

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1512 of 2016**

- Sital Ram S/o Janu Ram Nagesiya Aged About 21 Years Occupation - Agriculture, R/o Village - Gurmha, Kona, Police Station - Bageecha, District Revenue And Civil - Jashpur Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through District Magistrate Jashpur, District Revenue And Civil - Jashpur Chhattisgarh

---- Respondent

For Appellant	:	Shri Vineet Kumar Pandey, Advocate
For State	:	Shri Ravish Verma, Govt. Adv.

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board**08/06/2021****Per Manindra Mohan Shrivastava, J.**

This appeal is directed against impugned judgment of conviction and order of sentence dated 30/01/2010 passed by the Upper Sessions Judge, Jashpur, District - Jashpur (CG) in Sessions Trial No.92/2008 whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below -

	<u>Conviction</u>	<u>Sentence</u>
1.	U/s 302 of IPC	Life imprisonment

2. The prosecution story, as unfolded from the impugned judgment and the records of the case is that FIR No.54/2008 was lodged in the police station – Bageecha by Manmohan Ram (PW1) – Sarpanch of the village wherein it was disclosed that

deceased Sunita was assaulted to death by appellant Sital Ram and co-accused – Bandhnu Ram. After recording FIR, the investigating officer reached at the place of occurrence, inquest over dead body was prepared and the dead body was sent for post mortem which was conducted by Dr. V. Bakhla (PW11). Upon post mortem, the doctor prepared report in (Ex.P/17) and having examined various internal injuries, opined that cause of death was Hemorrhage as well as Asphyxia and nature of death stated to be homicidal in nature. The appellant and the co-accused were formally arrested and charge sheet was filed. Upon completion of investigation, the appellant and the co-accused were charged of commission of offence under Section 302 and Section 376 (2) of IPC. The appellant and the co-accused abjured guilt and were put to trial.

3. Prosecution, in order to prove its case, examined number of prosecution witnesses. The appellant and the co-accused were examined under Section 313 CrPC and they denied having committed offence and all incriminating evidence and circumstances appearing against them. No defence witness was examined.

4. Learned Trial Court, giving benefit of doubt to Bandhnu Ram, held on the basis of prosecution witnesses evidence of Durjan (PW4) and Baleshwar (PW5) that it is the appellant – Sital Ram, who had killed the deceased and on that basis, though learned Trial Court acquitted the appellant on the charges of commission of offence of rape, convicted under Section 302 IPC and sentenced life imprisonment. Present appeal arises from the aforesaid impugned judgment and conviction of the appellant.

5. Learned counsel for the appellant would argue that the entire evidence led by the prosecution so as to involve the appellant in the alleged incident is based on the evidence of Durjan (PW4) and Baleshwar (PW5). He would argue that the evidence of these prosecution witnesses, even if accepted as it is, would only show that in the midnight at about 2 AM, when they were coming after attending a marriage, the appellant was found providing hot fomentation on the body of the victim Sunita. He

would further submit that in the absence of there being any iota of evidence led by the prosecution to prove that the appellant had any motive to kill the deceased as stated in the prosecution story, learned Trial Court itself not relying upon the extra judicial confession part in the evidence of Durjan (PW4), no inference of the guilt of the appellant – Sital Ram could be drawn on the basis of proved circumstances as stated above. He would argue that none of the witnesses including Durjan (PW4) and Baleshwar (PW5) have stated that they had seen the appellant – Sital Ram assaulting the deceased. It is next submitted that involvement of the appellant is based only on he being found present at the spot where body of Sunita was lying and that he was seen providing hot fomentation. Learned counsel would impress upon this Court by vehemently arguing that the evidence falls short of the legal requirement of proof of guilt beyond reasonable doubt as it cannot be said that in all probability, it is the appellant and the appellant alone, who assaulted the deceased in such a manner that she sustained internal injuries and succumbed to death.

6. In the alternative, it has been advanced before us that even if an inference is liable to be drawn that the appellant must have assaulted the deceased, in any case, it nowhere proves that the appellant had intention to cause death because the only overt act of the appellant which was seen and deposed before the Court by Durjan (PW4) and Baleshwar (PW5) is that the appellant was trying to heal the injury of the deceased by providing hot fomentation. Therefore, in any case, it would only be a case of knowledge and not intention which is punishable under Section 304-II IPC providing for maximum sentence of 10 years. As the appellant has undergone 13 years of sentence by now, conviction of the appellant may be altered from Section 302 IPC to Section 304-II IPC and he be released as he has already undergone maximum sentence that could be awarded under Section 304-II IPC.

7. On the other hand, learned State counsel would argue that the prosecution evidence of clinching nature as contained in the evidence of Durjan (PW4) and

Baleshwar (PW5) clearly proves that the appellant was found in the midnight in the agricultural field with victim – Sunita. The appellant having been last seen with the deceased coupled with reliable evidence of Dr. V. Bakhla (PW11) and post mortem report (Ex.P/17), it being a case of homicidal death, it was for the appellant to explain how Sunita sustained such fatal internal injury leading to internal bleeding and death. Failure on the part of the appellant to explain, rightly leads to inference that the appellant must have killed the deceased. He would next submit that merely because the appellant was seen providing hot fomentation, his guilt of intention to cause death is not diluted because the post mortem report shows that serious internal injuries were found which included damage to liver and gall bladder. The deceased is said to have died of internal bleeding and Asphyxia. Therefore, merely because some kind of hot fomentation was provided, it cannot be said that there was no intention to cause death. He further submits that learned Trial Court has completely ignored to take into consideration the evidence of extra judicial confession as contained in the evidence of Sushila (PW6) which clearly proves that it is the appellant who confessed that he killed the deceased by hands, fists, legs and foot wear. Lastly, it is submitted that presence of lacerated wounds on the body of the deceased show that the appellant had intention to kill, coupled with serious hatred against the deceased and he was fully knowing that any such attempt of assault would lead to death. Therefore, his conviction may not be altered.

8. We have heard learned counsel for the parties and gone through the records of the case.

9. As far as homicidal death of Sunita is concerned, there is no iota of doubt in the evidence led by the prosecution to prove this aspect. Dr. V. Bakhla (PW11), who conducted post mortem and prepared report, has clearly deposed that he conducted post mortem and has proved his report in Ex.P/17. He has deposed in his evidence that there were many bruises found present on the body of the deceased like cheek, chest,

abdomen, right and left hypochondrial region and also scapular region. He has also proved many abrasions in different parts of the body. Injury no.3 shows lacerated wound in the internal part of vulva and vagina. In the internal examination, the doctor has clearly deposed that internal bleeding and blood clotting in the intestine was found. He has deposed that the lower part of the liver and gall bladder both were found damaged. All the injuries were found antemortem in nature. On the basis of this examination as deposed by him, the doctor clearly stated that it was a case of death due to internal bleeding due to various injuries, therefore, the opinion of the doctor that the death was homicidal in nature, in the absence of there being any incident of accident, deserves to be accepted. Learned State counsel would also place on record that in the cross-examination, nothing has been elicited to doubt the veracity of evidence of the doctor and report prepared by the doctor.

10. In the present case, though there were two accused namely present appellant – Sital Ram and Bandhnu Ram, learned Trial Court has granted acquittal to Bandhnu Ram in view of set of evidence on record that Bandhnu Ram had informed all the people regarding injuries of the deceased – Sunita. Though the appellant – Sital Ram was also charged of commission of offence of rape, there is no conviction and acquitted him of the charges under Section 376 IPC.

11. Next question which arises for consideration is whether there is reliable evidence led by the prosecution to hold beyond reasonable doubt that the deceased was assaulted by the present appellant. In this regard, we have considered the evidence of Durjan (PW4) and that of Baleshwar (PW5).

12. Durjan (PW4) has deposed in his evidence that when he was returning after attending marriage in the night, he had seen the appellant with a girl and the appellant was found providing hot fomentation but by that time, the girl had died. He has further deposed that having seen all this, when he asked the appellant as to why he killed Sunita, the appellant and the co-accused kept mum and did not say anything.

Thereafter, he went to Chowkidar to inform about the incident. In his cross-examination, he admitted that he has not seen the appellant assaulting the deceased though he has seen the appellant at the spot. In the cross-examination, a suggestion given which has been admitted by him that when he was coming after attending a marriage in the night, he had seen the appellant in the agricultural field and she was being provided hot fomentation and by that time, she had died and further, when he was asked, no reply came forward.

From what has been stated by this witness in his examination-in-chief as well as in the cross-examination, which has emerged as uncontroverted testimony is that when he was returning in the night after attending marriage, he had seen the deceased in the company of the appellant. Not only this, according to this witness, he had seen the appellant providing hot fomentation to the victim. That means, the appellant was attempting to heal the injuries sustained by the deceased. Another important aspect emerging from the uncontroverted testimony of this witness is that when the appellant was asked about the injuries of the deceased, the appellant did not give any answer. According to this witness, though hot fomentation was being given by the appellant, the victim had already died.

13. The other witness Baleshwar (PW5) has also given somewhat similar statement as that of Durjan (PW4). He has deposed that he was informed by Bandhnu (acquitted co-accused) and then he went to agricultural field of one Fiya along with Bandhnu, where he found that Sunita was lying unconscious and the appellant – Sital Ram was present. In the cross-examination, he has admitted that he does not know who assaulted Sunita. The evidence of this witness only proves that when on the request of Bandhnu, he had gone to Fiya, he found Sunita lying unconscious and the appellant was found on the spot. This much evidence of this witness is quite reliable and can be acted upon. A conjoint reading of reliable evidence of Durjan (PW4) and Baleshwar (PW5) proves beyond doubt that in the agricultural field, at the odd hours in the night, the appellant was found in the company of the deceased, the deceased was found

unconscious and the appellant was found giving hot fomentation. That means, there was an attempt to heal some injuries of the deceased. Then the question that arises is how the appellant was knowing that the deceased had sustained some injuries. It is further proved from the evidence of Durjan (PW4) and Baleshwar (PW5) that when he was asked why he assaulted the deceased, the appellant did not give any reply. That was an occasion for the appellant to explain as to how Sunita sustained injuries and how he came to know that she sustained injuries because he was seen providing hot fomentation to Sunita. That means, he was knowing that Sunita sustained injuries. However, despite being asked by this witness, the appellant failed to explain the injuries on the body of the deceased. Not only this, the appellant has also failed to explain as to how and in what circumstances and in what manner and by whom, Sunita sustained injuries, both external and internal. This, in our considered opinion, was the burden of the appellant to prove under Section 106 of Evidence Act. It has come in the evidence of number of witnesses that acquitted co-accused – Bandhnu Ram had informed several persons that Sunita was found in the agricultural field and on his information, number of persons reached the spot where the appellant was found providing hot fomentation to Sunita. That means, she was found in the company of the deceased and there was no body else. It was midnight and they were found in the agricultural field. The uncontroverted testimony of the witnesses show that the appellant had full knowledge of the injuries. As has been deposed by Durjan (PW4), his impression was that Sunita had already died. According to Baleshwar (PW5), he saw Sunita lying unconscious. In this background of proved circumstances, the burden squarely lay on the appellant to explain as to how Sunita sustained external injuries. Failure on the part of the appellant, even after being asked by Durjan (PW4), failure to lead any evidence during trial or explaining circumstances in the examination under Section 313 CrPC and there being no suggestion given to any of the prosecution witnesses in their cross-examination, suggesting any possible and plausible defence in the form of explanation as to how Sunita sustained injury, adverse inference has rightly been drawn against the appellant by the learned Trial Court that it is the appellant who must have assaulted

Sunita.

14. It is the case of the prosecution that the appellant assaulted Sunita by hands, fists, legs and footwear. According to the prosecution, the appellant was provoked having come to know about some kind of illicit relation between Sunita and Mathhuraam (PW15). A suggestion has been given to Mathhuraam (PW15) in his cross-examination but he denied that he had committed rape on the deceased. The prosecution has come out with the motive that the appellant having come to know about the relation between deceased Sunita and Mathhuraam (PW15), committed rape on her and then murdered her but there is no evidence led by the prosecution to prove motive.

15. The prosecution having failed to lead any strong motive for alleged commission of offence coupled with adverse inference drawn against the appellant that the appellant must have assaulted the deceased with hands, fist, legs and footwear and the medical evidence proving beyond doubt that the deceased died homicidal death, it has to be held that the prosecution succeeded in proving beyond doubt that it is the appellant and the appellant alone who assaulted the deceased by hands, fists, legs and footwear, due to which the deceased sustained multiple abrasions, serious and fatal injuries leading to internal bleeding and finally death.

16. The last question remains to be answered by us is that the appellant should be convicted under Section 302 IPC or his conviction may be altered to Section 304-II of IPC. In this regard, we notice that even according to the prosecution itself, the appellant was found making an attempt to heal the injuries sustained by providing hot fomentation. If at all the appellant had any intention to cause death of the deceased, there was no reason why the appellant would attempt to heal the injuries of the deceased. This act on the part of the appellant in attempting to heal the injuries was perhaps under the impression that she was still alive, by way of proving hot fomentation, which creates serious doubt whether the appellant had any intention to cause death.

Nature of injury including the damage caused by the appellants, it was certainly such bodily injury which was likely to cause death i.e. damage to liver and other vital parts of the body, leading to bleeding. On this aspect, nothing has been elicited in the cross-examination of Dr. V. Bakhla. Therefore, the prosecution evidence and the doctor's opinion has already been relied upon by us in considerations herein above.

Even according to the prosecution, the appellant was provoked by disclosure of deceased having sexual relationship with another person due to which, he started beating the deceased with hands, fist, legs and footwear. This kind of provocation certainly is in the category of grave provocation. If that be so, present would not be a case of murder but only culpable homicide not amounting to murder causing bodily injury upon certain provocation.

17. The aforesaid consideration leads us to hold that the appellant would not be guilty of commission of offence under Section 302 IPC but Section 304-II IPC.

18. In the result, conviction of the appellant deserves to be altered to that under Section 304-II IPC. Since the maximum sentence provided for offence under Section 304-II of IPC is 10 years and the appellant has undergone more than 13 years of jail sentence, the appellant is to be released forthwith.

19. Accordingly, the appeal is partly allowed in the manner and to the extent stated above by altering conviction of the appellant under Section 302 IPC to that under Section 304-II IPC. The appellant be released forthwith.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge