

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 49 of 2015**

- Bandhan @ Maten Bargah S/o Sudden Bargah, aged about 44 years, R/o village Adchi Thana - Darima, District Surguja (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Police Station Darima, District Surguja (C.G.)

---- Respondent

For Appellant.	:	Shri V.P. Singh, Advocate.
For Respondent.	:	Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board**By Pritinker Diwaker, J****30/07/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 19.11.2014 passed by the Sessions Judge, Surguja (Ambikapur) (C.G.), in S.T. No.152/2013 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs.300/- with default stipulation.

02. In the present case, name of appellant is Bandhan @ Maten Bargah whereas name of deceased is also Bandhan S/o Mangal Bargah.

03. As per the prosecution case, there was old dispute between two Bandhan on account of discharging waste in the agricultural field. It is said that on 13.09.2012 at about 5.30 pm, when the deceased was cleaning his hand and foot after returning from field, the accused/appellant reached there carrying weapon like axe (Tabli) with him and has caused two injuries on his neck and one on shoulder resulting in his instantaneous death. The said incident was witnessed by Nanbai (PW/1), wife of deceased, whereas Rajnath (PW/2) saw the accused/appellant fleeing from the spot carrying blood stained axe (Tabli) in his hand. Immediately after the incident, at 9.30 PM dehati merg (Ex.P/8) was recorded by Nanbai (PW/1), wife of appellant. Soon thereafter dehati nalisi (Ex.P/1) was recorded followed by FIR (Ex.P/1-A) on 13.09.2012 at 11.30 PM under Section 302 IPC against the accused/appellant at the instance of Nanbai (PW/1). Inquest over the dead body was conducted vide Ex.P/10 on 14.09.2012 and body was sent for postmortem examination to Primary Health Center, Darim where Dr. Janeshwar Singh (PW/4) performed postmortem examination on the body of deceased noticing following injuries:-

- (i) Incised wound in the size of 10 cm x 3 cm in throat.
- (ii) Incised wound in the size of 5 cm x 2.5 cm on left side of neck.

Autopsy Surgeon opined the cause of death of deceased to be hemorrhagic shock due to incised wound on neck leading to cardiac respiratory arrest and death was homicidal in nature.

04. Memorandum of the accused/appellant was recorded vide Ex.P/3, based on which, one axe (tabli), vest and underwear of the accused/appellant were seized under Ex.P/4. Seized articles were subjected to chemical examination and as per FSL report, blood was found on the seized articles, however, there is no serological report on record to confirm origin of blood group. After filing of the charge sheet, the trial Judge has framed the charge against the accused/appellant under Section 302 of IPC.

05. So as to hold the accused/appellant guilty, the prosecution examined as many as 07 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.

06. 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.

07. Learned counsel for the appellant submits :

(i) That at the time of commission of offence mental

condition of the accused/appellant was not proper and it appears that he was suffering from insanity and unsoundness. He referred the statements of Nanbai (PW/1) and Rajnath (PW/2).

(ii) Even if the entire prosecution case is taken as it is, at best the offence under Section 304 Part-II or Part-I IPC is made out against the accused/appellant.

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/appellant is in accordance with law and there is no infirmity in the same. He submits that no evidence has been adduced by the defence that at the time of commission of offence the mental condition of the appellant was not good and that he was insane.

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

10. Nan Bai (PW/1) is wife of the deceased. She has stated that on the date of incident when her husband returned after grazing cattle, she offered water to him for cleaning hand and foot and while she was doing so, the accused/appellant reached there carrying *Tabli* in his hand and caused number of injuries to the deceased resulting in his death. She has further stated that at the time of assaulting the deceased, the accused/appellant was hurling 'हे काली माई'. In cross examination, she remained firm.

11. Rajnath (PW/2) has stated that when he was returning

from the field, he met the accused/appellant who caught hold of him and at that time he was carrying axe (*Tabli*) stained with blood in his hand. He has further stated that soon thereafter PW/1 informed him that the accused/appellant has killed the deceased. This witness has also stated that he was not aware as to what was the mental condition of the accused/appellant at the time of commission of offence, however, prior to the incident he came to know that mental condition of the accused/appellant was not good.

