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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 952 of 2012**

- Milan Sahu S/o Helas Ram Sahu, aged about 24 years, R/o Baigapara Lakholi, Police Station- Kotwali, Rajnandgaon, District- Rajnandgaon (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, through Police Station Arakshi Kendra Kotwali, Rajnandgaon, District Rajnandgaon (C.G.)

---- Respondent/State

For Appellant : Smt. Savita Tiwari, Advocate

For Respondent/State : Shri Ravi Bhagat, Deputy Government Advocate

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

Judgment
(07-08-2020)

Per Gautam Chourdiya, J

1. This appeal is heard through Video Conferencing.
2. Challenge in this appeal is to the judgment of conviction and order of sentence dated 28.08.2012 passed by learned Sessions Judge, Rajnandgaon (C.G.) in Sessions Trial No. 55 of 2011, whereby appellant- Milan Sahu stands convicted under Section 302 of IPC for committing murder of his wife namely Shashilata Sahu and sentenced to undergo life imprisonment and fine of Rs.5,000/-, in default of payment of fine to further undergo additional rigorous imprisonment for one year.
3. Facts of the case in brief are that appellant Milan Sahu is a resident of village Lakholi and he was residing in his father's house and deceased Shashilata was his neighbour. Both appellant and the deceased were having

affair and they performed love marriage. One daughter Dimple, aged about 1½ years was born out of their wed-lock. On some ideological differences, there was dispute between the appellant and the deceased and they decided to live separately. On 31.03.2011, an agreement was executed before Notary N.P. Swarnkar (PW-3) by the appellant and the deceased for living separately. Thereafter, in the evening of 31.03.2011, the deceased left the house of the appellant and was residing in her parents' house which was situated in the same locality. On 01.04.2011, the deceased was called by the appellant to his house for making search of his identity card. When the deceased went to the house of the appellant, the appellant took him in a room and closed the room from inside, and gave repeated adze (*basula*) blows to the deceased as a result of which she sustained multiple serious injuries. Helas Sahu (father of the appellant) was shouting that the appellant was beating his wife. On hearing this, PW-7 Kumari Bai alongwith her neighbours namely PW-2 Jugnu, PW-9 Rohit, PW-10 Oman, PW-4 Yashwant Sahu and PW-8 Yogeshwar Sahu reached the house of the appellant and at that time, the room of the appellant was closed from the inside. They broke open the door of the room of the appellant and saw that the deceased was lying on the cot in a pool of blood in unconscious condition and the appellant was sitting in the corner of his room with adze (*basula*) in his hand. Thereafter, they took the deceased to District Hospital, Rajnandgaon where Doctors having examined the deceased, declared her dead.

4. On written information received from Hospital regarding death of the deceased, PW-15 C.L. Kosre, Sub-Inspector reached the hospital, registered the merg intimation vide Ex.-P/21 and gave notice to the *Panchas* vide Ex.-P/9A. The inquest (Ex.-P/9) on the dead body of the deceased was prepared in presence of the witnesses. PW-14 Praveerchandra Tiwari,

Inspector, reached the District Hospital, Rajnandgaon and after inquiring from PW-8 Yogeshwar Sahu (brother of the deceased), recorded *dehatinalishi*/unnumbered F.I.R. (Ex.-P/10) under Section 302 of IPC against the appellant/accused and prepared spot map (Ex.-P/11). On the basis of Ex.-P/10, numbered F.I.R. (Ex.-P/20) was registered under Section 302 of IPC against the appellant under Crime No. 141/2011 in Police Station Kotwali, Rajnandgaon. *Nazrinaksha* (Ex.-P/8) was prepared by Patwari Harish Kashyap (PW-5) on 05.06.2011.

5. Postmortem examination of deceased Shashilata was conducted in District Hospital, Rajnandgaon by PW-16 Dr. B.L. Kumre and he gave his report vide Ex.-P/14 (application for postmortem & postmortem report). According to his (PW-16) report, he found following injuries on the body of deceased Shashilata:-

- i) Lacerated wound in size of 3 inch x ½ inch x deep on the right temporo-parietal region caused by heavy sharp object;
- ii) Lacerated wound in size of ¾ inch x ½ inch x ¼ inch on the upper region of the right ear;
- iii) Stab wound in size of 1 inch x ½ inch x deep on the right side of stomach upto peritoneum;
- iv) Stab wound in size of ¾ inch x ½ inch x deep on the mid of the axillary region;
- v) Stab wound in size of 1 inch x ½ inch x 2 inch above the right kidney &
- vi) Incised wound beside the injury no. v.

All injuries were caused by sharp heavy object.

Doctor opined that cause of death was hypovolemic and neurogenic shock due to head injury, rupture of right kidney and liver and duration of death was within 24 hours prior to postmortem examination. Doctor (PW-16) also examined the adze and opined that the injuries suffered by the deceased could be caused by the said adze (*basula*) vide Ex.-P/14A.

6. Appellant Milan Sahu was taken into custody on 01.04.2011 and his memorandum statement (Ex.-P/5) was recorded consequent to which adze (*basula*) was recovered from his room vide Ex.-P/6. One pillow alongwith its cover stained with blood and brown coloured broken pieces of bangles 18 in numbers were seized from the place of occurrence vide Ex.-P/7. Seized articles (adze and pillow) were sent for FSL examination vide Ex.-P/15, the report of which is Ex.-P/19 and according to which blood was found on Article 'A' – adze (*basula*) and Article 'B' pillow. After recording the case diary statements of the witnesses namely Yogendra @ Raja Chouhan, Jugnu Ram, Yashwant Sahu, Rohit Sahu, Oman, Ganesh and Kumari Sahu, the charge-sheet was filed for offence under Section 302 of IPC against the appellant.
7. The trial judge framed the charge under Section 302 of IPC against the appellant which was denied by him. In order to prove guilt of the accused/appellant, the prosecution examined as many as 16 witnesses namely PW-1 Yogendra Chouhan, PW-2 Jugnu Ram, PW-3 N.P. Swarnakar, PW-4 Yashwant Sahu, PW-5 Harish Kashyap, PW-6 Ashok Sharma, PW-7 Kumari Bai, PW-8 Yogeshwar Sahu, PW-9 Rohit, PW-10 Oman Vishwakarma, PW-11 Ganesh Kumar Sahu, PW-12 Tuleshwar Kumar Sahu, PW-13 Hemchand Verma, PW-14 Praveer Chandra Tiwari, PW-15 C.L. Kosre and PW-16 Dr. B.L. Kumre. Statement of the accused/appellant was recorded under Section 313 Cr.P.C. where he denied the circumstances appearing against him and pleaded innocence and false implication due to previous enmity with the witnesses. No defence witness has been examined by the appellant.
8. The trial Court after hearing the counsel for the parties in the matter and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-2 of this

judgment, hence this appeal.

9. Smt. Savita Tiwari, learned counsel appearing on behalf of appellant Milan Sahu, submits:-

- that in this case, neither any independent witness supported the prosecution case, nor is there any eyewitness in this case and due to some ideological differences between the deceased and the appellant, the appellant was falsely implicated by the parental members of the deceased.
- that the appellant has been convicted solely on the basis of evidence of PW-7 Kumari Bai and PW-8 Yogeshwar Sahu, who being mother and brother of the deceased, are interested witnesses and further considering the material contradictions in their statements, no reliance can be placed thereon.
- that as per memorandum statement of appellant Milan Sahu, one adze (*basula*) was seized, though blood stain was found on the adze as per FSL report but its origin has not been proved by the prosecution.
- that there was no any premeditation or pre-plan to commit murder of the deceased by appellant, therefore, the offence was not amounting to murder and the appellant may be convicted for a lesser offence. There is absolutely no motive proved by the prosecution as against the appellant. In these circumstances, conviction of the appellant under Section 302 of IPC is not sustainable and he deserves to be acquitted of the said charge.

10. On the other hand, Shri Ravi Bhagat, learned Deputy Government Advocate appearing on behalf of State, supporting the impugned judgment submits that the judgment impugned is strictly in accordance with law and there is no scope for any interference by this Court. He submits that there is no reason for this Court to disbelieve the statements of PW-7 Kumari Bai and PW-8 Yogeshwar Sahu. He also submits that the appellant was seen sitting at the place of occurrence with adze (*basula*) in his hand.

11. We have heard learned counsel for the parties and have also perused the

records of the Sessions Court.

12. So far as homicidal death of the deceased is concerned, PW-16 Dr. B.L. Kumre conducted postmortem on the body of the deceased and found injuries as mentioned above in para-5 and proved the same. In his opinion, the cause of death was hypovolemic and neurogenic shock due to head injury, rupture of right kidney and liver and duration of death was within 24 hours prior to postmortem examination. Doctor (PW-16) also examined the weapon of offence i.e. adze (*basula*) and opined that the injuries suffered by the deceased could be caused by the said adze (*basula*) vide Ex.-P/14A. Inquest report (Ex.-P/9A) has been proved by Kumari Bai (PW-7) and Yogeshwar Sahu (PW-8) who found that the deceased was lying on cot in a pool of blood and the appellant was present in the room with *basula*. Thus, from the above medical evidence in the form of postmortem report (Ex.-P/14), PW-16 Dr. B.L. Kumre and the inquest report (Ex.-P/9) proved by PW-7 and PW-8, the prosecution has been successful in proving that the death of deceased Shashilata was homicidal in nature.

13. PW-7 Kumari Bai (mother of the deceased) has stated in her deposition that deceased Shashilata had performed love marriage with the appellant two years prior to the date of incident and the appellant is her neighbour. She stated that one day prior to date incident i.e. 31.03.2011, the appellant and the deceased had executed an agreement (Ex.-P/3) for living separately and thereafter the deceased came to her (PW-7) house for residing. PW-7 has further stated that on the next day i.e. 01.04.2011 at about 07:00 am, the appellant was shouting and harassing the deceased in connection with his identity card and thereafter at about 11:00 am he came to the deceased and requested her to search for his identity card. On this, the deceased went to the house of the appellant. PW-7 further stated that the deceased went to the house of appellant and after 5 minutes, the father of the appellant (Helas

Ram) was shouting that the appellant was beating his wife in a room. When she (PW-7) went to the house of the appellant, the room of the appellant was closed from inside, then she called her son Yogeshwar Sahu (PW-8). Then Yogeshwar and many people came there and they broke open the door of the room of the appellant and saw that the deceased was lying in unconscious condition on the cot in a pool of blood and the appellant was sitting in the corner of room keeping *basula* in his hand. Thereafter, they took the deceased to District Hospital, Rajnandgaon, where Doctors having examined the deceased, declared her dead. In cross-examination, she (PW-7) remained firm and nothing could be elicited from her by the defence to render her evidence untrustworthy or doubtful.

14. PW-8 Yogeshwar Sahu (brother of the deceased) has duly supported the evidence of PW-7 Kumari Bai. PW-8 has stated that when he reached the place of occurrence, the deceased was lying on a cot in a pool of blood and the appellant was sitting in the corner of his room keeping something in his hand. PW-8 and Yashwant (brother of the appellant) took the deceased by the motorcycle of appellant to District Hospital, Rajnandgaon, where Doctors seeing the deceased, declared her dead. Thereafter, PW-8 lodged unnumbered F.I.R. (Ex.-P/10). In cross-examination, this witness also remained firm and nothing could be elicited from him by the defence to render his evidence untrustworthy or doubtful. The incident took place on 01.04.2011 at about 11:15 am and prompt F.I.R. was lodged at about 12:45 pm by PW-8 Yogeshwar Sahu.

15. The place of occurrence has been proved by Patwari Harish Kashyap (PW-5) who prepared the *nazrinaksha* (Ex.-P/8) on 05.06.2011 in presence of PW-8 Yogeshwar Sahu to the effect that the dead body of the deceased was found in a room of appellant in the house of Helas Ram (father of the appellant). It has also been proved that the broken pieces of bangles of the

deceased and one pillow stained with blood were seized from the room of the appellant vide seizure memo Ex.-P/7 on which PW-4 Yashwant Sahu admitted his signature, but he did not support the prosecution case. Another spot map (Ex.-P/11) was prepared by PW-14 Praveer Chandra Tiwari (Investigating Officer) and he has duly proved the same. Therefore, it is clear that the incident happened in the house of Helas Ram (father of the appellant) where the appellant was living in a separate room and the dead body was found in the said room.

16. PW-1 Yogendra Chouhan, PW-2 Jugnu Ram, PW-4 Yashwant Sahu, PW-6 Ashok Sharma, PW-9 Rohit, PW-10 Oman Vishwakarma, PW-11 Ganesh Kumar Sahu and PW-12 Tuleshwar Kumar Sahu are the independent witnesses and have not supported the prosecution case and they have been declared hostile.

