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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1615 of 2015**

- Swarup Singh S/o. Shri Babu Lal Pav, aged 55 years, R/o. Village Katra, Police Station Marwahi, Distt. Bilaspur Chattisgarh

---- Appellant**Versus**

- State of Chhattisgarh, Through Police Station House Marwahi, Distt. Bilaspur Chhattisgarh

---- Respondent

For the appellant : Shri Gajendra Sahu, Advocate
For the respondent/State : Shri Vikas Shrivastava, Panel Lawyer

**DB: Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Shri Justice Ram Prasanna Sharma
Judgment On Board**

Per Manindra Mohan Shrivastava, J

22.02.2019.

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 26.8.2011 passed by Additional Sessions Judge, Pendra Road, Distt. Bilaspur (CG) in Session trial No.43/10 wherein the said Court convicted the appellant under Section 302 of the IPC and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs.1000/- with default stipulations.

2. According to the prosecution case, on 31.8.2010, early in the morning at about 5.00 am, the appellant came to the house of Julu Bai alleging that she had been playing witchcraft, pounced

upon her and strangled her to death. FIR (Ex-P/2) was lodged. Upon lodging of the FIR, dead body was sent for postmortem and Dr. BS Paikra (PW-6) conducted postmortem (Ex-P/6) and opined that Julu Bai died due to throttling which lead to asphyxia. The investigation culminated into filing of charge sheet against the appellant for alleged commission of offence under Section 302 IPC which also lead to framing of charges. The appellant abjured guilt and was put to trial.

3. In order to prove its case, the prosecution examined as many as 7 witnesses and out of these, Heera Singh (PW-1), Belwati (PW-2) & Gend Kunwar (PW-3) were examined as eyewitnesses of the incident. They remained firm in their statement and supported the prosecution case. The learned trial Court upheld the appellant guilty for commission of offence.

4. While learned counsel for the appellant does not seriously dispute the incident, obviously in view of the eyewitness account of Heera Singh (PW-1), Belwati (PW-2) & Gend Kunwar (PW-3), his submission is that present would be a case of commission of offence of culpable homicide but not amounting to murder.

Elaborating his submission, learned counsel for the appellant urged before us that the evidence has come that in the previous night, the appellant had come to the house of the deceased raising grievance that she was playing witchcraft and the next day morning also, it was only on this allegation that the deceased was playing witchcraft thus the appellant throttled her.

He would argue that even according to the prosecution case, as is reflected from the appellant's memorandum of statement (Ex-P/9), there was an impression gathered by the appellant and his family members that because of witchcraft being played by Julu Bail, sister-in-law of the appellant was unable to conceive. Therefore, it is argued that present is a case of sudden and grave provocation attracting 1st Exception to Section 300 IPC. As the appellant did not use any weapon but it is said that he only throttled the deceased, the alleged act would not travel beyond the scope of Section 304 Part-II IPC.

5. On the other hand, learned counsel for the State, supporting the judgment of conviction and order of sentence would argue that the prosecution case that the appellant had come early in the morning and strangled the deceased, is proved from the reliable testimony of Heera Singh (PW-1), Belwati (PW-2) & Gend Kunwar (PW-3), the members of the family of the deceased who have clearly stated regarding criminal overt act of the appellant. He would argue that it is not a case of sudden and grave provocation which led the appellant to loose his self control and commit overtact of strangulation. He would argue that in the previous night also, the appellant had come, threatened and the next day, early morning also, he came and killed which clearly shows that there was nothing like suddenness in the commission of overt act. He would argue that the only reason that sister-in-law is not conceiving, may be a provocation but not a grave one,

so as to say that a person would loose his self control and commit the act.

6. We have heard learned counsel for the parties and perused the record.

7. Criminal overt act of the appellant in strangulating to death, the deceased Julu Bai is proved from reliable testimonies of as many as three witnesses. Heera Singh (PW-1) grand-son of the deceased, Belwati (PW-2) grand-daughter-in-law of the deceased and Gend kunwar (PW-3), grand-daughter of the deceased, all of them have emphatically and reliably spoken regarding the incident. Their coherent statement is that early in the morning at 5.00 am, the appellant came to the house of the deceased and stated that she had committed witchcraft, pulled her out and strangulated to death. All of them deposed that despite attempts made by these persons to rescue Julu Bai, the appellant did not leave her until she died. The place and time of death and the manner in which the appellant committed the offence is similar, as found in the statement of all these witnesses, who are the members of the family of the deceased and we find no reason why they would falsely implicate someone who has not committed the offence and allow the real culprit to go scot free.

8. Evidence has also come on record that on the previous day also, the appellant had come and threatened the deceased. Belwati (PW-2) has stated in her cross-examination that the appellant had come in the night, abused and then went away.

The suggestion that it is because of the incident which happened in the night, the appellant has been falsely implicated, has been denied. Gend Kunwar (PW-3) has also stated that at about 11.00 in the night, the appellant had come to the house of the deceased, abused and went away. On the next day, the appellant came quietly in their house, early in the morning.

9. Even if we accept the prosecution case that the appellant killed the deceased because of the apprehension that Julu Bai was playing witchcraft on his sister-in-law due to which sister-in-law was not able to conceive a child, it is difficult to accept that this could be categorised as a grave provocation.

10. In order to attract the 1st Exception to Section 300 IPC, it is required to be established that death has been caused while deprived of power of self control by grave and sudden provocation. There are three exceptions to application of aforesaid rule embodied in the provisions itself, which we need not dwell into as they are not necessary for decision of the case.

Explanation appended to Exception 1 provides that whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

11. An apprehension giving rise to an anger that Julu Bai was playing witchcraft due to which the appellant's sister-in-law was unable to conceive a child, may be said to be a provocation but certainly not a grave one. Moreover, the provocation has to be sudden in order to attract Exception I. The gist of the provision is

that provocation has to be sudden and grave so much so that one is deprived of power of self control. Therefore, the degree is very high and not every ordinary case of provocation.

12. It is not a case where the appellant lost self control upon disclosure of alleged witchcraft and instantaneously committed criminal overtact. The evidence on record that on the previous night the appellant had come to the house of the deceased abused and then he had gone back home, coupled with evidence that next morning as early as at 5.00 am, the appellant had quietly entered the house of the deceased only leads to inference that the appellant had come with all planning to kill the deceased and that is why he chose such early part of the day.

13. The combination of the aforesaid circumstance clearly rules out that criminal overt act was an out come of sudden and grave provocation where the appellant lost his self control. 1st Exception therefore is not attracted.

14. Consequently, looking into the homicidal nature of the death, we are not inclined to interfere with the impugned judgment of conviction and sentence. Accordingly, the appeal is dismissed.

**Sd/-
Judge**

(Manindra Mohan Shrivastava)

**Sd/-
Judge**

(Ram Prasanna Sharma)