts and, thus, the appeal of Appellant Shankar deserves to be rejected.

16. In the result :

(i) The appeal of Appellant Sitaram is allowed. His conviction under Sections 302/34 and 323 of IPC is set aside and he is acquitted of the said charges. He is on bail, therefore, his bail-bonds shall remain in operation for a period of six months from today in view of provisions contained in Section 437-A of CrPC.

(ii) The appeal of Appellant Shankar is dismissed. He is stated to be on bail. His bail-bonds are cancelled and he is directed to surrender forthwith and/or be taken into custody for serving out the remaining period of his sentence.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge