



2026:CGHC:14069



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NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1054 of 2008**

Sheshnarayan, S/o Shri Sevakram Sahu, aged about 22 years, R/o Village-  
Urla, Thana- Bhilai-3, District- Durg (C.G.)

**--- Appellant****versus**

State of Chhattisgarh, Through The District Magistrate, Durg, Tahsil And  
Distt.-Durg C.G.

**--- Respondent/State**

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For Appellant : Mrs. Indira Tripathi, Advocate.  
For State : Mr. Himanshu Yadu, PL

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**Hon'ble Smt. Justice Rajani Dubey J.****C A V Judgement**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 19.11.2008 passed by learned Sessions Judge, Durg, District- Durg (C.G.) in Sessions Trial No. 129/2008, wherein the said Court convicted the appellant and sentenced him as under:-



Conviction	Sentence
Under Section 307 of IPC.	R.I. for 05 years, with fine amount of Rs. 500/-, in default of payment of fine, to undergo additional S.I. for 03 months.

2. The brief facts of the case are that the complainant- Leela Bai was married to the accused Sheshnarayan in July, 2006. She lived with her husband for approximately 9–10 months. Thereafter, he allegedly harassed her, stating that he would not keep her. As a result, she began residing at her maternal home at Borsi, where she has been living for the past year with her six-months' old son. On 04.04.2008, during a social meeting, the accused expressed his intention to discontinue cohabitation with his wife Leela. In response to a proposal from the community, he agreed to pay Rs. 700/- per month for the maintenance of his wife and son. Thereafter, the appellant went to his father-in-law's house on 30.04.2008 and stayed there. After having the dinner, the accused and his wife slept in one room with their child, while his wife's parents and brother slept in the courtyard (*parchi*). According to the complainant, at about 3:30 a.m., when the accused asked for water and she went to bring it, upon returning to her room she found the accused attempting to strangulate her son with a nylon rope and therefore, she raised an alarm, her parents, brother & sister rushed to the room, rescued her son from the appellant and observed black marks on Doman Sahu's neck caused by strangulation. Then, on the next day at about 7:30 am, report has been lodged at Police Station- Kumhari and on the basis of said report, an offence under Section 307 of IPC has been registered against the appellant and immediately injured Doman



Sahu was sent for medical examination vide Ex. P/4 and Dr. S.K. Fating (PW-5) has examined the injured and gave report vide Ex. P/5 and he advised for X-Ray of the injured Doman of his neck and chest. The aforesaid nylon rope was also sent for query and query report is Ex. P/7. Dr. A.K. Sahu (PW-7) has submitted X-Ray report of Doman Sahu and thereafter prepared the seizure memo of the nylon rope vide Ex. P/3. The police obtained a spot map as prepared by the Patwari vide Ex. P/2, A.S.I.- M.C. Soni, seized a black nylon rope vide Ex. P/3. Accused was arrested as per arrest memo (Ex.P/10), statements of the witnesses were recorded and based on the complete oral and documentary evidence, the accused was found guilty under Section 307 of IPC. After completion of due and necessary investigation, he was charge-sheeted before the Court of concerned Jurisdictional Magistrate, who, in turn, committed the case for trial. On the basis of the material contained in the charge-sheet, learned trial Court framed charges against the appellant for alleged commission of offence under Section 307 of IPC. The appellant/accused has abjured guilt was subjected to trial.

3. In order to bring home the guilt, the prosecution has examined as many as 09 witnesses to prove its case against the appellant. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C., in which he denied all the incriminating circumstances appearing against him in the prosecution case and pleaded his innocence and false implication in this case.
4. After appreciation of oral as well as documentary evidence led by the prosecution, learned Trial Court has convicted the appellant and



sentenced him as mentioned in inaugural paragraph of this judgment.

Hence, this appeal.

5. Learned counsel for the appellant submits that judgment of conviction and sentence passed by trial Court is arbitrary, illegal and contrary to the law applicable to the facts and circumstances of the case. The learned trial Court has failed to properly appreciate the evidence on record. The material available indicates that the complainant, who was not keeping well and was under mental stress, herself attempted to press the neck of her son with a nylon rope and thereafter falsely implicated the appellant in the alleged commission of the offence. The prosecution has failed to establish any motive on the part of the appellant for the alleged commission of the offence. Moreover, a plain reading of the F.I.R. indicates that it appears to be an afterthought. It is further submitted that the testimonies of the complainant's father and mother are contradictory and in view of the material improvements and omissions therein, the conviction of the appellant cannot be sustained. It is further submitted that the alleged rope was not recovered from the possession of the appellant and was instead produced by the complainant's parents. In such circumstances and considering the material on record, the allegation of attempt to commit murder of his son against the appellant is not sustainable. The independent witnesses have not supported the prosecution's case and the complainant's evidence is unreliable and full of material inconsistencies. Thus, the findings recorded by learned trial Court are highly perverse and the impugned judgment of conviction and order of sentence being bad in law is liable to be set aside. In support of her



contention, she relied upon the judgment of Hon'ble Apex Court in the matter of **Raju and another vs. State of Uttarakhand**.<sup>1</sup>

6. *Ex adverso*, learned counsel for the State vehemently opposes the submissions of the appellant's counsel and submits that the prosecution has established its case beyond reasonable doubt. The learned trial Court meticulously evaluated the oral and documentary evidence, correctly appreciating the credibility of witnesses and the circumstances of the case. Consequently, the conviction and sentence imposed on the appellant are wholly justified and the impugned judgment requires no interference by this Court.
7. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment.
8. It is evident from record of learned Trial Court that it framed charge against the appellant for offence under Section 307 of IPC. Learned Trial Court after appreciating the oral and documentary evidence, convicted the appellant for the aforesaid offence and sentenced as mentioned in inaugural para of this judgment.
9. PW-1- Complainant, who is the wife of the appellant has stated that appellant is her husband and their marriage was solemnized prior to two years of the date of incident and after 10 months of her marriage, the appellant left her in her maternal home at Borsi and Doman is her son, who was aged about 10 months and on the date of incident, her husband/accused came to her maternal home to bring her. The complainant's mother asked the accused as to why he came for taking her daughter now as the accused denied to live with her in the meeting.

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<sup>1</sup> CRA No. 1151 of 2010



In the Courtyard (*parchi*) her parents slept and in the room, she, her son and her husband/accused were sleeping. According to the complainant, at about 3:30 a.m., when the accused asked for water and she went to bring it, upon returning to her room she found the accused attempting to strangulate her son with a nylon rope and therefore, she raised an alarm, her parents, brother & sister woked up after hearing to such noise and rushed to the room, rescued her son from the appellant and observed black marks on her son. Then, she lodged an F.I.R. (Ex. P/1), wherein admitted her signature on A to A part.

In para 8 of her cross-examination, she stated as under:-

"8. मेरे बच्चे के जन्म होने के लगभग एक हफ्ता बाद मेरे मायके में पंचायत हुई थी। पंचायत लड़के वालो ने बुलवाया था। यह कहना गलत है की पंचायत में मैंने अपने पति के साथ जाने से इंकार की थी। बार बार यह पूछने पर की जब अभियुक्त ने तुम्हे और तेरे बच्चे को अपने घर नहीं ले गया तब क्या तुमने थाना पर इस बाबत रिपोर्ट दर्ज कराई थी। गवाह कोई उत्तर नहीं दे रही है। मैं मेरे पति द्वारा यदि वह आज ले जाने को तैयार हो तो भी मैं नहीं जाऊंगी।

She admitted that she had been unwell earlier and was undergoing treatment and also assigned the reason that she was under mental stress for which she was being treated; however, she denied that such treatment was being provided by her husband.

In para 10 of her cross-examination, she admitted that her mental stress worsened due to lack of proper treatment.

In para 11 of her cross-examination, she stated that she had a physical relationship with her husband/accused on the date of the incident, which deteriorated her health. She denied this suggestion that she was strangulating her son by putting a rope around his neck due to stress.



In para 13, she admitted this suggestion as under:-

“13..... यह कहना सही है की मैंने पुलिस वालो ने आरोपी को अंदर कर देने की बात कही थी यह कहना सही है की मैंने ठाणे में पुलिस के अधिकारी को बोला था की कुल मिलाकर आरोपी को बंद कर दो ”

In para 14, she stated as under:-

“ 14. मैं रिपोर्ट प्र० पी० 1 पढ़कर नहीं बतायूंगी साक्षी को बार बार यह कहने पर की अपनी रिपोर्ट पढ़कर देख लो तो वह नहीं पढ़ूंगी कहा और बाद में रिपोर्ट पढ़ने से इंकार कर दिया । यह कहना गलत है की प्र० पी० 1 की रिपोर्ट मैंने नहीं लिखाई है यह कहना सही है की प्र० पी० 1 का रिपोर्ट पेन का लिखा हुआ नहीं है वह टाइप शुदा है ”

In paragraph 15, she stated that she had stopped taking treatment for her mental stress a month ago.

10. PW-2 Punau Ram father of complainant has stated that accused is his son-in-law and on the night of incident her daughter/complainant has raised an alarm at about 3-3:30 am then he rushed to the room and where he saw that the accused was strangulating his son by putting nylon rope around the neck, then he rescued her son.

In para 10 of his cross-examination, he admitted that they suggested to the police that the appellant be jailed based on the report by any means.

In para 13, he denied this suggestion that the accused falsely implicated him because he refused to take his daughter due to her mental condition.

11. PW-3 Rajbati, the complainant's mother, supported her daughter's statement. During her cross-examination, she admitted that her son-in-law came to take her daughter on the date of incident, but she denied



that she did not let her go with him. She stated that her daughter treatment has been done when her daughter became pregnant. She admitted that her daughter and son-in-law slept in the same room, but denied that on the night of the incident, she saw her daughter strangulating her son with a rope after hearing her son-in-law's screams.

12. PW-4 Kishan Lal Sahu stated that on 01.05.2008, Punau's grandson Doman was crying. When he asked him as to why Doman was crying, he said that the accused, who had come to take his daughter, ordered her to get water and while she went to bring the same, the accused was strangulating Doman's neck with a rope. He further stated that Punau's younger son saw the accused throwing the rope. The police had seized the nylon rope as per seizure memo Ex. P/3.
13. Dr. S. K. Fating (PW-5) examined the complainant's son, Doman Lal, and found a ligature mark on his neck. He advised for an X-ray and submitted his report (Ex. P/5). Upon examining the nylon rope, he stated in response to the Investigating Officer's query (Ex. P/7) that continuous tightening of the rope could have caused death.

In para 9 of his cross-examination, he stated as under:-

"9... प्र 0 पी 0 5 में पिता द्वारा बच्चे के गले दबाने की बात जो दर्ज की है बच्चे की माँ लीला बाई ने मुझे जो बताया है उसे ही मैंने उसके बताये अनुसार प्र 0 पी 0 5 पर घटना बाबत दर्ज कर दिया था । "

14. PW-7 Dr. A. K. Sahu has stated that he conducted X-Ray of chest and neck of Doman and in X-Ray report, no fracture was found, gave his report vide Ex.P/9.
15. Appellant/accused has stated in his statement recorded under Section



313 of Cr.P.C. as under:-

“ मैं निर्दोष हूँ, रात को मैं मेरी पत्नी मेरे बच्चे तीनों सोये थे मेरी पत्नी अपनी मानसिक स्थिति के कारन अपने बच्चे के गले को रस्सी से दबा रहे थे तब मैं बच्चे के रोने की आवाज सुनकर उठा देखा तो मेरे बच्चे के गले को वो दबा रहे थे, मैंने रस्सी को झीना और चिल्लाकर पत्नी के माँ बाप को बताया, मेरेको अपनी लड़की को बचाने झूठा फसा रहे है।”

16. A close examination of the statements of all witnesses reveals that on the date of the incident, the accused visited his father-in-law, Punau Ram's, house. The evidence further indicates that a subsisting dispute between the accused and his wife was ongoing at the relevant time. The complainant (PW-1), along with her parents (PW-2 and PW-3) admitted that she suffers from some mental illness. The accused has consistently stated the same in his defence that the complainant herself attempted to strangle her son Doman, with a rope and that he has been falsely implicated in the crime in question.
17. PW-2 and PW-3 have admitted that they were not eyewitnesses and were informed of the said incident by their daughter upon reaching the spot.
18. The complainant- Leela Bai (PW-1) admitted having a physical relationship with the accused before the incident.
19. The Hon'ble Apex Court in the matter of **Raju** (supra) observed in para 15 of its judgment as under:

**“15. To further fan the flames, there is no motive attributed to the appellant or his co-accused Bholu, in order to justify their conviction under Section 307 of**



**IPC. Both the injured witnesses, Imaran and Mathu, during their cross-examination, clearly explicated that there was no enmity or ill will between them and the accused persons. It is not even the prosecution's case that this was a chance occurrence. It seems that the accused and the alleged victims were familiar with each other and had some kind of association. There is thus more to this than meets the eye, and we are not entirely convinced of the narrative presented and perceived by the prosecution."**

20. In view of the foregoing decisions, in the present case also, a careful examination of the evidence shows that PW-1, PW-2, and PW-3 have not clearly explained why the accused allegedly attempted to strangle his son. All three witnesses admitted that the accused came to his in-laws' house to take his wife (PW-1) with him, though, in the social meeting that took place prior to the incident, the appellant refused for cohabitation with her. Further it is clear that all the witnesses have admitted that the complainant- Leela Bai, suffers from a mental illness. In these circumstances, the appellant's defence—that the complainant may have attempted to strangle her own son—cannot be ruled out and appears probable. It is a settled principle of law that the prosecution must prove its case beyond reasonable doubt, whereas the defence only needs to establish a plausible explanation. Further, PW-1, PW-2, and PW-3 admitted that they requested the S.H.O. to have the accused arrested by any means, which casts serious doubt on the credibility and objectivity of their version. On a holistic assessment, the prosecution's case is riddled with inconsistencies, lacking clarity,



and fails to meet the threshold of proof beyond reasonable doubt. Consequently, the case against the accused is wholly unreliable and no conviction can be sustained.

21. *Ex consequenti*, the appeal is **allowed** and the impugned judgment dated 19.11.2008 of the learned trial Court is hereby set aside. The appellant is acquitted of the charge leveled against him.
22. The appellant is reported to be on bail. However, keeping in view the provisions of Section 481 of BNSS, 2023 the appellant is also directed to furnish a personal bond for a sum of Rs. 25,000/- with one surety in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of special leave petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereon shall appear before the Hon'ble Supreme Court.
23. The Trial Court record along with a copy of this judgment be sent back immediately to the Trial Court concerned for compliance and necessary action.

**Sd/-**

**(Rajani Dubey)**

JUDGE