

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 652 of 2012**

1. Naresh Rai S/o Premrai, aged about 40 Years
2. Smt. Manpati Bai @ Dhoba W/o Nareshrai Aged About 38 Years, R/o Village Puranga, PD Bagicha, Presently residing at Bene Chatakpur, Ps Narayanpur, Distt. Jashpur, C.G.

----Appellants**Versus**

- State of C.G. Through PS Narayanpur, Distt. Jashpur, C.G., Chhattisgarh

---- Respondent

For Appellants	Shri C. Jayant K. Rao, Advocate.
For Respondent/State	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board by Justice Prashant Kumar Mishra**05/08/2019**

1. The appellants would call in question the legality and validity of the judgment of conviction and order of sentence dated 14.06.2012 passed by the Additional Sessions Judge, Kunkuri, District Jashpur, C.G., in ST No.58/09, whereby they have been convicted and sentenced as under :

Conviction	Sentence
Under Section 304 Part 1 of IPC (appellant No.1)	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine 6 months additional rigorous imprisonment.

Under Section 304 Part 1 read with 34 of IPC (appellant No.2)	Life imprisonment and fine of Rs.2,000/-, in default of payment of fine 6 months additional rigorous imprisonment.
---	--

2. Appellants Nareshrai and Manpati Bai are husband and wife. Despite being married, Nareshrai wanted to marry deceased Gauri Bai and to achieve the said objective, he brought Gauri Bai to his house and they stayed as husband and wife for about 2 months. As per the statement of PW-12 Champa Bai, appellant No.2 informed her that appellant No.1 is a convict, therefore, she should take back her daughter and thus, the deceased Gauri Bai went back to her house.
3. At about 12-1 noon on 22.07.2009 both the appellants and Gauri Bai were in conversation on an agricultural field in the village. On some dispute appellant No.1 picked up an axe and gave repeated blows on the head and neck of the deceased. The deceased died instantly.
4. The FIR Ex.P-1 was lodged by PW-1 Baleshwar Ram, however, he is not an eyewitness. The incident was witnessed by PW-3 Pradeep Lakda who has supported the case of prosecution stating that at the time of incident he had gone to his own agricultural field for sowing the crop and witnessed that appellant No.1 had thrown back the deceased on the ground. When the deceased moved up she was again thrown back and thereafter heated arguments took place between the deceased and the

appellant No.1. Thereafter, he picked up the axe and caused injuries over her head. Both the appellants ran away from the spot. This witness saw the incident at a distance of 50-60 meters. He would immediately inform the incident to one Mahendra Ram (not examined). Other witnesses assisted during memorandum and search or were part of investigation. PW-17 Dr. Smt. K. Kujur conducted the postmortem and submitted her report vide Ex.P-15. She found four injuries over the person of the deceased as under:

1. Lacerated wound over right temporal region with fracture.
2. Lacerated wound over left parietal region.
3. Lacerated wound over occipital region.
4. Lacerated wound near right ear.

In her opinion, the cause of death was hemorrhagic shock due to fracture of right temporal bone, skull bone and the death was homicidal in nature.

5. Considering the eyewitness account and the opinion of the autopsy surgeon, the death of the deceased was found to be homicidal and it is the appellant No.1 who committed the act of assault on the person of the deceased.
6. The trial Court has convicted the appellants for committing offence under Section 304 Part 1 of IPC. The trial Court has referred two judgments in the matter of *Jahid Vs. State of Rajasthan, 1999 Cr.L.J. 4430* and *Debu Vs. State, 1996 Cr.L.J. 1903*, to conclude that the incident has taken place at the heat of passion, therefore, it would fall under Section 304 Part 1

of IPC. Though, it is not mentioned, it appears that the trial Court was also impressed by the fact that despite being armed with a sharp edged weapon, the appellant No.1 caused injuries from the blunt part of the Axe because the deceased had suffered four lacerated wounds and no incised wound.

7. Learned counsel for the appellants would submit that the eyewitnesses account is not reliable and in any case the sentence imposed for committing offence under Section 304 Part 1 IPC is too harsh.
8. Learned counsel for the State would support the impugned judgment of conviction and order of sentence.
9. As we have discussed in the preceding paragraphs, the eyewitness PW-3 Pradeep Lakda has deposed the entire incident and there is nothing in his cross-examination which would discredit his statement. He being owner of the adjoining agricultural field, his presence on the spot during sowing season in the noon is very natural. He has been cross-examined on all aspects but he has remained firm in saying that he witnessed the incident. He has denied that he has any kind of enmity with the appellants. When he was suggested he has land dispute with the family of the appellants, he would state that the appellants do not have any land in the village, therefore, there is no question of any dispute on this count.
10. PW-8 Antoniya projected herself as an eyewitness during her examination-in-chief but at the later part she would admit that

whatever she has stated in the Court is hearsay and she has not seen the incident. PW-12 Champa Bai is the mother of the deceased, she speaks about the desire of appellant No.1 to marry the deceased and the fact that the deceased had stayed in the house of appellant No.1 for about two months. However, this witness is not an eyewitness.

11. Considering the entire material, we are in agreement with the findings recorded by the trial Court that the prosecution has proved that the appellant No.1 Nareshrai has committed an act of assault on the deceased. So far as appellant No.2 Smt. Manpati Bai is concerned, even the eyewitness PW-3 would not attribute any overt act to her, therefore, there is absolutely no evidence against appellant No.2 of her involvement in the crime in question. She being the wife of appellant No.1 may be present on the spot but she has not participated in commission of the crime in any manner.

12. For an offence under Section 304 Part 1 of IPC, the minimum sentence provided is RI for 10 years. Therefore, considering the fact that appellant no.1 Nareshrai is in jail since 24.07.2009 i.e. for more than 10 years, we are inclined to reduce the sentence to the period already undergone by him.

13. Accordingly, the appeal in respect of appellant no.1 Nareshrai is allowed in part. While maintaining his conviction under Section 302 Part 1 of IPC, the sentence imposed upon him is reduced to the period already undergone by him. However, the appeal filed

on behalf of appellant No.2 Smt. Manpati Bai is allowed and her conviction under Section 304 Part 1 read with 34 of IPC is hereby set aside. She is reported to be on bail, therefore, her bail bonds shall remain in force for a period of six months from today in view of provisions of Section 437A of Cr.PC. Since appellant No.1 Nareshrai is in jail, he be set at liberty forthwith after his furnishing a bail bond for a sum of Rs.25,000/- before the concerned trial Court which shall remain operative for a period of six months from today as per provisions of Section 437A of Cr.PC.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge