

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 880 of 2011**

1. Bisheshar son of Dadu Ram Nishad, aged about 19 years, R/o Village Kapsada, Police Station Dharsiwan, Tahsil & District Raipur, CG

**---- Appellant****Versus**

1. State of Chhattisgarh through the Police Station Dharsiwan, Raipur, CG

**---- Respondent**


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| For Appellant        | : | Shri Afroj Khan, Advocate  |
| For Respondent/State | : | Shri Avinash K. Mishra, PL |

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**Hon'ble Shri Justice Pritinker Diwaker &  
Hon'ble Shri Justice Sanjay K. Agrawal**

**Judgment on Board by Pritinker Diwaker, J**

**22/05/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 25.11.2006 passed by the Sessions Judge Raipur, in Sessions Trial No. 302/2006 convicting the accused/appellant under Section 302/34 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 500/-, plus default stipulation.

2. According to the case of the prosecution, deceased/accused Shiv Prasad Sahu was having an affair with the deceased namely Chunni Bai though she was married to some other person. After marriage Chunni Bai returned to her village and on 2.5.2006 at about 9.15 AM the accused/appellant herein and the deceased/accused Shiv Prasad Sahu were waiting for her. When she reached there along with Amrika Bai (PW-2) and Amrit Bai (PW-3),

the accused persons apprehended her and deceased/accused Shiv Prasad Sahu caused several injuries on her body with the help of crowbar resulting in her death. Further case of the prosecution is that after killing Chunni Bai, both the accused persons also committed the murder of Savitri Bai and Amrotin after entering their house. FIR Ex. P-2 was lodged by Shiv Kumar Sahu (PW-1) – the father of the deceased on the same day against both the accused persons for the offences punishable under Sections 302/34, 341 and 450 IPC. Immediately thereafter *merg* Ex. P-1 was also registered at the instance of PW-1. After inquest Ex. P-4, body of the deceased was sent for postmortem examination which was conducted by Dr. Raj Kumar Singh (PW-12) who gave his report Ex. P-9. As accused Shiv Prasad Sahu died on 17.5.2006 i.e. before filing of challan, by jumping off the watch tower, it was filed against the accused/appellant herein only. Thereafter, charge was framed by the Court below against the accused/appellant under Section 302/34 IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 14 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his 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 that the conviction of the accused/appellant is based mainly on the evidence of Amrika

Bai (PW-2) but if her entire Court statement is seen it is clear that she has improved a lot while deposing in the Court and made allegation only against the accused/appellant herein for causing the death of Chunni Bai and no such allegation is made by her in the diary statement. He submits that evidence of Amrit Bai (PW-3) carries the reference of deceased/accused Shiv Prasad Sahu only and not of the accused/appellant herein. Lastly, counsel for the accused/appellant submits that as the accused/appellant has already remained in jail for about 11 years, sentence imposed on him may be reduced to the period already undergone.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that even if it is taken that Amrika bai (PW-2) has improved her version while deposing in the Court, it cannot be said that she has not stated the truth. State counsel further submits that in the diary statement of Amrika Bai also both the accused persons are said to have apprehended the deceased and thereafter deceased/accused Shiv Prasad Sahu is said to have assaulted her with the help of crowbar which eventually resulted in her death. Even otherwise, State counsel submits that since the accused/appellant has been convicted with the aid of Section 34, he cannot escape his conviction and being so the findings of the Court below do not suffer from any illegality or infirmity. According to the State counsel, the accused persons did not stop after killing Chunni Bai but they also committed the murder of Savitri Bai and Amrothin for which they faced the trial separately.

7. Amrika Bai (PW-2) has stated that on the date of incident at about 8-9 AM when she along with Chunni Bai was returning after taking water, both the accused persons, who were already standing on the way, assaulted Chunni Bai with the help of crowbar and when she tried to intervene, they pushed her aside. She has further stated that when she was going to call her father Sukhram, the accused persons entered the house of Amrotin and Savitri Bai and killed them also. In cross-examination, this witness has stated that while making statement to the police, she had made disclosure against the accused/appellant also for causing the death of Chunni Bai but if it is not mentioned therein she could not tell the reason for that. It is relevant to note here that in the diary statement this witness has not made any allegation of assault against the present appellant but has categorically stated that both the accused persons were waiting for them and that it is the deceased/accused Shiv Prasad Sahu who assaulted Chunni Bai. She has further stated that the accused persons had stopped them on the way and after killing Chunni Bai, they entered the house of Amrotin and Savitri Bai and committed their murder also. In her case diary statement also, this witness has stated that after committing the offence, the accused persons went away by jumping over the wall of one Tirathram and committed the murder of Amrotin and Savitri also. Amrit Bai (PW-3) – another eyewitness to the incident has stated that she saw only the deceased/accused assaulting Chunni Bai. She has stated that she did not see any other person present on the place of incident except deceased/accused Shiv Prasad, Chunni Bai (deceased) and Amrika Bai (PW-2). Dr. Raj Kumar Singh (PW-12) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-9 stating that he noticed

five contused lacerated wounds on various parts of the body such as chin, upper lip, left ear, left temporal region of head, left mastoid and the incisor teeth, canine etc were broken. Cause of death, according to this witness, was hemorrhage and shock as a result of injuries to head which were caused by hard and blunt object. Shiv Kumar Sahu (PW-1) is the father of the deceased who lodged FIR Ex. P-2 and *merg* Ex. P-1 who has duly supported the case of the prosecution. Chhabiram (PW-4) has not supported the case of the prosecution and has been declared hostile. Trilok Ram (PW-5) is the witness of inquest Ex. P-4. Prahlad Kumar Sahu (PW-7) is the witness who reached the place of occurrence after the incident had taken place. Suresh Chandra Mandal (PW-10), Govind Singh (PW-11) and Dwarika Prasad Srivas (PW-13) are the police officials who assisted in the investigation. Viswas Chandrakar (PW-14) is the investigating officer who has duly supported the case of the prosecution.

8. Having heard counsel for the parties and taken note of the entire evidence available on record, in particular that of the eyewitnesses (PW-2) and (PW-3) it is apparent that on the date of incident at about 9 AM when the deceased along with PW2 and PW-3 was returning home after fetching water, the accused/appellant waylaid her and the deceased/accused opened an assault with the help of crowbar. Impact of the crowbar blows was as such that the deceased breathed her last on the spot itself. The brutality of the accused persons can further be gathered from the Court statement of Amrika Bai (PW-2) who has stated that when she tried to save the deceased, they pushed her aside and that after finishing Chunni Bai they moved ahead and committed the murder of Amrothin and

Savitri also by gaining an entry into their houses. Though Amrika Bai (PW-2) appears to have improved her version given in the Court but if her overall statement recorded in the Court and before the police is seen, it remains undisputed that both the accused persons were present on the spot and there is not even a whisper showing innocence of the present appellant that he made any effort to save the deceased from the deadly act of the deceased/accused. Being this, he cannot get rid of his conviction under Section 302 with the aid of Section 34 IPC as he has not offered any explanation in his statement recorded under Section 313 of the Code of Criminal Procedure in support of his stand that he is innocence and was not nurturing any intention of causing the death of the deceased. Medical evidence showing five injuries on the body of the deceased including on the vital part like head also corroborates the version of the eyewitnesses. Prosecution has thus collected sufficient material to prove the guilt of the accused/appellant also and that way the Court below did not go wrong in slapping conviction on the accused/appellant under Section 302/34 IPC.

9. Consequently, the appeal being devoid of any substance is liable to be dismissed and it is dismissed as such. Judgment impugned is hereby maintained. The accused/appellant is already in jail and therefore no order to lodge him inside is necessary.

Sd/-  
(Pritinker Diwaker)  
Vacation Judge

Sd/-  
(Sanjay K. Agrawal)  
Vacation Judge