12. Vinay Singh (PW/3), witness to memorandum (Ex.P/3) and seizure (Ex.P/4), has admitted his signature thereon and supported the prosecution case.

13. Dr. Janeshwar Singh (PW/4) conducted postmortem on the body of deceased and gave his report (Ex.P/5) opining the cause of death of deceased to be hemorrhagic shock due to incised wound on neck leading to cardiac respiratory arrest and death was homicide in nature.

14. R. M. Yadav (PW/5) - Sub Inspector, assisted in the investigation. Kannilal Beck (PW/6) is the Patwari who prepared spot map vide Ex.P/2. Vijay Painkra (PW/7) is the Investigating Officer who has duly supported the prosecution case.

15. Close scrutiny of the evidence makes it clear that on 13.09.2012 at 5.30 PM, on account of old dispute with respect of discharging of waste in agriculture field, the accused/appellant entered the house of the deceased carrying axe (*Tabli*) in his hand and caused injuries on his head and neck

resulting in his death. The incident has been witnessed by Nan Bai (PW/1), wife of the deceased, who has duly supported the prosecution case. Further, after committing the offence when the accused/appellant was fleeing from the spot, he met Rajnath (PW/2) and at the relevant time the accused/appellant was carrying blood stained axe (*Tabli*) in his hand. From the un rebutted evidence of PW/1 and PW/2, it stands proved beyond all reasonable doubt that it is the accused/appellant who killed the deceased by assaulting him with *Tabli*. That apart, as per postmortem report of the deceased, he sustained injuries on neck and shoulder, and the cause of death was hemorrhagic shock as a result of neck injury leading to cardiac respiratory arrest and death was homicide in nature. Another piece of evidence against the accused/appellant is his memorandum (Ex.P/3), based on which, one axe (*Tabli*), vest and underwear were seized vide Ex.P/4. The seized articles were subjected to chemical examination and as per FSL report (Ex.P/18), blood has been found thereon. Though there is no serological report on record but in view of other evidence available on record, the FSL report can be treated as an additional evidence against the accused/appellant.

16. As regards the argument of the counsel for the appellant that at the time of incident, the appellant was suffering from insanity or unsoundness of mind, this Court could not lay its hand even on a single substantive piece of evidence which is suggestive of the same. Nan Bai (PW/1), eye witness to the

incident, has not uttered even a single word with regard to insanity or unsoundness of mind of the accused/appellant. Though the defence has given suggestion to PW/2 in his cross-examination to substantiate its plea of insanity or unsoundness of mind but he has denied the said suggestion and stated that he had come to know about the insanity or unsoundness of the accused/appellant prior to the incident but he was not aware as to what was the mental condition of the accused/appellant at the time of commission of offence. No medical papers to show that the accused/appellant was suffering from any such mental ailment or the opinion of the medical expert has been brought on record.

While dealing with the point of insanity or unsoundness of mind the Apex Court has in many cases - some of them being - **Surendra Mishra Vs. State of Jharkhand**, (2011) 11 SCC 495; **Mariappan Vs. State of Tamil Nadu**, (2013) 12 SCC 270; **Sheralli Wali Mohammed Vs. State of Maharashtra**, (1973) 4 SCC 79; **Oyami Ayatu Vs. State of M.P.**, (1974) 3 SCC 299 and **Bhikari Vs. State of Uttar Pradesh**, AIR 1966 SC 1, has unequivocally held that unless pleaded and proved during trial, the accused/appellant is not entitled to derive the protection of Section 84 of IPC simply by raising the issue at a belated stage. Here also, though this plea was taken before the trial Court but no medical evidence could be adduced by the defence from which it could safely be inferred that the cognitive faculties of the accused were so impaired that he was not in a

position to see the repercussions of his act and since it has not been done, the accused/appellant cannot disown his guilt of murdering the deceased. Further, the act of the accused/appellant in denying the charges, pleading trial and innocence in his statement under Section 313 Cr.P.C. makes this Court to draw an inference that his mental faculties were not so impaired to provide him the strength to wriggle out of the rigor of law. Thus, in these circumstances and keeping in mind the aforesaid legal position, the appellant is held to be dis-entitled to have the protection of Section 84 of IPC.

17. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. The appellant is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Gautam Chourdiya)
JUDGE