

Asha Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-06-1994

Reported in : 1994CriLJ2431; 1994(2)WLC443; 1994(1)WLN303

Judge : Rajendra Saxena and; P.K. Palli, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 104, 302, 304 and 307; Code of Criminal Procedure (CrPC) - Sections 293 and 313

Appeal No. : D.B. Criminal Appeal No. 339/1990

Appellant : Asha Ram

Respondent : State of Rajasthan

Advocate for Def. : B.S. Gehlot, P.P.

Advocate for Pet/Ap. : M.L. Garg, Adv.

Disposition : Appeal dismissed

Judgement :

1. This appeal has been directed against the judgment dated 10-10-1990 passed by the learned Additional Sessions Judge, Nohar in Sessions Case No, 34/88, whereby he found the accused-appellant guilty for the offence under Section 302, I.P.C. and sentenced him to undergo life imprisonment and to pay a fine of Rs. 1000/-; in default to further undergo rigorous imprisonment for one month.

2. Briefly the facts necessary for disposal of this appeal are that Anda Ram Bawari had two sons from his first wife, namely Het Ram and appellant Asha Ram. Het Ram died in the year 1984. Kila No. 6714-15 of Murabba No. 166/421 and Kila Nos. 9 to 14 and 17 to 24 of Murabba No. 167/421 situated in Chak No. 16 DWD were alleged to be in the temporary allotment of Asha Ram. But since the said land was in excess to the land permanently allotted to him, the temporary allotment of the aforementioned land was cancelled in view of the provisions of Post-1955 Rules, Het Ram being the eldest son of Anna Ram filed an application in the year 1978 for the allotment of the said land in his favour and a stay is alleged to have been issued in his favour restraining the Tehsildar from dispossessing him from the said land and from realising the penalty. However during the pendency of that application Het Ram died. He was survived by his widow Smt. Saraswati deceased and his two minor daughters. It is alleged that Smt. Saraswati filed an application dated 15-4-1987 Ex.D-4 in the court of S.D.O., Nohar alleging that she being the successor and legal representative of her husband Het Ram, she was entitled for the allotment of the said land, which was in her cultivatory possession and prayed that in place of Het Ram she should be impleaded and the said land be allotted to her as per Rules. It is the case of the prosecution that . about two months prior to the alleged incident, which took place on 6-6-1988, Smt. Saraswati had given 9 bighas of the said land to PW 1 Sahi Ram for cultivation for a year on share basis and that for remaining 9 bighas there was a dispute between her and Anna Ram for the last four years. On the fateful day at about 12 noon, PW 1 Sahi Ram was cutting 'Jhadka' (unwanted growth of bushes) in the land, which was given to him for cultivation and Saraswati was cutting unwanted bushes in her field. Sahi Ram's wife PW 4 Smt. Nathi and PW 8 Smt. Rami wife of PW 2 Nand Lal and one Bhagirath were also working in the nearby Khala (water channel). At that time appellant Asha Ram armed with a gandasa Article 9 came near Saraswati and asked her not to cut the bush growths, and claimed that the said land belonged to him. Thereupon Smt. Saraswati insisted that since that was her land, she will cut the bushes. Thereupon appellant Asha Ram inflicted a gandasa blow causing injuries on her jaw, whereupon she fell down. The appellant dealt many gandasa blows causing extensive injuries to her and thereafter ran away towards 16 Chak. PW 1 Sahi Ram, who witnessed the

said incident went near Smt. Saraswati, who had by that time succumbed to her injuries. Thereafter Sahi Ram went running to Chak 16 and informed about the incident to PW 3 Sheo Karan, Gokul, Ganga Ram and Thakru. Thereafter he along with these persons went to Police Station, Rawatsar at 1.15 p.m. and on his oral report F.I.R. Ex.P. 1 was scribed by PW 9 Braham Prakash, Head Constable, Incharge Police Station and a case under Section 302, I.P.C. was registered Braham Prakash informed PW 10 Devendra Singh, Dy. S.P. through a wireless, whereupon the latter reached the place of occurrence in the evening. Devendra Singh inspected the site, prepared site-plan Ex. P. 3 and memo there of, autopsy of dead body of Smt. Saraswati Ex. P.2 and memo Ex.P.6 of injuries sustained by her. He seized and sealed the blood-stained earth and controlled sample from the place of occurrence vide seizure memo Ex.P.7. He also found one Kassi (spade) of the deceased lying at a distance of about 7 ft. from her dead body and a pair of chappals. He seized those articles vide seizure memos Ex.P.8 & Ex.P.9. He also got the dead body of Smt. Saraswati photographed by PW 6 Ram Kumar, Photographer. Her photographs being Ex. P. 12 to Ex.P.14.

3. PW 12 Dr. Ram Ji Lal Bansal, who had accompanied the Dy. S. P., conducted the post-mortem examination of the dead body of Smt. Saraswati on the spot and found the following injuries :-

(i) Incised wound 5' x 1' x 1/2' over the frontal region of fore head;

(ii) Incised wound 5'x 1' x 1/2' through and through on the mandible. The buccal cavity was clotted With blood and thereby gaping of muscles; (iii) Incisdd wound at the base of right hand little finger which was separated and just attached by la skin with fresh clotted blood;

(iv) Bruise 6' x 1/2' on the left scapular region;

(v) Bruise 5' x 1/2' over the chest;

On opening the body, he found that the skull was fractured at the site of injury No. I.

The doctor vide his post-mortem report Ex.P.29 opined that the aforesaid injuries were ante-mortem in nature and that the cause of death was| due to excessive haemorrhage due to multiple injuries.

4. The blood-stained ghaghra, kurti, baniyan, under-wear and odhani taken out from the dead body of Smt. Saraswati were seized and sealed vide seizure memo Ex.P.10. Her blood-stained tabeej was seized vide seizure memo Ex.P.11. PW 10 Devendra Singh, Dy. S.P. procured the true copy of the Khasra Girdawari of Murabba Nos. 23/167/ 421 and 24/166/421 for Samvat Year 2043-2044 marked Ex.P. 15 wherein the aforementioned 18 kilas have been recorded as Arazi Raj and wherein on six different kilas mentioned therein the cultivation of gram was recorded. He also prepared a site-plan Ex. P.22 dated 7-6-1988 separately at the instance of PW 7 Jogendra Prasad, Patwari showing various kila numbers of the aforementioned Murabbas and found that the dead body of Smt. Saraswati was lying in kila No. 10, that guwar crop was cultivated in kila No. 12 and that PW 1 Sahi Ram had seen the alleged incident, while he was standing in kila No. 14 of Murabba No. 167/42.2.

5. The appellant was arrested on 7-6-1984 vide seizure memo Ex.P.26. It is the case of the prosecution that on 10-6-1984, he volunteered information Ex.P.27 and in pursuance thereof got the blood-stained gandasa article 9 recovered inside the 'Gudras' from his residential house vide recovery memo Ex.P.4. The sealed packets of the various articles recovered in this case were kept in the Malkhana of the Police Station. Those packets were handed over to Shiv Ram F.C. (now dead), who took those to the State Forensic Science Laboratory, Jaipur and deposited those intact vide receipt Ex.P.30. The Serologist after chemical examination vide his report. Ex. P. 13 opined that the 'gandasa' alleged to have been recovered at the instance of the appellant as well as the blood smeared soil, ghaghra, blouse, baniyan, kachchha, odhana and the tabeej, which were taken out from the dead body of Smt. Saraswati were stained with human blood having 'B' group. After completion of the investigation a challan was filed against the appellant in the court of learned Munsif & Judicial Magistrate, Nohar, who in his turn committed the case to the learned Addl. Sessions Judge.

6. The appellant was charged for the offence under Section .302, I.P.C. He pleaded not guilty and claimed trial. The prosecution examined as many as 12 witnesses. The appellant in his plea recorded under Section 313, Cr.P.C. denied all the circumstances appearing against him in the prosecutiorr evidence and asserted that he did not get the 'gandasa' recovered at his instance. In his defence, he examined 3 witnesses. In short, his defence was that after the cancellation of the allotment of Anna Ram of the aforementioned 18 bighas of the land, he and his brother Het Ram had filed an application for allotment of the said land in their favour, that vide 'Likha Padhi' (writing) dated 6-4-1984 Ex.D-3, they had mutually partitioned the aforementioned 18 bighas of the land, wherein kila Nos. 9, 10, 12 to 14, 17 to 19 and 23 and 24 had come in the share of Het Ram and the remaining 9 bighas fell in his share, that Smt. Saraswati wanted to dispossess him from that land and that on the day of incident, she was cutting the bushes in the land which was in his possession and that in exercise of his right of private defence of property, she might have sustained injuries. The learned Sessions Judge found that the prosecution case was proved beyond all reasonable doubt by the sole testimony of eye-witness PW 1 Sahi Ram, which was corroborated by the medical evidence, recovery of 'gandasa' article 9 and the F.S.L. report. He further held that the alleged incident had taken place in Khasra No. 10, which even as per 'Likha Padhi' Ex.D-3 was in the share of Het Ram. Therefore,- the appellant could not claim any right of private defence of property. He accordingly by the impugned judgment convicted the appellant and sentenced him as above. Hence this appeal.

7. We have heard Shri M. L. Garg, the learned counsel for the appellant and Shri B. S. Gehlot, the learned Public Prosecutor at length and carefully perused the record of the lower court in extenso.

8. Shri Garg has strenuously contended that as per F.I.R. Ex.P.I besides PW 1 Sahi Ram, his wife Smt. Nathi and PW8 Smt. Rami were also the eye-witnesses, but both of them have not supported the prosecution case and turned hostile. According to him the testimony of Sahi Ram suffers from material infirmities and falsehood and, therefore, the learned trial Judge has committed an-illegality in relying on his testimony. According to him, the land on which the alleged incident

took place was not in the possession of Smt. Saraswati, who was cutting the 'Jhadkas' there, that it was amply proved by the evidence recorded in this case that only 9 bighas land had come in the share of Het Ram, which was already given by Smt, Saraswati to Sahi Ram for cultivation and that since she wanted to illegally take possession of the land, which had fallen in the share of the appellant, the latter had a right of private defence of property and that at the worst it can be contended that he had exceeded in exercise of that right. Therefore, alternatively the offence made out against the appellant cannot travel beyond the offence punishable under Sec. 304, Part II, I.P.C., because he had no intention to kill Smt. Saraswati.

9. On the other hand, the learned Public Prosecutor has vehemently urged that from the prosecution evidence it stands firmly established that the appellant had inflicted successive 'gandasa' blows to Smt. Saraswati in kila No. 10 of Murabba No. 167/421, which even as per the contents of 'Likha Padhi' dated 6-4-1984 Ex.D-3 had fallen in the share of Het Ram and which was in actual physical possession of Smt. Saraswati. He has submitted that PW 1 Sahi Ram is a most reliable witness and even if PW 4 Smt. Nathi and PW 8, Smt. Rami have turned hostile still then his testimony stands fully corroborated by the medical evidence as well as the circumstantial evidence as also from the recovery of blood-stained 'gandasa' article 9 at the instance of the appellant and the report of F.S.L. Ex.P.13, which conclusively proves that the blood-stained clothes of the deceased, the sample of the blood-stained earth taken from the place of the incident as also the 'gandasa' article 9 were stained with human blood having 'B' group. According to him, the appellant had the intention to commit the murder of Smt. Saraswati, because even after she had fallen down after sustaining injury from the first blow, he had dealt successive 'gandasa' blows on her head and on the other parts of her body and, therefore, the prosecution has successfully brought home the offence under Section 302, I.P.C. against him and the impugned judgment does not call for any interference.

10. We have given our most anxious and thoughtful consideration to the rival submissions made before us. The homicidal death of Smt. Saraswati is not in dispute, which stands conclusively proved by the testimony of doctor PW 12 Shri

Ram Ji Lal Bansal and the post-mortem examination report Ex.P.29.

11. First of all let us find out as to at which place the alleged incident had taken place. PW 1 Sahi Ram has deposed that Smt. Saraswati was in cultivatory possession of 18 bighas of the land for which a stay was issued in favour of her husband Met Ram, that she had given 9 bighas of land on the eastern side to him for cultivation on one half share about 2 months prior to the incident and that he had sown gawar in one bigha about a fortnight back. He has further deposed that at the time of incident Smt. Saraswati was cutting 'Jhadkhas' on her land, and that the appellant wanted to cultivate the said land forcefully. He has stated that when Saraswati was cutting the unwanted growth of bushes, appellant came there from his 'Dhani' armed with a gandasa and asked her not to cut those bushes, that thereupon Smt. Saraswati told that she would cut the bushes because that land belonged to her and that thereupon the appellant inflicted a gandasa blow on her left jaw, that after receiving injury she fell down, that thereafter the appellant gave another gandasa blow causing injuries on her left side of the chest, and thereafter, he further dealt 2-3 gandasa blows on her person causing injuries on her head and little finger of her left hand and that after inflicting those injuries the appellant with that gandasa fled away towards Chak 16. Sahi Ram has deposed that he had seen the incident, when he was about 2 bighas away from Smt. Saraswati, that when she cried, he ran towards her and that when he was about a bigha away from her the appellant had ran away. He has further deposed that he had sent his wife Nathi to fetch water from the water channel (Khala) and that at the time of the incident she was coming from the 'Khala' towards him. He has stated that when he reached the spot Saraswati had fallen down succumbed to her injuries. He has also deposed that immediately after the occurrence he had lodged the report Ex. P. 1 at the Police Station and that the Dy. S. P. inspected the site in his presence and prepared site-plan Ex. P. 3 and memo thereof Ex. P. 3 A. These documents have also been well proved by PW 10 Devendra Singh, Dy S.P. and motbir PW 5 Prithvi Raj, Sarpanch. PW 10 Devender Singh has deposed that the dead body of Saraswati was lying at place marked 'A' in site-plan Ex. P. 3 and that her 'Kassi' (spade) was lying at a distance of about 7 ft. away from the dead body at place marked 'Y'. He has deposed that he found the unwanted bushes, which were cut by the deceased at various places shown by dots in the site-plan Ex. P. 3, that he

also found the blood-stained soil there, which was seized and sealed by him along with the controlled samples. He has further deposed that in order to ascertain the exact location of the place of occurrence, he prepared another site-plan Ex. P. 22 showing various Kila No. 8 of the Square in question at the instance of PW 7 Jodendra Prasad, Patwari Halka, and that at the time of inspection, the dead body of Smt. Saraswati was lying in Kila No. 10 of Murabba No. 167/421, that in Kila No. 12 he had noticed the guwar crop, which was sown in about 3/4 Kila and that one 'Ber' tree was standing in the corner of Kila No. 9 which has been shown and marked as 'B' in site-plan Ex. P. 3. Motbir PW 5 Prithvi Raj has also deposed likewise. PW 1 Sahi Ram, PW 5 Prithvi Raj and PW 10 Devendra Singh have been cross-examined at length, but no suggestion was put to any of these witnesses that the dead body of Smt. Saraswati was removed or placed in Kila No. 10 after the incident nor there is any evidence for drawing such an inference. Therefore, it stands proved beyond reasonable doubt that the alleged incident had taken place in Kila No. 10 of Murabba No. 167/421 of Chak 16 DWD from where the blood-stained soil was also found and the same was seized and sealed by Devendra Singh. In Khasra Girdawari Ex. P. 15, this Khasra No. 10 has been recorded as 'Arazi Raj', and in Samvat Year 2043-2044 'Ghana' crop in one bighas has been shown in the said Kila.

12. P.W. 7 Jogendra Prasad, Patwari had deposed that he is the Halka Patwari of Chak 12 to 19 DWD, and that on 7-6-1988 he had prepared the copy of the Khasra Girdawari Ex. P. 15, on the basis of the original record. He has further deposed that on that day only one or two bighas of the said land were ploughed, and that it was in his knowledge that for the said 18 bighas of the land there was a stay order in favour of late Het Ram. It is true that no Copy of that stay order has been filed by the prosecution, but this witness has categorically stated that the land revenue of the aforementioned 18 bighas of the land was realised from Het Ram. However, in his cross-examination he had admitted that he did not know as to who was cultivating the said land and as to whether that stay order was issued on the application filed by Het Ram's father Anna Ram or not But from the statement of PW 7 Jogendra Prasad, Patwari it stands amply proved that the aforementioned 18 bighas of the land was recorded as 'Arazi Raj' and that rent thereof used to be recovered from Het Ram, the husband of the deceased

Saraswati. From the prosecution evidence, it further stands well proved that the incident had taken place in Kila No. 10 of Murabba No. 167/421. Now it may be mentioned here that the appellant has filed one 'Likha Padhi', Ex. D-3, dated 6-4-1983. D.W. 1 Chet Ram claims to be scribe of that document. He has deposed that he got the same scribed at the instance of appellant Asha Ram and his brother Het Ram that he had read over the contents of Ex. D-3 to them, who admitted the same and put their thumb impressions thereon. A careful perusal of this 'Likha Padhi' Ex. D-3 reveals that a stay order was issued in respect of the aforementioned 18 bighas of the land in favour of Het Ram, that an application was filed for the allotment of the said land and that in the 'Panchayat', Het Ram had given 9 bighas of land to Asha Ram and retained the remaining 9 bighas of the land in his possession. In Ex. D-3, it has been clearly mentioned that Kila Nos. 9, 10, 12, 13, 14, 17 to 19 and 23, 24 of Murabba No. 167/421 were retained by Het Ram in his share. Therefore, even as per contents of Ex. D-3, Kila No. 10, where the incident took place, was in the share and possession of deceased Saraswati. The appellant has also relied on an application dated 15-4-1987 Ex. D-4 filed by Smt. Saraswati in the court of S.D.O., Nohar. In that application also it has been clearly mentioned that appellant Asha Ram and Het Ram had filed an application for the allotment of the aforementioned 18 bighas of the land being adult sons of Anna Ram and that Het Ram's application was included in the list of approved allotments. It has also been mentioned therein that the half share i.e. 9 bighas of land of her husband late Het Ram was in her cultivatory possession, and that she being his successor was entitled for allotment of the said land. Therefore, even from documents Exs. D-3 & D-4, it stands conclusively proved that Kila No. 10 of Murabba No. 167/421 was in the cultivatory possession of Smt. Saraswati and that this Kila was neither in the share nor possession of the appellant on the day of occurrence.

13. P.W. 3 Sheo Karan has stated that in the years 1983 or 1984 a 'Panchayat' was convened regarding the aforementioned 18 bighas of the land, that in the said Panchayat Het Ram and appellant Asha Ram were given half shares each, that the western portion of the land was given to the appellant while the eastern portion of the said land fell in the share of Het Ram. He has further said that Saraswati had given 9 bighas of that land for cultivation to Sahi Ram and that for the

remaining 9 bighas of the land there was a dispute between her and the appellant.

14. From the evidence recorded in this case, it is well established that at the time of occurrence, Saraswati was cutting the unwanted bushes in Kila No. 10 of Murabba No. 167/421, which admittedly had fallen in the share of her husband, and which was in her actual physical possession. Therefore, the appellant neither had any right nor on the said Kila No. 10 thus he had no legal authority or right to ask Smt. Saraswati not to cut the bushes on Kila No. 10. Therefore, we are fully convinced that the appellant did not have any right of private defence to property in respect of Kila No. 10.

15. Shri M. L. Garg, the learned counsel for the appellant has relied on the case of Pooran Singh v. State of Punjab, 1975 SCC (Cri) 608 : (1975 Cri LJ 1479) wherein the Apex Court has held that a trespasser may have a right of private defence of property only when he is in a settled possession and that such nature of possession must contain the following attributes :-

(i) that the trespasser must be in actual physical possession of the property over a sufficient long period;

(ii) that the possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus possidendi. The nature of possession of the trespasser would however be matter to be decided on facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced in by true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession, in which case the trespasser will have a right of private defence and the true owner will have no right of private defence.

16. In the instant case it has been firmly established that the appellant was not at all in the actual physical possession on Kila No. 10 on the day of the incident or even prior to that. Hence there was no question of his having a settled possession on the said land and, therefore, no right of private defence of property could accrue in his favour. In view of this Pooran Singh's case is not at all applicable.

17. The next case cited by Mr. Garg is Karnail Singh v. The State of Rajasthan, 1977 Cr LJ 1729. In that case the complainant party wanted 'to commit trespass with the intention to take possession. The accused resisted and fired gun shots in exercise of right of private defence of property. Therefore his conviction under Section 307 I.P.C. was set aside. It was also observed in that case that if there was sufficient material on record to show that the accused acted in exercise of right of private defence of his property, he could not be deprived of the benefit of plea of sufficient defence even though he had tried to set up plea of absence in vain and pleaded the right of private defence of the property in the alternative. We respectfully agree with this proposition of law. But as mentioned earlier, in the case on hand, no right of private defence of property can legally accrue in favour of the appellant. Hence Karnail Singh's case renders no assistance to the appellant.

18. Another case cited by Mr. Garg is State of Rajasthan v. Ramswaroop reported in 1984 Cri LR (Raj) 557. In that case the accused persons were threatened with extinction of their persons and property. The complainant party tried to forcefully dispossess and take law in their own hands. The accused persons thereupon caused injuries to the complainant party resulting in death. It was held that the accused acted in exercise of right of private defence and did not exceed that right, and therefore, the appeal of the State against the acquittal was dismissed. Apparently the facts of this case are poles apart with the facts of the instant case.'Therefore, this ruling is of avail to the appellant.

19. Mr. Garg has lastly relied on Hem Ji v. State of Rajasthan, 1990 Cr LR (Raj) 554. In that case the accused was in possession of the disputed land and cultivating the same while the deceased had another piece of the land in his cultivation. The deceased trespassed over the land of accused. It was held that

the accused had every right to defend the possession of his land from the deceased, who was the trespasser over the land. It was further held that under Section 104 of the IPC the accused's right to defend the possession of his land was limited to cause any harm other than the death. On the other hand, the accused had inflicted seven injuries to the deceased causing his death and thus he had exceeded the right of private defence of property. Therefore, his conviction under Section 302 IPC was set aside and instead he was convicted for the offence under Section 304 Part-II IPC. At the sake of repetition, it may be mentioned here that such are not the facts of the case in hand, where it has been conclusively proved that the alleged incident had taken place in Kila No. 10, where the deceased was cutting unwanted bushes and where the appellant had dealt successive gandas blows on her jaw, head and other parts of her body and caused her death. The appellant was never in settled possession of the said Kila No. 10 even as per contents of 'Likha Padhi' Ex. D-3. Therefore, he had no right of private defence of property. Hence, Hem Ji's case also does not come to the rescue of the appellant.

20. In our considered opinion, the trial court has not committed any illegality in holding that the appellant had no right of private defence of property. PW 1 Sahi Ram has been cross-examined at length and his testimony has not been impeached. This is true that PW 4 Smt. Nathi and PW 8 Smt. Rami have stated that they did not see the alleged occurrence and have been declared hostile. Still then the testimony of PW 1 Sahi Ram, which does not suffer from any material infirmity stands well corroborated by the statement of PW 12 Dr. Ram Ji Lal Bansal. His statement also finds due corroboration from the recovery of blood-stained gandas article 9, which was effected at the instance of the appellant. This recovery has been well proved by the statement of independent motbir PW 2 Nand Ram and the testimony of PW 11 Om Prakash, S.H.O., who has proved the recovery memo Ex. P.4, site-plan and memo thereof from where the blood-stained gandas was recovered lying concealed in the 'gudras' in the house of the appellant. PW 9 Braham Prakash, Head Constable, who was the Incharge of the Malkhana of the Police Station has proved the entries of the Malkhana Register Exs. P. 17 & 18 and the entries of the General Diary Exs. P. 20 & 21. He has deposed that he had handed over six sealed packets of articles seized/recovered

in this case to Shri Shiv Ram, F.C., who is now dead. He has also proved the F.S.L. Report Ex. P. 30. Thus all available and material evidence has been adduced by the prosecution to show that all the sealed packets of the various articles seized/recovered in this case were kept in safe custody and were deposited to the State Forensic Science Laboratory intact. In F.S.L. Report Ex. P. 30, which is admissible in evidence under Section 293 of the Cr.P.C., it has been specifically mentioned that all the six packets were found to be properly sealed bearing the impressions, which tallied with the specimen impressions forwarded. PW 10 Devendra Singh, Dy. S.P. has also proved the slips of specimen seals Exs. P. 24 & 25.

21. As mentioned earlier the F.S.L. Report Ex. P. 30 firmly proves that the gandasas Article 9 recovered at the instance of the appellant as well as the various blood stained clothes taken out from the dead body of Smt. Saraswati were found to be stained with human blood having 'B' group. Therefore, the recovery of gandasas Article 9 vide recovery memo Ex. P. 4 also incriminates and connects the appellant with the crime.

22. From the evidence, it is amply proved that the appellant had intentionally inflicted gandasas blow on the jaw of Smt. Saraswati and when she fell down, he successively dealt at least three more gandasas blows causing fatal injury on her forehead, resulting in fracture on the frontal bone. The doctor has deposed that incised wound on her frontal region on her forehead were sufficient in the ordinary course of nature to have caused her death. Therefore, it is abundantly apparent that the appellant had the intention to commit the murder of Smt. Saraswati and as such the offence made out against him is punishable under Section 302 I.P.C. only and not under Section 304 Part-I or Part-II I.P.C.

23. In our considered opinion, the learned trial Judge has scanned, discussed, analysed and evaluated the evidence recorded in this case in a right perspective and has not committed any illegality either of fact or law in convicting the appellant for the offence under Section 302 I.P.C. Hence the impugned judgment does not warrant any interference.

24. The up shot of the above discussion is that this appeal is meritless and the same is hereby dismissed.

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