

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.1351 of 2015**

Sadhram Kujur S/o Jarhu Ram Kujur Aged About 40 Years Cast Oraon,
Occupation Agriculturist, R/o Village Nanka, Thana Dharamjaigarh, Th. And
Distt. Raigarh, Chhattisgarh **---- Appellant**

Versus

State Of Chhattisgarh Through P.S. Dharamjaigarh, Distt. Raigarh,
Chhattisgarh **....Respondent**

For Appellant	:	Mr. Deepak Jain, Advocate
For State	:	Mr. Anurag Verma, Panel Lawyer

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board by Manindra Mohan Shrivastava, J.

16/07/2021

Heard.

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 26.04.2012 passed by Sessions Judge, Raigarh District Raigarh (CG) in Sessions Case No.88/2010, whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below :

Conviction	Sentence
Under Section 459 of IPC	RI for 10 years and fine of Rs.1000/- in default of fine additional R.I. for 1 year
Under Section 302 of IPC	RI for life imprisonment and fine of Rs.1000/- in default of fine additional R.I. for 1 year
Under Section 323 of IPC	RI for 6 months and fine of Rs.100/- in default of fine additional RI for 7 days (All sentence run concurrent)

2. The prosecution story, as unfolded from the impugned judgment and

records of the case, is that an FIR in Ex.P/7 was lodged in the Police Station at about 1:30 in the night of 30th of January, 2010 by Jagram Kujur (PW1) husband of the deceased stating that the appellant Sadhram, his brother, entered his house in the midnight by breaking open the door and assaulted him on his abdomen and when his wife, deceased, came in between to save, she was also assaulted. The deceased Guruvai Bai was taken to Dharamjaigarh and from there, she was shifted to Raigarh hospital, she received treatment but she finally succumbed to death on 02.02.2010. Upon receipt of morgue intimation, Panchnama was prepared inquest over dead body was prepared and dead body was sent for postmortem which was conducted by Dr. L.K. Soni (PW3), who found single injury on the head of the deceased, caused by hard and blunt object and according to him, cause of death was head injury and he opined that it was homicidal in nature. Jagram Kujur (PW1), FIR informant and husband of the deceased had also sustained some injury and therefore, his injury was also examined by Dr. B.L. Bhagat (PW10). It is relevant to mention that when deceased Guruvai Bai had sustained injury as also her husband Jagram Kujur (PW1), therefore, the injuries were examined by Dr. L.K. Soni (PW3) and Jagram Kujur (PW1) was found having sustained some injury in the abdomen though not very significant one.

3. On the basis of what was stated in the FIR, offence was registered against the appellant, investigation was carried out and charge-sheet was filed. The appellant was charged of commission of offence of murder of Guruvai Bai and causing simple injury to Jagram Kujur (PW1). The appellant having abjured guilt, was put to trial. The prosecution examined as many as 18 witnesses. Thereafter accused were examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against him in the evidence led by the prosecution. The appellant denied all the circumstances and evidence of incriminating nature as stated by the prosecution witnesses and in defence stated that he had gone to the house of his brother to pacify quarrel between him and his wife, snatched away an axe from Jagram Kujur and thrown outside and that Jagram Kujur and deceased had come in drunken state. He stated that he has been falsely implicated. No defence witness was examined.

4. Learned Trial Court however relying upon the evidence of Jagram Kujur (PW1) the husband of the deceased, Smt. Vimla Bai (PW14) daughter-in-law and taking into consideration other evidence with regard to there being dispute between the appellant and Jagram Kujur, convicted the appellant for commission

of offence under Section 302 of IPC as also under Section 323 of IPC for causing simple injury to Jagram Kujur.

5. Assailing correctness and validity of impugned judgment of conviction and order of sentence, learned counsel for the appellant would argue that the prosecution case that the appellant assaulted his sister-in-law Guruvari Bai on her head and his brother Jagram Kujur (PW1) on his abdomen is highly doubtful because two prosecution witnesses Dheersai (PW5), a villager and independent witness and Harihar (PW6), who is adopted son of Jagram Kujur (PW1) and husband of Vimla Bai (PW14) and who resided in the same house have stated otherwise not supporting the prosecution case. He would submit that Dheersai (PW5) has stated that Jagram Kujur (PW1) came to his house in the night and gave extra-judicial confession that it is he who had assaulted his wife Guruvari Bai. Harihar (PW6) has stated that when his mother, deceased, had sustained injury and was lying on the ground, upon being asked, she gave an oral dying declaration that she was assaulted by Jagram Kujur (PW1). He would argue that the aforesaid two witnesses who are prosecution witnesses, render it highly doubtful that it is the appellant who had assaulted the deceased and defence story become highly possible and plausible that it is not the appellant Sadhram but Jagram Kujur (PW1) who himself assaulted his wife and falsely implicated Sadhram, his brother because of existing dispute. He would further argue that the prosecution witnesses of memorandum and seizure of axe have turned hostile and recovery of bloodstained axe from the appellant cannot be said to be proved on the sole testimony of the investigating officer. It is further argued that Investigating Officer, J. Lakda (PW13) has admitted in his evidence that after treatment, Guruvari Bai had recovered and thereafter, she was taken back to her house. He would also submit that there is evidence on record to prove that Jagram Kujur (PW1) and his wife were habitual of drinking and there used to be frequent quarrel and fight between them in state of drunkenness. Therefore, the entire case of the prosecution as far as appellant/Sadhram is concerned, becomes highly doubtful.

6. In the alternative, learned counsel for the appellant would argue that even if the prosecution story of the appellant having assaulted the deceased and caused injury on her head, leading to her death is relied upon, it is doubtful whether the appellant had any intention to cause death, of his sister-in-law because, according to the prosecution evidence, the appellant had dispute, if any, with his brother Jagram Kujur only and therefore, he had no motive to assault his sister-in-law

Guruvari Bai. He would next submit that as far as evidence of Jagram Kujur (PW1) that the appellant first assaulted Jagram (PW1) and thereafter, when his sister-in-law Guruvari Bai was trying to run away, he chased her and then assaulted on her head, is not reliable because in the FIR and case diary statement both, this witness has stated that the appellant assaulted him and when Guruvari Bai came in between to pacify, she was assaulted. This material contradiction has been elicited in the cross-examination of Jagram Kujur (PW1). Even the evidence of Smt. Vimla Bai (PW14) is only with regard to giving an assault and not that the appellant chased Guruvari Bai trying to escape, catching hold of her and then giving her assault. He would further submit that as per medical evidence, one single injury has been found on the head of deceased Guruvari Bai which is said to be caused by a hard and blunt object, meaning thereby that if at all, the appellant had given axe blow, there was no intention to cause death because sharp edged side of the axe was not used but the blunt side only was used causing one single injury and except that, there is no other injury. Therefore, it is contended, the criminal overt act of the appellant does not travel beyond the ambit and scope of Section 304 part II of IPC. The appellant has already served 11 years of jail sentence therefore, the conviction of the appellant be altered to that Section 304 Part-II of IPC and as he has undergone more than maximum sentence which could be awarded for commission of offence under Section 304 Part II of IPC, the appellant be released.

7. On the other hand, learned counsel for the State would submit that the prosecution case is founded on reliable eyewitness account given by Jagram Kujur (PW1) the husband of the deceased and daughter-in-law, Vimla Bai (PW14) and both of them have stated that the appellant came in breaking open the door, assaulted Jagra Kujur (PW1) and thereafter, when his wife came, he also threatened her and when she ran away, the appellant chased and then assaulted.

8. He would further argue that FIR was promptly filed within three hours of the incident by Jagram Kujur (PW1). There is evidence of enmity because of the property dispute between the appellant and Jagram Kujur (PW1). Conduct of Jagram Kujur (PW1) in immediately lodging FIR and informing other witnesses as deposed by other witnesses renders improbable that he had assaulted his wife and sought to falsely implicate his brother Sadhram. The conduct of the appellant in running away from the spot and not seen by anybody exposes guilty mind. It is improbable that the other brothers of the appellant and Jagram Kujur (PW1) would

be falsely implicating Sadhram. The evidence of Jagram Kujur (PW1) is corroborated from the evidence of Smt. Vimla Bai (PW14), the daughter-in-law.

9. We have heard learned counsel for the parties and perused the records as also the impugned judgment.

10. The conviction of the appellant is founded mainly on the evidence of Jagram Kujur (PW1) and Smt. Vimla Bai (PW14), who are eyewitnesses of the incident. In the present case, FIR in Ex.P/7 which was lodged in the Police Station by Jagram Kujur (PW1) at 1:30 a.m. in the night of 30th of January, 2010, it has been stated that at about 23:45 hours in the night, the appellant Sadhram came with an axe and hit the door twice and then he forcibly entered the house, abused and assaulted in the abdomen and when his wife came in to pacify the dispute, with intention to cause death, she was also assaulted from the back side of the axe, due to which, she fell down and fainted. The time of death stated to be 23:45 hours of 29.01.2010 and the FIR has been lodged in the midnight itself at about 1:30 a.m. Lodging of FIR by Jagram Kujur (PW1) and recording of the same by the Investigating Officer J. Lakda (PW13) is duly proved from their evidence as both of them have proved their signature in the FIR and on this aspect, nothing could be elicited in the cross-examination to doubt the time of lodging FIR in the police station.

11. Jagram Kujur (PW1) has deposed in his evidence that in the night, the appellant came in, hit at the door and he also assaulted in the abdomen with the help of an axe. According to him, the appellant came at around 11:00 p.m. in the night. He further deposes that when his wife saw the incident, she started running away, the appellant chased her and then assaulted with the help of an axe on her head, due to which, his wife fell down, thereafter the appellant again attempted to assault this witness and then the axe was snatched away. He deposes that wife of his adopted son snatched the axe from the hands of the appellant. According to him, Dilram, Sakharam, Dilsai arrived at the spot after hearing noise. The witness reiterates that he had seen the incident. It has been elicited that there was no dispute between him and the appellant, who is his own brother and also admits that he and his wife had consumed liquor. A suggestion that there was no light at the spot has been denied. He has stated that he had called for help of his brother Sakharam and then Sakharam arrived. In his cross-examination, however, certain contradictions and omissions have been elicited that when his wife ran away, has

not been stated in the FIR Ex.P/7 and case diary statement Ex.D/1, axe was snatched away by Smt. Vimla Bai (PW14) was also not stated in FIR and case diary Ex.D/1. Sakharam and Dilram arrived after hearing noise, incident was informed to Jagram Kujur, witness having seen from his own eyes that the appellant assaulted his wife were elicited as not stated in the case diary statement and the FIR. Of all these omissions, it is important to note that in the FIR in Ex.P/7 and case diary in Ex.D/1, Jagram Kujur (PW1) only stated that the appellant came in and assaulted on his abdomen and when his wife came in to pacify, she was also assaulted. However, a contradictory statement has been made in the Court evidence that the appellant first assaulted Jagram Kujur and thereafter, when his wife started running away, the appellant chased her and also assaulted.

12. Smt. Vimla Bai (PW14) is the other eyewitness who is daughter-in-law of Jagram Kujur (PW1). She has also corroborated the evidence of Jagram Kujur (PW1) that the appellant had entered the house and she saw that the appellant assaulted her mother-in-law Guruvari Bai with the help of an axe on her head twice and also assaulted in the abdomen of her father-in-law Jagram Kujur. In the cross-examination, it has been elicited that in her case diary statement, it has not been stated that the appellant assaulted the deceased twice on her head. Thus as far as number of assaults are concerned, there is contradiction in the case diary statement in what has been stated before this Court. Moreover, this witness has stated that her mother-in-law and father-in-law, after having taken meals and drinking had entered into quarrel also and hearing noise she got up and then she saw the incident of assault. She has emphatically repeated again in the cross-examination that the appellant assaulted her mother-in-law Guruvari Bai. The other omission, contradiction are not very material.

