

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 983 of 2011

1. Smt Nirmala Devi, w/o Shri Raju @ Surendra Nath Jaisal, aged about 45 years
2. Gudwa @ Basant @ Guddu, S/o Raju @ Surendra Nath Jaisal, aged about 20 years.

Both are residents of Camp- II, Hudko Atr., Santoshipara, Bhilai, PD Chhawani, Distt- Durg (CG)

---- Appellants

Versus

- State of Chhattisgarh, through Station House Officer, PS Chhawani, Distt- Durg (CG)

---- Respondent

For Appellants	:	Shri Shri BP Singh, Advocate
For Respondent/State	:	Shri Avinash K Mishra, PL

**Hon'ble Shri Justice Rajendra Chandra Singh Samant &
Hon'ble Shri Justice Anil Kumar Shukla**

Judgment on Board by Rajendra Chandra Singh Samant, J.

02.06.2017

1) The appellants have preferred the present appeal against the judgment of conviction and order of sentence dated 28.09.2011 delivered by the learned 4th Additional Sessions Judge, Durg in Session Trial No. 178 of 2010, whereby appellant-1 Nirmala Devi has been convicted for the offence punishable under Section 302/34 of the IPC and sentenced to undergo life imprisonment and to pay fine of Rs.3,000/- with default stipulation. By the said judgment, appellant- 2 Gudwa @ Basant @ Guddu has been convicted for the offences punishable under Sections 302 and 354 of the IPC and sentenced to undergo life imprisonment and to pay

fine of Rs.3,000/- with default stipulation and RI for two years respectively.

2) Case of the prosecution, in brief, is that on 27.05.2010, Ku.Puja (PW-3) had been to Sulabh Sauchalay at about 6 pm evening. She heard the cry of her sister Khubu @ Khushbu (PW-1) and saw that appellant-2 was outraging her modesty. She tried to intervene, on which appellant- 2 threatened to kill and also assaulted them with fists and legs . Both the sisters went to their residence and narrated the incident to mother- Laxmi (PW-4) and father- Shyamu (deceased). Later on, at about 7 pm on the same day, appellants-1 and 2 came in front of the house of the prosecutrix (PW-1) and assaulted deceased Shyamu, Ku.Puja (PW-3), Khushbu @ Khubu (PW-1) and Laxmi (PW-4). Ku. Puja lodged FIR (Ex.P/4) at PS Chhawani, District Durg at 7.30 pm on the same day. Offences under Sections 307, 354, 506 read with Section 34 of the IPC were registered against the appellants. Injured witness Laxmi (PW-4) was examined by Dr.Meeta Dey (PW-7) vide Ex.P/15 and simple injuries were found on her body. The doctor also examined Ku.Puja vide Ex.P/16 and Khushbu @ Khubu vide Ex.P/17 and found simple injuries on their body. Other injured persons Kulsum (PW-6), Kanti, appellant- Nirmala Devi and Baby were examined vide Ex.P/18, Ex.P/19, Ex.P/20 and Ex.P/21 respectively, by the same doctor. Deceased Shyamu was taken to the hospital who was declared brought dead.

3) On the information received from the hospital, Morgue intimation was registered vide Ex.P/36 at Police Station Chhawani, district Durg. Inquest over dead body of the deceased has been conducted vide Ex.P/3. Dead body of the deceased was sent for autopsy to the District Hospital, Durg vide Ex.P/25. Dr Akhilesh Yadav (PW-13) conducted autopsy on the dead body of the deceased vide Ex.P/27. He opined that the deceased died due to shock and haemorrhage due to ante-mortem injuries to heart/lungs/intestines and death was homicidal in nature.

4) During the investigation, statements of the witnesses were recorded under Section 161 of the Cr.P.C. Seizure of blood stained soil, plain soil and pieces of hairs was made vide Ex.P/5. At the instance of appellant- 2, vide his memorandum statement vide Ex.P/8, a knife was recovered vide Ex.P/9. At the instance of appellant- 1, memorandum statement vide Ex.P/10, a club was seized vide Ex.P/11. Spot map was prepared vide Ex.P/27 by the Investigating Officer VD Nand (PW-12). The seized articles were sent for chemical examination vide Ex.P/33 and FSL report is received vide Ex.P/35. On completion of investigation, charge-sheet has been filed against the appellants.

