

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 356 of 2013**

- Bindro Oraon S/o Rajju Oraon, aged about 40 years, R/o village Shivrathpur, Thana Sitapur, District Surguja (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Police Station Sitapur, District Sarguja (C.G.)

---- Respondent

For Appellant.	:	Shri Deepak Gupta & Shri Akhilesh Kumar, Advocates.
For Respondent.	:	Shri Vaibhav Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sharad Kumar Gupta

Judgment on Board**By Pritinker Diwaker, J****07/04/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 11.01.2013 passed by the First Additional Sessions Judge, Ambikapur, District Sarguja (C.G.), in S.T. No.296/2011 convicting the accused/appellant under Sections 302, 307 IPC, Section 4 of Chhattisgarh Tonahi Pratadna Nivaran Adhiniyam, 2005 and sentencing him to undergo rigorous imprisonment for life, R.I. for 10 years and R.I. for 3 years, plus default stipulation respectively.

02. Brief facts of the case are that on or around 04.02.2011, Amar Sai (PW/6) had gone to the appellant's house for performing sorcery. In the night intervening 5-4/02/2011, the accused/appellant entered the house of Asari (PW/1), his neighbour, on the pretext that he was feeling cold. After some time, he requested Asari (PW/1) and his wife

Budhiyaro Bai (deceased) to drop him back to his house and by that time when he (appellant) reached near his house, he assaulted Budhiyaro Bai by knife causing as many as 10 injuries saying Tonhi-Tonhi to Budhiyaro Bai and it is she who played sorcery with him as a result of which he is not well. He has also caused knife injury to Amar Sai (PW/6), who had performed sorcery in the appellant's house. On 05.02.2011, at the instance of Asari Ram (PW/1), FIR (Ex.P/1) was registered against the accused/appellant under Section 307 IPC, Sections 4 and 7 of Chhattisgarh Tonahi Pratadna Nivaran Adhiniyam, 2005. Both injured Budhiyaro Bai and Amar Sai (PW/6) were taken to Community Health Center, Sitapur where they were medically examined by Dr. S.N. Painkra (PW/9) who gave MLC (Ex.P/13) in respect of Budhiyaro Bai noticing 10 incised wounds on abdomen and back side, out of which one was in the size of 1x1/2x1/2 cm, second was in the size of 1-1/2x1/2x2 cm and remaining were in the size of 1-1/2x1/2x1-1/2 cm. MLC (Ex.P/14) in respect of Amar Sai (PW/6) was given by Dr. S.N. Painkra (PW/9) noticing one incised wound on left side of abdomen in the size of 1x1/2x1-1/2 cm. On 05.02.2011, during treatment, deceased Budhiyaro Bai succumbed to her injuries. Based on Memo (Ex.P/20) received from the hospital, un-numbered merg (Ex.P/21) and unexhibited numbered merg were recorded on 05.02.2011. Inquest on the body of deceased was conducted on 06.02.2011 and dead body was sent for postmortem examination to the District Hospital, Ambikapur vide Ex.P/18 which was conducted by Dr. Vikash Agrawal (PW/10) who gave his report (Ex.P/17) noticing following injuries:-

- (i) Stitched lacerated wound on buttock in the size of 3x0.5 cm.
- (ii) Three stitched lacerated wound in the size of 3x0.5 cm each over mid-line of back in spinal region (dorsal aspect).
- (iii) One lacerated wound of 4x0.5 cm over left side of para-spinal region.
- (iv) Three stitched lacerated wound in the size of 3x0.5 cm each over right rend region.
- (v) Lacerated wound in the size of 2x0.5 cm over right shoulder.

Autopsy Surgeon opined the cause of death of deceased to be shock due to penetrating injury over vital organ (right kidney and liver) leading to cardio respiratory failure.

03. On 05.02.2011 itself, memorandum of the accused/appellant (Ex.P/4) was recorded, based on which, one knife was seized from his possession vide Ex.P/5, the same was subjected to chemical examination and as per FSL report (Ex.P/25), presence of blood thereon was confirmed. In the incident, knife alleged to have been used in the commission of crime was sent for examination to Dr. S.N. Painkra (PW/9), who gave his query report Ex.P/16 opining that injuries sustained by the deceased could have been caused by the said knife. After filing of the charge sheet, the trial Judge has framed the charge against the accused/appellant under Section 302 of IPC and Section 4 of Chhattisgarh Tonahi Pratadna Nivaran Adhiniyam, 2005.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 18 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. One defence witness namely Bulluram (DW/1) was also examined to

substantiate its case.

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

06. Learned counsel for the appellant submits :

(i) That the accused/appellant has been falsely implicated in the crime in question.

