

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.144 of 2008**

Bodhan, S/o Shri Bagar Sai, aged about 40 years, Occupation Agriculture, R/o Village Kotaia, P.S. Pratappur, Police District Surajpur, District Surguja, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh through P.S. Pratappur, District Surguja, Chhattisgarh

---- Respondent

For Appellant	:	Shri D.N. Prajapati, Advocate
For State/Respondent	:	Ms. Smita Ghai, Panel Lawyer

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

Judgment on Board**Per Deepak Gupta, Chief Justice**

24.11.2016

1. This appeal by the accused is directed against the judgment dated 11.1.2008 passed by the Additional Sessions Judge (F.T.C.), Pratappur, District Surguja in Sessions Trial No.85 of 2007, whereby he convicted the accused/Appellant under Section 302 of the Indian Penal Code (IPC) and sentenced him with rigorous imprisonment for life and to pay fine of Rs.100/-, in default of payment of fine, to undergo additional rigorous imprisonment for 1 month.
2. The prosecution story, briefly stated, is that accused/appellant Bodhan was married to Chalgahinbai (hereinafter referred to as 'the deceased'). The son of accused/Appellant Bodhan from his first wife, Rajesh was missing. The deceased, according to the prosecution, used to tell fortunes and future of local villagers. She also sometimes used to be possessed by a Devi and, therefore, the villagers used to go

to her to get help. According to the prosecution, accused Bodhan asked her where Rajesh was. She replied that Rajesh will never come back, implying that either Rajesh had died or had left the house. On this, accused Bodhan got angry, dragged her out of the house, beat her mercilessly and then killed her. He then threw the body in the vegetable garden attached to the house. Merg Intimation (Ex.P-1) was lodged by Gulal, PW-1 in which he stated that he was informed about the occurrence and the said occurrence has been witnessed by Juganibai, PW-8, Aneshwar, PW-9 and Sochanibai, PW-5. After the Merg Intimation was lodged, the police recorded the First Information Report (Ex.P-2). Inquest was carried out vide Ex.P-4. Thereafter, the police investigated the matter. The body of the deceased was subjected to post mortem. The post mortem report is Ex.P-11. As per this post mortem report, the deceased died of the injuries sustained by her and there is no manner of doubt that the deceased died due to the injuries caused to her.

3. The issue involved is whether the prosecution has been able to prove beyond reasonable doubt that it is the accused who caused the injuries. Two of the eyewitnesses Juganibai, PW-8 and Aneshwar, PW-9 have turned hostile. However, we may add that Juganibai, PW-8 is wife of Aneshwar, PW-9, who is younger brother of the accused. Therefore, it is not surprising that they have turned hostile. We now come to the remaining two eyewitnesses Sanjay, PW-3 and Sochanibai, PW-5.
4. As far as Sanjay, PW-3 is concerned, he is a child witness, aged about 9 years. According to him, he saw the accused dragging his wife (deceased) from her hair and pulling out her out of the house and also kicking his wife. The witness, however, in cross-examination admitted

that his father has old enmity with accused Bodhan and he has clearly admitted that he has made the statement on the asking of his father. Though in answer to the Court question he replied that he had stated what he has seen, but again when cross-examined, he deposed that his father had told him that he had to give evidence against the accused and he had made his statement on the asking of his father.

5. This Court has repeatedly held that the children are truthful and do not tell lies. However, the law is well settled that the evidence of a child witness must be scrutinised carefully. The reason for doing so is that a child can be pressured by the parents or a person having control over him to say something which is not truth. In fact, sometimes, when the child is put under pressure, he starts believing that what has been told to him is truth and forgets what he has seen. In this case, possibility of the child making wrong statement cannot be ruled out because the child has clearly admitted in the Court that he has been tutored by his father.

6. Lastly, coming to the statement of Sochanibai, PW-5, in examination-in-chief, she has stated that she saw the occurrence outside her house when the accused was beating his wife (the deceased). Thereafter, this witness intervened in the matter and stopped the fight and returned home. She saw nothing thereafter. However, in cross-examination, she has admitted the suggestion of the Counsel for the defence that in fact she has not seen any part of the occurrence. Therefore, all the four eyewitnesses have not supported the prosecution case. The needle of suspicion may point towards the accused, especially in view of the fact that some of the witnesses have stated that he ran away from the place. However, suspicion can never take place of proof, especially in a case of murder. We are,

therefore, of the view that the Trial Court has wrongly convicted the accused.

7. Accordingly, the appeal is allowed. The impugned judgment of conviction and order of sentence is set aside and the accused/appellant is acquitted of the charge framed against him. He is on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE