

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 791 of 2010**

1. Smt. Reena Gupta W/o Shri Om Prakash Gupta aged about 23 years, Occupation – Housewife, R/o Village Trikunda, Thana Trikunda, District Surguja, CG

---- Appellant**Versus**

1. State of Chhattisgarh through District Magistrate, Surguja, District, CG

---- Respondent

For Appellant	:	Shri Sachin Singh Rajput, Advocate
For Respondent/State	:	Shri Rahul Tamaskar, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri R.P. Sharma****Judgment on Board by Pritinker Diwaker, J****30/08/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 07.10.2010 passed by Additional Sessions Judge (FTC) Pratappur, District Sarguja, in Sessions Trial No. 06/2010 convicting the accused/appellant under Section 302 IPC and sentencing her to undergo imprisonment for life and pay fine of Rs. 1,000/-, plus default stipulation.

2. According to the case of the prosecution, on 13.09.2009 there was some family dispute between the accused/appellant herein and the deceased Kamla Devi – her mother-in-law, and for that it is said that the accused/appellant pushed the deceased into the well as a result of which she died. Information about the death of the deceased was given to her son Om Prakash Gupta (PW-4) at whose instance merg intimation Ex. P-3 was recorded on 14.09.2009 at 7

AM. After inquest vide Ex. P-5, body of the deceased was sent for postmortem examination which was conducted by Dr. J. Ekka (PW-9) who gave his report Ex. P-8. A written report dated 11.10.2009 Ex. P-6 was made to the police by Laxmi Gupta (PW-6) – the brother of the deceased stating therein that as was informed to him by Sampat Bai (PW-2), the accused/appellant used to quarrel with the deceased and that on 13.09.2009 she had pushed her into the well which ultimately resulted in her death. Written report also says that the incident was witnessed by Savita (PW-1). Based on this written report and the inquiry conducted by the police FIR Ex. P-9 was registered against the accused/appellant on 18.10.2009 for the offence punishable under Section 302 IPC. After investigation, charge-sheet was filed by the police under Section 302 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 11 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which she denied her guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned above.

5. Counsel for the accused/appellant submits as under:

(i) That the accused/appellant has been convicted on the basis of statement of eyewitness Savita (PW-1) – an entirely unreliable witness because her statement under Section 161 of the Code of Criminal Procedure was recorded on 18.10.2009 and there is no satisfactory explanation for this inordinate delay of 34 days as required under the law.

(ii) That Savita (PW-1) disclosed the entire incident to Sampat Bai (PW-2) on the second day of the incident itself but even the diary statement of Sampat Bai (PW-2) was recorded on 18.10.2009 and therefore, considering this inordinate delay in recording her statement under Section 161 of the Code of Criminal Procedure Sampat Bai also becomes wholly unreliable and based on her testimony the accused/appellant cannot be convicted.

(iii) That the cause of death could be accidental also as no injury mark has been noticed on the body of the deceased.

(iv) That even there is no mark of dragging on the body of the deceased.

(v) That as the deceased was a well-built lady, it could not be possible for anyone to lift her up and throw into the well so easily.

(vi) That as number of persons resided near the house of the accused and the deceased and further the incident took place in the noon hours, if the deceased was beaten and thrown into the well by the accused/appellant, she must have raised hue and cry attracting the attention of the neighbours at least.

(vii) That Om Prakash Gupta (PW-4) has stated in his evidence that earlier also the deceased had fallen into the well and that the dispute between accused and the deceased was a common family dispute.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC are based on due appreciation of the evidence on record and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Savita (PW-1) has stated that on the date of incident at noon hours while going to the kitchen garden she heard the quarrelsome activities in the house of the accused/appellant which falls on the way. She is also stated to have seen the accused and the deceased catching hold of hair of each other. According to this witness, accused/appellant had pressed the neck of the deceased on account of which she had become unconscious. Thereafter, she has stated that the accused/appellant pushed the deceased into the well and on seeing this she (this witness) got scared, returned home and went to sleep without disclosing this to anyone. She has further stated that at about 4 O'clock her aunt (PW-2) took her to her house and then went to the well for fetching water. While taking out water from the well her aunt is stated to have got scared and called this witness over there. When this witness went to the well, she saw a dead-body floating in the well. Thereupon, her aunt (PW-2) knocked the door of the accused/appellant and asked her as to where the deceased was? When the accused/appellant expressed her ignorance about the deceased, aunt of this witness called her out and showed the body of the deceased floating in the well. This witness has further stated that the police had come to the house of the accused and taken out the body of the deceased and that the accused/appellant had threatened all daring to give statement to the police against her. She has further stated that after cremation of the deceased was over, disclosure of incident was made by her to Sampat Bai (PW-2) who in turn informed the same to Laxmi Gupta (PW-6). Police however is stated not to have

recorded the statement of this witness. At this stage, this witness has been declared hostile. However, in cross-examination she has stated that the police had come to investigate the matter and on her being questioned she had disclosed the same thing about the incident as has been stated by her in the Court. Sampat Bai (PW-2) is the witness to whom the entire incident of deceased being pushed by the accused/appellant into the well was disclosed by Savita (PW-1) on the second day after the dead-body was cremated. This witness has also stated that on the date of incident when she went to the well situated within the compound of the accused/appellant she saw a dead-body floating therein. Thereafter she asked the accused/appellant as to where the deceased was but she expressed her ignorance about her. Thereupon, she informed her that the deceased had fallen into the well. Savita (PW-1) is also said to have informed this witness that the accused/appellant had threatened to thrash all giving statement to the police against her. According to this witness, she made a disclosure of the incident to the police also when it had come to her village for inquiry. She has further stated that at the time when the body of the deceased was taken out of the well, the police was present there. Surajdev Gupta (PW-3) - the brother of the deceased has not supported the case of the prosecution and has been declared hostile. Om Prakash Gupta (PW-4) - the husband of the accused/appellant and son of the deceased has also turned hostile. However, according to him, his son Kunal had informed him that the accused/appellant had pushed the deceased into the well. On coming to know this, he informed the same to his maternal uncle namely Laxmi Gupta (PW-6). He has also stated that about a year and a half prior to the incident his mother (deceased) had fallen into the well and that the dispute if

any between the accused and the deceased was nothing more than a family dispute. Yogendra Prasad Yadav (PW-5) is the witness to inquest Ex. P-5. Laxmi Prasad (PW-6) – the brother of the deceased and maker of the written report has stated that the incident was disclosed to him by Sampat Bai (PW-2) on the 10th day thereafter. Babulal Gupta (PW-7) – the husband of the deceased has stated that he came to know through Savita (PW-1) that the accused/appellant had pushed the deceased into the well. He has stated that there used to be skirmishes between the accused and the deceased. He has further stated that after cremation of the deceased, his grandson Kunal had also disclosed to him that the accused had pushed the deceased into the well. Kunal however has not been examined by the prosecution. Dhaneshwar Singh (PW-8) is the witness who assisted in the investigation. Dr. J. Ekka (PW-9) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-8 opining the mode of death as asphyxia and cause as drowning. This witness has however not mentioned any injury in the report. S.C. Shukla (PW-10) and Dinesh Kumar (PW-11) are the witnesses who carried forward the investigation.

9. Having thus seen the the entire material on record it is apparent that the entire case of the prosecution rests on the evidence of Savita (PW-1) and Sampat Bai (PW-2). PW-1 is said to have seen the accused/appellant pushing the deceased into the well on 13.09.2009 in the noon hours but she informed PW-2 about the same on the next day who then happened to pass on the same to Laxmi Gupta (PW-6). It is worthwhile to mention here that the incident took-place on 13.09.2009 but yet PW-1 and PW-2 though

came to know about the same just within a day but even then their case diary statements were recorded on 18.10.2009 i.e. 34 days thereafter and no satisfactory explanation for such inordinate delay has been offered by the prosecution. This unexplained delay in recording the diary statements of these two witnesses creates a strong doubt in the mind of this Court about the veracity of their disclosure statement. Even Laxmi Gupta (PW-6) though had come to know about the incident on the 10th day of the death of the deceased yet he also kept quiet till 11.10.2009, the date on which the written report Ex. P-6 was made by him. Prosecution has not even bothered to examine the boy named Kunal who is said to have informed PW-4 and PW-7 about the deceased being pushed by the accused/appellant into the well. Furthermore, it has come in the evidence of PW-4 that earlier also the deceased had fallen into the well. Though PW-1 and PW-2 have deposed against the accused/appellant, keeping in view the long unexplained delay of 34 days credibility of their version becomes doubtful so as to base conviction of the accused/appellant thereon. This apart, the prosecution has not adduced any other reliable piece of evidence on the basis of which the findings recorded by the Court could be maintained. The doctor conducting the postmortem examination on the body of the deceased has also not disclosed any injury on the body of the deceased except stating the mode of death as asphyxia and cause as drowning. In this scenario, it cannot be conclusively said that it is the accused/appellant who pushed the deceased into the well. Rather taking note of the previous instance, the possibility of deceased falling into the well accidentally cannot be ruled out.

10. In view of what has been discussed above, the Court below

appears to have made a wrong appraisal of the evidence before it while holding the accused/appellant guilty under Section 302 IPC. Being so, the judgment impugned without being based on proper appreciation of the evidence on record is liable to be set aside and the appeal deserves to be allowed. Accordingly, the appeal succeeds and the judgment under challenge is set aside. Accused/appellant is acquitted of the charge levelled against her. Being already on bail, no order to set her free etc. is required to be passed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.P. Sharma)
Judge