13. However Dheersai (PW5) and Harihar (PW6) have not supported the prosecution story. Dheersai (PW5) is a villager who tells a different story stating that in the night of the incident Jagram Kujur (PW1) came to his house and confessed that he assaulted his wife. He was declared hostile. In the cross-examination, he stated that there was dispute between the appellant and Jagram Kujur (PW1) over property and village meeting was also convened and both were properly advised, however, he has not supported the rest of the case of the prosecution including seizure of weapon etc. In the cross-examination, he has admitted that Jagram Kujur (PW1) used to assault his wife suspecting witchcraft. He also admits that Jagram Kujur (PW1) came to him and stated that Guruvari Bai

was making noise in intoxicated condition so he assaulted her.

14. Thus according to this prosecution witness, Jagram Kujur (PW1) gave extra-judicial confession before him that he had assaulted his wife.

15. The other prosecution witness Harihar (PW6), who is the adopted son of Jagram Kujur (PW1) and husband of Smt. Vimla Bai (PW14) has stated that when upon hearing noise, he came to the house and saw that mother was lying faint. In his cross-examination, he has admitted a suggestion that when he reached at the spot, his mother was in senses and she disclosed that she was assaulted by Jagram Kujur (PW1) and Jagram Kujur (PW1) has run away and at that time, Jagram Kujur (PW1) was not at home. According to this witness, an oral dying declaration was given by the deceased that she was assaulted by Jagram Kujur (PW1).

16. According to learned counsel for the appellant, the statement of aforesaid two prosecution witnesses renders highly doubtful the entire case of the prosecution regarding involvement of the present appellant as assailant and makes it highly possible and plausible that it is not the appellant but Jagram Kujur (PW1) himself had assaulted his wife because they were intoxicated, quarreling in the night and appellant has been falsely implicated.

17. At first blush, the argument appears to be attractive however upon consideration of the entire material on record, the case of defence is to be rejected.

18. Firstly, the FIR in the present case has been promptly lodged by husband of the deceased Jagram Kujur (PW1) in the police station. This conduct of he himself in lodging FIR in the police station is against probability of he himself being the assailant.

Secondly, Jagram Kujur (PW1) in his evidence has stated regarding he having informed Sakharam, Dilram and Dilsai. Sakharam (PW2), who is his own brother says that he was informed by the appellant that his wife has been assaulted by appellant Sadhram. Harihar (PW5), his own son, also says that he was informed and came to his house at 12:00 in the night to inform that Guruvari Bai died and that she was assaulted and when he reached the house of Jagram

Kujur, he saw Sakharam and Jagram Kujur present there but Sadhram was not in the house.

19. Madhav (PW7) stated regarding the appellant having come to him to inform regarding death of his wife. Smt. Vimla Bai (PW14) also states that after the incident, the appellant Sadhram eloped. Dilram (PW15) also states that in the night Jagram Kujur (PW1) came to him to inform that the appellant has assaulted his wife Guruvai Bai. He has further stated that when he reached the spot, the appellant was not present.

20. From the evidence of the aforesaid witnesses the conduct of the appellant and Jagram Kujur (PW1) is clearly reflected. While Jagram Kujur (PW1) had immediately lodged FIR and informed other persons regarding the incident, the appellant eloped and was not seen though he was next door resident. His other brothers who were also residing side by side reached the spot but the appellant was not seen there.

21. There is evidence of Dheersai (PW5) that the appellant and Jagram Kujur (PW1) had dispute over property and even village meeting was convened. This shows that the appellant and Jagram Kujur (PW1) had some dispute and their relations were strained.

22. It is also relevant to mention here that Jagram Kujur himself is an injured witness and the evidence of Dr. L.K. Soni (PW3) is that Jagram Kujur (PW1) had also sustained some injury on his abdomen. To say that Jagram Kujur immediately after assaulting his wife, lodged report promptly within three hours by falsely implicating him therefore, does not appear to be probable.

23. Dheersai (PW5) is not the eyewitness of the incident but only states regarding extra-judicial confession. It is interesting to note that while wife of Harihar, namely, Smt. Vimla Bai has given eyewitness account of reliable nature that the appellant assaulted Guruvai Bai with the help of an axe on her head, her husband Harihar in his cross-examination, did not disclose anything except stating that when he reached the house, he found that the mother was lying faint. In the cross-examination, a suggestion has been given then elicited that when her mother regained consciousness, she gave an oral dying declaration that she was assaulted by Jagram Kujur (PW1). According to this witness, as stated in the

examination-in-chief, when he reached, number of witnesses had already arrived at the spot. Therefore, such statement of oral dying declaration become highly doubtful because had it been so, the other person who were present at the spot would have certainly stated regarding such statement made by the deceased to Harihar. It is not reflected from the evidence of Harihar (PW6) that any such declaration was given by the deceased when both of them were all alone.

24. Therefore, the eyewitness account given by Jagram Kujur (PW1) and daughter-in-law, Smt. Vimla Bai (PW14) is proved beyond doubt that it is appellant who had assaulted the deceased.

25. Next question which arises for consideration is whether in the circumstances of the case, the conviction of the appellant is liable to be altered to that under Section 304 Part-I of IPC in view of submission of learned counsel for the appellant.

26. From the evidence of Jagram Kujur (PW1) and Smt. Vimla Bai (PW14), it is clear that the incident happened in the night. It is stated that the appellant and his wife both were drunken and there was some quarrel also between them. Both in the FIR in Ex.P/7 and case diary statement in Ex.D/1, Jagram Kujur (PW1) has stated that when the appellant came in, he assaulted him on the abdomen and when deceased came in to pacify the dispute, she was also given one assault on the head from the back side of the axe. There is improvement made in the Court statement by Jagram Kujur (PW1) that after giving assault to him, when his wife started running away to save herself, the appellant chased her and gave her assault. Therefore, this version of appellant chasing the deceased and giving her assault become doubtful and it is quite probable that when the appellant was assaulting his brother Jagram Kujur (PW1), deceased Guruvari Bai came in to pacify and in that heat of passion, the appellant gave one blow on her head.

27. Even according to the evidence of Smt. Vimla Bai (PW14), there is nothing to show that the appellant chased her, caught hold of deceased Guruvari Bai, manifesting intention to cause death and then assaulted.

28. The medical evidence on record proved by Dr. B.L. Bhagat (PW10) is that only one single injury was found on the head of the deceased which unfortunately proved to be fatal. According to the doctor witness, the injury was caused by hard

and blunt object that means the appellant while giving assault did not use the sharp edged side of the axe but only the blunt side. The circumstances in which the appellant assaulted are that the appellant had come in the house of the witness Jagram Kujur (PW1), there was dispute between them and the appellant started abusing and assaulted Jagram Kujur (PW1). The story of the FIR Ex.P/7 and case diary statement Ex.D/1 of Jagram Kujur (PW1) that while his wife Gurusvari Bai came in to pacify and separate them, she sustained one single injury on the head that too caused by the back side of the axe by the appellant appears to be probable. If that be so, this would be a case covered by Exception 4 of Section 300 IPC of assault in a sudden quarrel without any pre-meditation. It cannot be said that the appellant took any undue advantage and otherwise acted in a cruel manner. Moreover, there is only single assault on the head and that too on the back side of the axe. Therefore considering the totality of the evidence as above, it cannot be said that the appellant had any intention to cause death but certainly knowledge has to be attributed.

29. In that view of the matter, the criminal overt act of the appellant would not travel beyond the scope and ambit of Section 304 part II of IPC.

30. Accordingly, the appeal of the appellant is partly allowed. Conviction is altered to that under Section 304 part II of IPC. The appellant has undergone more than 10 years of jail sentence by now which is more than the maximum sentence which could be awarded under Section 304 part II of IPC.

31. In the result, the appeal is partly allowed and the appellant having undergone more than maximum sentence for the offence, is directed to be released forthwith.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge