

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**  
**CRA No. 1169 of 2015**

- Jeevan Rathiya S/o Dule Singh Rathiya Aged About 45 Years R/o Village Kunkuri, P.S. - Kharsiya, Civil And Revenue Distt. - Raigarh Chhattisgarh

---- Appellant

**Versus**

- State Of Chhattisgarh Through District Magistrate Raigarh, Distt. Raigarh Chhattisgarh.

---- Respondent

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| For Appellant/s      | : Mrs. C.K. Navrang, Advocate |
| For State/respondent | : Mr. Rajendra Tripathi, PL   |

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**D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**

**Hon'ble Smt. Justice Vimla Singh Kapoor**

**Order on Board**

**Per Manindra Mohan Shrivastava, J.**

**26/07/2021**

This appeal is directed against the impugned judgment dated 11.09.2015 passed by Additional Session Judge Raigarh, District Raigarh in Sessions Trial No. 76/2014 whereby the appellant has been convicted and sentenced as hereunder:-

| Conviction                              | Sentence                                                                                              |
|-----------------------------------------|-------------------------------------------------------------------------------------------------------|
| Under Section 302 of Indian Penal Code. | Life Imprisonment with fine of Rs. 5,000/-. In default of payment of fine, further RI of five months. |
| Under Section 307 of Indian Penal Code. | RI of five years with fine of Rs. 1,000/-. In default of payment of fine, further RI of three months  |
|                                         | Both Sentence shall run concurrently.                                                                 |

**2.** An FIR (Ex. P-24) was lodged in the police station by Agya Prasad (PW-1) – son of deceased that on 25.12.2013, in the evening

at about 7.30 PM, when he was returning home, he saw that appellant was scolding his mother in front of the shop of Anand Ram Rathiya that she is playing witchcraft on him and his children and making them sick therefore, he will not leave her alive and kill and thereafter assaulted on the head with the help of wooden stump of a cot due to which his mother fell down and started bleeding. When his father arrived at the spot to pacify, he was also assaulted by the appellant and declared that whoever comes forward, will be killed. Thereafter, the injured were taken into hospital and in the hospital Mankuwar was declared dead and Bhagwano was subjected to treatment. Taking Merg intimation and after recording the FIR, the inquest was prepared, dead body of Maankunwar Bai was sent for postmortem and Bhagwano Rathiya was also subjected to medical examination. Bhagwano was found having sustained injury whereas the postmortem of Mankuwar Bai revealed fatal injury on her head leading to her death. As the appellant was named in the FIR, he was taken into custody, his memorandum is said to have been recorded and on that basis, the wooden stump of the cot and the wearing apparel of the appellant are said to have been seized from his house and sent for forensic examination and found to be stained with human blood. The investigation was completed, charge-sheet was filed and on the basis of the incriminating material in charge-sheet, the appellant was charged for commission of offence of murder of Mankuwar and attempt to cause death of Bhagwano Rathiya. The appellant having been abjured guilt, was subjected to trial and the prosecution, in order to prove its case, examined as many as 13 witnesses. The appellant was thereafter examined under Section 313 Cr.PC where he denied

all incriminating evidence and circumstances appearing against him and stated that he has been falsely implicated. No defence witnesses were examined.

Learned trial Court relying upon the evidence led by the prosecution, held the appellant guilty of commission of offence of murder, giving rise to present appeal.

3. Learned counsel appearing for the appellant would argue that in the present case, conviction is founded only on suspicion which has failed to translate into truth. Learned counsel for the appellant would submit that none of the witnesses have reliably stated regarding they being witness to the incident. Agya Prasad (PW-1) who lodged FIR claiming to be an eye witness has turned hostile and has stated that he had not seen the incident of assault but when he reached the spot he found his mother lying dead on the ground. As far as, Bhagwano Rathiya (PW-2) the injured witness is concerned, though he deposes regarding he having been assaulted by the appellant, as far as assault on the deceased is concerned, this witness does not clearly state that he saw the appellant actually giving assault on Mankuwar Bai. As far as, witnesses of memorandum and seizure Ghasiya Ram (PW-4) and Kiritram (PW-11) are concerned, their evidence is also not free from doubt because even after having stated regarding memorandum and seizure proceedings drawn, in their cross-examination they have admitted that neither any memorandum was drawn in their presence nor any seizure effected. The evidence of presence of blood in the wooden stump of cot and the wearing apparel is also inconclusive because the group and origin of the blood has not been found.

4. On the other hand, learned State counsel would submit that in the present case, the conviction of appellant is based on reliable evidence led by the prosecution. He would submit that doubt, if any on the evidence of the prosecution witnesses, who have seen the incident, is cleared from the circumstances proved from the evidence of the prosecution that at and around the time of the incident i.e. at about 7.30 PM in the evening, the appellant was seen with the wooden stump and an axe in his hand, he was present at the spot where Mankuwar Bai was lying dead in front of the shop of Anand Rathiya coupled with the evidence of Bhagwano (PW-2) that when he reached the spot where his wife was lying dead on the ground, the appellant was present and he assaulted Bhagwano due to which he also sustained injuries. He would further submit that the recovery of wooden stump and blood stained wearing apparel of the appellant connects him with the alleged commission of offence because both these articles have been found to be stained with human blood which has not been explained as to how human blood came on these articles which were seized from the house of the appellant.

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

6. In the FIR which was lodged promptly soon after the incident, it has been recorded that the appellant assaulted deceased Mankuwar and Bhagwano doubting that Mankuwar was playing witchcraft on the appellant and his children keeping them sick. Lodging of FIR has been proved by Agya Prasad (PW-1) son of the deceased and Investigating

Officer (PW-13). Just immediately after the incident when the FIR was lodged the appellant was named as the accused.

7. Homicidal death of Mankuwar is not substantially in dispute in view of categoric evidence of Dr. Shailendra Kumar Agrawal (PW-7) who conducted postmortem. He has proved multiple injuries, fracture on vital parts of the body of the deceased, including head and in his evidence, the cause of death is multiple injuries, excessive bleeding leading to death. The evidence with regard to the nature and extent of injury could not be impeached in the cross-examination.

8. Agya Prasad (PW-1) – son of the deceased, though, cited as an eye witness, only states that while he was coming back to his house in the evening at about 7.30 PM, he saw that his mother was lying on the ground in front of shop of Anand Ram Rathiya but he could not see who assaulted his mother but he says that his father had seen the appellant assaulting his mother. This witness was declared hostile and when he was examined by the prosecution side he has admitted suggestion regarding appellant giving threat and then assaulting the mother of this witness. But when put to cross-examination, this witness it is elicited from this witness that when he reached the spot he found the dead body of his mother lying on the ground and there was nobody else. He has further stated that the he could not actually see who was indulged in *Maarpeet* and the evidence is based on hearsay.

09. Bhagwano Rathiya (PW-2) is an injured witness. He is the husband of the deceased Mankuwar. Dr. Lalita Rathiya (PW-12) examined Bhagwano Rathiya and found number of injuries on his

head, face and under the eyes. According to the opinion of the Dr. Lalita (PW-12) these injuries could be caused by hard and thick weapon.

Bhagwano Rathiya (PW-2) has deposed that on the date of incident, when his wife did not return from shop at about 7.30 PM, he went to the shop of Anand Ram and there he found that dead body of his wife Mankuwar was lying on the ground and there he was assaulted by the appellant. He has deposed that what was the weapon used by the appellant could not be identified because of the darkness. He has further stated that he informed police that appellant had assaulted his wife. He was declared hostile by the prosecution and thereafter, in his examination, he has admitted suggestion that appellant resides in front of the house of Bhagwano and used to blame his wife that she is playing witchcraft due to which appellant's children remain sick and further that doubting that the deceased was playing witchcraft, the appellant went near shop of Anand Ram and there he assaulted his wife threatening that he would not leave her alive and kill and due to the assault given to the wife of this witness, she fell down on the ground. When this witness went to pacify, he was also assaulted on his head due to which this witness also fell down. However, in his cross-examination it is elicited that by that time, this witness reached at the spot, his wife had already fallen down. It has also been elicited that he had not informed the police as to who had assaulted but he reiterates that assault was given by the appellant and at that time, he was at a distance of about 8 to 10 feet. He has denied suggestion that he could not see who assaulted his wife and has emphatically stated in his examination that the appellant

assaulted his wife. However, the evidence of this witness with regard to whether he actually saw the incident of assault on his wife by the appellant is not firm but he has been changing statement time and again, finally the Court put question to him, in response to which, he has again stated that the appellant must have assaulted his wife.

**10.** Therefore, as far the evidence of this witness with regard to appellant giving assault on the deceased is concerned, is not firm but at the same time, the evidence of this witness that at about 7 to 7.30 PM when he reached near the shop of Anand Ram, he found his wife lying dead on the ground and there he was assaulted on his head by the appellant is reliable. According to him, the appellant used to a wooden stump to assault the head. This evidence is fully reliable. This therefore, proves that at the place where Mankuwar was lying dead, the appellant was present at the spot with weapon in his hand and had assaulted Bhagwano on his head.

**11.** Duje Rathiya (PW-3) has stated that at about 7 to 7.30 in the evening, appellant was seen with a club and an axe in his hand when he came out of his house. As he has not fully supported the case of the prosecution, he has been declared hostile and upon being examined by the prosecution, he admits that while giving statement to the police, he had informed that his house, house of the Bhagwano and Jeevan Rathiya are in the same colony. In his cross-examination, the suggestion that he had not seen appellant with a club and an axe in his hand, has been denied.

**12.** As far as, recovery of blood stained cloth and weapon/wooden stump is concerned, the independent witnesses of memorandum and

seizure Ghasiya Ram (PW-4) and Kiritram (PW-11) have not remained firm in their statement regarding they being present at the time when the appellant had given his disclosure statement but present is the case where the articles were not seized from any other open place but according to the evidence of I.O. (PW-13), the wooden club and clothes were seized from the house of the appellant and there is no reason to disbelieve the evidence of the I.O. in this regard. Both these articles have been found stained with human blood and the appellant has not explained as to how the articles seized from his house, were found stained with human blood.

**13.** It would thus be seen that though doubtful eye witness account of the incident as stated by Agya Prasad (PW-1) and Bhagwano Rathiya (PW-2) are not reliable by itself, however, the proved circumstances of the evidence, as discussed above, are that on the date of incident the appellant was blaming the deceased Mankuwar that she was playing witchcraft on his children which had kept his children sick. It is also proves the circumstance of the case that the appellant and the deceased were resident of the same colony and their houses were situated near each other. Further, it is also proved that on the date of incident at about 7 to 7.30 in the evening, the appellant was seen coming out of this house holding an axe and a wooden club in his hand. The next circumstance proved from the prosecution evidence is that when Bhagwano (PW-2) reached in front of the shop of Anand Ram Rathiya, he saw that his wife lying dead on the ground and at that time the appellant assaulted him on his head with the help of wooden club. This proves two things, firstly, that the appellant assaulted Bhagwano secondly, that the appellant was

present with wooden stump at the spot where the dead body of Mankuwar Bai was lying on the ground.

The presence of human blood on the appellant's wearing apparels and the wooden club seized not from any open place but from his house completes the chain of circumstances to lead to an inference that it is the appellant and the appellant alone who must have killed the deceased.

**14.** In view of the above consideration we do not find any ground to interfere with the impugned judgment of conviction and order of sentence, the appeal is therefore, **dismissed**.

**Sd/-**

**(Manindra Mohan Shrivastava)**  
**Judge**

**Sd/-**

**(Vimla Singh Kapoor)**  
**Judge**