

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 845 of 2004**

Sukhru Ram S/o Kodwa Ram Yadav aged about 50 years, occupation Charwaha, r/o village Tikadhi, P.S. Marwahi, District Bilaspur.

---- Appellant**Versus**

State of Chhattisgarh through the District Magistrate, Bilaspur, Chhattisgarh.

---- Respondent

For the Appellant	:	Shri Shrawan Chandel, Advocate.
For the Respondent/ State	:	Shri Vivek Sharma, Government Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Rajendra Chandra Singh Samant****Judgment on Board by Prashant Kumar Mishra, J.****21/03/2017**

1. The appellant would call in question his conviction under Section 302 of the Indian Penal Code (for short 'the IPC') for committing murder of his mother Phoolmati @ Bakai at about 4:00 to 5:00 pm on 1.9.2001.

2. The prosecution case, as emerging from the material available on record, is that at about 12:00 – 1:00 noon on the date of incident, the appellant, armed with a *farsi* in his hand, was roaming in the village extending threat to commit murder. At that time, Budhram (PW-6) (Kotwar) snatched the *farsi* from the appellant. However, the appellant again came to the residence of his mother at about 4:00 - 5:00 pm and without there being any quarrel or provocation started giving blows to her mother. The appellant caused injuries over the neck and parietal region by means of *farsi*. As a result of the injuries, the deceased succumbed to death instantly.

3. After effecting seizure of the weapon from the appellant and recording the statements of the witnesses, charge-sheet was filed against the appellant for the offence under Section 302 of the IPC and eventually, he has been convicted for the said offence.

4. Assailing the conviction, Shri Shrawan Chandel, Learned counsel for the appellant would submit that Savitri Bai (PW-1) is not an eyewitness and the other witness, namely, Leelabai (PW-10) is a child witness, therefore, there is no clinching evidence against the appellant. In the alternative, he would submit that the act of the appellant would at best be punishable under Section 304 part I of the IPC.

5. Per contra, Shri Vivek Sharma, Learned State counsel would vehemently oppose the submission made by the appellant's counsel. According to him, it is an open and shut case of murder.

6. The entire prosecution case revolves around the statement of two eyewitnesses, namely, Savitri Bai (PW-1) and Leelabai (PW-10). Although, other witnesses have been examined, however, since seizure of *farsi* has been duly proved against the appellant and there is no dispute about the fact that the deceased died a homicidal death, we would concentrate on marshalling the evidence of Savitri Bai (PW-1) and Leelabai (PW-10) only.

7. Savitri Bai (PW-1) is the daughter-in-law of deceased – Phoolmati, therefore, the appellant happens to be the brother-in-law (*Jeth*) of this witness. The entire prosecution case is silent about the motive for

commission of crime. The evidence of Savitri Bai (PW-1) would reveal that she and her mother-in-law, deceased – Phoolmati, were present in the house at about 4:00 pm when the appellant entered their house and straightaway started inflicting injuries over the person of the deceased by means of *farsi*, despite request by this witness not to inflict injuries. Leelabai (PW-10), aged about nine years is the daughter of Savitri Bai (PW-1). She was also present in the house when the appellant inflicted injuries over the person of the deceased. There is no contradiction or omission, much less any material contradiction or omission in the statements of these two witnesses, therefore, the witnesses are credible and trustworthy.

8. Seizure of *farsi* vide Ex. P/3 has been proved by Udaybhan (PW-2) who has fully supported the prosecution case.

9. In view of the above evidence, we do not find any infirmity in the finding recorded by the trial court about the guilt of the appellant.

10. We shall now consider the alternative submission made by learned counsel for the appellant. It is argued that the offence would fall under Section 304 part I of the IPC and not under Section 302 of the IPC. To consider the submission, we are once again required to revert back to the testimony of the eyewitnesses and the background in which the appellant has committed the offence. As earlier discussed by us, the prosecution case is silent about the motive of commission of crime. In a case where we are called upon to consider whether the appellant had knowledge but not the intention to commit murder, motive assumes significance and in the absence of such evidence, the motive or reason to commit murder is in the mind of

the culprit and it deprives the court to gather necessary facts to consider whether the appellant had any intention or not to kill the deceased.

11. Be that as it may, the evidence of the eyewitnesses, namely, Savitri Bai (PW-1) and Leelabai (PW-10) would not suggest that when the appellant entered their house there was any altercation or quarrel leading to provocation for which the appellant started causing injuries to the deceased. In the absence of any provocation or sudden fight, it is difficult to hold that the act of the appellant would fall within the Exception 1 or the Exception 4 to Section 300 of the IPC. To the appellant's further discomfort, Udaybhan (PW-2) has stated that the appellant was roaming around the village armed with *farsi* at about 12:00 - 1:00 noon extending threat to commit murder. This statement is corroborated by Budhram (PW-6). Therefore, it appears that the plan or intention to commit murder was brewing in the mind of the appellant since noon which was ultimately executed at about 4:00 – 5:00 pm. It is just contrary to the evidence which would attract Exception 1 or Exception 4 to Section 300 of the IPC.

12. In the above view of the matter, we find it difficult to accept the alternative submission of learned counsel for the appellant.

13. In the result, the appeal deserves to be and is hereby dismissed. The appellant is on bail. His bail bond is cancelled. He be arrested forthwith for serving the sentence.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Rajendra Chandra Singh Samant)