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HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Appeal No.1630/1997

APPELLANT : Goverdhan

-Versus-

RESPONDENT : State of M.P.

Smt. Shashi Shukla, Advocate for the appellant.

Shri S.S. Chouhan, Public Prosecutor for the respondent/State.

**PRESENT : Hon'ble Shri Justice S.K. Gangele.
Hon'ble Shri Justice Anurag Shrivastava.**

Whether approved for reporting: Yes/No.

J U D G M E N T
(25.04.2017)

Per Anurag Shrivastava, J.

The instant appeal has been filed by the accused/appellant Goverdharn against the judgment of conviction and order of sentence dated 07.06.1996 passed by Additional Sessions Judge, Sohagpur in Sessions Case No.44/1996 by which the accused/appellant has been convicted for the offence punishable under Sections 302 and 307 (two counts) of IPC and sentence to undergo imprisonment for life and also imprisonment for 7-7 years respectively.

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2. In brief, the case of prosecution is that accused Goverdhan and complainant Rajaram (PW-3), witness Salakram (PW-6) and Rajkumar (PW-4) are real brothers. The deceased Smt. Nabiya Bai was their mother. There was dispute of partition of the ancestral property between accused Goverdhan with his brothers. Goverdhan was living separately whereas deceased Nabiya Bai was living with his younger son complainant Rajaram and Salakram. As per prosecution it is alleged that on 17.05.1995 in the village Hatvas, in the early morning the wife of accused Goverdhan Smt. Keshar Bai was taking the soil from the land of complainant. Keshar Bai objected to it and told her not to dig the soil from their land. A dispute arose between them meanwhile the accused Goverdhan came there and assaulted Nabiya Bai by a spade on her head. Thereafter at about 08:30 A.M. complainant Rajaram, his brother Salakram and Rajkumar were taking Nabiya Bai for treatment to hospital, to village Pipariya. When they reached out of village the accused Goverdhan came there and told them not to take Nabiya Bai to hospital. When Rajaram and Salakram refused to obey accused he got annoyed and assaulted Nabiya Bai by Axe on her head and inflicted fatal injury. The witnesses Salakram and Rajaram tried to intervene then accused assaulted them also by Axe on their head and inflicted injuries. Nabiya Bai died on the spot and Salakram and Rajaram became unconscious. Witness Rajkumar immediately went to Police Station, Pipariya and gave information of the incident. A sanaha

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(Ex.P/19 and P/20) was recorded by the police and Sub-Inspector Jahir Singh (PW-10) went on the spot and recorded the Dehati merge intimation (Ex.P/8) and also Dehati Naalishi (Ex.D/2) on information of Rajaram. During inquest the panchanama of dead body of the deceased Nabiya Bai was prepared and sent for postmortem to Primary Health Centre, Pipariya. Injured witnesses Rajaram and Salakram were also sent for MLC and treatment to the hospital. The red earth was seized from the spot. Thereafter a FIR (Ex.P/12) was recorded on the basis of Dehati Nalsi and offence was registered against the accused. During investigation on memorandum of accused an Axe was seized and also blood stained cloths of accused was seized. The statements of witnesses were recorded and after completion of investigation charge sheet has been filed.

- 3.** On commencement of trial, charges were framed by the trial Court against the accused/appellant for offences under Sections 302 and 307 (two counts) IPC. He abjured guilt, thereafter statement of 12 prosecution witnesses were recorded. Accused did not give any evidence in the defence. After completion of trial the trial Court vide impugned judgment found accused/appellant guilty for commission of offence punishable under Sections 302 and 307 (two counts) of IPC for murder of his mother Nabiya Bai and committed attempt to murder of his brothers Rajaram and Salakram.

