

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 819 of 2004**(Arising out of judgment/order dated 20.09.2004 in Case No. 254/97 of the learned Additional Sessions Judge, Sarguja)Judgment reserved on : 22/08/2017Judgment delivered on : /10/2017

1. Gopi Prasad Yadav S/o Ramvruksha Yadav, aged about 50 years.
2. Sanjay Yadav S/o Gopi Yadav, aged about 29 years.
3. Surti Bai W/o Gopi Yadav, aged about 29 years.
4. Santosh Yadav S/o Gopi Yadav, aged about 20 years.

All R/o village Sakin - Samri, Thana Kusmi, District Sarguja,
(C.G.)

---- Appellants**Versus**

- State Of Chhattisgarh Through - Station House Officer, Police Station : Magarlod, District Dhamtari (C.G.)

---- Respondent

For Appellants.	:	Shri A.K. Prasad, Advocate.
For Respondent/State	:	Shri Avinash K. Mishra, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

C.A.V. Judgment**Pritinker Diwaker, J.****04/10/2017**

This appeal arises out of the judgment of conviction and order of sentence dated 20.09.2004 passed by the Additional Sessions Judge, Sarguja District Ambikapur, in S.T. No.254/97 convicting the accused/appellants under Sections 302 and 323 read with section 34 IPC and sentencing them to undergo

imprisonment for life and S.I. for one month respectively.

02. As per the prosecution case, on 18.06.1997 at about 7.00 am, when deceased Savitri Bai and her other family members were working in their field, the appellants reached there and quarrel took place between them. According to the appellants, the field belongs to them whereas according to complainant party, it was their field and the same was sowed by them. After having hot talks, the accused persons caused injuries to deceased Savitri Bai, Baldev (PW/10) and Jitendra Yadav (PW/11) and in the same incident from the side of accused, appellant Santosh Yadav had also suffered injuries. Injured Savitri Bai was immediately taken to hospital where she was examined by Dr. Ramesh Kumar Tripathi (PW/13) vide Ex.P/34 who noticed swelling over right temporal bone, swelling over occipital bone with lacerated wound of 1 1/2 cm x 1/4 cm x 1/4 cm. The other injured Jitendra Yadav (PW/11) was medically examined by Dr. Ramesh Kumar Tripathi (PW/13) vide Ex.P/36 who noticed lacerated wound of 3 1/2 x 1/2 x 1/4 cm over scalp about 10 cm above left ear, swelling with tenderness over back of right hand, not able to flap his fingers and swelling with tenderness over left hand. Baldev (PW/10) was medically examined vide Ex.P/39 by Dr. T. Sai (PW/14) who noticed lacerated injury on temporal region of scalp in the size of 3 x 2 cm, lacerated injury on frontal region of scalp in the size of 4 x 2 cm and complaining pain on right

arm. On same day i.e. on 18.06.1997, in the afternoon deceased Savitri Bai succumbed to her injuries during treatment. From the hospital, an information of the death was given to the police, based on which merg was recorded on 18.06.1997 itself and in the meanwhile at 9.00 am on the report lodged by Baldev (PW/10), FIR Ex.P/2 was registered against accused/appellants Sanjay Yadav, Santosh Yadav and Gopi Yadav under Section 307/34 IPC. After the death of deceased, inquest on her body was conducted on 18.06.1997 vide Ex.P/17 and dead body was sent for postmortem examination to Primary Health Center, Kusmi where Dr. Ramesh Kumar Tripathi (PW/13) conducted postmortem on body of deceased and gave his report Ex.P/38 noticing following injuries:-

- (i) One injury on scalp over temporal (on right side of head)
- (ii) One injury (stitched wound) on back of head over occipital.

The doctor has opined the cause of death to be intra cervical hemorrhage due to head injury and death was homicidal in nature.

03. A counter case was also registered against the Baldev (PW/10), Jitendra Yadav (PW/11) and Mithlesh Kumar (PW/12) under Sections 324 and 325/34 IPC, however, in Sessions Trial No.131/2000 these three persons have been acquitted holding the accused/appellants of the present case to be aggressor.

After investigation, charge sheet was filed against the accused/appellants and one juvenile accused Pintoo @ Akshay and the trial Court framed charges under Sections 302/34 and 323/34 IPC against the accused/appellants, however, the juvenile accused Pintoo was tried separately by the Juvenile Justice Board.

04. So as to hold the accused/appellants guilty, the prosecution examined as many as 16 witnesses. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. The accused/appellants examined five defence witnesses in support of their case.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellants as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned counsel for the appellants submits:

(i) That the deceased has suffered only two injuries on her vital part head and those injuries have been caused by the juvenile accused Pintoo @ Akshay.

(ii) That the field belongs to the accused/appellants and not the complainant party, and it is the complainant party who was aggressor and had tried to dispossess the appellants and, therefore, the incident occurred.

(iii) That in self defence, the accused persons have caused certain injuries to the complainant party and it cannot be said that they had any intention to commit murder of the deceased.

(iv) That from the evidence including that of autopsy surgeon, it is not clear that as to which injury sustained by the deceased ultimately proved to be fatal and as the main injury has been caused by the juvenile accused, the accused/appellants cannot be convicted for committing murder of the deceased.

(v) That even if the entire prosecution case is taken as it is, it is apparent that only intention of the accused persons was to cause some injury to other party but unfortunately Savitri Bai died, however, in any case the accused/appellants cannot be convicted for committing murder of the deceased.

(vi) That considering the act of the accused/appellants, they can at best be convicted under Section 326 IPC. It has been argued that appellant Surti Bai remained in jail for about 8 months and 8 days whereas appellants Gopi Prasad, Sanjay Yadav and Santosh Yadav have remained in jail for about 2 years and 9 months.

(vii) That the appellants cannot be convicted with the aid of Section 34 IPC because there was no common intention on their part and it was like a free fight where both the parties have suffered injuries and that at least no case is made out against appellant Surti Bai.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State:-

(i) That conviction of the accused/appellants is strictly in accordance with law and there is no infirmity in the same.

(ii) That in the counter case, Baldev (PW/10), Jitendra Yadav (PW/11) and Mithlesh Kumar (PW/12) have been acquitted holding that they were exercising their right of private defence and thus it is proved that the appellants in the present case were aggressor.

(iii) That it is the defence of the appellants that main injury has been caused by the juvenile accused, however, as per the statement of eye-witnesses, all the accused persons have taken active part in causing death of the deceased and injuries to Jitendra Yadav (PW/11).

(iv) That Smt. Maya Devi (PW/1), Maheshwari Bai (PW/3), Ku. Basanti (PW/6), Baldev (PW/10), Jitendra Yadav (PW/11) and Mithlesh Kumar (PW/12) are the eye-witnesses to the incident and all of them have supported the prosecution case.

(v) That autopsy surgeon Dr. Ramesh Kumar Tripathi (PW/13) has nowhere stated that the deceased died after sustaining injuries by stone and the possibility of death of deceased because of injuries caused by the accused persons cannot be ruled out.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Smt Maya Devi (PW/1) is sister of the deceased and eye-witness to the incident. She has stated that on the date of incident she saw the accused/appellants going towards the field and assaulting Savitri Bai. She has further stated that Baldev (PW/10) was sowing the field in question for the last 10-15 years. Appellant Santosh, Sanjay, juvenile accused Pinto were holding club whereas appellant Gopi was holding spade. Appellant Gopi assaulted Baldev (PW/10) and Jitendra Yadav (PW/11) by spade as a result of which PW/10 fall on the ground and became unconscious. She has further stated that all the accused/appellants assaulted the deceased by club. In cross-examination, this witness remained firm.

10. Maheshwari Bai (PW/3) - sister-in-law (Dewrani) of the deceased while supporting the prosecution case has stated that she saw the accused/appellants entering the field of Baldev (PW/10) and causing injuries to deceased Savitri Bai. She has stated that when deceased was lying on the ground, she offered water to her. She has further stated that there was scuffle between the deceased and accused/appellant Surti Bai and that they were abusing each other. According to this witness, deceased threw appellant Surti on the field. She admits that in the incident appellant Santosh also suffered injuries on his head.

11. Kumari Basanti (PW/6) is the daughter of deceased and eye-witness to the incident. She has stated that when her

father, brothers and mother were working in the field, the accused/appellants reached there and started quarreling with them. According to this witness, appellant Surti Bai caught hold of neck of deceased, dragged her and called appellants Santosh, juvenile accused Pintoo, Sanjay and Gopi. Appellant Gopi Yadav assaulted her uncle Jitendra (PW/11) and father Baldev (PW/10) by spade. Appellant Sanjay and Santosh assaulted the deceased by club whereas juvenile accused Pintoo gave stone blow to the deceased.

12. Baldev (PW/10) is the husband of deceased. He has stated that the land in question was sowed by him and on the date of incident when he was working in the field along with his brother Jitendra (PW/11), son Mithlesh Kumar (PW/12) and deceased, the accused/appellants reached there. Appellant Surti Bai started abusing his wife and then his wife deceased Savitri Bai threw appellant Surti on the ground and then other accused persons started beating them. He has further stated that firstly it is accused/appellant Sanjay who beat his wife by club. Appellant Sanjay was holding club, appellant Gopi was holding spade and all the accused/appellants started beating his wife by their respective weapons. He has also stated that appellant Santosh assaulted him (this witness) by club on his head as a result of which his head got ruptured. Appellant Gopi also assaulted him. This witness has also stated that appellant Santosh and Gopi assaulted his brother Jitendra

(PW/11) on his head. According to this witness, appellant Surti gave stone blow on the head of his wife as a result of which she became unconscious. In cross-examination, he states that there was scuffle between his wife and appellant Surti Bai and at that moment, juvenile accused Pintoo also reached there. He has denied the fact that it is juvenile accused who caused head injury to the deceased.

13. Jitendra (PW/11) is injured eye-witness. In the incident he suffered injuries and his medical report is Ex.P/36. He has stated that when he was working in the field along with his other family members, the accused persons reached there carrying club in their hands, deceased was assaulted by them and also by the juvenile accused Pintoo and it is the juvenile accused who caused head injury to the deceased by stone, as a result of which deceased became unconscious and then accused/appellants fled away from the spot. In para 6 of his cross-examination, he has stated that juvenile accused Pintoo gave injury on the head of deceased at last as a result of which she became unconscious.

14. Mithlesh Kumar (PW/12) is son of the deceased in whose name the land in question has been recorded. He has stated that all the accused persons reached his field, caused injuries to Jitendra (PW/11) and to the deceased. He has further stated the deceased was subjected to spade injury on her head and she was also given a club blow on her waist as a

result of which she became unconscious. This witness has also stated that it is the deceased Savitri Bai who threw the appellant Surti on the field. In para 10, he has stated that while running, juvenile accused threw a stone which hit the head of the deceased.

15. Dr. Ramesh Kumar Tripathi (PW/13) is the witness who medically examined deceased Savitri Bai and Jitendra (PW/11) vide Ex.P/34 and P/36 respectively. This witness has also conducted postmortem examination on the body of deceased and gave his report Ex.P/38 opining the cause of death of deceased to be intra cervical hemorrhage due to head injury and death was homicidal in nature. This witness in para 14 has admitted the fact that injury sustained by the deceased could have been caused by sharp edged weapon and likewise injuries sustained by Jitendra (PW/11) were also caused by any sharp edged weapon. He states that injuries sustained by the deceased Savitri Bai could not have been caused because of fall or if she was hit against the stone.

16. Dr. T. Sai (PW/14) is the witness who medically examined Baldev (PW/10) vide Ex.P/39.

17. H.R. Chandra (PW/9) is the Investigating Officer who has duly supported the prosecution case.

18. Laxman Ram (PW/15) is the Patwari who prepared the spot map vide Ex.P/33 and according to his statement, the incident occurred in the field of Mithlesh Kumar (PW/12), son

of the deceased.

19. Pintoo Yadav @ Akshay (DW/1) has stated that in the incident deceased died because of stone injury caused by him. Other defence witnesses Jhallu Yadav (DW/2), Dr. B.N. Mishra (DW/3), Ramnath Ram (DW/4) and Gyanchand Shrivastava (DW/5) have stated that it was the deceased party who were aggressor and the incident took place when deceased Savitri Bai threw appellant Surti on the field. According to Dr. B.N. Mishra (DW/3), appellant Santosh suffered injury on his head.

20. Close scrutiny of the evidence makes it clear that there are four eye-witnesses and two injured witnesses to the incident. They are Maya Devi (PW/1), Maheshwari (PW/3), Ku. Basanti (PW/6), injured Baldev (PW/10), injured Jitendra (PW/11) and Mithlesh Kumar (PW/12). All of them have stated that while they were working in the field, appellant Surti came there and started quarreling on which deceased Savitri caught hold of appellant Surti and threw her on the ground and thereafter appellant Surti called her family members. Evidence of these witnesses makes it crystal clear that appellant Surt Bai has not caused any injury to the deceased. In the FIR (Ex.P/2) there is no mention of name of appellant Surti Bai and her name finds place only in 161 Cr.P.C. statement (Ex.D/2) of Maheshwari Devi (PW/3) and thereafter in the Court. No specific role has been attributed to appellant

Surti, in-fact, it was the deceased who first caught hold of appellant Surti Bai and threw her on the ground. Considering the statements of these witnesses and FIR (Ex.P/2), we are of the view that appellant Surti Bai is very much entitled to receive the benefit of doubt