17. Ex.-P/3 is the agreement which was executed between the appellant and the deceased for separation on account of some ideological differences between them. PW-3 N.P. Swarnakar is the Notary in Tahsil Office, Rajnandgaon. PW-3 stated that an agreement (Ex.-P/3) was executed between the appellant and the deceased which was duly notarized by him on 31.03.2011 and he has proved the same.

18. PW-13 Hemchand Verma, Sub-Inspector, made seizure of Ex.-P/3 agreement vide Ex.-P/13 and has proved the same. PW-13 has also recorded the case diary statements of the witnesses. PW-14 Praveer Chandra Tiwari is the Investigating Officer. PW-15 C.L. Kosre, Sub-Inspector, has registered the F.I.R. (Ex.-P/20) and merged intimation (Ex.-P/21). PW-14 and PW-15 have supported the prosecution case.

19. It was argued by the learned counsel for the appellant that conviction of the appellant is solely based on the evidence of PW-7 Kumari Bai and PW-8 Yogeshwar Sahu, who being mother and brother of the deceased, are

interested witnesses and as such, the conviction is not sustainable.

20. In *Gangabhavani Vs. Rayapati Venkat Reddy and Others, (2013) 15 SCC*

298, the Supreme Court has observed that *“Interested witnesses are those who want to derive some benefit out of the litigation/case. Evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it. Evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. Natural witnesses may not be labelled as interested witnesses. In case the circumstances reveal that a witness was present at the place of occurrence and had witnessed the crime, his deposition cannot be discarded merely on ground of being closely related to victim/deceased.”*

21. In *State of U.P. Vs. Jagdeo and Others (2003) 1 SCC 456*, the Supreme

Court has observed that *“If eyewitnesses are family members or friends of the deceased, their testimony should be examined cautiously but mere interestedness of the witnesses cannot be a ground for rejecting their evidence.”*

22. Definitely, there is no eyewitness to the incident, but in the present case, the

witnesses are mother and brother of the deceased and the incident took place in the room of the appellant at about 11-11:15 am on 01.04.2011. As per evidence of PW-7 Kumari Bai, prior to the date of incident i.e. on 31.03.2011 the appellant and the deceased had executed the agreement (Ex.-P/3) for separation. Thereafter, in the evening of 31.03.2011 the deceased went to her mother's house for residing and on next day at about 11:00 am, on being called by the appellant, the deceased went to his house for making search of his identity card. After 5 minutes, the father of the appellant started shouting that the appellant was beating his wife in room, then PW-7 reached the house the appellant, where the room of the appellant

was closed from the inside. When her son Yogeshwar Sahu (PW-8) and other people came there and they broke open the door of the room of the appellant, they saw the deceased lying in unconscious condition on cot in pool of blood and the appellant was sitting in the room keeping *basula* in his hand. The version of PW-7 has been duly supported by the evidence of PW-8 Yogeshwar and he lodged prompt F.I.R. on the same day at about 12:45 pm, therefore, there is no reason to disbelieve the evidence of PW-7 and PW-8 (mother and brother of the deceased). The defence has also failed to establish as to why they would falsely implicate the appellant and screen the real offender. Being so merely on account of these witnesses being interested witness, their testimony, which is otherwise cogent and reliable and finds due corroboration from medical evidence as well as other evidence, cannot be disbelieved.

23. We further find no substance in the argument of the appellant that in the facts and circumstances of the case, the appellant, at the most, is liable to be convicted for any lesser offence. The appellant called the deceased in his house for making search of his identity card, closed the door of his room from inside and assaulted the deceased by means of adze (*basula*) on her vital part with such a force that it led to her instantaneous death. In these circumstances, it can safely be inferred that the appellant while assaulting the deceased was not only having intention to cause her death but also had the knowledge that by causing such bodily injury, the deceased would succumb to the same. As such, his conviction under Section 302 of IPC cannot be faulted with.

24. For the reasons stated above, we are of the opinion that the prosecution has successfully proved guilt of the appellant beyond all reasonable doubt on the basis of evidence adduced by it and the trial Court has rightly convicted and sentenced the appellant under Section 302 of IPC on proper appreciation of

the evidence so adduced.

25. In the result, the appeal being bereft of any substance is liable to be and is, accordingly, dismissed. Appellant is reported to be in jail, therefore, no order regarding his surrender, arrest etc. is required.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge