

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 712 of 2011**

- Ram Ratan Suryavanshi , son of late Puri Suryavanshi, aged about 52 years, resident of village Suryavanshi Mohalla, Machkhanda, Police station Sipat, District Bilaspur (C.G).
--- Appellant

Versus

- State of Chhattisgarh, through Station House Officer Police Station Sipat, District Bilaspur (C.G). --- Respondent

For the Appellant	:	Mr. C.R. Sahu, Advocate
For the State	:	Mr. Anil S. Pandey, Advocate

CRA No. 720 of 2011

- Laxmin Bai, wife of Ram Ratan Suryavanshi, son of late Puri Suryavanshi, aged about 45 years, resident of village Suryavanshi Mohalla, Machkhanda, Police station Sipat, District Bilaspur (C.G).
--- Appellant

Versus

- State of Chhattisgarh, through Station House Officer Police Station Sipat, District Bilaspur (C.G). --- Respondent

For the Appellant	:	Mr. Govind Ram Miri, Advocate
For the State	:	Mr. Anil S. Pandey, Advocate

**DB: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Shri Justice Sanjay Agrawal, JJ,**

JUDGMENT/ORDER ON BOARD**05.06.2017**

1. These appeals are directed against the impugned judgment of conviction and order of sentences dated 23.07.2011 passed in S.T.No. 34 of 2011 by the First Additional Sessions Judge, Bilaspur, by which the appellants have been held

guilty of commission of offence under Section 302 IPC and sentenced to undergo life imprisonment with fine of Rs. 500/- each, in default of payment of fine, to further undergo additional R.I., for 3 months.

2. According to the prosecution story, on the date of incident at about 5.00 p.m., in the evening, P.W.1 Ganesha Bai, wife of deceased, was being maltreated and abused by the deceased and at that time all of a sudden, the elder brother of deceased, namely Ramratan Suryavanshi (appellant of Criminal Appeal No. 712 of 2011) and his wife Laxmin Bai (appellant of Criminal Appeal No.720/2011) arrived at the spot and assaulted the deceased. It is stated that because of the assault made by hands & fists and bamboo club, deceased Laxmi Prasad sustained injuries on his chest as also head which proved to be fatal due to which he succumbed to death.
3. On the report of Ganesha Bai (P.W.1), wife of deceased, FIR (Ex.P.2) was registered by the police on 27.12.2010 at about 19.15 hours against the appellants for the alleged commission of offence punishable u/ss 302, 324, 294 read with section 34 IPC. After usual investigation and on recording statements of witnesses u/s 161 Cr.P.C., obtaining postmortem report and collecting blood stained soil from the spot as also clothes of the deceased and the appellants which were sent for FSL examination, charge sheet was filed against the appellants for the alleged commission of offence u/ss 302, 324, 294 read with section 34 IPC. Upon committal, the appellants were charged for commission of offence and they having abjured their guilt were tried for

commission of offence as alleged.

In order to prove the case, the prosecution examined as many as 14 witnesses which included the investigating officer, the Doctor who conducted the postmortem and the witnesses, said to be eye-witnesses of the incident. The appellants were examined u/s 313 Cr.P.C., in respect of incriminating evidence and circumstances appearing against them. The appellants denied to have committed any offence. No defence witnesses was examined.

Relying upon the evidence led by the prosecution particularly the eyewitness account of the incident namely Ganesha Bai (P.W.1) Mangat Ram (P.W.2) and Shiv Prasad (P.W.5) and taking into consideration the homicidal nature of death and the injuries caused, the learned trial Court by impugned judgment, convicted and sentenced the appellants as aforesaid.

4. Assailing the correctness and validity of the impugned judgment of conviction and order of sentence, the learned counsel appearing for the appellants argued that the evidence of eye-witnesses is liable to be disbelieved because either they have made improvements in their statements or they are concocted in nature. As far as P.W.1 Ganesha Bai wife of deceased is concerned, it is submitted that her conduct was most unusual that instead of saving her husband from the alleged assault, she left the spot. It is submitted that even according to this witness, she left the spot of incident soon after the quarrel had begun and she has exaggerated in her court statements of having seen the entire incident. Learned counsel for the appellants further

argued that according to this witness there were number of neighbors residing in the same vicinity but the prosecution has not examined them which raises doubt with regard to the entire case of prosecution. Further submission is that though Ganesha Bai (P.W.1) has stated that the incident was seen by the villagers and children, those children have not been examined and the neighboring witnesses also having not been examined, non-examination of these witnesses leads to drawing adverse inference against the prosecution. Further contention is that in the map of scene of crime prepared by the Police Officer conducting investigation and in the map prepared by the Patwari, the place of incident is different than what has been stated by P.W.1 Ganesha Bai. According to Ganesha Bai, the incident happened in the warandah of the house whereas according to these maps the place of incident is in the narrow passage (gully) in front of the house and the dead-body of the deceased was also found lying in the gully which has not been explained by the prosecution. It is also argued that the map has not been prepared in accordance with the instructions 747 of the Police Mannual and does not indicate the names of witnesses to whom the investigating agency has noticed to come at the time of preparation of the scene of crime.

