

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 883 of 2012**

- Raju Yadav S/o Jagannath Yadav, Aged about 40 years, R/o Thethwarpara Ravanbhantha, Jamul, Police Station Jamul, District Durg (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh through Police Thana- Jamul, Durg, District Durg (C.G.)

---- Respondent

For Appellant	: Shri Suresh Tandon, Advocate appears on behalf of Shri Jitendra Gupta, Advocate
For Respondent/State	: Shri Santosh Bharat, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra, J**Hon'ble Shri Justice Gautam Chourdiya, J****Judgment on Board by Justice Prashant Kumar Mishra****10.07.2019**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 27.07.2012 passed by learned Sessions Judge, Durg, District Durg (C.G.) in Sessions Trial No. 18 of 2012, whereby the appellant stands convicted under Section 302 of IPC for committing murder of his wife namely Geeta Bai and sentenced to undergo life imprisonment and fine of Rs.500/-, in default of payment of fine to undergo further simple imprisonment for two months. The appellant has been further convicted under Section 323 of IPC and sentenced to undergo simple imprisonment for one month, with direction to run both the sentences concurrently.

2. The appellant has allegedly committed murder of his wife Geeta Bai during the intervening night of 6th–7th September, 2011. The F.I.R. (Ex.-P/1) was lodged by PW-2, Dushyant Yadav son of the appellant, informing the police that his father was suspecting his mother's character, therefore, dispute used to occur regularly in their house. On 06.09.2011 at about 10:00 pm, after taking meals, when he went to another room for sleeping, he was woken up by younger brother, PW-1 – Prabhakar Yadav, saying that their father (appellant) is committing murder of their mother Geeta Bai. The informant rushed to the other room and witnessed that his

father had pushed Geeta Bai on the ground and was sitting over her chest. While the appellant was encircling the neck of his mother with *towel*, the informant tried to separate them, however, the appellant elbowed him and he sat quiet holding his chest. Her mother died instantaneously.

3. F.I.R. (Ex.-P/1) has been lodged at about 08:00 am in the next morning, therefore, there is no delay in lodging the F.I.R. Postmortem examination was conducted by Dr. Badri Narayan Dewangan (PW-7) vide Ex.-P/12. Autopsy Surgeon (PW-7) has also found ligature mark over the neck of the deceased and opined that cause of death was asphyxia due to strangulation. During the investigation *towel* and knife were recovered from the possession of the appellant vide Ex.-P/9.

4. In course of Trial, the prosecution examined PW-1 Prabhakar Yadav, PW-2 Dushyant Yadav, PW-3 Smt. Biraji Bai, PW-4 Rajkumar Yadav, PW-5 Satrugan Yadav, PW-6 Purendra Korsewada, PW-7 Dr. Badri Narayan Dewangan, PW-8 Seru Sahu, PW-9 Bhupendra Kumar Patil, PW-10 Dr. Nivedita Denny, PW-11 Taaran Singh Rajput, PW-12 Mannu Lal Yadav and PW-13 Nathuram Nishad. On the basis of evidence on record, the Trial Court has convicted the appellant as aforementioned.

5. It is argued by learned counsel for the appellant that PW-1 Prabhakar Yadav is a child witness and PW-2 Dushyant Yadav was emotionally attached to the mother (deceased), therefore, both of them are making false allegation against the appellant. It is also argued that the *towel* and knife were not sent for FSL, therefore, there is no corroboration of the oral evidence and as such impugned judgment deserves to be set aside.

6. Learned counsel for the State would support the impugned judgment.

7. Heard learned counsel for the parties and perused the record.

8. We have seen the evidence adduced by the prosecution carefully.

9. Despite being child witness PW-1 Prabhakar Yadav has narrated in detail as to how the appellant committed murder of his wife Geeta Bai. This witness (PW-1)

informs the Court that seeing his father strangulating his mother, he called Dushyant Yadav (PW-2) who was sleeping in the adjoining room and Dushyant immediately rushed to the place of occurrence and tried to separate the appellant and his mother. Statement of PW-1 is fully supported by PW-2. It is this witness (PW-2) who lodged the F.I.R. (Ex.-P/1) making almost the same allegations as were made in his deposition in the Court. Both these witnesses, PW-1 Prabhakar Yadav and PW-2 Dushyant Yadav, being sons of the appellant and deceased, their presence in the house during the night was absolutely normal and there is otherwise nothing to discredit the eyewitnesses account and therefore, the Trial Court has rightly believed their statements.

10. Postmortem report (Ex.-P/12) has been duly proved by PW-7 Dr. Badri Narayan Dewangan. He has found ligature mark over the neck of the deceased and opined that cause of death was asphyxia due to strangulation. Thus, the medical evidence in form of postmortem report (Ex.-P/12) corroborates the eyewitnesses account rendered by PW-1 Prabhakar Yadav and PW-2 Dushyant Yadav. In view of these two pieces of substantial evidence, non-sending of *towel* and knife for FSL examination is not such a lacuna which would be fatal for the prosecution. It is also to be seen that the knife was never used as a weapon in course of commission of murder. *Towel* used for strangulation was also not required to be sent for FSL examination because it was not blood stained.

11. The present appears to be an open-and-shut case against the appellant and the Trial Court has rightly convicted him for offence under Sections 302 and 323 of IPC.

12. In the result, the appeal being bereft of any substance is liable to be and is, accordingly, dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge