

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 175 of 2013**

1. Daduram S/o Bhaiyaram Satnami Aged About 50 Years R/o Village Sangin Kachar, PS & Tahsil Dongargaon, District Rajnandgaon C.G.
2. Keja Bai W/o Daduram Aged About 45 Years R/o Village Sangin Kachar, PS & Tahsil Dongargaon, District Rajnandgaon C.G.

---- Appellants**Versus**

- State Of Chhattisgarh Through The District Magistrate, District Rajnandgaon C.G.

---- Respondent

For Appellants : Shri Anupam Panda, Advocate

For State/respondent : Shri Pawan Kesharwani, PL

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava, J.****10/02/2020**

This appeal is directed against the impugned judgment of conviction and order of sentenced dated 02.02.2013 passed by Sessions Judge Rajnandgaon in Session Trial No. 47/2011 whereby and where under, the appellant No.1 is held guilty for commission of offence under Section 302 IPC and sentenced Life imprisonment and appellant No.2 held guilty for commission of offence under Section 323 IPC and sentenced for one year simple imprisonment.

2. The prosecution story, as is unfolded from the impugned judgment and the record of the case is that an FIR in Ex.P-19, was lodged in the Police Station by Radha Bai (PW-1) in which, she disclosed that the appellants along with their daughter came to her house and appellant No.1 Daduram inflicted repeated assaults on the

head of her husband Dularu whereas, appellant No.2 Keja Bai assaulted with hands and their daughter Dineshwari Bai with wooden in club in which incident, Dularu sustained injury, fell down and later on, died. The inquest over dead body was prepared and sent for postmortem. Dr. Anil Mahakalkar (PW-10) conducted postmortem, prepared his report and opined that death was caused due to hemorrhage as a result of injuries. The appellants herein were charge-sheeted and charges were framed for commission of offence under Section 302 r/w 34 IPC. The appellants having abjured guilt, were put to trial. It is pertinent to mention here that at the time of incident, co-accused Dineshwari Bai was minor, therefore, charge sheet in respect of her was submitted before the Juvenile justice Board.

3. The prosecution led eye witness account of PW-1, PW-2, PW-4, PW-5 and PW-7 to prove its case of assault by the appellants on the deceased. The appellants were examined under Section 313 Cr.P.C in respect of incriminating evidence and circumstance against them. The appellants denied having committed the offence. In support of their defence, case the appellants/accused examined sole defence witness namely minor Dineshwari Bai – co-accused of the case. The learned trial Court however, relying upon the evidence led by the prosecution and disbelieving the defence in so far as the present appellants are concerned, held them guilty of offence under Sections 302 and 323 IPC, respectively and sentenced them as mentioned above.

4. Assailing legality and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant

limits his argument only to the extent that even if the evidence of eye witness is accepted, criminal overt act of the appellants would not travel beyond the scope and ambit of Section 304 IPC as, present is a case of sudden and grave provocation. Learned counsel for the appellant would argue that even the prosecution witnesses admit that the appellant No.1 and his wife had come to assault Dularu, they having come to know that deceased Dularu, in their absence, had entered the house and outraged modesty of their minor daughter Dineshwari. It is argued that this incident of outraging modesty of their minor daughter when she was all alone at home, amounted to sudden and grave provocation and at the very first instance, Daduram the appellant No.1, is alleged to have given an assault and his wife said to have assaulted with hands and fists. His submission is that in such a situation, even if it is held that the appellant No. 1 had intention to cause death, it being a case covered under Exception 1, being a case of sudden and grave provocation, the conviction of the appellant No.1 be altered to that under Section 304 Part 1 IPC .

5. As far as appellant No. 2 is concerned, it is argued that the conviction of the appellant under Section 302 IPC is not maintainable because even according to the prosecution appellant No.2 Keja Bai was not holding any weapon in her hand and the allegation against her is of giving beating to Dularu by hands. Further, the evidence of PW-7 proves that when Keja Bai was returning from the house of Dularu, on way, she met her husband Daduram and then they returned back. Therefore, it cannot be said that they shared common intention to kill the deceased or even to grievously harm him.

6. On the other hand, learned State counsel, opposing submission and supporting the judgment of conviction would submit that even if it is accepted that Daduram and his wife were enraged and provoked, having come to know that deceased Dularu had entered their house and outraged modesty of their minor daughter, it cannot be said to be sudden and grave so as to bring it within the first exception to Section 300 IPC. He submits that in such a situation, the appellants could have approached the police station and lodged report or would have taken up the matter in their community rather than taking law in their own hands and giving fatal assault on Dularu on his vital parts by dangerous weapon like a club which clearly manifests intention on the part of the appellants that they had arrived in the house of Dularu to murder him. He would submit that the incident of assault by appellants is proved not only from the evidence of PW-1, Radha Bai, wife of the deceased but other prosecution witnesses namely PW-1, PW-2, PW-4, PW-5 and PW-7.

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

8. From the evidence of PW-1, PW-2, PW-3, PW-4, PW-5 and PW-7, the prosecution has been able to lead overwhelming evidence with regard to assault given by appellant Daduram on the head of the deceased Dularu. Moreover, the evidence also proves that the assault was given by Daduram with the help of club. The cause of death, as according to the evidence of doctor (PW-10), is opinion as contained in postmortem report Ex.P-12 is shock due to antemortem head injury. The evidence of PW-13 the neuro surgeon also proves that there was

internal hemorrhage because of the superficial injuries caused on the skull of the deceased as a result of *Lathi* blow. We also notice that there was no fracture but the assault given on the head with the help of *Lathi* resulted in internal hemorrhage leading to death.

9. The only point arising for consideration is whether this is a case of murder or a case of culpable homicide not amounting to murder.

10. The sole defence witness, the minor daughter of the appellant has stated in her evidence that when she was all alone at home, deceased Dularu came to her house and outraged her modesty and she somehow escaped and went to her maternal grandmother who asked her to inform the matter to her father Daduram. Radha Bai (PW-1) when cross-examined, has stated in Para 9 of her cross-examination that Dineshwari had complained of her modesty outraged. She admits that in her report, she has stated that her husband had caught hold of Dineshwari and hugged her though she states that she does not know how this was written.

11. Neelkanth (PW-2) has also admitted in Para 12 of his evidence that Keja Bai and his daughter were making allegations on Dularuram that absence Dularu had caught hold of Dineshwari.

12. From the evidence of the aforesaid witness it is clear that the incident of assault was result of the alleged outraging of modesty of minor daughter of appellants by deceased Dularuram, when she was all alone at home.

13. The evidence of PW-1, PW-2, PW-4 and PW-7 is that Keja Bai and his daughter Dineshwari came to the house of Dularuram and slapped him on the alleged act of outraging modesty of Dineshwari

and went away. After two minutes, they came back along with Daduram holding the club and then Daduram assaulted the deceased. PW-7 has stated that Keja Bai and her daughter Dineshwari came to the house of Dularu abusing him and after giving assault when they were going back home, on way, they met with Daduram and thereafter, all of them again came back to the house of Dularu and started abusing him and then, Daduram, who was holding a club, assaulted Dularu.

14. Meeluram (PW-5) whose shop is situated near the house of Dularu has stated that at about 12 in the afternoon, he saw Daduram holding a club and searching for Dularu hurling abuses and declaring that he will kill him. At that time, Dularu was not in his house and it was locked.

15. From the evidence of aforesaid prosecution witnesses, it is proved that after appellant/Daduram came to know about the incident of outraging of modesty of his minor daughter by deceased Dularu, since then, he was searching for Dularu. Dularu initially was not at home and his home was locked. It is also proved from the prosecution evidence that, later on, when Keja Bai and her daughter Dineshwari came to the house of Dularu at about 6 to 6.30 PM, he was found there and there they slapped him and while they were returning from that place, they met Daduram on way and then, they all came back together to the house of Dularu and then Daduram assaulted Dularu.