5. According to the learned counsel for the appellants, the prosecution having failed to examine the natural witnesses being the next door neighbors shows that the prosecution has not led the truth before the Court. As far as the other two prosecution witnesses P.W.2 Mangat Ram and P.W.9 Kumar Sanu are concerned, it is submitted that they are

concocted witnesses, they were not present at the time of incident and looking to proximity of the house of appellants and the house of deceased it is highly improbable that they would have seen the deceased. Those who were residing as next door neighbors were not examined by the prosecution. Further submission of learned counsel for the appellants is that the evidence of so called eye-witness account is liable to be disbelieved because the ocular testimony is contradicted by the nature of injuries found on the body of deceased. He submits that according to P.W.1, the appellants sought to strangle the deceased and thereafter a lathi blow was given near his private part, but the postmortem report does not show any such injury found on the body of deceased which shows that in fact, P.W.1 had not seen the incident and that is why she says that soon after the quarrel began, she went to call Sarpanch. The seizure of bamboo club on the basis of memorandum is highly doubtful and improbable and in any case inconsequential because no human blood much less blood of the origin of that of deceased has been proved by the prosecution.

6. Lastly it is submitted that even if the entire prosecution story is taken as it is, there was no premeditation on the part of the appellants. The deceased was the real brother of appellant Ram Ratan and there was no reason why he would kill his own brother. It was in a spur of moment that P.W.1 wife of deceased raised complaint that she was being abused, scolded and assaulted by her husband that the appellants came out from their house and may have assaulted to only teach him a lesson but certainly not to kill

him. Initially no deadly weapon was brought and even according to P.W.1 later-on a lathi (Danda) was brought from the house. The appellants have already undergone jail sentence of more than 6 1/2 years and in these circumstances, the conviction of the appellants may be converted to that u/s 304 Part II IPC.

7. On the other hand, learned State Counsel supports the judgment of conviction and order of sentence and submits that the contradictions and omissions pointed out by the defence do not render the ocular testimony of the 3 eye-witness P.W.1, P.W.2 & P.W.9 who have fully supported the case of prosecution. He submits that there is no reason much less anything elicited in the cross examination of P.W.1, wife of deceased as to why she should falsely implicate the appellants who are her own relatives and allowed to go scot free the real culprits who have killed her husband. He next submits that the corroboration of eye-witness account of the wife of the deceased by the evidence of two other independent eye-witnesses of the prosecution who are neighbors of deceased, fully makes out the case of prosecution. The appellants repeatedly gave blows and assault not only with hands, fists but also repeated lathi blows on the forehead and occipital part of the deceased which clearly shows that there was an intention to kill and with that intention and knowledge, hard blow was given on the vital part of the body which proved to be fatal, therefore, the conviction does not warrant any interference.
8. The homicidal death of Laxmi Prasad is not substantially in dispute. The eye-witness account as stated by P.W.1 in the

FIR clearly proves that there was an incident of fight at the spot where the deceased Laxmi Prasad was first assaulted by the two appellants. This has not only been stated in the FIR but also in the merged intimation. The eye witness account of the incident even given by P.W.1 who is none other than the wife of deceased proves that the appellants assaulted the deceased. According to this witness, initially an assault was made on the deceased by hands and fists, he was pulled down and an attempt was made to strangle him by pressing his neck and thereafter appellant Laxmin Bai brought a bamboo club from her house and then it is stated that with this club more than one assaults were made which included the assault on the head also. Similar is the version of other two witnesses namely P.W.2 Mangat Ram and P.W.9 Kumar Sanu.

9. The Postmortem Report Ex.P-13 has been duly proved by P.W.8 Dr. Rajendra Singh Maravi. Upon postmortem, the doctor found that head was swollen; there was lacerated wound below the chin in size of 2cm x 2cm x 2cm; eyes were depressed; right ear was teared; right eyebrow & underline bone were depressed; nose and maxillary bones were fractured; right parietal bone was fractured. There was swelling on both sides of the chest and underline muscles were ruptured and Rigor-mortis was present. The doctor also opined that the death was due to cardio-respiratory failure and the sudden arrest of functioning of heart and lungs as a result of injury. He has stated that the injury was grievous in nature. On this evidence of the doctor, nothing material could be elicited from his cross

examination to hold otherwise. Therefore, from the oral and medical evidence proved by the prosecution, there cannot be any doubt that Laxmi Prasad died homicidal death.

10. Though number of prosecution witnesses were examined by the prosecution, at least 3 witnesses which included the wife of deceased also have fully supported the case of prosecution who have been examined as eye witness of the incident. P.W.1 Smt. Ganesha Bai has clearly stated in her evidence that though initially the relations were cordial, but later on it was strained on account of partition. With regard to the incident, she has stated that when her husband came back at about 4.00 p.m., he went along-with children to village side. According to the witness, when her husband was describing the poor condition of agricultural productivity, her brother-in-law and sister-in-law (appellant Ramratan and Laxmin Bai) arrived at the spot under an impression that a quarrel was going on between them and at this stage, the sister-in-law passed ugly remarks on her husband. At this stage, Ram Ratan enquired the matter and then there were exchange of abuses which were followed by quarrel in which her husband was pulled down. Attempt was made to press his neck and strangulate him and in this moment of quarrel, sister-in-law Laxmin Bai brought a bamboo club from the house and then assault was made near private part of her husband. Thereafter the assault was also made on the nose, head, mouth and surrounding areas which proved to be serious and her husband started bleeding. Thereafter, she went to call the Sarpanch of village. According to this witness, the incident was seen by her children Sapna and

Sameer and other neighbors. In the FIR, this witness has stated that the incident was seen by neighbors and children. This witness has been subjected to a detailed cross examination. She admits that the deceased and the appellant Ram Ratan are real brothers. According to her, partition had already taken place. She has admitted the suggestion that after partition, the relations were strained. She has further stated that the incident is of about 5 p.m., in the evening. According to her, the witnesses were watching the incident but no body came to rescue her husband and she also did not make an attempt and as soon as the incident started, she went to call the Sarpanch. The suggestion that the deceased was hurling abuses had come out with an Axe striking at the door and had quarrel with her husband 2 days before has been denied. There is no other evidence on record to show that the present incident was sequential to any serious dispute of quarrel immediately before the present incident.

The argument of learned counsel for the appellant that the conduct of this witness that she did not make any effort to save her husband but went to call the Sarpanch is so unnatural conduct as to warrant that her statements should altogether be disbelieved, cannot be accepted. Different persons may behave and respond to a particular facts situation in different manner. According to this witness, her husband was being assaulted by his own brother and sister-in-law. If in these circumstances she had gone to call the *Sarpanch* to end the dispute, it cannot be said to be so unnatural. It was not a case of fight between two persons

unknown to each other but an in-house fight between the two brothers and even according to this witness, initially the appellants had not come out with any weapon in their hands. Therefore, the conduct of this witness to leave the spot and go to Sarpanch does not by itself render her testimony liable to be disbelieved.

The other submission of the learned counsel for the appellant that the witness has not seen the incident of actual assault also cannot be accepted firstly for the reason that she happens to be the wife of deceased and her presence at the spot cannot be said to be unnatural or improbable. She has clearly stated that as to in what manner the incident happened. Merely because she says that after the quarrel began, she went to call the Sarpanch, it cannot be said that she had not seen the incident or the overt act stated by her in her examination-in-chief. She has given a natural version of what she had seen before she left the place of incident to call the Sarpanch.

Secondly the evidence of P.W.1 is corroborated by at-least two other witnesses of the prosecution namely Mangat Ram (P.W.2) and Kumar Sanu (P.W.9).

P.W.2 in his cross examination has stated that he is related to the deceased. According to him, he is residing only 4th or 5th house away from the house of deceased. Therefore, he appears to be a natural witness of the incident being neighbor and relative. He has stated in his evidence that when he was returning at about 5.00 – 5.30 p.m., in the evening he saw that Laxmi Prasad was being assaulted by appellant Ramratan and Laxmi Bai. Nothing could be elicited

ifrom his cross-examination to disbelieve his testimony.

Similar is the evidence of P.W.9 Kumar Sanu which shows that when he came out of his house he saw Ram Ratan and Laxmin Bai were assaulting Laxmi Prasad with club and Laxmi Prasad fell down. In his cross examination, this witness states that his house is situated about 40 feet away from the house of Ram Ratan which means that he is also one of the neighbors residing in the house nearby the houses of deceased and the appellant Ram Ratan . Nothing could be elicited from the statement so as to disbelieve the testimony of this witness having seen the incident.

11. From eye-witness account of P.W.1, P.W.2 & P.W.9 it is proved by the prosecution beyond doubt that an incident of fight happened in front of the house of deceased and in that incident, the appellants assaulted the deceased by hands, fists and bamboo club and the injury proved to be fatal resulting in death of deceased.
12. Learned counsel for the appellant also sought to impress upon the Court by submitting that as the children and other villagers or other next door neighbors were not examined by the prosecution, an adverse inference has to be drawn against the prosecution. We are not impressed with this submission because in the FIR as also the court statement, P.W.1 has clearly stated that the incident has been seen by villagers. She has not given specific names of any particular neighbor in the village so as to say that the prosecution did not examine that witness and failed to account for non-examination of such witness. In fact, the two witnesses P.W.2 and P.W.9 are neighbors of the deceased and

therefore, their testimony only supports the case of prosecution and what has been stated in the FIR and Court statement of P.W.1 that incident was seen by villagers. The non-examination of two children would not in the circumstances of the case, lead to draw an adverse inference. Once the testimony the wife of deceased and two other witnesses who were neighbors, is found to be trustworthy, we are not inclined to disbelieve the testimony merely because the minor children of the deceased were not examined. It is not a case where the evidence of P.W.1, P.W.2 and P.W.9 is so contradictory that it would not be safe to rest on conviction without seeking corroboration from the evidence of child witnesses of the incident.

13. Having held so, the next question which arises for consideration is whether the conviction of the appellants u/s 302 IPC is proper or whether it is a case where the conviction should be altered to section 304 Part II in the background of the incident, relationship between the parties and the spur of moment or heat of passion which led to incident.
14. There is overwhelming evidence on record led by the prosecution itself that appellant Ramratan is real brother of deceased Laxmi Prasad and appellant Laxmin Bai is wife of Ramratan. P.W.1 the most important witness of the prosecution is the wife of deceased Laxmi Prasad. From her evidence, it is clear that an incident of sudden quarrel took place when this witness was being misbehaved by her husband which led to altercation and exchange of abuses between the appellants on one side and the deceased Laxmi Prasad on the other on the spot itself.

The evidence of P.W.2, the eye-witness is that the appellants were assaulting the deceased with hands and fists. In para 4 of his cross examination, he states that deceased Laxmi Prasad and appellant Ramratan were scuffling with each other. He also clearly states that they were not holding any weapon in the hand and blowing fists on each other. P.W.9 Kumar Sanu also states that the deceased was being assaulted by appellant Ramratan and his wife Laxmin Bai. These witnesses have also stated that there used to be quarrel between the two brothers after partition had taken place.

15. A conjoint reading of the aforesaid evidence on record would show that the quarrel between the appellants and deceased surfaced at the spur of moment when Ganesha Bai, wife of deceased was being scolded by her husband and the loud voice attracted appellants Ramratan and Laxmin Bai who were residing in the next house. The evidence also proves that after they came out and started enquiring about the matter, certain comments were passed, followed by abuses hurled and heated altercation between deceased and appellant Laxmin Bai which further followed by scuffle and assault on each other by hands and fists. In the midst of this quarrel, it is stated that it has come in evidence that Laxmin Bai brought a club from her house and assault was given to the deceased on his head. The over-all circumstances would go to show that it was only in the spur of moment and heat of passion that the incident happened between the deceased and his sister-in-law on a petty issue of the deceased misbehaving with his wife and quarreling with her. Initially

the appellants had not come out with any weapon in the hand. It was only when Ramratan and deceased Laxmi Prasad were scuffling with each other and blowing firsts, then suddenly Laxmin Bai brought a bamboo club from the house with which Laxmi Prasad was assaulted. The assault resulted in a blow on the head of Laxmi Prasad which proved to be fatal. From the nature of number of injuries it cannot be said that the appellants took any undue advantage or acted in a cruel manner. Therefore, in these circumstances, we hold that it would be a case fit to be covered by explanation clause of sudden and grave provocation and assault made by the appellants in heat of moment without any premeditated mind. Thus the proved facts only justify the conviction for culpable homicide not amounting to murder. Consequently, we are inclined to alter the conviction of appellants from that under section 302 IPC to section 304 Part II IPC being guilty of culpable homicide not amounting to murder.

16. In the totality of circumstances, the conviction of the appellants for the offence punishable under section 304 Part II IPC shall be for the period already undergone by the appellants as it is found that the appellants have already undergone more than 6 1/2 years of sentence. In the result the appeals are partly allowed and the appellants be set at liberty forthwith if they are not required in any other offence.

Sd/-

(MANINDRA MOHAN SHRIVASTAVA)
(V. JUDGE)

Sd/-

(SANJAY AGRAWAL)
(V. JUDGE)