

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.1644 of 2015**

- Aasmati Yadav S/o Satyanarayan Yadav Aged About 42 Years R/o Village Bhalupani, P.S. Shankargarh, Civil And Rev. Distt. Balrampur, Chhattisgarh., Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station Shankargarh, Civil And Rev. Distt. Balrampur, Chhattisgarh., Chhattisgarh

---- Respondent

For Appellant	:	Smt. Laxmin Tondey, Advocate
For Respondent/State	:	Shri Anand Verma, Dy.GA

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board**Per Manindra Mohan Shrivastava, J.****15-04-2019**

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 06-10-2015 passed by the Special Judge, Surguja (Ambikapur) in Special Sessions Trial No.28/2012, whereby and whereunder the appellant has been held guilty for commission of offence under Section 342 & 302 of IPC and sentenced him, as described below-

Section-302	Life Imprisonment and fine of Rs.200/-, in default
IPC	of payment of fine, additional R.I. for 1 year.

Section 342	R.I. for one month
of IPC	

All the sentences were ordered to run concurrently.

2. The prosecution story, as unfolded from the impugned judgment and records of the case is that on 05-11-2011, the deceased-Ghuran had gone to

the house of Sonwa Bai, PW-9 along with his father-Somra, PW-11 and brother-Vijay, PW-1. It is said that there, all of them consumed liquor and then the appellant arrived there and started quarreling with the deceased-Ghuran concerning a dispute with regard to cutting of crops over an agricultural land said to be given on lease to Ghuran by Ganesh, brother of the appellant and son of Sonwa Bai, PW-9. According to the prosecution, during this dispute, the appellant pushed Vijay, PW-1 away from her house and then kept Somra, PW-11 in wrongful confinement and assaulted Ghuran so much so that Ghuran died at the spot. A morgue intimation was recorded in the police station at the instance of Vijay, PW-1, followed by FIR in Ex.P-1. Dead body was sent for postmortem and two head injuries, as also, injury on private parts along with many other injuries at different parts of the body of the deceased were found and doctor gave an opinion that the cause of death was injury on the head and private parts of the deceased leading to excessive bleeding and shock. Investigation culminated in filing of charge sheet against the appellant alleging commission of offence under Section 302 & 342 of IPC. The appellant abjured guilt and she was subjected to trial. In order to prove its case, the prosecution examined as many as 11 witnesses. The prosecution examined Vijay, PW-1, Sonwa Bai, PW-9 and Somra, PW-11 as eye-witnesses of the incident. Vijay, PW-1 and Somra, PW-11 supported the prosecution case by deposing that the appellant had assaulted Ghuran. Sonwa Bai, PW-9, mother of the appellant did not support the prosecution story and stated that there was a fight between the deceased and Vijay, PW-1 and Somra, PW-11 and her daughter did not assault anybody.

Learned trial Court, relying upon the evidence of Vijay, PW-1 and Sonwa Bai, PW-9 and the evidence of homicidal death, held the appellant guilty of commission of offence of murder of Ghuran and sentenced her, as described

above, giving rise to this appeal.

3. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that the prosecution case could not be proved beyond reasonable doubt. He would submit that the manner, in which, Vijay, PW-1 has stated in his evidence and what has been elicited in his cross-examination, he is not the eye witness of the incident. Somra, PW-11, father of the deceased-Ghuran, himself admits that he was drunken and was confined inside the room and story of watching the incident from a whole or gap of the door is highly improbable. This is an improvement upon his diary statement also. It is also argued that one of the prosecution witness Sonwa Bai, PW-9 has not supported the prosecution case and gave a different version by stating that the deceased had entered into fight with his brother Vijay and father Somra and all of them, in a drunken state. A suggestion has also been given to Vijay, PW-1 that an attempt was made to outrage the modesty, which was denied. Lastly, it is submitted that even if it is admitted that the assault was given by the appellant to the deceased, even according to the prosecution, at the spot, dispute arose between the appellant and the deceased in respect of a claim over the standing crops and the appellant is alleged to have used a wooden shaft which is ordinarily used for preparation of cot and it is not a case that any dangerous weapon was used. Therefore, in these circumstances, conviction of the appellant would not travel beyond the ambit and scope of Section 304 Part II of IPC. The appellant having already undergone 8 years of jail sentence, therefore, conviction of the appellant may be altered and the period of sentence may be treated as undergone.

4. On the other hand, learned State counsel would support the impugned judgment of conviction and order of sentence by submitting that in the present

case, the evidence of the prosecution witnesses, clearly proved that when the deceased was consuming liquor along with his brother Vijay and father Somra in the house of Sonwa Bai, the appellant arrived at the spot and started quarreling with Ghuran, in which, Ghuran stated that he would cut the crop, at that moment, the appellant replied that Ghuran would cut the crops only when he remains alive. He would argue that the deceased was given multiple assaults, in all, total 13 injuries including injuries on private parts have been sustained by the deceased. It is argued that private parts of the deceased were badly injured and crushed. Therefore, the conviction of the appellant does not warrant interference.

5. Having considered the submission of learned counsel for the parties, we have perused the records.

6. The prosecution case that the appellant killed the deceased by assaulting him is based on the eye-witness account given by the two witnesses namely Vijay, PW-1, brother of the deceased and Somra, PW-11, father of the deceased. In the FIR and morgue intimation, which was lodged by Vijay, PW-1, it has come out that in the night, when Vijay, Ghuran and Somra were consuming liquor in the house of Sonwa Bai, PW-9, the appellant arrived there and entered into quarrel with Ghuran and then assaulted him.

7. Vijay, PW-1, claims to be an eye-witness of the incident, has stated that when he along with his father Somra and brother Ghuran had consumed liquor in the house of Sonwa Bai, where they all were invited, the appellant had come there and he was pushed out of their house and father-Somra kept in a wrongful confinement and then his brother Ghuran was assaulted by a club. He claims to have peeped from the door that the appellant was assaulting his brother Ghuran. But, in his cross-examination, Vijay, PW-1 states that, though, there was an incident of assault, he could not save his brother, because door was

closed and admits that his brother Ghuran was assaulted only after he was pushed out of the room. He also admits that the room, in which, assault was given, Sonwa bai was also present and it is the Sonwa Bai, who had seen the incident.

It is also worthwhile to notice that the conduct of this witness, if his submission is accepted, that he was peeping from the door that the appellant was assaulting his brother, his normal conduct would have been to make an attempt to save his brother or if he was unable to break the door, call for help from the villagers or from the police or somebody else on that night itself. But, there is no evidence on record led by the prosecution that soon after the incident, Vijay informed about the incident to any body or called the police despite having seen that his brother was being assaulted by the appellant. Morgue intimation has been given in the police station, followed by FIR only on the next morning at about 9 AM. Therefore, it is quite doubtful whether this witness had actually seen the incident. Moreover, this witness also does not say as to why the appellant assaulted his brother. He has stated that the deceased had no dispute, though the appellant used to declare that she would not allow Ghuran to reap crops on the land, whereas his brother had cultivated the land after taking the land from Sonwa. From this evidence, what can be inferred is that there was some kind of dispute existing between the appellant and Ghuran over a piece of land and the appellant was taking exception to Ghuran's act of cultivating the land and claiming to reap the crops.

8. Somra, PW-11, father of the deceased namely Somra has stated in his evidence that he, along with his son Vijay and Ghuran, had gone to the house of Sonwa Bai, where they all had consumed liquor. He has stated that the appellant assaulted his son on his head and private parts, due to which, he died at the spot. As he did not fully support the prosecution case, to that extent, he

was declared hostile. In his examination, he has admitted that Aasmati had told Ghuran that she would reap the crops over the land taken on lease by Ghuran and when Sonwa declared that his agricultural land was taken on lease, therefore, both of them should reap crops, at that time, the appellant declared that Ghuran would cut the crops only when he remains alive. He has further stated that his son Vijay was pushed away from the house and he was locked inside the room, the appellant assaulted Ghuran with the help of wooden plank. He claims to have seen the incident by peeping from the door. A suggestion that after consumption of liquor, this witness started quarreling with two sons, has been denied. But, then he admits that he was locked inside the room by Sonwa.

9. From the evidence of this witness also, what transpires is that when this witness and two sons had consuming liquor at the house of Sonwa Bai, at that time, the appellant arrived there and quarrel had taken place on the issue as to who should cut the crops and then the present appellant declared that the deceased would reap the crops only when he remains alive and then assaulted him.

This witness claims to have seen the incident. He says that when the incident was going on, he was peeping from the door.

10. Sonwa Bai, PW-9, mother of the appellant has not supported the prosecution story and has come out with the case that the deceased was quarreling along with father Somra and brother Vijay, whereafter he went inside.

11. We find that from the side of the appellant, a suggestion has been given during the cross-examination of Vijay, brother of the deceased, that an attempt was made to outrage her modesty, which has been denied. The appellant, in her examination under Section 313 of Cr.P.C. has not come out with any such case that the deceased attempted to outrage her modesty. If any such act would have been performed, mother of the appellant-Sonwa Bai would have

certainly stated regarding any such attempt.

12. Defence has built up on the basis of statement under Section 313 Cr.P.C. and the statement of Sonwa Bai that in the house of Sonwa Bai, the deceased and his father Somra and brother-Vijay had consumed liquor and started fighting with each other which could be possibly explain as to how the deceased sustained injuries, does not help the appellant, because if that would have been so, some injuries would have been found on the body of Vijay. Moreover, had it been so, the natural conduct of Sonwa Bai would have been to inform the villagers or the police regarding such incident. The incident has actually been reported by Vijay, PW-1 that his brother was assaulted by the appellant.

13. Though, learned counsel for the appellant vehemently argued that looking to the facts and circumstances of the case, the conviction of the appellant may be altered to Section 304 Part II of IPC, we find ourselves unable to do so. There is nothing on record to show that the deceased had also assaulted the appellant and that fight was going on between them. In fact, the evidence on record shows that the deceased was heavily drunk. Moreover, we find that in the present case, 13 injuries have been found on the body of the deceased, which includes two head injuries, his testicles were crushed and private parts were also badly injured. Therefore, it appears that the appellant acted in a cruel manner. It is not a case that the appellant also sustained injuries.

14. Therefore, in view of above, we do not find any good ground to interfere with the impugned judgment of conviction and order of sentence.

15. In the result, the appeal is dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor_)
Judge