

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 366 of 2009**

Raju @ Raju Yadav S/o Punnu Ram Yadav, Aged about 19 years, Occupation Hamali, R/o Village Saket, Police Station Pathariya, District Bilaspur (CG)

---- Appellant

Versus

State of Chhattisgarh Through -Station House Officer, Police Station : Hirri, District Bilaspur (CG)

---- Respondent

For Appellant : Shri Manoj Mishra, Advocate

For the respondent/State: Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****07/12/2018**

1. Shri R.R.Sinha, Shri Ashok Patil, Smt. Sudha Agrawal and Shri N.K.Chatterjee, Advocates have been engaged by the appellant, but despite repeated calls, none appeared on all dates of the week, therefore, Shri Manoj Mishra, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellant.

2. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 31.10.2008, passed in S.T.No.83/2008 by the 8th Additional Sessions Judge(FTC), Bilaspur, District Bilaspur (CG) for commission of the

offence under Sections 460 and 304 Part II of the IPC and sentenced to undergo R.I. for 10 years on each count and fine of Rs.200/- with default stipulation.

3. As per prosecution case, the appellant is grand-son of the deceased Mantora Bai who was residing at village Mohda. On 4.5.2008 in night at about 9.30 pm, the appellant entered into the house of Mantora Bai with an intention of theft, but during that period Mantora Bai was awakening and shouted for help for her defence. Then the appellant covered her mouth and strangled her neck as a result of that Mantora Bai died. The matter was reported and the appellant was charge sheeted. After completion of trial, the trial Court has convicted and sentenced the appellant as aforementioned.

4. I have heard learned counsel for the parties and perused the record.

5. Learned amicus curiae appearing on behalf of the appellant submits as under :

(i) There is no eye-witness account to the incident.

(ii) All the statements have been recorded after the incident which are contradictory to each other and therefore, same is not reliable piece of evidence.

(iii) Shankar Lal Sahu (PW1) is hearsay witness and trial Court has wrongly appreciated the statement of said witness, therefore, finding of the trial Court is not liable to be sustained.

6. On the other hand, learned counsel for the State supporting the judgment submits that the finding arrived at by the trial Court is based on cogent and reliable evidence and the same is not liable to be interfered with.

7. Munna Lal Kewat (PW14) and Bahorik Yadav (PW5) are the witnesses of the incident. As per version of Munna Lal Kewat (PW14) at about 10.00 pm on the date of incident, he was sleeping in his house and at the same time, Santosh Sahu and Parma Yadav informed him that some thief has entered into the house of Mantora Bai. Then he rushed to the house of Mantora Bai and found that one person had entered into her house and closed the door from inside. They removed the roof of the house and dashed the person entered into the house by club then he came out of the room and firstly he informed that he is resident of village Muru but in next breath he informed that he is resident of village Saket. This witness has clearly stated before the trial Court that the appellant who is present in the Court is the same person who entered into the house of Mantora Bai. He further deposed that the appellant confessed before him that he pressed the neck of Mantora Bai and killed her. He saw the dead body of Mantora Bai lying in the house. Version of this witness is supported by the version of Bahorik Yadav (PW5)

who deposed on same line. Both the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence and their version is unshaken. Version of these witnesses is supported by the version of Dr. Devesh Kumar Pradhan (PW9), who conducted autopsy of the deceased on 5.5.2008 at Community Health Centre Bilha. As per version of this witness, he conducted autopsy of the deceased and after examination found that the deceased died due to pressure on her neck. He further opined that the nature of death is homicidal and period of death is 12 to 24 hrs. since examination. Version of this medical expert is also unshaken during cross-examination and there is no other medical opinion in the record contrary to the opinion of this expert, therefore, version of this medical expert is supportive piece to the direct evidence led by prosecution. From the evidence it is established that the appellant has caused death of Mantora Bai.

8. Now the point for consideration is whether it is a case of murder or culpable homicide. From the evidence, it is not established that the appellant was having intention to kill Mantora Bai. As per version of the prosecution he entered into the house to steal some article, but it appears that due the resistance or awakening of Mantora Bai, he pressed her neck which was unintentional. The trial Court has elaborately discussed the entire evidence and came to conclusion that act of the appellant is

unintentional and is culpable homicide not amounting to murder which falls within the mischief of Section 304 Part II IPC. Again, house trespass by night and causing voluntarily death is an offence under Section 460 IPC for which the trial Court has convicted the appellant and this Court has no reason to substitute another finding, therefore, conviction of the appellant for offence under Section 304 Part II and 460 IPC is hereby affirmed.

9. Heard on the point of sentence :

10. The trial Court had awarded sentence of 10 years R.I. which cannot be termed as harsh, disproportionate or unreasonable looking to the facts and circumstances of the case. The sentence part is also not liable to be interfered with.

11. Accordingly, the appeal is liable to be and is hereby dismissed. As per report, the appellant has already suffered the full jail term and has been released after getting remission, therefore, no order for his arrest etc. is required. Sd/

(Ram Prasanna Sharma)
JUDGE