5) Appellant-1 Nirmala Devi was charged under Section 302/34 IPC and appellant- 2 Gudwa @ Basant @ Guddu was charged under Sections 302, 307, 354 and 506 Part II of the IPC. Both the appellants denied the charges. Prosecution has examined 14 witnesses. Accused persons were examined under Section 313

of the Cr.P.C. Denying all the incriminating evidence brought by the prosecution, they have pleaded innocence and false implication. It is submitted that deceased Shyamu, his wife, daughters and other residents of the vicinity caught hold of appellant- 2 and brutally assaulted him. He somehow escaped from their clutches and went in hiding because of fear, hence, he could not lodge any report. Later on, he was arrested. No witness was examined in defence. On completion of trial, the impugned judgment was passed by which the appellants were held guilty, convicted and sentenced as mentioned above.

6) The grounds of appeal are that the impugned judgment is bad in law, erroneous on the basis of the evidence of unbelievable prosecution witnesses, which suffers from major material contradictions and omissions. The trial Court has overlooked that appellant- 1 and 2 also suffered injuries in the same incident. In the alternative, it is submitted that the incident occurred because of sudden provocation and in the heat of passion. Hence, the offence if any made out, it is only under Section 304 Part I of the IPC, that too against appellant- 2. It is admitted by the witnesses of the prosecution that appellant- 2 was caught hold by other persons also and was beaten. Hence, it cannot be said that he was aggressor. On these grounds, it is prayed that the appellants may be acquitted.

7) It is submitted by learned counsel for the appellants that appellants have been falsely implicated in this case. As per the case of the prosecution, two incidents took place. First incident

took place at Sulabh Souchalay when appellant- 2 outraged modesty of the prosecutrix (PW-1). In the second incident, he was caught hold by the witnesses and by various other persons in the vicinity and he was assaulted by them. There were various injuries on his body. The witnesses of this incident are, Surajlal (PW-5) and Kulsum (PW-6), who have turned hostile and have not supported the case of the prosecution, which creates doubt on the prosecution case. The injuries found on the body of appellant- 1 vide Ex.P/20 have not been explained and it demonstrates that appellants were not aggressors in this case. Hence, the appellants are entitled for benefit of doubt. It is also submitted that the incident took place due to sudden provocation as appellant- 2 was assaulted by the deceased and other witnesses along with the residents in the vicinity because of which the appellant also assaulted the deceased, as a result of which Shyamu died. Therefore, only the offence under Section 304 Part- I of the IPC is made out against the appellant.

8) Learned State counsel opposed the grounds raised in this appeal and in this behalf it is submitted that Ku.Puja (PW-1), Khushbu @ Khubu (PW-3) and Laxmi (PW-4) have clearly supported the case of the prosecution. Further the medical evidence is also in support of the prosecution. Eight incised wounds were found on the body of the deceased, which indicate the intention of the appellants and the same clarify as to who was

aggressor. Hence, it is clearly not a case of sudden provocation. There is no scope for interference.

9) Considering the grounds raised by the parties, question before this Court is whether the conviction against the appellants is supported by the evidence of the prosecution beyond reasonable doubt.

10) The evidence produced before the trial Court is perused.

11) Khushbu @ Khubu (PW-1) has stated in her evidence that on the date of incident she along with her sister Puja (PW-3) had been to Sulabh Sauchalay in the evening at 6 hours. When she came out of it, appellant- 2 Gudwa @ Basant @ Guddu all of a sudden came near her, caught hold of her hand and chest with an intention to outrage her modesty. On her objection, he kicked on her chest thrice. She went crying to her house, informed her mother and father about the incident. When her mother Laxmi (PW-4) went to meet appellant- 2 and asked him as to why he was teasing the girls of that locality, he and appellant- 1 Nirmala Devi quarrelled with her and assaulted her with clubs. At the same time, deceased Shyamu came to intervene them. Then, appellant- 2 brought a knife and assaulted Shyamu in his abdomen and dragged the deceased towards a dark area, where he again stabbed the deceased, which was witnessed by this witness. In her cross-examination, she supports her previous statement vide Ex.P/1. The contradictions and omissions brought to the notice of the Court are immaterial, though she has admitted that

appellant- 2 is physically handicapped on one leg and denied having knowledge that any injury was caused to Nirmala Devi and her daughter- Baby. Further, she has admitted that she along with her sister caught hold of the appellant and were taking him when the quarrel started. Further she has stated that her father had not gone to the place of residence of the appellants. She has again reiterated that appellant- 2 dragged his father to a place of darkness before stabbing him with knife. These statements cannot be treated as a rebuttal to the statement made by her in her examination-in-chief. Further, she has stated that when she came back to her house with her mother and sister, appellant- 1 Nirmala Devi came to their house and had appeased them, but, later appellant- 2 Basant alone came to their house, caught hold of deceased- Shyamu, on which she herself, her mother and sister tried to separate him from the clutches of appellant- 2 Basant. Then, appellant- 1 Nirmala Devi, Baby and Babu came on the spot and started assaulting them, at that time, appellant- 2 Basant dragged her father to the spot of darkness and stabbed, which she has witnessed.

12) Ku.Puja (PW-3) has supported the version of Khushbu @ Khubu (PW-1) in her examination-in-chief and stated that she had witnessed the entire incident. Her statement is remained un-rebutted and she lodged the FIR. It has not been confronted and the contradictions and omissions brought to the notice of the Court are inconsequential and immaterial. Further, she has

admitted that appellant- 2 Basant was caught hold near the Sulabh Sauchalay by herself and her sister with the help of other women of that locality. On seeing this, her father came to the spot. She has also stated that the persons who gathered on the spot were angry because appellant- 2 Basant had committed eve teasing. It was at the same time and at the same place, her mother and father talked to the mother of appellant- 2 Basant. She denied that appellant- Basant dragged the deceased to dark place and stabbed. This admission in her cross-examination appears that she has not witnessed the incident directly that it was appellant- Basant, who had stabbed her father. Although, she came to know about it immediately after the incident took place, she saw her father on the spot of the incident. Hence, apart from this variation in her statement because of her admission made in cross-examination, her statement is in support of the statement of Khushbu @ Khubu (PW-1) and FIR, Ex.P/4.

13) Laxmi (PW-4), wife of the deceased- Shyamu stated that she was at her house when her two daughters and one neighbour came to her and narrated her about the incident at Sulabh Sauchalay. She took appellant- 2 Basant to his mother who narrated the incident to her. At the same time, appellants started assaulting them. Appellant- 2 Basant left the place, went to his home and came back with a knife to her house and stabbed deceased Shyamu. At the same time, Nirmala Devi also assaulted the deceased with club and appellant- 2 fled from the spot. In her

cross-examination, some discrepancies have been brought to the notice of the Court vide her statement Ex.P/7, which cannot be considered as material. She had admitted that on hearing about the incident, she along with others went to the place of incident near Sulabh Sauchalay and saw Basant present there, who was caught, but he was not assaulted. The only discrepancy in her previous statement Ex.P/7 which needs consideration is that appellant- 1 Nirmala Devi assaulted the deceased with club at the time when appellant - 2 Basant was stabbing him with knife. This statement is not in tune with the statement of Khushbu @ Khubu (PW-1) and neither such thing has been stated by Ku.Puja (PW-3). This variance shall be taken into consideration.

14) Shiv Mangal (PW-2) is the witness of Ex.P/3. Kulsum (PW-6) was examined as eyewitness, but has not supported case of the prosecution and turned hostile.

15) Dr Meeta Dey (PW-7) has examined Laxmi (PW-4) vide Ex.P/15, Ku.Puja (PW-3) vide Ex.P/16, Khushbu @ Khubu (PW-1) vide Ex.P/17, Kulsum (PW-6) vide Ex.P/18, Smt Kanti vide Ex.P/19 and appellant- 1 Nirmala Devi vide Ex.P/20 and reported that all the injured persons have suffered simple injuries and the same is not challenged.

16) Dr Akhilesh Yadav (PW-13) has conducted postmortem of deceased- Shyamu. On examination, he found the following injuries:

- 1 Incised wound right side of chest 7 cm above right nipple of size 2.5 x 1/4 x 4 1/2 cm.
- 2 Incised wound right side of chest 5 cm below right nipple of size 3 x 1/2 x 7cm.
- 3 Incised wound right side chest below the second wound of size 2.5 x 1.2 x 5 cm
- 4 Incised wound lateral chest of size 2 x 1/2 x 1/4 cm
- 5 Incised wound on left of sternum of size 3.5 x 1.5 cm
- 6 Incised wound above left nipple of size 3x1.5 x 6.5 cm
- 7 Incised wound in front of right hand of size 3.5 x 1.5 cm
- 8 Incised wound over navel of size 3 x 3 cm from which some part of intestine had come out.

17) On internal examination, he found that 6th rib was broken and internal muscles were also injured. Right lung was in ruptured condition and there was a puncture on the right ventricle of heart. Small intestine was also ruptured. He has opined that cause of death was shock and haemorrhage due to antemortem injuries to heart/lungs/intestines, hence, death of the deceased was homicidal in nature. This report was remained unchallenged.

18) Rest of the witnesses examined by the prosecution are with respect to the investigation procedure.

19) Town Inspector- VD Nand (PW-12) has conducted part of the investigation. He has stated that at the instance of appellant- 2 Basant vide his memorandum statement Ex.P/8 one knife was seized from his possession from the place of hiding vide Ex.P/9. Witness to this memorandum statement is Surajlal (PW-5) who has turned hostile. No question was put to Laxmi (PW-4) who was a

witness to this procedure. Hence, the evidence of recovery of knife on the basis of memorandum statement given by appellant- Basant rests only on the statement of VD Nand (PW-12). In cross-examination, his statement remained un-rebutted and on going through the whole statement given by him, no reason has been found on the basis of which his statement should be dis-believed. Hence, it is held that the trial Court rightly believed the evidence of recovery of this article from appellant- Basant.

20) After scrutinizing of the evidence of the prosecution witnesses and material on record, it is very clear that there is sufficient evidence to support the prosecution in this respect that appellant- 2 Gudwa @ Basant @ Guddu at first outraged modesty of Khushbu @ Khubu (PW-1) near Sulabh Sauchalay, which has been witnessed by Ku.Puja (PW-3) and later on he was the person, who, by using a knife, stabbed deceased- Shyam causing him multiple injuries, which resulted in his death. The statement of Ku Puja (PW-3) also has relevancy and is corroborative. Further the medical evidence also confirms that death of deceased was due to the ante-mortem stab injuries. Hence, there remains no doubt that appellant- 2 Basant came to the spot with a knife and stabbed the deceased to death. The stand of defence that it was an act of sudden provocation has no relevance in these state of affairs, because, appellant- Basant, who was caught hold by the witnesses after the first incident in which he outraged modesty of Khushbu @ Khubu (PW-1), but then he was set free and went to his house. His

arriving on the spot armed with a knife shows that he had ample time to consider the situation, even then he came prepared for the only purpose of assaulting the deceased with knife, which shows his intention to cause his death. However, the number of injuries caused on the body of the deceased confirms the intention of the appellant. Hence, conviction of appellant- 2 Basant in the impugned judgment does not suffer from any infirmity and there is no scope for interference.

21) Regarding the role of appellant- 1 Nirmala Devi in this case, there is evidence that she had been present at the time when deceased was assaulted by appellant - 2 Basant. According to Khushbu @ Khubu (PW-1), Nirmala Devi came to assault her and others with a club. When her father came to intervene, it was at that time appellant- 2 Basant came with a knife and stabbed him. This shows that appellant- Nirmala Devi alone came to assault them and appellant- 2 Basant did not join her in assaulting Khushbu @ Khubu (PW-1), Ku.Puja (PW-3) and others, but he came with a different intention. Under these circumstances, it cannot be said that appellant- Nirmala Devi supported the intention of appellant- Basant. Ku.Puja (PW-3) is not a direct witness of the incident when deceased- Shyamu was being stabbed by appellant- 2 Basant. Hence, there is no role of appellant- Nirmala Devi in the incident in which deceased was stabbed to death. According to Laxmi (PW-4) as well, when the incident of assault and beating was happened, it was appellant - Basant who came alone with a knife and stabbed

the deceased. Looking to the aforesaid evidence of the eyewitnesses on the spot, it becomes very clear that appellant- Nirmala Devi did not directly participate in the incident of assault on deceased- Shyamu, who was done to death. Her role is slightly different as it appears that the residents of the vicinity had become hostile and were after the appellant- Basant to assault him and for this reason, she came with a club to protect her child and assaulted the witnesses and others. It was at this moment that appellant- 2 Basant came with an ulterior motive and intention to cause death of deceased- Shyamu and acted accordingly. Hence, for these reasons, the conviction of appellant- 1 Nirmala Devi under Section 302/34 is not sustainable. As there are injured persons in this case who have suffered simple injuries and there is evidence that appellant- Nirmala Devi assaulted them with a club, at the most she can be held guilty for voluntarily causing simple injuries to Khushbu @ Khubu (PW-1), Ku.Puja (PW-3), Laxmi (PW-4), Kulsum (PW-6) and Kantidevi for which she can be convicted only under Section 323 of the IPC on five counts. After due consideration of the evidence of the witnesses of the prosecution, we are of the considered opinion that the conviction and sentence of appellant- 2 Basant does not suffer from any illegality and infirmity. Hence, this part of the impugned judgment is upheld.

22) The aforesaid view taken with regard to appellant- 1 Nirmala Devi on the basis of the reasons aforementioned, her conviction and sentence under Section 302/34 is set aside, instead, she is

convicted under Section 323 of the IPC on five counts. As it is reported that she has suffered custody for sufficient period, hence, she is sentenced to imprisonment for the period of custody already undergone by her for the offence on all counts, which shall be deemed to have run concurrently. The appeal so far as it relates to appellant- 2 Gudwa @ Basant @ Guddu is dismissed.

23) The appeal is partly allowed to the extent indicated above.

Sd/-
(Rajendra Chandra Singh Samant)
Vacation Judge

Sd/-
(Anil Kumar Shukla)
Vacation Judge