(ii) That at the time of incident, mental condition of the accused/appellant was not proper for which he was taking treatment from Amar Sai (PW/6) and, therefore, he could not have been convicted under Section 302 or 307 IPC.

(iii) That the important witness of the prosecution Amar Sai (PW/6) has not supported the prosecution case.

(iv) That the appellant is in jail for last seven years and, therefore, he be set at liberty.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same. He further argued that there is absolutely no evidence on record to connect that at the time of commission of offence, mental condition of the appellant was not well. He also argued that it was for the appellant to give sufficient evidence in respect of his mental condition and in absence of the said evidence, no benefit can be extended to the appellant.

08. We have heard learned counsel for the parties and perused the

material available on record.

09. Asari Ram @ Agrasen (PW/1), husband of deceased, while supporting the prosecution case, has stated that in the night intervening 4-5/02/2011, the accused/appellant came to his house, asked for tobacco and after staying for some time he asked him to drop back to his house as he was feeling cold. While he (this witness) and his wife Budhiyaro Bai dropping the accused/appellant back to his house, just opposite to the appellant's house, all of a sudden he caused as many as 10 knife injuries to his wife as a result of which she fell down. In cross-examination, he remained firm and nothing could be elicited by the defence to discredit his testimony.

10. Smt. Angita (PW/2), daughter-in-law of the deceased, who after hearing the cries of the PW/1 immediately reached to the place of occurrence and saw Budhiyaro Bai and Amar Sai (PW/6) in injured condition. She has further stated that the accused/appellant was shouting that he has killed the Tonhi (Budhiyaro Bai).

11. Ram Kumar (PW/3), son of the deceased, has almost made similar statement as has been made by PW/2.

12. Arjun Kehri (PW/4), Dhaneshwar Yadav (PW/5), Amar Sai (PW/6) and Basant Kumar (PW/7) have been declared hostile.

13. Dr. S.N. Painkra (PW/9) medically examined deceased and PW/6 & gave MLC (Ex.P/13 and P/14) respectively. He has stated that injuries sustained by the deceased and PW/6 were caused by hard and blunt object.

14. Dr. Vikash Agrawal (PW/10) conducted postmortem examination on the body of deceased and gave his report (Ex.P/17) opining the

cause of death of the deceased to be shock due to penetrating injury over vital organ (right kidney and liver) leading to cardio respiratory failure.

15. R.J. Kerketta (PW/11) and R.B. Jagte (PW/12), Assistant Sub Inspector, assisted in the investigation.

16. Shiv Kumar Singh (PW/13) is the Patwari who prepared spot map vide Ex.P/2.

17. S.R. Bhagat (PW/16) - Investigating Officer, has duly supported the prosecution case.

18. Bullu Ram (DW/1) has stated that earlier the mental condition of the accused/appellant was not good, however, after taking treatment he improved but in the year 2010 he again became a man of unsound mind for which he was being treated.

19. Close scrutiny of the evidence available on record, makes it clear that in the night intervening 4-5/02/2011, while the accused/appellant was being dropped back to his house by PW/1 and his wife Budhiyaro Bai, the accused/appellant caused as many as 10 knife injuries to Budhiyaro Bai leading to her death. In the incident, PW/6 also sustained injuries on his abdomen. Immediately after the incident, FIR (Ex.P/1) was lodged by PW/1, husband of the deceased, naming the accused/appellant to be the perpetrator of crime. The incident has been witnessed by PW/1-husband of the deceased whose version is well corroborated by the evidence of Smt. Angita (PW/2)-daughter-in-law, Ram Kumar (PW/3)- son of the deceased and medical evidence according to which injuries on abdomen, back side and vital part i.e. right kidney and liver were noticed and the same were caused by hard and

blunt object. Furthermore, Dr. S.N. Painkra (PW/9) in his query report (Ex.P/16) has opined that the injuries sustained by the deceased could have been caused by knife. This witness has also done MLC of the deceased and injured PW/6 vide Ex.P/13 and P/14 respectively noticing as many as 10 incised wound on the body of deceased and one incised wound on left side of the abdomen of PW/6. Even if injured witness PW/6 has not supported the prosecution case, it does not in any manner dent the prosecution case. Furthermore, on the memorandum of the accused/appellant (Ex.P/4), one knife was seized from the possession of the accused/appellant vide Ex.P/5 and as per FSL report (Ex.P/25), presence of blood thereon was confirmed. Considering the statements of eye-witnesses coupled with the medical evidence and chemical examination report, the complicity of accused/appellant in crime in question stands proved beyond reasonable doubt and we have no reason to disbelieve the statements of these witnesses.

20. 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.

21. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellant is reported to be in jail and therefore no further order regarding his arrest etc. is required.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sharad Kumar Gupta)
JUDGE