NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 751 OF 2010

SUDRU .... APPELLANT

VERSUS

THE STATE OF CHATTISGARH .... RESPONDENT

J U D G M E N T

B.R. GAVAI, J.

1. The appellant has approached this court being aggrieved by the Judgment and order passed by the High Court of Chattisgarh at Bilaspur in Criminal Appeal No.1072 of 2001 thereby, dismissing the appeal of appellant and confirming the Judgment of conviction and order of sentence as recorded by the Learned Special Judge, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act and Additional Sessions Judge, Bastar at Jagdalpur (hereinafter referred as 'Trial Court') on 6th September, 2001.

2. The prosecution story in brief is thus, Janki Bai is the second wife of the appellant. First wife of the appellant had died. The marriage between the appellant

and Janki Bai was solemnized seven years prior to the date of incident. They were having three issues from the wedlock. On 22.7.2000 the appellant had come home in a drunken condition and had a quarrel with Janki Bai. During the quarrel Janki Bai took her two children and went to the house of her brother-in-law. The appellant and their elder son Ajit remained in the house. On 23.7.2000 when she returned to the house, she saw that Ajit was lying on mat and his body was covered with a blanket. Upon removing blanket, she saw Ajit in dead condition. Blood was oozing from his mouth. She called her father-in-law Lakhmu. Injuries were seen on the neck of the deceased. An FIR came to be lodged in Police Station Dantewada by Janki Bai. Upon completion of investigation, chargesheet came to be filed in the Court of Chief Judicial Magistrate, Dantewada, who in turn committed the case to the Court of Sessions Judge, Jagdalpur. The case was received on transfer by the Additional Sessions Judge, Jagdalpur, who conducted the trial. The learned Trial Court passed an order of conviction thereby, convicting the appellant for the offence punishable under section 302 of the IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.500/- and in default of payment of fine to further undergo R.I. for one year. Being aggrieved

thereby, appeal was filed before the High Court of Chattisgarh at Bilaspur. The High Court dismissed the appeal. Hence, the appellant filed the present appeal in this Court.

3. The learned Counsel for the appellant submitted that, the Trial Court as well as the High Court have erred in convicting the appellant and dismissing the appeal. It is submitted that, the case rests on circumstantial evidence and the prosecution has utterly failed to prove the incriminating circumstances and in any case has failed to establish the chain of incriminating circumstances, which leads to no other conclusion than the guilt of the appellant. It is further submitted that, the star witness Janki Bai has turned hostile and as such there is no evidence to sustain order of conviction.

4. No doubt, in the present case all the witnesses who are related to the accused and the deceased have turned hostile. PW-1 Janki Bai, wife of the appellant and the mother of the deceased has also turned hostile. However, by now it is settled principle of law, that such part of the evidence of a hostile witness which is found to be credible could be taken into consideration and it is not necessary to discard the entire evidence. Reference in this respect could be made to the judgment

of this Court in the case of *Bhajju v. State of M.P.*, (2012) 4 SCC 327, which reads thus:

> **"36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Evidence Act enables the court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party."**

5. From the evidence of PW-1 Janki Bai it would reveal, that insofar as that part of the evidence wherein, she has stated that there was a quarrel between her husband and her, she left the room with the other two children and the deceased and the appellant were alone in the room and that when she reached the house in the morning, she saw her son Ajit covered with the blanket and after opening the said blanket seeing Ajit to be dead is concerned, the same has remain unshattered. It could thus be seen that, from the evidence of PW1 Janki Bai, it can be safely held that there was a quarrel between PW-1 Janki Bai and appellant and after the quarrel, she went to the house of her brother-in-law with two younger children and that the deceased was left alone in the

company of appellant and on the next day morning the deceased was found to be dead.

6. In this view of the matter, after the prosecution has established the aforesaid fact, the burden would shift upon the appellant under Section 106 of the Indian Evidence Act. Once the prosecution proves, that it is the deceased and the appellant, who were alone in that room and on the next day morning the dead body of the deceased was found, the onus shifts on the appellant to explain, as to what has happened in that night and as to how the death of the deceased has occurred.

7. In this respect reference can be made to the following observation of this Court in the case of *Trimukh Maroti Kirkan versus State of Maharashtra*, reported in (2006) 10 SCC 681:

> **"In a case based on circumstantial evidence where no eye-witness account is available there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete."**

8. The appellant has utterly failed to discharge such burden. The appellant has taken defence in his statement under Section 313 of Cr.P.C., that the deceased

has died due to ailment. However, this is falsified by the medical evidence of PW-2 Dr. B.K. Tirki. In his evidence he has stated that, there was a fracture on the head of the deceased and the death of the deceased might have occurred due to strangulation. There were marks of fingers on the neck of the deceased. No doubt, that non-explanation or false explanation by appellant cannot be taken as a circumstance to complete the chain of circumstances to establish the guilt of the appellant. However, the false explanation can always be taken into consideration to fortify the finding of guilt already recorded on the basis of other circumstances.

9. In this respect apart from referring to the observations of this Court in the case of *Trimukh Maroti Kirkan* (supra), it will be apposite to refer to the following observation of this Court in *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, which reads thus:

> **"151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court."**

10. Taking into consideration these aspects of the matter, we do not find that the learned Trial Court and the High Court have erred in recording the finding of guilt and order of conviction. The appeal is found to be without merit and as such is dismissed.

.....J.
[DEEPAK GUPTA]

.....J.
[B.R. GAVAI]

NEW DELHI;
AUGUST 22, 2019.