

**HIGH COURT OF MADHYA PRADESH : BENCH INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**&**

**HON'BLE SHRI JUSTICE ANIL VERMA**

**ON THE 12<sup>th</sup> OF JANUARY, 2023**

**CRIMINAL APPEAL No. 84 of 2012**

**BETWEEN:-**

**RAMPRASADBAI W/O RAMESH, AGED ABOUT 35 YEARS,  
OCCUPATION: LABOUR GRAM.SAMANGI MANDA THA.SHAJAPUR  
DISTT.SHAJAPUR (MADHYA PRADESH)**

**.....APPELLANT**

**(SMT. SHARMILA SHARMA, LEARNED COUNSEL FOR THE  
APPELLANT.)**

**AND**

**THE STATE OF MADHYA PRADESH GOVT. THROUGH POLICE  
STATION THA.SHAJAPUR DISTT.SHAJAPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

**(SHRI AMIT SINGH SISODIA, LEARNED GOVT. ADVOCATE FOR  
RESPONDENT/STATE)**

*This appeal coming on for final hearing this day, JUSTICE*

*VIVEK RUSIA passed the following:*

**JUDGMENT**

The appellant has filed this appeal being aggrieved by the judgment dated 15.11.2011 passed by learned Sessions Judge, Shajapur in Sessions Trial No. 79/2011 whereby she has been convicted u/s. 302 of the IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- with default stipulation.

1. As per the prosecution story, on 10.2.2011 near about at 9 pm.

complainant Ramchandra went to his agricultural field and after returning back next day at about 8.00 am. he was informed by Surpanch Dulesingh Patel and Kanhaiyalal that Kalu has been murdered by his daughter-in-law by means of Axe in the yesterday's night at about 9 pm, Kalu sustained injuries on his head and hands and he is lying dead inside the house. The complainant immediately rushed inside the house of Kalu and saw Kalu lying dead in a pool of blood. "Dehati Nalis" vide Exh. P/5 was recorded at his instance, police reached the scene of the crime called five independent witnesses and drew "Safina" Form" vide Exh. P/7, and "Naksha Panchayatnama" vide Exh. P/8. The appellant was arrested on 11.2.2011 vide Exh. P/2. Her statement was recorded u/s. 27 of the Indian Evidence Act and the Axe used in the commission of the offence were also recovered. The appellant was medically examined, and the Doctor found swelling over Buttock's upper part which was said to have been caused by the deceased. On the same date, bloodstained soil, pieces of broken bangles and a bloodstained mattress were recovered. All the seized articles were sent to the FSL, Sagar. The dead body of Kalu was also sent for postmortem which was found homicidal.

2. After completing the investigation, charge sheet was filed u/s. 302 of the IPC. The charge was read over to the appellant and she denied it but stated that the deceased Kalu was coming towards her with an Axe, but he fell down and sustained the injuries and she has falsely been implicated in this case. She also stated that her husband used to work at a brick-making furnace and she used to live alone in the house. The deceased Kalu had the intention to make an illicit physical relationship with her due to which she lived for three months

in her parental house. she has further disclosed to the court that even on the date of the incident, his father-in-law tried to commit rape , hence in defence, she assaulted him due to which he died. Learned trial Court disbelieved her statement and proceeded with the trial by calling the prosecution witnesses to prove the sole charge against her. The prosecution examined as many as 9 witnesses as P.W.1 to P.W.9 and got exhibited 19 documents as Exh. P/1 to P/19. In defence, the appellant examined herself as D.W.1.

3. After evaluating the evidence that came on record learned trial Court has convicted and sentenced the appellant as stated first. Hence, the present appeal before this Court.

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

4. After arguing on merit of the case learned counsel for the appellant submits that even if it is established that the Appellant caused the injuries, by means of an axe to her father-in-law the same was done in exercise of the right of the private defence for which she is protected under Section 100 of the IPC. We are impressed with this alternate submission of the learned counsel as it is a case where the appellant came up with a specific defence that she assaulted the deceased in order to save herself as he wanted to rob her honor . The prosecution has examined daughter of the appellant Anita aged about 13 years as P.W.3 who deposed that her grandfather i.e. the deceased was forcing her mother to go with him inside the room for which she refused. Thereafter, her grandfather assaulted her mother on her back due to which she fell down and deceased climbed on to of her. Her mother took out the Axe from the hand of deceased and assaulted him. She has not been declared hostile . In cross-examination, she has

admitted that her grandfather wanted to keep her mother as his wife and earlier also he tried to molest her, and she had to reside 3 years in her parents' house. Likewise, Gokul (P.W.1) and Ramchandra (P.W.2) in their cross-examination have stated about bad character of the deceased that last year also he kept one lady and had an evil eye on his daughter-in-law i.e. the present appellant. Dulesingh (P.W.4) also in his cross-examination has stated that the deceased Kalu tried to molest the appellant but no report was lodged.

5. Therefore, it is a case where the appellant in order to save her honor assaulted her father-in-law who had bad character. The nature of injuries sustained by the appellant also reflects that out of an anger she assaulted the deceased. Learned Additional Session Judge did not consider the above facts and circumstances on which the offence was committed which falls under the category of right of self defence.

6. In the case of *State of U.P. v. Gajey Singh*, reported in (2009) 11 SCC 414 the Apex court has held as under :-

27. Section 100 of the Penal Code is extracted as under:

“100. *When the right of private defence of the body extends to causing death.*—The right of private defence of body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:

*First.*—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

*Secondly.*—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

*Thirdly.*—An assault with the intention of committing rape;

*Fourthly.*—An assault with the intention of gratifying unnatural lust;

*Fifthly.*—An assault with the intention of kidnapping or

abducting;

*Sixthly.*—An assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.”

**28.** Section 100 of the Penal Code justifies the killing of an assailant when apprehension of atrocious crime enumerated in several clauses of the section is shown to exist. The first clause of Section 100 applies to cases where there is reasonable apprehension of death while the second clause is attracted where a person has a genuine apprehension that his adversary is going to attack him and he reasonably believes that the attack will result in a grievous hurt. In that event he can go to the extent of causing the latter's death in the exercise of the right of private defence even though the latter may not have inflicted any blow or injury on him.

**29.** It is settled position of law that in order to justify the act of causing death of the assailant, the accused has simply to satisfy the court that he was faced with an assault which caused a reasonable apprehension of death or grievous hurt. The question whether the apprehension was reasonable or not is a question of fact depending upon the facts and circumstances of each case and no straitjacket formula can be prescribed in this regard. The weapon used, the manner and nature of assault and other surrounding circumstances should be taken into account while evaluating whether the apprehension was justified or not?

under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.”

7. In view of the above, this case falls under third description of Section 100 of the IPC. The appellant sustained injuries in order to save herself which is established on the testimony of Dr. N.K. Gupta (P.W.6) and the broken bangles were found on the spot. She assaulted the deceased to save her honor as he was pressurizing her to make illicit relation with him. The appellant should have been given the benefit of right of defence under section 100 of the I.P.C..

It is a matter of concern that a lady has remained in custody

from the date of her arrest i.e. more than 11 years and no application for suspension of jail sentence was filed. She was not in a position to engage a counsel, therefore, State Legal Aid Services has provided her legal assistance. The deceased made her life miserable and when she lost her patience, took this drastic step to kill her father-in-law. We are sorry to observe here that the learned trial Judge being a lady could not understand the pains and agony suffered by the appellant and failed to understand under what circumstances she assaulted her father-in-law when he was intended to outrage her modesty . Even husband of the appellant did not come forward to protect her and did not enter into the witness box in her support though he was having full knowledge about character of his father. In view of the foregoing discussion, the impugned judgment is liable to be set aside.

Accordingly, this appeal is allowed and the conviction of appellant u/s. 302 of the IPC is hereby set aside. The appellant be released from the custody forthwith. Copy of this order be sent to concerned jail by FASTER mode.

Record be sent back to the trial court.

**[VIVEK RUSIA]**  
**JUDGE.**

Alok/-

**[ANIL VERMA]**  
**JUDGE.**