

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 553 of 2011**

- Maniram S/o Late Shri Asharam Binjhar, aged about 26 years, R/o village - Karmapatpar, Thana - Bagbahra, District Mahasamund (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : The District Magistrate, Mahasamund, District Mahasamund (C.G.)

---- Respondent**And****CRA No. 558 of 2011**

- Smt. Baisakhin Bai W/o Late Shri Asharam Binjhar, aged about 50 years. R/o village - Karmapatpar, Thana - Bagbahra, District Mahasamund (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : The District Magistrate, Mahasamund, District Mahasamund (C.G.)

---- Respondent

For Appellants : Smt. Indira Tripathi, Advocate.
For Respondent/State : Shri Neeraj Mehta, P.L.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Smt Justice Rajani Dubey****Judgment on Board by Pritinker Diwaker, J****31/08/2018**

As these two appeals arise out of the common judgment dated 19.07.2011 passed by the Sessions Judge, Mahasamund, in S.T. No.64/2010 convicting accused/appellant Maniram in Cr.A.No.553/2011 under Section 201 IPC, Smt. Baisakhin Bai in Cr.A.No.558/2011 under Sections 302 and 201 IPC & sentencing them

to undergo R.I. for two years with fine of Rs.500/-, imprisonment for life with fine of Rs. 1,000/- and R.I. for two years with fine of Rs.500/-, plus default stipulation respectively, they are being disposed of by this common judgment.

02. Accused/appellant Maniram in Cr.A.No.553/2011 is son of deceased Asharam, whereas accused/appellant Baisakhin Bai in Cr.A.N.558/2011 is wife of the deceased.

03. As per the prosecution case, on 01.08.2010, deceased, after consuming liquor, attempted to cause injury to accused Baisakhin Bai by carpenter axe and in that process he fell down and weapon got off from his hand. Accused Baisakhin Bai picked up the said carpenter axe and assaulted the deceased on his neck resulting in his instantaneous death. It is said that accused/appellant Maniram in Cr.A.No.553/2011 was also present in the house and after the incident he narrated the same to his brother Radhye Shyam (PW/7), who in turn, informed villagers including Tulsiram Bariha (PW/8)- Sarpanch about the incident. At the instance of Sarpanch Tulsiram Bariha (PW/8), FIR (Ex.P/15) was registered against the accused/appellants on 02.08.2010 at 11.30 AM under Sections 302, 201 and 34 IPC followed by merg intimation (Ex.P/16) at 11.40 AM. On the same day, inquest on the body of deceased was conducted vide Ex.P/6 and body was sent for postmortem examination to Community Health Center, Bagbahara, where Dr. Vijay Pratap Singh (PW/4) conducted postmortem on the body of deceased and gave his report (Ex.P/9) noticing five incised wounds on neck in the size of 1 cm x 2 cm x 2 cm, 3 cm x 2 cm x 1 cm, 7 cm x 1 cm x 2 cm, 8 cm x 2 cm x 2 cm and 7 cm x 2 cm x 2 cm. The autopsy surgeon opined the cause of death of deceased to be cardio respiratory

arrest due to excessive hemorrhage from incised wounds and the death was homicidal in nature.

04. Memorandum of accused/appellant Maniram in Cr.A.No.553/2011 was recorded vide Ex.P/7, based on which, one carpenter axe and lungi of appellant Maniram were seized vide Ex.P/2 and P/4 respectively. Seized articles were subjected to chemical examination and as per FSL report (Ex.P/24), presence of blood was confirmed on lungi and carpenter axe. Further, blood was also found on the clothes of the deceased. The allegation against accused/appellant Maniram in Cr.A.No.553/2011 is that he helped accused/appellant Baisakhin Bai in causing disappearance of the evidence by clearing the room. After completion of investigation, charge sheet was filed against the accused/appellants under Sections 302/34 and 201/34 of IPC and accordingly charges were framed against them by the trial Court.

05. In order to prove complicity of the accused/appellants in the crime in question, the prosecution has examined 12 witnesses. Statements of the accused/appellants under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case.

06. After hearing the parties, the Court below while acquitting accused/appellant Maniram under Section 302/34 IPC, has convicted and sentenced the accused/appellants as mentioned above in paragraph No.1 of this judgment. Hence, these appeals.

07. Counsel for the accused/appellants submits :

(i) That there is no evidence against accused/appellant Maniram in Cr.A.No.553/2011 showing his involvement under Section 201 IPC.

(ii) That to save accused/appellant Baisakhin Bai in Cr.A.No.558/2011 herself, she seems to have caused injuries to the deceased and had no intention to commit murder of the deceased. Learned counsel further submits that even if the entire prosecution case in respect of accused/appellant Baisakhin Bai is taken as it is, at best, she is liable to be convicted under Section 304 Part-II or Part-I IPC.

08. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellant is in accordance with law and there is no infirmity in the same. Learned counsel further submits that present is a case of house murder where dead body of the deceased has been found inside the house of accused/appellant Baisakhin Bai and no plausible explanation has been offered by her in her statement recorded under Section 313 of Cr.P.C.

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

10. Brijkishor Singh Rajput (PW/1) - Constable, assisted in the investigation.

11. Dileshwar (PW/2), witness to inquest (Ex.P/6), memorandum of accused/appellant Maniram (Ex.P/7) and seizure (Ex.P/2, P/3 & P/4), though turned hostile but has admitted his signature thereon.

12. Bund Sai (PW/3) is the witness before whom extra-judicial confession was made by accused/appellant Baisakhin Bai. This witness has stated that when he reached the place of occurrence, he saw cut injuries on the neck of the deceased and blood was oozing from the injuries. He has further stated that accused/appellant Baisakhin Bai confessed before him that she has

killed the deceased.

13. Dr. Vijay Pratap Singh (PW/4) conducted postmortem examination on the body of deceased and gave his report (Ex.P/9) opining the cause of death to be cardio respiratory arrest due to excessive hemorrhage from incised wounds. He has submitted that weapon of offence i.e. carpenter axe was produced before him for examination, and as per his query report (Ex.P/13), he opined that the injuries sustained by the deceased could have been caused by the said weapon.

14. Dhanesh Kumar Dhruv (PW/5) - Constable, assisted in the investigation.

15. Laxman Prasad Sahu (PW/6) - Investigating Officer, has duly supported the prosecution case.

16. Radhye Shyam (PW/7), son of the deceased, has stated that on the fateful night he was informed by accused/appellant Maniram that his (this witness) mother has killed the deceased. He has further stated that his parents used to quarrel after consuming liquor, and on the date of incident also he thought that some quarrel might have taken place between them and, therefore, he did not respond immediately. However, after some time, he went to Tulsiram Bariha (PW/8) - Sarpanch, and narrated the entire incident to him. He has also stated that thereafter he went to the house of deceased where he saw the dead body. He has also stated that his parents were living in a separate house constructed in the field.

17. Tulsiram Bariha (PW/8) is Sarpanch of the village. He has stated that accused/appellant Baisakhin Bai and her husband Asharam were living in a separate house constructed in the field. He has further stated that on the date of incident at about 3.00 -

3.30 AM, Radheshyam (PW/7), son of deceased, had come to his house and informed that his mother appellant Baisakhin Bai has killed the deceased.

18. Jeevan Lal Bariha (PW/9) is the villager. He has stated that after coming to know about the incident when he reached the house of deceased, he saw the body of the deceased lying there and being asked by the villagers, accused/appellant Baisakhin Bai informed them that after consuming liquor her husband armed with carpenter axe chased her with intent to inflict injury to her, however, he fell down near door as a result of which carpenter axe got off from his hand. She picked up the same and caused injuries to the deceased.

19. Sagar Netam (PW/10) is the witness to inquest made under Ex.P/5. Raman Bariha (PW/11) turned hostile. Vijay Kumar Sahu (PW/12) is the patwari who prepared spot map vide Ex.P/24.

20. Admittedly, there is no eyewitness account in the present case and the entire case is based on the circumstantial evidence main being the accused/appellant Baisakhin Bai and the deceased were residing in the same house and extra-judicial confession made by accused Baisakhin Bai.

21. As regards conviction of accused/appellant Baisakhin Bai in Cr.A.No.558/2011, from the evidence available on record it is clear that the deceased and appellant Baisakhin Bai were residing together in a room constructed on field and were frequently engaged in quarrels after consuming liquor. On 01.08.2010 the deceased was found dead inside the house which was in the occupation of two only (deceased and the appellant). According to autopsy surgeon, he noticed multiple incised wounds on neck of the

deceased and opined the death to be cardio respiratory arrest due to excessive hemorrhage from incised wounds and the death was homicidal in nature. Evidence further reflects that at the relevant time the accused/appellant was the only surviving inmate of the said house. Once it is established by the prosecution that at the relevant point of time the deceased was alone in the house with accused/appellant, she is under obligation to give an explanation, as envisaged under Section 106 of IPC, as to how her husband died in her house. But, the accused/appellant fails to offer any reasonable explanation in discharge of the burden cast upon him by Section 106 of the Evidence Act. It is interesting to note that the accused/appellant did not raise any positive defence and she in answer to all the questions put to her in her examination under Section 313 CrPC simply stated that she was not aware thereof and she has been falsely implicated in the crime. Furthermore, the query put to the doctor as to whether the injuries found on the body of deceased could be caused by carpenter axe has been answered by the doctor in affirmative vide Ex.P/13. Thus, on the basis of aforesaid evidence, the complicity of accused/appellant Baisakhin Bai in commission of the offence stands proved beyond reasonable doubt.

22. It is true that appellant Baisakhin Bai has not put forward the plea of right of private defence in her statement under Section 313 CrPC and simply denied her involvement in the crime in question. The question which arises for consideration is whether this omission on the part of the accused/appellant preclude her from taking the plea now in this appeal? In our considered opinion, an omission on the part of the accused to specifically set-up the plea of private defence does not preclude her from raising it even for the

first time in an appeal, if she is able to show from the prosecution evidence and other materials on record that she acted in private defence. It is open to the accused to deny commission of the criminal act attributed to her and her presence on the spot. At the same time, it is also open to her to show from the record of the case that if she did the criminal act assigned to her, she did it in the exercise of the right of private defence of person or property. Thus, the plea of right of private defence cannot be denied to the accused if available to her, simply on the ground that she did not specifically put it forward during trial where she pleaded innocence and false implication only.

23. Now it is to be seen whether in the given facts and circumstances of the case the right to private defence was available to accused/appellant Baisakhin Bai or not? In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his/her safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered.

24. As could be seen from the aforesaid discussion and the evidence on record that it is the deceased who first chased accused/appellant Baisakhin Bai carrying carpenter axe in his hand for causing injuries and in that process deceased fell down and weapon got off from his hand. Accused/appellant Baisakhin Bai picked up the said carpenter axe and caused as many as five injuries on his neck which resulted in his death. However, despite the fact that the injuries were caused by accused/appellant Baisakhin Bai after she was being chased by the deceased for causing injury, the extent of injuries caused on the vital part (neck)

of the deceased with deadly weapon like carpenter axe, cannot be said to be justified for the reason that the deceased was drunk and as such she had all the opportunity to drive him away by causing such amount of injuries necessary to protect herself and thereby she could have avoided death of the deceased. Thus, accused/appellant Baisakhin Bai has exceeded the right of private defence. But this fact cannot be lost sight of the fact that the incident occurred in the spur of moment, in the heat of passion and the assaults were not intentional and premeditated. Consequently, this Court is of the considered view that accused/appellant Baisakhin Bai had exceeded the right to private defence and being so, her case comes within the purview of Exception 2 to Section 300 of IPC, which reads as under.

“Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.”

25. Further, considering the manner in which assault was made by deadly weapon on the vital part neck of the deceased, it can safely be inferred that while inflicting such injuries on the person of the deceased, the accused/appellant had the intention of causing such bodily injuries as is likely to cause his death. Being so, she is liable to be convicted under Section 304 Part-I IPC.

26. As regards the sentence, considering the peculiar facts and circumstances of the case where under compelling circumstances, accused/appellant Baisakhin Bai in Cr.A.No.558/2011 killed her

husband to protect her life, the incident had taken place in the year 2010 i.e. about 8 years have elapsed since then, she has already remained in jail for more than five years, we feel that it will be in the interest of justice to sentence her to undergo R.I. for seven years.

27. As regards conviction of accused/appellant Maniram in Cr.A.No.553/2011 under Section 201 IPC, there is absolutely no clinching and credible evidence on record showing that appellant Maniram in any manner caused disappearance of the evidence of the offence with intent to save accused Baisakhin Bai from the legal punishment. None of the prosecution witness has stated specific against accused/appellant Maniram so as to hold him guilty beyond shadow of doubt. Being so, he is entitled to be acquitted of the said charge.

28. In the result, Cr.A.No.553/2011 is allowed. The judgment impugned convicting accused/appellant Maniram under Section 201 IPC is set aside and he is acquitted of the charge levelled against him. Appellant Maniram is reported to be on bail. His bail bonds shall stand discharged. Cr.A.No.558/2011 is partly allowed. While maintaining the conviction and sentence of appellant Baisakhin Bai under Section 201 IPC, her conviction and sentence under Section 302 IPC is altered to Section 304 Part-I IPC and she is sentenced to undergo R.I. for ten years. Accused/appellant Baisakhin Bai in Cr.A.No.558/2011 is on bail. She be taken into custody forthwith for serving jail sentence imposed by this Court.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Rajani Dubey)
Judge