16. The aforesaid evidence led by the prosecution, clearly proves that when sometime in the afternoon, Daduram came to know about outraging of modesty of his minor daughter at home by Dularu, since

then, he was searching for Dularu and finally he having come to know that Dularu is at home reached there and gave *Lathi* blows. The blows were not so hard as to cause fracture but the *Lathi* blows resulted in internal injury which led to death of Dularu.

17. Present is a case where the prosecution evidence Dr. Anil Mahakalkar (PW-10) has proved multiple injuries on the appellant Daduram. The defence case is that relatives of Dularu assaulted Daduram. The prosecution has failed to explain injuries of Daduram. In **(2009) 11 SCC 414, State of UP Vs. Gajey Singh and another**, the legal position was examined as below:-

“31. In this case, the trial court convicted both the accused and the High Court allowed the appeal filed by the accused persons and acquitted them. In the instant case, the injury caused on Rajpal Singh is neither superficial nor of minor nature. Non-explanation of the injuries on Rajpal Singh and Gajey Singh has created serious doubt about the credibility of the prosecution version.”

“32. It would be appropriate to recapitulate the ratio of some of the relevant cases decided by this court. In State of Karnataka v. Jinappa Payappa Kudachi & Others 1994 Supp. (1) SCC 178, this Court observed thus:

"6. The effect of non-explanation by the prosecution about the injuries on the accused persons depends on the facts and circumstances of each case. Normally if there is such non-explanation, it may at the most give scope to argue that the accused had the right of private defence or in general that the prosecution evidence should be rejected as they have not come out with the whole truth particularly regarding the genesis of the occurrence..."

“35. A three-Judge Bench of this Court in Abdul Rashid Abdul Rahiman Patel & Others v. State of Maharashtra (2007) 9 SCC 1, observed that:

'20. ... it is well settled that if injuries on the defence are not explained by the prosecution, the

same may be taken to be a ground to discard the prosecution case, in case the truthfulness of prosecution case is otherwise doubted. But, in cases like the present one, where there is consistent evidence of the injured eyewitnesses apart from evidence of independent eyewitnesses, even if it is assumed that the prosecution has failed to explain the minor and simple injuries on the defence, the same cannot be taken to be a ground to reject the testimony of such witnesses.'

In the instant case, the injuries were neither superficial nor minor therefore, non-explanation of serious injuries in the instant case doubts the very genesis of the prosecution version."

In a subsequent decision in **(2014) 12 SCC 389, Ganesh Datt**

Vs. State of Uttarakhand also legal position was restated as below:-

"20. In Babulal Bhagwan Khandare V. State of Maharashtra, (2005) 10 SCC 404 this Court held: (SCC p. 414, Para 27)

"27. ... Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance"."

18. Taking into consideration the over all evidence and the cause of provocation, as also failure of the prosecution to explain injuries on Daduram, in our opinion, present case is clearly covered under first exception of Section 300 IPC. However, the overt act of the appellant Daduram being one manifesting his Intention to cause death, as he give repeated blow on the head of the deceased Dularu and he was heard saying that he will kill Dularu, though it is held that he had intention to cause death, as the present case is found covered under first exception, conviction of appellant Daduram is altered to one under Section 304-I IPC. As he has undergone more than nine years of jail sentence, the sentence is reduced to the period already undergone.

19. The trial Court has convicted Keja Bai under Section 323 IPC. Keja Bai is not alleged to have been holding any weapon in her hand. The injuries have been found only on the head and not on other parts of the body of deceased Dularu. In these circumstance taking into consideration the aforesaid aspect, though conviction of Keja Bai is sustained under Section 323 IPC, the sentence reduced to the period already undergone by her.

20. In the result, this appeal is partly allowed in the manner and to the aforesaid extent.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge