

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1163 of 2013**

1. Phool Bai Gond w/o Tejau @ Bhola, aged about 27 years.
2. Kanhaiya Kumar Marawi S/o Thukel, aged about 24 years.

Both resident of village Majhreta, Police Station Pathariya, District Bilaspur (C.G.) at present District Mungeli.

---- Appellants**Versus**

- State of Chhattisgarh Through : Police Station Pathariya, present District Mungeli (C.G.)

---- Respondent

For Appellants.	:	Ms. Nirupama Bajpai, Advocate.
For Respondent.	:	Shri Vaibhav Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgment on Board**By Pritinker Diwaker, J****30/04/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 11.10.2013 passed by the Additional Sessions Judge, Mungeli, District Bilaspur (C.G.), in S.T. No.33/2011 convicting the accused/appellants under Section 302 IPC and sentencing them to undergo imprisonment for life with fine of Rs.1000/- each plus default stipulation.

02. In the present case, name of the deceased is Santoshi Bai, wife of accused/appellant No.2-Kanhaiya Kumar Marawi and sister-in-law (Bhabhi) of accused/appellant No.1-Phool Bai Gond.

03. As per the prosecution case, deceased Santoshi Bai was under

some evil spirit for which, on the date of incident i.e. on 12.04.2011 in between 5.00 to 7.00 AM, she was treated by the accused/appellants. It is alleged that the accused/appellants and juvenile accused Vishnu, brother of accused/appellant No.2-Kanhaiya Kumar, caused several injuries to the deceased by knife attached to barbed wire as a result of which deceased died. Further case of the prosecution is that when the accused persons were beating the deceased, some of their neighbours tried to enter the said room but accused/appellant No.2-Kanhaiya and juvenile accused Vishnu prevented them to enter the room. On the information of village Kotwar, merg intimations (Ex.P/20 and P/21) were recorded on 12.04.2011. Inquest on the body of deceased was conducted on 12.04.2011 and dead body was sent for postmortem examination to Community Health Center, Pathriya vide Ex.P/22 which was conducted by Dr. A.R. Banjare (PW/11) who gave his report (Ex.P/25) noticing following injuries:-

- (i) Abrasions in the size of 1/4" x 1/4" and 1/2" x 1/2" on right thigh.
- (ii) Abrasion in the size of 2-1/2" x 1" on right forearm.
- (iii) Abrasion in the size of 2" x 2" on left thigh.
- (iv) Lacerated wound in the size of 6" x 1/2" x 1/2" on left forehead below parietal region.
- (v) Lacerated wound in the size of 1-1/2" x 1/2" x 1/2" on right side below eyebrow.
- (vi) Swelling on right hand.
- (vii) Contusion in the size of 2" x 2" on right forearm. All injuries were antemortem in nature caused by hard and blunt object, injury No.4 was grievous and others were simple in nature.

Autopsy Surgeon opined the cause of death of deceased to be

shock due to excessive hemorrhage.

04. After merging inquiry, on 12.04.2011 at 07:45 PM, FIR (Ex.P/23) was registered against the accused/appellants and juvenile accused Vishnu under Section 302/34 IPC. One barbed wire having knife was seized from accused/appellant No.1-Phool Bai vide Ex.P/13. One leather belt and shirt were seized from juvenile accused Vishnu vide Ex.P/14. One shirt was seized from accused/appellant No.2-Kanhaiya vide Ex.P/15. Seized articles were sent for chemical examination to FSL, Raipur, however, no report thereof could be obtained. After filing of the charge sheet, the trial Judge has framed the charge against the accused/appellants under Section 302/34 of IPC.

05. So as to hold the accused/appellants guilty, the prosecution examined as many as 11 witnesses. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

06. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellants as mentioned above. Hence, this appeal.

07. Learned counsel for the appellants submits :

(i) That four eye-witnesses to the incident i.e. Manharan (PW/1), Maharathi (PW/2), Suranlal (PW/4) and Jawahar (PW/5) are not reliable and none of them has stated that they saw the accused/appellants killing the deceased.

(ii) That Maharathi (PW/2) and Surajlal (PW/4) have categorically stated that they have not seen any accused beating the deceased. Likewise, Manharan (PW/1) and Jawahar (PW/5) are also not reliable witnesses.

(iii) Even if the entire prosecution case is taken as it is, the accused/appellants cannot be convicted under Section 302 IPC. It has been argued that for the betterment of the deceased, accused/appellants were treating her as per the village custom and thus they cannot be held guilty for the offence under Section 302 IPC.

(iv) That the accused/appellants are in jail for last seven years and, therefore, they be set at liberty forthwith.

08. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that the conviction of the accused/appellants is in accordance with law and there is no infirmity in the same. He submits that the case of the accused/appellants would not fall under any Exception to Section 300 IPC and, therefore, it cannot be said that the act of the accused/appellants is culpable homicide not amounting to murder.

09. We have heard learned counsel for the parties and perused the material available on record.

10. Manharan Lal (PW/1) is the witness to inquest made under Ex.P/1. He has stated that he noticed mark of knife injury on the head of the deceased and saw accused/appellant No.1-Phool Bai causing injury to her by barbed wire. He has further stated that at the relevant time, accused/appellant No.2-Kanhaiya and juvenile accused Vishnu were standing at the door, they were carrying club in their hands and were not

allowing any villagers to enter the room. He has also stated that accused Kanhaiya and Vishnu have caused injury to the deceased by a club and that the incident has also been witnessed by the other villagers.

11. Maharathi (PW/2) has been examined as eye-witness to the incident. In examination-in-chief, he has supported the prosecution case but in cross-examination he has stated that he had not seen the accused persons beating the deceased.

12. Similar is the position with Surajlal (PW/4). However, he has stated that when he and other villagers reached the house of accused persons, deceased was there along with accused persons and that accused/appellant No.1- Phool Bai was keeping her fingers in the mouth of the deceased saying that she was alive. This witness, in examination-in-chief, has stated that he saw the accused persons beating the deceased but in cross-examination he denied the said fact.

13. Jawahar (PW/5) is the witness to inquest (Ex.P/1) and spot map (Ex.P/4). He is also eye-witness to the incident. He has stated that when he and other villagers went to the house of deceased, accused/appellant No.2-Kanhaiya and juvenile accused Vishnu had prevented them from going inside the house and upon gaining forceful entry in the house, they saw accused/appellant No.1-Phool Bai holding the deceased in her lap, her fingers were inside the mouth of the deceased and she was shouting that the deceased is alive/dead. This witness has stated that the deceased was in the house of accused/appellant No.2-Kanhaiya.

14. Latel (PW/6) has been declared hostile.

15. Mahetaru (PW/7), witness to inquest (Ex.P/1), turned hostile.

16. K.K. Shukla (PW/8) - Investigating Officer, who has duly supported the prosecution case.
17. Pyarelal Painkra (PW/9) is the Patwari, who prepared spot map vide Ex.P/4.
18. Sukhdev Daheriya (PW/10) - Constable, assisted in the investigation.
19. Dr. A.R. Banjare (PW/11) conducted postmortem examination on the body of deceased and gave his report Ex.P/25 opining the cause of death of deceased to be shock and hemorrhage due to injuries on the body.
20. Close scrutiny of the evidence makes it clear that on the date of incident i.e. on 12.04.2011, on the pretext of treating the deceased, who was under evil spirit, accused/appellants caused several injuries to her by barbed wire having knife thereto. The incident was witnessed by PW/1, PW/2, PW/4 and PW/5 and all of them have supported the prosecution case. Evidence of PW/1, PW/2, PW/4 and PW/5 gets corroboration from each other and medical evidence, according to which, injuries on right thigh, right forearm, left thigh, left side of forehead, right eyebrow of the deceased were noticed and the same were caused by hard and blunt object. The autopsy surgeon further opined that injury on left forehead below parietal region was grievous in nature. Though there are minor variations in the statements of PW/2 and PW/4, but considering the statement of PW/1 and PW/5, especially when they have not been cross-examined properly, we are of the view that the trial Court was justified in convicting the accused/appellants under Section 302/34 IPC. Considering the statements of eye-witnesses coupled with the

medical evidence, the complicity of accused/appellants in crime in question stands proved beyond reasonable doubt and we have no reason to disbelieve the statements of these witnesses.

21. We find no substance in the argument of counsel for the appellants that the act of the accused/appellants would fall within the definition of culpable homicide not amounting to murder.

22. In the case in hand, the deceased was being treated by the accused/appellant No.1 as she was allegedly under evil spirit and accused/appellant No.2 was standing there carrying club in his hand. While the treatment was being given, accused/appellant No.1 has crossed her all limit and caused as many as seven injuries by barbed wire having knife thereto. Prevalence of the practice of witch hunting are common in the villages but in the present case, the manner in which the deceased was treated shows the brutality on the part of the accused/appellants and under no circumstance their act would fall under any Exception to Section 300 and, therefore, it would be difficult for us to convict the accused/appellants for lesser offence.

23. Yet another important fact which is required to be noted here is the conduct of the accused/appellants. When the villagers were trying to enter the house of the accused/appellants, they were restrained from doing so by them (appellants). If the deceased was being really treated then the accused/appellants ought to have allowed the villagers but they restrained them and after gaining forceful entry they saw the entire picture. The deposition of PW/1, PW/2, PW/4 and PW/5 makes it abundantly clear that the accused/appellant No.2 and juvenile accused Vishnu was standing their on guard to ensure that nobody comes at the

place of occurrence. This shows that accused/appellant No.2 and juvenile accused were deputed to watch that when the accused/appellant No.1 was treating the deceased, no one should come there. This conduct of the accused/appellants also goes against them. It may be the intention of the accused/appellants to give treatment to the deceased but the manner in which she was dealt with and injuries caused to her reflect that the accused/appellants had killed the deceased.

24. We find no evidence on record to suggest that the accused/appellants were innocent and that their intention was not to kill the deceased. Further, we do not find any evidence on record to show that by the treatment of accused/appellants, any person who were under evil spirit recovered.

25. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.

26. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellants are reported to be in jail and therefore no further order regarding their arrest etc. is required.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE