



G A 1033 / 92 (2)

C.J.P.I. 50000-1-79

APPEAL OF PRISONER Division Bench (Criminal)

No. 190 Name Buddham Ram  
Father's name Poomai Ram Liram  
Residence Goolhi Age 40 yrs  
Sentenced to Life imprisonment on 5.9.92  
Under section 302 I.P.C. by A.D.J. (2) Raigarh  
in default for one month

it is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears either. If the legal practitioner does not appear within seven days he may not be heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

- 1 Date of Application for copy of Judgement 5.9.92
- 2 Date of which copy received 5.9.92
- 3 Date on which Appeal sent 5.9.92
- 4 Whether the prisoner wishes to be represented or not: yes/No. ☒

No. 190 Name Buddham Ram  
Continued in Raigarh Jail  
No. 1075 dated 5.9. 1992

Forwarded to the Deputy Commissioner C.T.M. Raigarh  
to gather which a copy of judgement or order passed in the case for forwarding transmission to the proper Appellate Court, M.P. High Court at Jabalpur.

Superintendent

Date of receipt in Deputy Commissioner's Office 7.9.92  
Date of receipt of record to accompany  
Memo of Appeal of the Appellate Court. }

No. 24 C.T.M. Raigarh dated 7.9.92 197

Forwarded to the Submitted to Sessions Judge Raigarh

Date of receipt in Appellate Court

(Eas Deputy Comm  
Chief Jd of Magistrate  
Raigarh M.P.)

P.T.C

(29)

A.F.R.

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Cr. Appeal No. 1033/1992**

**Budhan Ram**

**Vs.**

**State of Madhya Pradesh (now Chhattisgarh)**

**JUDGMENT FOR CONSIDERATION**

Sd/-  
Dilip Raosaheb Deshmukh  
Judge

**Hon'ble Shri Fakhruddin, Acting Chief Justice**

Sd/-  
Fakhruddin  
Judge

Post for 28 -10-2005 .

Sd/-  
Judge  
28-10-2005

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Cr. Appeal No.1033/1992**

Budhan Ram

Vs.

State of Madhya Pradesh (now Chhattisgarh)

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**CORAM: - HON'BLE SHRI FAKHRUDDIN, ACTING CHIEF JUSTICE  
& HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.**

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**PRESENT: -**

Shri Jamil Akhtar Lohani and Smt. Indira Tripathi, Counsel for the  
accused-appellant from legal aid.

Shri Akhil Mishra, Panel Lawyer for the State.

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**J U D G M E N T**

(Delivered on 28-10-2005)

**Per Dilip Raosaheb Deshmukh, J.**

1. This appeal is directed against the judgment dated 05-09-1992 delivered by Shri D.R.Rahul, First Additional Sessions Judge, Raigarh in Sessions Case No. 44/1992 whereby the appellant was convicted under Section-302 of the I.P.C. for committing murder of his wife Tarsila Bai and was sentenced to undergo imprisonment for life and fine of Rs.100/- in default of which the appellant was directed to undergo additional rigorous imprisonment for one month.
2. It is not disputed that the deceased Tarsila Bai was wife of the appellant.

3. Briefly stated the prosecution story is that on 17-11-1991 at about 7 P.M., the appellant and his wife Tarsila Bai had consumed liquor. A quarrel ensued thereafter during which the appellant started beating Tarsila Bai with kicks and fists. Phulo Bai PW-2 who saw the occurrence, asked the appellant to desist from beating Tarsila Bai but the appellant pushed her away and continued beating Tarsila bai. Tarsila bai succumbed to the injuries. On 18-11-1991, the appellant went to Phula Bai PW-2 and Dile Ram PW-3 and made an extra judicial confession of having killed his wife Tarsila Bai. Subran Ram PW-1 brother of the appellant lodged the F.I.R. Ex.P-2. Sub Inspector Idla Mourya PW-11 reached the spot and prepared inquest vide Ex.P-7 and sent the dead body for postmortem. Dr. Y.K.Toppo PW-12 who conducted the autopsy found the following injuries on the person of Tarsila Bai :-

- A. Two Abrasions over both sides of the face bluish black in colour, between Eye (both) and Ear (both), 2" oval superficial to skin.
- B. Lacerated wound over upper lip centrally inner aspect 1x1 cm in size.
- C. Lacerated wound over chin of the face, it is also stained with blood, 1x1 cm in size.
- D. Abrasion over both right and left shoulder 2" oval superficial to skin, reddish black in colour.
- E. Abrasion over both right and left hand, multiple in number 2x1 cm in size.

- F. Abrasion over both right and left leg, multiple in number 2x2 cm, reddish black in colour.
- G. Abrasion over body, multiple in number chest to Abdomen 2x2 cm, reddish black in colour.
- H. reddish black discoloration over both right and left Illiac Fossa of abdomen 3x2 inches in length & breadth.
- I. Abrasion over both gluteal region. reddish black 2x2 inches in size.
- J. Multiple Abrasions over back and one prominent abrasion over sacral area. It is 4" oval in size. reddish black in colour.

During internal examination he found both the Illiac Fossa were ecchymosed and opined that death of Tarsila Bai was due to Nuerogenic shock resulting from external injury No.8 mentioned above and was homicidal in nature. After completion of investigation the appellant was prosecuted under Section-302 of the I.P.C.

- 4. The accused-appellant abjured the guilt, pleaded innocence in defence and pleaded that Tarsila Bai had sustained injuries due to fall on the grinding stone. The trial Judge relied upon the evidence of Phulo Bai PW-2, Dile Ram PW-3 & also the evidence of Dr. Toppo PW-12 and convicted the appellant under Section-302 of the I.P.C. and sentenced him as aforesaid.
- 5. Learned counsel for the appellant has contended that the defence of the appellant that Tarsila Bai had sustained

injuries due to fall on grinding stone was plausible in view of the testimony of Phulo Bai PW-2 in cross-examination at para-3 and Dr. Toppo PW-12 in cross-examination at para-6. In the alternative, he contended that even if prosecution evidence was to be relied on in its entirety, the offence committed by the appellant could not travel beyond Section-304 Part-II of the I.P.C. The injury sustained by Tarsila Bai clearly ruled out the possibility that the appellant who was in intoxicated state intended to cause her death. The appellant was in jail since 19-11-1991 and had thus undergone incarceration for almost 14 years. He, therefore, prayed that the imposition of sentence already undergone by the appellant would, in the facts and circumstances of the case be sufficient to meet the ends of justice. On the other hand, learned Panel Lawyer for the State argued in support of the impugned judgment.

6. We have heard rival contentions and gone through the record. Phulo Bai PW-2 has stated that both the appellant and Tarsila Bai had consumed liquor and were quarrelling. The accused-appellant was beating Tarsila Bai. She tried to intervene but the appellant pushed her away and persisted in beating Tarsila Bai. Although in cross examination she has stated that Tarsila Bai had sustained injury due to fall on the grinding stone in the courtyard, yet the trial Judge has rightly refused to place reliance on this statement in view of the several injuries sustained by Tarsila bai. There is nothing else in the cross examination of Phulo Bai PW-2 which would

discredit her testimony or render her unworthy of credit. Her testimony finds the fullest corroboration from Dr. Toppo PW-12 who has proved the several injuries sustained by Tarsila Bai and opined that death of Tarsila Bai was due to Neurogenic shock as a result of injury No.8 i.e. reddish blue discoloration over both right and left Iliac Fossa and abdomen 3x2 inches in length and breadth. The injuries sustained by Tarsila Bai leave no manner of doubt that she was severely beaten by the appellant by kicks and fists. The testimony of Phulo Bai PW-2, Dile Ram PW-3 that on the next day morning, the appellant made an extra judicial confession to them, of having killed his wife Tarsila Bai is wholly un rebutted. There is nothing in cross examination which would even suggest that the extra judicial confession was not voluntarily or was made under any kind of threat or promise. Having considered the testimony of Phulo Bai PW-2 and Dr. Toppo PW-12, we are of the considered opinion that the trial Judge has rightly concluded that the appellant had caused the death of Tarsila Bai.

7. The only point which requires our consideration is as to what offence was committed by the appellant. There is nothing on record to show that the appellant had motive to commit murder of Tarsila Bai. The testimony of Phulo Bai PW-2 shows that the appellant and Tarsila Bai were heavily drunk at the time of occurrence and were quarrelling. The injuries sustained by Tarsila Bai shows that the death was as a result of Neurogenic shock due to

injury No.8 on the Illiac Fossa as mentioned above. In the case of **Sunil Kumar Jachak Vs. State of Madhya Pradesh (Now Chhattisgarh)** reported in **2004(2) M.P.H.T.-47 (CG)**, the accused had assaulted his wife with a wooden mallet. In postmortem examination 14 contusions were found on her body. Two ribs of each side fractured. Right lung was ruptured. Death of deceased was due to shock and haemorrhage as a result of injury to thorax region. It was held that the offence did not travel beyond Section-304 Part-II of the I.P.C. and sentence of rigorous imprisonment for 6 years was awarded. In the case of **Thankachan Vs. State of Kerala** reported in **2005 A.I.R.-S.C.W.-4577**, the accused in a drunken condition was quarrelling with his wife. The son intervened. The accused picked up a chopper and inflicted cut injury on the leg of the son who died due to excessive bleeding. It was held that the accused could not have intended to cause the death and the conviction was altered to Section-304 Part-II of the I.P.C. and sentence of rigorous imprisonment for 10 years was awarded.

8. Applying the above principles and also in the facts and circumstances of the present case we find that at the time of occurrence both the appellant and his wife were in a drunken state and were quarrelling. The appellant beat his wife with kicks and fists as a result of which she died due to Nuerogenic shock, mainly because of injury to both right and left Illiac Fossa of abdomen. We have, therefore, no hesitation in coming to the conclusion that



in the facts and circumstances of the case, the requisite intention for causing the death of Tarsila Bai could be attributed to the appellant. However, the manner in which the appellant beat his wife Tarsila Bai it can be safely inferred that the accused had the knowledge that the injuries sustained by Tarsila Bai were likely to cause her death. Therefore, in our considered opinion the offence committed by the appellant does not travel beyond Section-304 Part-II of the I.P.C.

9. In the result, the appeal is partly allowed. The conviction of the appellant under Section-302 of the I.P.C. and the sentence awarded thereunder are set aside. Instead the appellant is convicted under Section-304 Part-II of the I.P.C. The appellant is in jail since 19-11-1991 i.e. for almost 14 years. In our considered opinion, rigorous imprisonment of 10 years would be sufficient to meet the ends of justice. We order accordingly. Since, the appellant has already undergone the sentence awarded he shall be set at liberty forthwith, if not required in any other case.

**Sd/-  
Fakhruddin  
Judge**

**Sd/-  
Dilip Raosaheb Deshmukh  
Judge**