21. So far as involvement of other accused/appellants namely Gopi Prasad, Sanjay Yadav and Santosh Yadav is concerned, from the statements of prosecution witnesses it is apparent that there was land dispute between the appellants and deceased family, on the date of incident while deceased and her family members were sowing the field in question, the appellants came there and some dispute cropped up between them in which appellants have caused injuries to the deceased, PW/10 and PW/11. According to Maya Devi (PW/1), appellant Santosh, Sanjay and juvenile accused Pinto were holding club, Gopi was holding spade and it is he who assaulted PW/10 and PW/11 by spade. All the aforesaid appellants gave 2-2 club blows to the deceased. According to PW/3, appellant Gopi was holding spade, appellant Santosh and Sanjay were holding club and all the appellants assaulted the deceased by their respective weapons. He has also stated that appellant Santosh had also suffered injury over his head, which was caused by appellant's club. According to PW/10, appellant Sanjay assaulted the deceased by club, appellant Gopi assaulted deceased and PW/10 by spade, appellant

Santosh assaulted PW/10 by club. Appellant Gopi and Santosh also assaulted PW/11 on his head. According to PW/11, appellant Sanjay assaulted the deceased by club, appellant Gopi and Santosh by spade. PW/11 has also stated that juvenile accused Pinto has assaulted the deceased by stone as a result of which she became unconscious. According to PW/12, appellant Sanjay, Santosh and juvenile accused Pinto were holding club whereas appellant Gopi was holding spade and all of them have assaulted the deceased. PW/11 has also stated that while juvenile accused Pinto was fleeing from the spot, he threw the stone which hit the head of the deceased. The injured Jitendra Yadav (PW/11) was medically examined by Dr. Ramesh Kumar Tripathi (PW/13) vide Ex.P/36 who noticed lacerated wound of 3 1/2 x 1/2 x 1/4 cm over scalp about 10 cm above left ear, swelling with tenderness over back of right hand, not able to flap his fingers and swelling with tenderness over left hand. Injured Baldev (PW/10) was also medically examined vide Ex.P/39 by Dr. T. Sai (PW/14) who noticed lacerated injury on temporal region of scalp in the size of 3 x 2 cm, lacerated injury on frontal region of scalp in the size of 4 x 2 cm and complaining pain on right arm. According to postmortem report (Ex.P/38), two injuries on scalp over temporal (on right side of head) and stitched wound on back of head over occipital were noticed and cause of death of deceased was intra cervical hemorrhage due to head injury and death was homicidal in nature. That apart, a counter case

was registered against the Baldev (PW/10), Jitendra Yadav (PW/11) and Mithlesh Kumar (PW/12) under Sections 324 and 325/34 IPC and in Sessions Trial No.131/2000 these three persons have been acquitted holding the accused/appellants of the present case to be aggressor. Thus, the involvement of these accused/appellants is apparently proved by the prosecution and we have no reason to disbelieve the prosecution story in respect of these accused/appellants.

22. Now the question which arises for consideration of this Court is whether in the given facts and circumstances of the case, the act of the accused/appellants makes them liable for conviction under Section 302/34 IPC or it is covered by any of the Exceptions to Section 300 IPC.

23. It is not in dispute that the incident took place when appellant Surti Bai objected to the deceased over sowing the field in question. The deceased first caught hold of appellant Surti Bai and threw on the ground and thereafter the appellants came there and inflicted club and spade blows on the deceased, injured PW/10 and PW/11. It has not come in the evidence that there was any premeditation on the part of the appellants. It has also not been specifically mentioned that as to who caused stone injuries on the head of the deceased, which according to postmortem report (Ex.P/38) was fatal. That apart, the weapons i.e. club and spade which the appellants were holding are commonly used in the village.

Thus, considering the facts and circumstances of the case giving rise to the incident leading to death of the deceased, we are of the opinion that though the appellants had no intention of causing death of the deceased but taking into account the nature and extent of injuries inflicted on the vital part head of deceased, which led to her death, it can safely be inferred that the appellants had definite knowledge that the injuries being inflicted by them on the deceased may result in her death. Being so, their act is covered by Exception 4 to Section 300 IPC i.e. culpable homicide not amounting to murder making them liable for conviction under Section 304 Part-II IPC.

24. As regards the sentence, considering the fact that the incident had taken place in the year 1997 i.e. 20 years back, the accused/appellant remained in jail for about 2 years and 9 months, this Court deems it just, proper and in the interest of justice to sentence them to undergo R.I. for five years. Ordered accordingly.

25. In the result, the appeal is partly allowed. Conviction and sentence of accused/appellants Surti Bai under Sections 302/34 and 323/34 of IPC are set aside and she is acquitted of the charges levelled against her by extending her benefit of doubt. Conviction and sentence of accused/appellants Gopi Yadav, Sanjay Yadav and Santosh Yadav under Sections 323/34 of IPC are maintained. However, their conviction under

Section 302/34 of IPC is altered to Section 304 Part-II/34 IPC and they are sentenced to undergo R.I. for five years. The accused/appellants are reported to be on bail. They be taken into custody forthwith for serving remaining sentence.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE