**HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**Criminal Appeal No.1822/2006**

**Natthu**

**Versus**

**State of M.P.**

**Present : Hon'ble Miss Justice Vandana Kasrekar, J.**
**Hon'ble Smt. Justice Anjuli Palo, J.**

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Shri Ahadulla Usmani, counsel for the appellants
Shri D.K.Paroha, Government Advocate for the respondent/State.

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**Whether approved for reporting** : Yes / No

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**Law laid down :-** Conviction can be based on circumstantial evidence.

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**Significant Paragraphs : - 10, 11, 14 to 16**

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**JUDGMENT**
**(22.09.2017)**

**Per : Smt. Anjuli Palo, J**

**1.** This appeal has been preferred by the appellants/accused under Section 374(2) of Code of Criminal Procedure against the judgment of conviction dated 05.06.2006 passed by the Second Additional Sessions Judge, Sagar in Sessions Trial No.23/2006, whereby the appellant was convicted under Section 302 of Indian Penal Code and sentenced to undergo life imprisonment and fine of Rs.500/-, in

default of payment of fine, further rigorous imprisonment of three months.

**2.** In brief the prosecution story is that on the intimation of Mohanlal an FIR was registered at Police Station Sanodha, District Sagar under Section 302 of Indian Penal Code against the appellant. After the investigation, it was found that On 30.05.2005, at about 11:30 am, the appellant, in a drunken condition has committed murder of his own mother Rajdulari @ Ajudhibai by inflicting injuries on her person by stone. The appellant himself informed to Mohanlal about the incident. Deceased Rajdulari died in the premises of appellant's house. After completion of the investigation, a charge-sheet was filed before the competent Court.

**3.** After committal of the case, the trial Court framed charge under Section 302 of IPC. The appellant abjured his guilt and pleaded that he is falsely implicated in the case. Learned trial Court found that the deceased was mother of the appellant. She died due to injuries caused by the appellant with stone on her head. After considering the circumstantial evidence, it was found that the appellant was habitual of torturing his mother. This fact was established from the testimony of Kusum Bai (PW-8) (wife of the appellant) and corroborated by Janki (PW-7) (daughter of appellant), both witnesses stated that the appellant was in the habit of consuming alcohol and used to beat them. Earlier the appellant had caused a

fracture on the right leg of the deceased. This fact was unchallenged by the appellant.

**4.** Gotiram (PW-5) also corroborated that the appellant was habitual of beating his family members. Learned trial Court held that the deceased died due to the injuries caused by the appellant and on the memorandum of the appellant, a stone has been seized by the police. As per FSL report, the learned trial Court held that stone was used by the appellant to murder his mother, hence, appellant was convicted under Section 302 of IPC and and sentenced to undergo life imprisonment and fine of Rs. 500/-, in default of payment of the fine amount, further rigorous imprisonment of three months.

**5.** The findings of the Trial Court are challenged on the grounds that the Trial Court committed illegality in holding that the deceased (Rajdulari) was murdered by the appellant. There is no eye-witness in the case. The Trial Court relied on the circumstances which were not proved against the appellant. Hence, the appellant prayed to set aside the impugned judgment and for acquittal from the charge.

**6.** Heard learned counsel for the parties. Perused the record.

**7.** Learned Government Advocate appearing on behalf of the respondent/State vehemently opposed the contentions of the appellant. He stated that the Trial Court rightly convicted the appellant under Section 302 of the Indian Penal Code.

**8.** The question for determination in this case is, whether the conviction of the accused is wrongly based on evidence on record?

**9.** It is not in dispute that deceased Rajdulari was the mother of appellant. At the time of incident, she was residing with the appellant and his family. After re-appreciation of the evidence, we find that on the date of incident, the appellant himself informed Mohanlal (PW-1) about the death of his mother. He also informed that the dead body of his mother was lying in his premises. This fact has not been challenged by learned counsel for the appellant, hence, this fact is treated as admitted fact. Gotiram (PW-5) is the neighbour of appellant. He stated that on the date of incident, the appellant came to his house in a drunken condition. The witnesses saw appellant calling his wife and children, but due to fear of being beaten by the appellant, they did not go near him. However, the appellant ran behind them with *lathi*/stick to beat them. Hence, his wife and children ran away towards the village. Thereafter, the witness heard about the death of Rajdulari. Learned counsel for the appellant strongly contended that there is no eye-witness in the present case and the learned Trial Court wrongly convicted the appellant on the basis of circumstantial evidence.

**10.** We do not agree with this contention as the conviction can be based either on direct evidence or on circumstantial evidence. It is settled law that in the case of circumstantial evidence, every circumstance against the accused shall be proved beyond any reasonable doubt to duly establish chain of circumstance. The conviction can be based on the circumstantial evidence. In

case of **Hanuman Govind Nargundkar vs. State of MP reported in AIR 1952 SC 343** is held as under:

> "It is well to remember that in case where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.
> 16. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra, AIR (1994) SC 1622. Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence must be fully established. They are:
> (1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
> (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
> (3) The circumstances should be of a conclusive nature and tendency;
> (4) They should exclude every possible hypothesis except the one to be proved; and (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the- innocence of the accused and must show that in all human probability the act must have been done by the accused."
> 11. The circumstantial evidence in the present case has to be examined in the light of the law as laid down above."

**11.** In the present case every witnesses deposed that the appellant was rude in nature and habitual of quarreling and beating his family members. Kusumbai (PW-8), wife of the appellant and her son Jahar (PW-4) both had stated the appellant killed his mother by causing injury on her head. Jahar (PW-4) clearly deposed that due to fear of his father, he had not given any statement before the police against his father. Similarly, due to fear of the appellant, his daugther Janki (PW-7) and Kusumbai (PW-4) turned hostile. Even then, in Paragraph 4 of her statement Kusumbai (PW-8) admitted that the deceased died due to the injuries caused by the appellant with stone.

**12.** It is a relevant fact for consideration in the present case that even though, his family member whoever was present on the spot turned hostile and stated that they were not aware as to how did Rajdulari died, but it was the usual conduct of the family. They were always in fear of the appellant as confirmed by other independent witnesses Chandrabhan (PW-2), Harisingh (PW-3). Harisingh (PW-3) deposed that the appellant used to beat his wife and children.

**13.** Indresh Tripathi (PW-10) Investigation Officer deposed that he seized a stone from the spot on the information of the appellant himself. The memorandum (Exh. P/8) and seizure memo (Exh. P/9) were prepared in the presence of *punch*

witness Chandrabhan (PW-2). With regard to memorandum of the appellant and seizure of the stone, testimony of Chandrabhan (PW-2) is unshaken and not challenged in the cross-examination by learned counsel for the appellant, hence such fact can be considered as admitted fact. In paragraph 5 Chandrabhan (PW-2) also specified that at the time of seizure, he saw blood stains on the stone. Indresh Tripathi (PW-10) deposed that the seized articles were sent to the FSL for chemical examination via memo (Exh. P/17). In the FSL report, it was confirmed that human blood stains were found on the seized stone but the blood group was not identified. Merely due to non-identification of the blood group other evidence cannot be brushed aside which established the involvement of the appellant directly with the crime.

**14.** We come to the conclusion that at the time of incident Gotiram (PW-2) saw the appellant at his house. It is also not in dispute that the deceased was present at the appellant's house on the date of incident. The appellant had himself informed Mohanlal (PW-1) that his mother died as someone had crushed her head with stone. They came to the premises of the appellant where the body of the deceased was lying. Thereafter, both of them went to the police station Sanodha. In the presence of the appellant murg intimation (Exh. P/1) was lodged by Mohanlal (PW-1) and not by the appellant himself.

It is important to note that in the presence of the appellant, his mother died in his house and prior to the incident, Gotiram (PW-5) had seen the appellant in anger. The burden of proof lies on the appellant to explain as to who committed the murder of his mother. But the appellant continuously kept mum. There is a missing link which would complete the chain of circumstantial evidence. It is a clear cut case for presumption against the appellant that he himself committed murder of his mother. There is no scope in his favour. Further there is no weakness in the case which would create reasonable doubt against the prosecution case.

**15.** It is also important to note that few days prior to the incident, the appellant caused grievous injury to his mother. This fact was stated by his son Jahar (PW-4) and corroborated by Dr. Sudhir Jain (PW-11) who conducted post-mortem of the deceased. He found that there was a plaster over the right knee of the deceased where her two bones were broken. It is apparently clear that it was an old injury. This proves that on earlier occasion also, the appellant had beaten his mother due to which she sustained grievous injury on her leg. Dr. Sudhir Jain (PW-11) found two lacerated wounds of 1x3 cm and 2x1/2 cm bone deep on the head of the deceased. Both injuries were caused by hard and blunt object. He also found large hematoma on the head of the deceased. After examination of

the seized stone, he confirmed that these injuries would have been caused by the stone but he strongly denied any possibility that the injuries would have been caused due to felling down. He opined that the head injury found on the deceased was fatal and sufficient to cause her death in natural course. Therefore, we find that in this case, findings of learned Trial Court are properly based on the evidence on record and not at all perverse or illegal in any manner.

**16.** Hence, under the appellate jurisdiction no interference is warranted by this Court in this appeal. We find that all the circumstances are duly proved against the appellant and establish that only the appellant is liable to have intentionally committed the murder of his mother Rajdulari. Hence, the appellant is rightly convicted under Section 302 of Indian Penal Code.

**17.** In view of the aforesaid, the appeal is liable to be and is hereby dismissed.

**18.** Copy of this order be sent to the Court below for information, alongwith its record.

**(MISS VANDNA KASREKAR)**
**JUDGE**

**(SMT. ANJULI PALO)**
**JUDGE**

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