

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.431 of 2016

Judgment Reserved on : 3.10.2017

Judgment Delivered on : 12.10.2017

1. Bhagwan Singh, S/o Mohan Singh Rathiya, aged about 50 years,

2. Laxmikant, S/o Bhagwan Singh, aged about 30 years,
- Both are R/o Village Jogda, P.S. Chhal, District Raigarh, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through District Magistrate, Raigarh, District Raigarh, Chhattisgarh

--- Respondent

For Appellants	:	Shri Awadh Tripathi, Advocate
For Respondent/State	:	Shri U.N.S. Deo, Government Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

Per Arvind Singh Chandel, J.

1.
- This appeal has been preferred under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction and order of sentence dated 17.3.2016 passed in Sessions Trial No.49 of 2015 by the 5th Additional Sessions Judge, Raigarh convicting and sentencing each of the accused/Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 302 of the Indian Penal Code	Life Imprisonment and fine of Rs.10,000/-, in default of payment of fine, 3 months' additional rigorous imprisonment
Under Section 201 of the	Rigorous Imprisonment for 1 year

Indian Penal Code	and fine of Rs.1,000/-, in default of payment of fine, 1 month's additional rigorous imprisonment Both the sentences are directed to run concurrently.
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2. Case of the prosecution, in brief, is that accused/Appellants Bhagwan Singh and Laxmikant are the father and brother of deceased Suryakant. Sahetrin Bai (PW1) is the wife of deceased Suryakant. All of them were residing under the same roof. Deceased Suryakant was residing along with his wife Sahetrin Bai (PW1) in one room of that house and accused/Appellants Bhagwan Singh and Laxmikant were residing in the rest part of that house. On 23.10.2014 at about 7:00 p.m., deceased Suryakant went to his father Bhagwan Singh to ask for the motorcycle kept in his possession. On this, accused/Appellants Bhagwan Singh and Laxmikant got angry and beat Suryakant by *lathi* and rod. Having heard shout, Sahetrin Bai (PW1), wife of deceased Suryakant reached the place of occurrence. She saw that Suryakant was lying down. When she wanted to go near Suryakant, Bhagwan Singh pushed her away, expelled her and closed the door and windows of the house from inside. She went out and shouted. Some boys were present near the house of the accused/Appellants. She went to them and asked to save her husband Suryakant. Those boys, namely, Gitam (PW19), Sukhsagar (PW6), Sushil (PW24) and Banshi came to the house of Appellants. Appellants Bhagwan Singh and Laxmikant scolded them and made them to flee from there. Injured Suryakant was screaming. Sahetrin Bai (PW1) again went to the house of the Appellants and asked them to allow her to see her husband Suryakant once. Appellant Bhagwan Singh opened the door. She

saw that bone of the left leg of Suryakant was exposed, right leg was fractured and Suryakant was bleeding from the injury caused on the head. She asked the Appellants to call a doctor, but they did not do so. She sat near her husband for the whole night. On being asked by her husband, she served him water and also massaged his body. Her husband kept on screaming for the whole night and at about 5:00 a.m. he died. Then the accused/Appellants and her mother-in-law told her that they will go to police station and they went away. At about 9:30 a.m., they returned and told her that whatever had to happen has taken place and they asked her to forgive them. Then she asked them to call her parents from her maternal house. Thereafter, at about 11:00 a.m., the accused/Appellants with the assistance of neighbours cremated the dead body of deceased Suryakant in the fence (*badi*) of their house. At about 3:00 p.m., mother and other relatives of Sahetrin Bai (PW1) reached to the house of Appellants. Along with them, Sahetrin Bai (PW1) went to her maternal home. Thereafter, she submitted a written report (Ex.P1) in Police Station Chhal. Morgue Intimation (Ex.P2) was recorded and First Information Report (Ex.P20) was registered under Sections 302 and 201 read with Section 34 of the Indian Penal Code. During investigation, statements of witnesses were recorded. Blood stained portion of the cemented floor of the house of the Appellants was also scraped out and seized vide Ex.P15. The seized blood stained scrap of the cemented floor and blood samples of accused/Appellant Bhagwan Singh, father of deceased and Urvashibai, mother of deceased were sent for DNA Test vide Ex.P30. On completion of the investigation, a charge-sheet was filed under Sections 302, 201 read with Section 34 of the Indian Penal Code. Charges were

framed under Sections 302, 201 read with Section 34 of the Indian Penal Code against the accused/Appellants.

3. In support of its case, the prosecution examined as many as 26 witnesses. Statements of the accused/Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt and pleaded innocence. They pleaded that they did not assault the deceased. The deceased died a natural death. The wife of the deceased herself refused to inform to the police about the death of her husband. The Appellants themselves informed to the maternal house of the wife of the deceased about the death of her husband and on arrival of the maternal relatives of the wife of the deceased at the house of the Appellants, the dead body of the deceased was cremated in presence and with the consent of the wife of the deceased and her maternal relatives in the fence (*badi*) of the house of Appellants.
4. On completion of the trial, the Trial Court convicted and sentenced the accused/Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the accused/Appellants argued that the case of prosecution is based on the only evidence of Sahetrin Bai (PW1), who is wife of the deceased. Since she did not disclose the incident to anyone, conviction of the accused/Appellants cannot be sustained on her testimony. It was further argued that Sahetrin Bai (PW1) was present with her husband (the deceased) from 7:00 p.m. till the dead body of her husband was cremated, but she did not disclose about the incident to any of the villagers or to her relatives. It was further argued that

belated disclosure and belated lodging of the FIR have totally discarded the credibility of the witness and such unreliable testimony of Sahetrin Bai (PW1), who has intention to falsely implicate the Appellants due to greed of property, cannot be sufficient to hold the Appellants guilty. Learned Counsel appearing for the Appellants placed reliance on **Babuli v. The State of Orissa, AIR 1974 SC 775** and submitted that the Supreme Court observed that the witness did not disclose the name of accused for about 20 hours after the occurrence. The Supreme Court held that the testimony of the witness is not reliable. Learned Counsel further placed reliance on **State of M.P. v. Surpa, AIR 2001 SC 2408** and submitted that the Supreme Court observed that the widow of the deceased, who claimed to be the eyewitness of the incident, did not report the matter to anyone till the next morning and thereafter also did not disclose the name of accused to the watchman of the building. The Supreme Court held that the testimony of said witness is not reliable.

6. Per contra, Learned Counsel appearing for the State argued that from the statement of Sahetrin Bai (PW1) it is proved that the accused/Appellants had assaulted her husband Suryakant. Suryakant had sustained injuries on both legs and head which is corroborated by DNA Test Report dated 24.4.2015. The DNA Test Report reveals that the blood stains found at the place of occurrence were of deceased Suryakant. It was further argued that the accused/Appellants have not shown any justifiable reason why Sahetrin Bai (PW1) would falsely implicate them. Therefore, her statement is trustworthy.

7. We have heard Learned Counsel appearing for the parties at length and perused the entire record with utmost circumspection.
8. Sahetrin Bai (PW1), wife of deceased Suryakant deposed that at the time of incident Suryakant had gone to his brother Laxmikant (accused) for his motorcycle and she had gone to a shop. When she heard the shout of her husband, she went to the place of occurrence and saw that accused/Appellant Bhagwan Singh was having a *danda* in his hands and accused/Appellant Laxmikant was having a rod in his hands. They were assaulting her husband. When she tried to intervene, Appellant Bhagwan Singh pushed her away and expelled her from there. She went to the boys present nearby and asked them to save her husband. On this, those boys, i.e., Gitam (PW19), Banshi, Sukhsagar (PW6) and Sushil (PW24) came to the spot and began to peep inside the house through a window. Appellant Bhagwan Singh scolded the boys and made them flee from there. Thereafter, at about 11:00 p.m., she again went to the door of the house of the Appellants and shouted for opening the door. Appellant Bhagwan Singh opened the door. She saw that her husband Suryakant was lying on a cot. He had sustained injuries on the head, one of his legs had been fractured and bone of the leg was exposed. She asked Appellant Bhagwan Singh to call a doctor, but he did not do so. She further deposed that at about 5:00 a.m., Suryakant died. Thereafter, Appellant Bhagwan Singh told her that they will go to the police station. Thereafter, they went away and returned at about 9:00 a.m. She further deposed that Appellant Laxmikant, saying that whatever had to happen has taken place, asked her to forgive them. Thereafter, the Appellants began to prepare for cremation. She

asked Appellant Bhagwan Singh to call her mother and other relatives from her maternal house. Her mother and other relatives came to the house of the Appellants. The dead body of her husband was cremated. Thereafter, she went to her maternal home along with her mother and other relatives. She further deposed that thereafter she submitted a written report (Ex.P1) in the police station.

9. Investigating Officer Inspector M.R. Ratre (PW26) has supported the above statement of Sahetrin Bai (PW1). He deposed that on 24.10.2014 Sahetrin Bai (PW1) had submitted a written report in the police station on the basis of which he had lodged morgue intimation (Ex.P2). He further deposed that on 25.10.2014 he seized blood stained scrap of the cemented floor of the house of the Appellants vide Ex.P15. He also prepared a Naksha Panchayatnama (Ex.P14) on the same day. Thereafter, on 29.10.2014, he registered the FIR (Ex.P20).
10. As per the Court statement of Sahetrin Bai (PW1) and her written report (Ex.P1), at the time of incident, when Appellant Bhagwan Singh expelled her from the house, she went outside and asked Gitam (PW19), Banshi, Sukhsagar (PW6) and Sushil (PW24) to save her husband. On this, all the boys came to the house of the Appellants. When they were peeping inside the house of the Appellants through a window, Appellant Bhagwan Singh scolded them and made them flee from there. Sukhsagar (PW6), Sushil (PW24) and Gitam (PW19) have not supported the above statement of Sahetrin Bai (PW1). Banshi has not been examined by the prosecution.

11. Sivan Bai (PW3), mother of Complainant Sahetrin Bai (PW1) deposed that after receipt of information regarding the death of her son-in-law Suryakant, they went to Village Jogda (son-in-law's village). There she asked about the death of son-in-law Suryakant. Her daughter told her that her father-in-law and brother-in-law killed him by assaulting with a *danda*. But, in her police statement (Ex.P6), Sivan Bai has stated that when she along with her daughter Sahetrin Bai returned to her home at Village Tarekela, Sahetrin Bai told her there about the occurrence. Rajendra (PW4), younger brother of Sahetrin Bai has categorically stated in paragraph 6 of his cross-examination that at Village Jogda, Sahetrin Bai had not told them anything about the incident. She told them about the incident only when they reached their Village Tarekela. Krishna (PW17), uncle of Sahetrin Bai also deposed that Sahetrin Bai had not told him anything at Village Jogda. Ritesh (PW18), other brother of Sahetrin Bai has also categorically stated in his examination-in-chief that after return to Village Tarekela, Sahetrin Bai informed about the incident.
12. Mahadeo (PW21), other brother of Sahetrin Bai (PW1) deposed that when they reached the house of Appellants, Sahetrin Bai informed that the accused/Appellants had killed her husband with *danda* and rod, but during his cross-examination, at paragraph 3, this witness has again stated that Sahetrin Bai informed about the incident in Police Station Chhal. In her Court statement, Sahetrin Bai (PW1) has not disclosed that when and where she told about the incident to her brothers and mother. From the above, it is also clear that at Village Jogda, Sahetrin Bai did not disclose the incident to her mother, brothers and other relatives came from her

paternal Village Tarekela.

13. As per the prosecution story, the dead body of deceased Suryakant was cremated in the fence (*badi*) of the house of the Appellants with the assistance of villagers immediately after the death, i.e., at about 11:00 a.m. At that time, mother and other relatives from Village Tarekela were not present. It is stated by Jamuna Prasad (PW2), Rajendra (PW4), Dhaneshwar (PW7), Harisingh (PW11), Ram Dayal (PW12), Ritesh (PW18), Umeshwar (PW20), Mahadeo (PW21), Sant Ram (PW22) and Toran (PW25) that the dead body of Suryakant was cremated in the fence (*badi*) of the house of the Appellants same day, i.e., on the date of death itself.

14. The witnesses from Village Jogda, i.e., Jamuna Prasad (PW2), Dhaneshwar (PW7), Umeshwar (PW20) and Toran (PW25) have admitted that about 60-70 persons from Village Jogda and other villages had gathered at the time of cremation. They have also admitted that at the time of cremation, mother and other relatives of Sahetrin Bai (PW1) were also present, but the relatives of Sahetrin Bai, i.e., Sivan Bai (PW3), Rajendra (PW4), Ritesh (PW18) and Mahadeo (PW21) have stated that when they reached Village Jogda, the cremation had been over. In his cross-examination, at paragraph 5, Mahadeo (PW21), brother of Sahetrin Bai has categorically admitted that when they reached Village Jogda, the cremation had not been over. From the above statement of Mahadeo (PW21), it seems that the mother and other relatives of Sahetrin Bai came from her paternal Village Tarekela were present at the time of cremation.

- 15.** As per the Court statement of Sahetrin Bai (PW1), deceased Suryakant had received injuries on the head as well as on both the legs. Jamuna Prasad (PW2), Dhaneshwar (PW7), Umeshwar (PW20), Sant Ram (PW22) and Toran (PW25) have admitted that before the cremation, according to the rituals prevailing in their family, the face of deceased was opened and water was dropped thereon. They further admitted that at that time they did not see any injury on the face or head of the deceased. Both Harisingh (PW11) and Ram Dayal (PW12) deposed that after receiving information of the death of Suryakant, they went to the house of accused/Appellants at about 10:00 a.m. They saw that the dead body of Suryakant was kept on a cot. Before preparing for cremation, the dead body was worn new cloth and was thereafter brought down from the cot. Thereafter, the dead body was cremated. Both these witnesses have also not deposed that they saw any injury on the dead body while it was being worn new cloth or was being brought down from the cot. Had there been any injury present on any of the two legs of the dead body or on his head, the same would have been witnessed by the above witnesses.
- 16.** Harisingh (PW11) has categorically stated in his examination-in-chief that when he reached the house of accused/Appellants, accused/Appellant Bhagwan Singh informed him about the death of Suryakant. When he asked accused Bhagwan Singh about the death, Bhagwan Singh told him that Suryakant was drunk and died. Sukhsagar (PW6) has also admitted that when they were playing cricket, Suryakant had come to the ground at about 4:30 p.m. At that time, Suryakant was heavily drunk and was faltering.

Sahetrin Bai (PW1), wife of deceased Suryakant has also admitted that her husband was habitual to consume liquor. In paragraph 7 of her cross-examination, she further admitted that she was also preparing and selling liquor at her house. From the above, it is also clear that the deceased was habitual to consume liquor and on the date of incident also, he was heavily drunk.

17. It was argued by the State Counsel that blood of the deceased was found on the floor of the house of the Appellants, but it was not explained by the Appellants that how it was found there. It is true that some blood stains were found in the verandah of the house of the accused/Appellants and those bloods stains were of the deceased. The DNA Test Report dated 24.4.2015 only clarifies that the blood was of the deceased, but how old it was is not reported. In this circumstance, even if the blood stains of the deceased were found on the floor of the house of the Appellants, it does not show that the blood had fallen on the floor on the date of incident itself.
18. As per the Court statement of Sahetrin Bai (PW1), the deceased was assaulted by the Appellants with *danda* and rod, but the said *danda* and rod have not been recovered from the Appellants. Investigating Officer Inspector M.R. Ratre (PW26) has not explained any reason for non-recovery of the weapon of offence. This leads to draw an adverse inference which renders the case of prosecution doubtful. In this case, there is no post mortem report or medical report available on record on the basis of which it could be ascertained that any injury was present on the body of the deceased. Except the statement of Sahetrin Bai (PW1), not a

single witness has deposed that he saw any bodily injury on the dead body of deceased.

19. The Trial Court has based the conviction upon the single testimony of Sahetrin Bai (PW1), wife of the deceased. There is no supporting evidence in this case. Therefore, a close and minute examination of statement of Sahetrin Bai is required.
20. As per the Court statement of Sahetrin Bai (PW1), when she heard the shout of her husband, she went towards the direction from where the shout was coming. She saw that accused/Appellant Bhagwan Singh was having a *danda* in his hands and accused Laxmikant was having a rod in his hands and they were assaulting her husband with those weapons, but the same is not mentioned in her written report (Ex.P1) nor in her police statement (Ex.D1). In Ex.P1, it is not mentioned by Sahetrin Bai that she had seen the Appellants assaulting her husband. As per Ex.P1, when she, having heard the shout of her husband, went to him, she saw that her husband had fallen down.
21. Sahetrin Bai (PW1) has admitted that her matrimonial house is situated in the mid of the village. Houses of other villagers were situated nearby her matrimonial house. In paragraph 14 of her cross-examination, she admitted that even after seeing her husband being assaulted, she did not call any of the residents of nearby houses by shouting. As per her statement, the deceased was first assaulted by the Appellants at about 7:00 p.m. Thereafter, at about 11:00 p.m., Sahetrin Bai again went to the place of occurrence and requested to open the door. When the door of the house was opened by the Appellants, she saw her

husband in injured condition. It seems that she was alone between 7:00 p.m. and 11:00 p.m. and she had ample opportunity to go to the neighbours and tell them about the incident, but she did not do so. From her statement, it reveals that since 11:00 p.m. till 5:00 a.m., she was with her husband and was serving him water and she also massaged his body, but she did not try at that time also to go out and get any assistance from the neighbours. Similarly, after the death of her husband, the accused/Appellants and her mother-in-law had gone to the police station and they returned at about 9:00 a.m. At that time also, she was alone at her house and she had again ample opportunity to go to the neighbours and tell them about the incident and gather them at the spot, but, on that occasion also, she did not do so. At the place and time of cremation of the dead body, her relatives had gathered, but, on that occasion also, she did not disclose the incident and consented for the cremation.

22. From the above discussion, it is clear that Sahetrin Bai (PW1) has improved her version in the Court in material points. She had ample opportunity to disclose the incident to the neighbours, but she did not do so. Rather, she consented for the cremation. Except Sahetrin Bai, no other witness has deposed that he saw any injury on the body of the deceased.
23. In the premises of aforesaid and the judgments of the Supreme Court in **Babuli case** (supra) and **Surpa case** (supra), the evidence of Sahetrin Bai (PW1) cannot be held to be reliable.
24. Furthermore, from the aforesaid, it is evident that before the occurrence, at about 4:30 p.m., the deceased was seen heavily

drunk. Since the dead body had been cremated before the police investigation, the cause of death is not known to anybody. There is no medical evidence available on record regarding any bodily injury of the deceased. We find from the evidence on record that the whole prosecution story is doubtful. Therefore, the accused/Appellants are entitled to get benefit of doubt.

- 25.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The accused/Appellants are acquitted of the charges framed against them under Sections 302 and 201 of the Indian Penal Code. They are in jail. They be set at liberty forthwith. Amount of fine, if any deposited shall be refunded to them.
- 26.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Arvind Singh Chandel)
JUDGE