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- 4.** Learned counsel for the appellant vehemently argument that the judgment under challenge is erroneous and is passed without appreciating the evidence on record. Further it is argued that the prosecution has failed to prove its case beyond reasonable doubt and in fact the incident which is alleged to have occurred is not proved by cogent evidence by the prosecution, therefore, the conviction of the accused/appellant is contrary to law and deserves to be quashed and set-aside. It is further argued that there is discrepancy about the weapon, which is used for inflicting the injuries. No independent witness has supported the prosecution case. There are material contradictions and discrepancies occurred in prosecution evidence. The main prosecution witnesses are interested and partisan witnesses. Therefore, their evidence cannot be relied upon.
- 5.** We have considered the rival submission made by both the parties.
- 6.** After perusing the entire record of the case, it is admitted that the accused/appellant Goverdhan is the elder son of deceased Nabiya Bai. Other witnesses Rajaram, Salakram and Rajkumar are his real brothers. It is also not denied that at the time of incident deceased Nabiya Bai and her son witness Rajaram had sustained fatal injuries on their head. Investigation Officer Jahir Singh, Sub-Inspector, Police Station Pipariya (PW-10) deposed that on 17.05.1995 the younger son of deceased Nabiya Bai came

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to Police Station and reported that accused Goverdhan had assaulted his mother and brothers. On this information Jahir Singh went to village Hatvas and he found dead body of Nabiya Bai on the spot and her sons Rajaram and Salakram were also found in seriously injured condition. Jahir Singh had recorded Dehati Merg (Ex.P/8) and Dehati Nalsi (Ex.D/2) on the information of Rajaram and conducted inquest and sent the dead body for postmortem and Rajaram and Salakram for medical examination and treatment to Primary Health Centre, Pipariya. This statement is also corroborated by witness Rajaram (PW-3) Rajkumar (PW-4) and Salakram (PW-6) and Dehati merge (Ex.P/8) intimation and Dehati Nalsi (Ex.D/2) and Rojnamchan Sanaha (Ex.P/19 and P/20).

- 7.** Dr. S.C. Sahu (PW-9) deposed that on 17.05.1995 in Primary Health Centre, Pipariya he had conducted the postmortem of dead body of deceased Nabiya Bai and found following injuries:-
- i. Incised wound 3" x 1" x deep inside the brain and bone was completely cut at this stage.
 - ii. Incised wound 3" x 1" x bone deep on the back side of the head.
 - iii. Incised wound 3" x 1" bone deep at right side of the head.
 - iv. Multiple fractures on the left side of partial temporal and occipital region, where broken bone pieces were found, inside the brain matter.

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v. Extra dural, sub dural, sub coetaneous, hematoma was present below the skull and inside the brain.

It is opined by the doctor that above injuries are caused by hard and sharp object and may be caused by Axe or spade. The statement of doctor is also gets corroborated by postmortem report (Ex.P/7). Therefore, from postmortem report it is established that the deceased Nabiya Bai was died of head injuries caused to her by Axe or Spade at the time of incident. The injuries were homicidal.

8. Similarly, the witnesses Rajaram and Salkaram were examined by Dr. Ashok Verma (PW-8). Dr. Verma deposed that on 17.05.1995 in Primary Health Centre, Pipariya he had examined Rajaram and found following injuries.

- i. Incised wound 2" x 1" x 1" on the left side of head.
- ii. Incised wound 1" x 1" x 1" on the left side of head near injury No.1.
- iii. Incised wound 5" x 1 ½" x 1 ½" on the centre of head.
- iv. Incised wound 2" x 1" x ½" on the left side of forehead.

All the injuries are caused by hard and sharp object and dangerous to life.

9. Dr. Ashok Verma (PW-8) further deposed that on 17.05.1995 in Primary Health Centre, Pipariya he had examined Salakram and found following injuries.

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- i. Incised wound 2 1/2" x 1/2" x 1/2" on the left side of head.
- ii. Incised wound 1" x 1/2" x 1/2" on the left side of head near injury No.1.
- iii. Incised wound 1" x 1/2" x 1/2" on the right side of head.

All the injuries are caused by hard and sharp object. The statement of Dr. Ashok Verma is duly corroborated by MLC report (Ex.P/5 and P/6).

- 10.** Dr. N. Hassan (PW-12) Radiologist deposed that on 19.05.1995 the X-Ray of Salakram was taken and it was found that there was a depressed fracture on the parietal bone. It is corroborated by X-Ray plate P/22 and report P/21 also.
- 11.** Thus, from above medical reports, it is clearly established that both the witnesses Salakram and Rajaram had sustained fatal injuries on head, which were caused by hard and sharp object and also dangerous to life.
- 12.** Now the question arises whether the appellant/accused had inflicted injuries to deceased Nabiya Bai and witnesses Rajaram and Salakram ?
- 13.** Rajkumar (PW-4) deposed that on the date of incident in the early morning the wife of accused Goverdhan, Kesar Bai was taking the soil from the land of Rajaram. Nabiya Bai objected to it and there was hot talks between them. After hearing the noise Rajaram went there and sent Kesar

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Bai back to her house. Thereafter accused Goverdhan came and assaulted Nabiya Bai by Spade on her head. After some time Rajaram, Rajkumar and Salakram were taking injured Nabiya Bai for treatment to hospital, when they reached out of village, the accused Goverdhan came there armed with Axe and told Rajaram not to take Nabiya Bai to hospital. When Rajaram refused, then accused assaulted Nabiya Bai by Axe on her head. When Rajaram and Salakram tried to intervene and save Nabiya Bai then accused again assaulted them by Axe on their head. Rajkumar had seen the incident and immediately went to Police Station Pipariya and informed Sub Inspector Jahir Singh (PW-10). Jahir Singh came to spot and found Nabiya Bai dead and Rajaram and Salakram seriously injured lying on the ground. A Dehati Nalsi and merge intimation were recorded by him of the spot.

- 14.** The statement of Rajkumar is also corroborated by the statement of Rajaram (PW-3), Salakram (PW-6) and Jahir Singh Sub Inspector (PW-10). Rajaram and Salakram both had deposed that on the date of incident in the morning the accused had assaulted his mother Nabiya Bai by Spade and when she was being taken to hospital for treatment by Rajaram, Salakram and Rajkumar, the accused again intercepted them on the way and assaulted them by Axe. There is no material omission or contradiction occurred in the statement of Rajaram, Salakram and Rajkumar. They are real brothers of accused, therefore, they cannot be

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termed as interested witnesses. Their statement is duly corroborated by Dehati Nalsi and postmortem and MLC report. There may be some discrepancy regarding use of weapon whether it is Axe or Spade but, it is not material. The trial Court had discussed at length on this point and rightly observed that this discrepancy is not material to discard the testimony of injured eye witnesses.

- 15.** Therefore, the trial Court has rightly arrived at the finding that the appellant/accused has assaulted the deceased and his brothers Salakram and Rajaram by Axe. Rajaram and Salakram were younger brothers of accused. Accused assaulted them when they were taking their mother the deceased for treatment. The multiple blow of Axe like weapon on the head of deceased and the witnesses Rajaram and Salakram shows the intention of the accused to kill them. Therefore, it is rightly found proved by the trial Court that the appellant/accused has committed murder of his mother and inflicted grievous injuries on head of his brothers and thereby committed offence of attempt to murder.
- 16.** Thus, the trial Court had rightly found appellant/accused guilty for commission of offence under Sections 302 and 307 (two counts) IPC and convicted him. The conviction is based on credible, clinching and reliable evidence sustainable under the law. The sentence imposed upon the appellant is adequate.

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- 17.** On close scrutiny of evidence, we do not find any illegality or infirmity in the impugned judgment warranting any interference. The appeal is liable to be dismissed and is accordingly dismissed.
- 18.** The bail bonds of appellant stands cancelled and he shall be sent to jail for undergoing the remaining jail sentence as awarded by the trial Court.

(S.K. Gangele)
Judge

(Anurag Shrivastava)
Judge

Vin**