

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 324 of 2012**

Smt. Gauri Bai Chauhan, W/o Chetan Chauhan, aged about 35 years,
Resident of Village Hattapali, Police Station Baramkela, District
Raigarh, C.G.

----Appellant**Versus**

State of Chhattisgarh, Through Police Station Baramkela, District
Raigarh, C.G.

---- Respondent

For Appellant
For State

Shri Yogeshwar Sharma, Advocate.
Shri K.K. Singh, Government Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Justice Gautam Chourdiya****22.07.2020**

1. The matter is heard through Video Conferencing.
2. Challenge in this appeal is to the judgment of conviction and order of sentence dated 23.02.2011 passed by Additional Sessions Judge, Sarangarh, District Raigarh, C.G. in Sessions Trial No.01/09, whereby the appellant stands convicted for the offence under Section 302 read with 34 of Indian Penal Code for committing murder of Dukalu Lohar on 26.09.2008 with common intention alongwith another co-accused Chetan Chauhan (dead) i.e. husband of appellant and sentenced to undergo life imprisonment and fine of Rs.1,000/-, in default of payment of fine to further undergo rigorous imprisonment for three months.

3. Case of the prosecution in brief is that on 26.09.2008 at about 16:40 PM, merg intimation Ex.P-16 was lodged by Shankar Singh Sidhar, Ward Boy of the hospital, informing the police that Dukalu Lohar, son of Baishaku, had died on the way when he was being brought to the hospital. The merg intimation Ex.P-16 was lodged against the unknown person. On the next day i.e. 27.09.2008 at about 8:30 am after inquiry on merg, FIR Ex.P-17 was lodged by PW-16 Amreshwar Singh, Sub-Inspector against the unknown person. Inquest on the dead body was conducted vide Ex.P-11 and the body was sent for postmortem. The postmortem examination was conducted on 26.09.2008 by PW-18 Dr. S. Toppo who gave his report vide Ex.P-18 finding following injuries on the body of the deceased:-

1. One abrasion injury mark present on the left side of face size 1 ½ cm x 0.4 cm.
2. One abrasion injury mark was found on the right nostril size 1cm x 0.4cm. Blood was oozing from the mouth and nose.
3. One lacerated wound present on the right ear size 3½ cm x ½ cm x 1 cm. Blood like stain was present on the clothes (Shirts, lungi).
4. Rigor mortis was present on upper limb while in lower limb it is not commenced (develop).
5. Two haematoma found on the left temporal region of head size 4cm x 3 ½ cm and another haematoma below to its measured 3 cm x 3 ½ cm.

6. Another haematoma found on the forehead at level of left eyebrow and fissured fracture of skull bone found and left temporal region of skull was found fissured fractured.

7. One bruise injury mark found on the right side of face below to the right eye size 2 ½ cm x 2 cm, blood was oozing from the right ear and mouth was closed.

The Autopsy Surgeon has opined that the cause of death was coma due to head injuries and the death was homicidal in nature. Time passes approximately within 12 hours of postmortem examination.

4. During investigation, co-accused- Chetan Chauhan's (dead) memorandum statement was recorded vide Ex.P-2 by Investigating Officer in which he disclosed the fact that deceased Dukalu Lohar was having illicit relations with his wife (Gauri Bai) and when his wife was working in the field of Parshuram, at that time, deceased Dukalu came there with an intention to outrage the modesty of his wife and to humiliate her. Hearing her screaming voice, co-accused- Chetan Chauhan, husband of the appellant Gauri Bai, came there to save her and assaulted upon deceased Dukalu by means of sickle, hands and fists. He also stated that when he was pressing the neck of deceased Dukalu, he (deceased) also assaulted upon him, as a result of which he (co-accused- Chetan) sustained injuries on his body. The said incident was witnessed by PW-6 Parshuram Patel and PW-7 Rajendra Snehi. Co-accused- Chetan Chauhan (dead) was also sent for medical examination who was examined by PW-18 Dr. S.

Toppo. The injuries sustained by the co-accused Chetan vide Ex.P-28 are as under:-

1. One abrasion injury mark of size 1cm x 0.4 cm in front of neck.
2. One abrasion injury mark of size ½ cm x 0.4 cm on the right side of the neck.
3. One abrasion injury mark of size 1cm x 0.4 cm on the left side of the neck.

In his opinion, injuries were simple in nature which could have come from hard and rough object and duration was about 36 hours.

5. From his possession (co-accused- Chetan Chauhan), one sickle was seized by police vide Ex.P-3. Blood Stained soil, plain soil and leafs of ginger plant were also seized from the place of occurrence vide Ex.P-4. Spot Map Ex.P-8 was prepared by Patwari PW-4 Khemsagar Chaudhary. Accused persons were arrested on 27.09.2008 vide Exs. P-23 and P-24 respectively. After recording statements of the witnesses, charge sheet was filed against the accused persons i.e. Chetan Chauhan and appellant Gauri Bai under Section 302 read with 34 of IPC.
6. The trial Court framed charge under Section 302 read with 34 of IPC against the accused persons which was denied by them and they prayed for trial. The prosecution examined 18 witnesses in support of its case i.e. PW-1 Fukalu, PW-2 Shukalu, PW-3

Yashwant Kumar Patel, PW-4 Khemsagar Chaudhary, PW-5 Ku. Hemlata, PW-6 Parshuram Patel, PW-7 Rajendra Snehi, PW-8 Vinok Kumar Nayak, PW-9 Laxman Nishad, PW-10 Chamar Singh, PW-11 Kedarnath, PW-11 Babulal Yadav, PW-12 Vidyadhar Patel, PW-13 Revti Bhushan, PW-14 Setram Nishad, PW-15 R.P. Tiwari, PW-16 Amreshwar Singh, PW-17 Shankar Singh Sidar and PW-18 Dr. S. Toppo. Statement of the accused/appellant Gauri Bai was recorded under Section 313 of CrPC in which she denied the incriminating circumstances appearing against her in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by her. The co-accused namely Chetan Chauhan, had died during the pendency of the Sessions Trial.

7. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above.
8. Learned counsel for the appellant submits that in this case prosecution has utterly failed to prove this fact that appellant was sharing any common intention with co-accused- Chetan Chauhan, husband of the appellant, for committing the murder of deceased Dukalu Ram. He also submits that appellant had not caused any injury to the deceased. He further submits that no other incriminating evidence is available on record, nor any article was seized from the appellant to connect her with the crime in question. He also submits that no eye-witness has stated

anything about the incident that the appellant had taken any active participation in committing the murder of deceased Dukalu Lohar and at time of incident she was crying for help to protect the deceased which is proved by the prosecution witnesses. Looking to the contradictory statements of eye-witnesses, the prosecution has failed to prove its case beyond all reasonable doubt. All the eye-witnesses are interested witness. No independent witness has supported the prosecution case. The trial Court only on the basis of conjectures and surmises has held the appellant guilty and therefore, the impugned judgment is liable to be set aside and the appellant be acquitted of the charge levelled against her.

9. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of accused/appellant are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

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

11. As per inquest (Ex.P-11) on the dead body of the deceased and the postmortem report (Ex.P-18), number of injuries were found on the body of the deceased and his death was homicidal in nature. The above fact has not been disputed by the counsel for the parties.

12.PW-1 Fukalu is the brother of the deceased. He stated in his deposition that he had received the information from the villagers that his brother had quarreled with accused persons and when he reached the place of occurrence he saw that his brother was in injured condition. Then, he called the ambulance and took his brother to hospital for treatment and during treatment he (deceased) died. He is also the witness of inquest.

13.PW-2 Shukalu stated in para 4 of his deposition that one Vijay informed him about the incident that co-accused Chetan Chauhan had assaulted upon his brother Dukalu and when he reached the spot he saw that his brother was in injured condition.

14.PW-3 Yashwant Kumar Patel has stated in his deposition that he has no knowledge as to who killed the deceased. PW-4 Khemsagar Chaudhary is the Patwari. He has prepared the spot map Ex.P-8. PW-5 Ku. Hemlata has not stated anything about the incident. PW-8 Vinod Kumar Nayak is the also witness of inquest Ex.P-11.

15.PW-9 Laxman Nishad stated in his deposition that he had heard about the quarrel between deceased Dukalu Lohar and co-accused Chetan Chauhan from the villagers.

16.PW-10 Chamar Singh stated in his deposition that in his presence Patwari has prepared the spot map Ex.P-8. PW-11 Babulal Yadav is the hearsay witness. PW-11 Kedarnath, PW-12 Vidyadhar Patel, PW-13 Revti Bhushan are the witnesses of

inquest vide Ex.P-11. PW-15 R.P. Tiwari, Assistant Sub-Inspector has proved the seizure memo Ex.P-4.

17. PW-16 Amreshwar Singh, Sub-Inspector is the Investigating Officer in this case. He stated in his deposition that on the basis of merg intimation he lodged the FIR Ex.P-16, sent the dead body of the deceased for postmortem vide Ex.P-18, recorded the memorandum statement of co-accused Chetan Chauhan vide Ex.P-2, seized the sickle vide Ex.P-3 from co-accused Chetan Chauhan, proved the seizure memo Ex.P-19, prepared Spot Formation vide Ex.P-20, sent the co-accused Chetan for medical examination vide Ex.P-21, prepared memo of query report vide Ex.P-22, arrested the accused persons vide Exs. P-23 and 24 and sent the arrest information to family members of accused persons vide Ex.P-25.

18. PW-17 Shankar Singh Sidar, Ward Boy of the hospital, has informed the police about the death of deceased and lodged the merg intimation Ex.P-16.

19. PW-18 Dr. S. Toppo conducted the postmortem of deceased vide Ex.P-18 and medically examined the co-accused Chetan Chauhan vide Ex.P-28 and gave his report as mentioned in the preceding paragraphs. He has duly proved the said reports. He has also examined the seized sickle and opined that the injuries suffered by the deceased could be caused by seized sickle.

20. The prosecution case is mainly based on the statements of PW-6

Parshuram Patel and PW-7 Rajendra Snehi, who are the eye-witnesses in this case.

21. PW-6 Parshuram has stated in para 2 of his deposition that on the date of incident at about 12:00 pm after returning from his field he went to fetch water from tubewell where he saw that deceased Dukalu and co-accused Chetan were scuffling with each other and his wife accused Gauri Bai was trying to tie the legs of Dukalu by lungi (a piece of cloth) and co-accused Chetan had assaulted upon Dukalu by means of sickle. Thereafter, he returned to his home.

22. It is not the prosecution case that accused/appellant Gauri Bai was trying to tie the legs of deceased Dukalu by lungi (a piece of cloth) but it was only co-accused Chetan Chauhan, who had assaulted upon the deceased Dukalu by means of sickle and at the time of incident co-accused Chetan was having a sickle in his hand and her wife was pulling the deceased and assaulted upon the deceased by hands and fists but no such injury caused by hands and fists was found on the body of deceased and no any specific statement was given by this witness i.e. PW-6 Parshuram that the injuries found on the body of deceased were caused by present appellant. When both co-accused Chetan and deceased were scuffling with each other, co-accused Chetan assaulted upon him by sickle as a result of which deceased Dukalu sustained injuries on his head and during treatment he died. PW-6 Parshuram stated that at the time of incident,

accused/appellant Gauri Bai was trying to tie the legs of deceased by lungi (a piece of cloth) and assaulted him by hands and fists but that fact is not mentioned in his case diary statement and it is a new fact he mentioned in his deposition. Further, no such piece of cloth was found from the place of occurrence nor seized from the accused/appellant. No other witnesses have also supported the contention of PW-6 Parshuram. Therefore, the statement of PW-6 Parshuram, who claims himself to be the eye-witness in this case is not worth reliance.

23. PW-7 Rajendra Snehi has stated in para 1 of his deposition that he saw the deceased Dukalu and co-accused Chetan Chauhan (dead) scuffling and assaulting each other and accused/appellant Gauri Bai was trying to pacify the dispute between them and was crying for help. He also stated in para 6 that due to distance, he could not see whether accused/Gauri Bai had assaulted upon the deceased Dukalu Lohar and he has no knowledge about this. If the statements of these two eye-witnesses i.e. PW-6 Parshuram and PW-7 Rajendra are seen together, they run contrary to each other and clearly indicate that appellant/Gauri Bai was not sharing any common intention with co-accused Chetan for committing the murder of deceased Dukalu.

24. From the record, it is seen that during scuffle between the co-accused Chetan and the deceased both of them assaulted each other and suffered injuries which has been duly proved by the postmortem report of the deceased and MLC Ex.P-28 of

co-accused Cheten by PW-18 Dr. S. Toppo. However, no injury was found on the body of appellant Gauri Bai, who was also present at the time of incident on the spot. According to PW-7 Rajendra Snehi, the present appellant was trying to pacify the dispute between the deceased and her husband and was crying for help. In these circumstances, it cannot be said that the appellant was sharing common intention with her husband Chetan of committing murder of the deceased. Looking to the contradictions in the statements of the eye-witnesses PW-6 Parshuram and PW-7 Rajendra, their evidence does not inspire confidence of this Court. If these witnesses had seen the appellant along with co-accused Chetan assaulting the deceased (Dukalu) by sickle, hands and fists, as to why they did not raise hue and cry, nor tried to save the deceased from the accused persons, why they remained silent on the date of incident or not disclosed the fact that the appellant had common intention with the co-accused Chetan Chauhan for committing the murder of deceased.

25. As per merg intimation Ex.P-16 lodged by PW-17 Shankar Singh Sidar, Ward Boy of the hospital, it was not mentioned in the merg intimation that the appellant had assaulted upon the deceased and it was lodged against the unknown person. In the present case, incident happened at about 16:10 pm on 26.09.2008 and after thirty minutes, the merg intimation Ex.P-16 was lodged by the PW-17 Shankar Singh Sidar against the unknown person. On

the next day i.e. 27.09.2008 at about 8:30 am, FIR Ex.P-17 was lodged by PW-16 Amreshwar Singh against the unknown person. When merg intimation was lodged after thirty minutes of the incident and the FIR was lodged after approximately 18 hours of the incident, as to why the name of assailant was not mentioned in the merg intimation and FIR that appellant has assaulted the deceased, no eye-witnesses and family members of the deceased have lodged FIR against the accused/appellant, it creates doubt upon them that they have falsely implicated the appellant in the crime in question because they were suspecting that due to illicit relations between the deceased and the appellant (Gauri Bai, W/o co-accused Chetan Chauhan), the appellant has committed the murder of deceased. In these circumstances, the prosecution case becomes doubtful. Further, no memorandum statement of the accused/appellant was recorded, no injury was found on the body of the appellant, nor any article was recovered from her to connect her with the crime in question. Therefore, there is no cogent and clinching evidence against the appellant adduced by the prosecution and the trial Court has wrongly convicted and sentenced the appellant for the offence under Section 302 read with 34 of Indian Penal Code.

26. In view of the above, we are not convinced that the prosecution has proved its case beyond reasonable doubt against the accused/appellant that she was having any common intention with her husband co-accused Chetan Chauhan for committing

the murder of deceased Dukalu Lohar. She deserves to be acquitted by giving her benefit of doubt. Accordingly, we set aside the impugned judgment of conviction and order of sentence and acquit the accused/appellant of the charge under Section 302 read with 34 of IPC. It is also stated the accused/appellant Gauri Bai is on bail, therefore, her bail bonds shall continue for a period of six months from today, in view of the provisions of Section 437-A of Cr.P.C.

27. In the result, the instant Criminal Appeal is allowed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge