

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 47 of 2010**

1. Sonsai Kashyap S/o Medini Prasad, aged about 32 years, resident of Bhatapara, Village Bhanvtara, Police Station, Shivrinarayan, District Janjgir Champa, CG

---- Appellant**Versus**

1. State Of Chhattisgarh, through SHO, P.S. Shivrinarayan, District Janjgir Champa (C.G.)

---- Respondent

For Appellants.	-	Shri Raghvendra Verma, Advocate.
For Respondent No.	-	Shri Rahul Tamaskar, PL.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice P.S. Koshy****Order On Board by Pritinker Diwaker, J****31 /07/2015**

This appeal has been filed against the judgment of conviction and order of sentence dated 17.11.2009 passed by the Sessions Judge, Janjgir Champa, in Sessions Trial No. 184/2009 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1000, plus default stipulation.

2. According to the report lodged by Medini Prasad (PW-1) – the father of accused/appellant herein and the deceased namely Punaaram Kashyap, as the accused and the deceased were not satisfied with the partition of land, they used to quarrel with each other. On 16.7.2009 just before the occurrence one Manoj Kashyap (PW-2) had seen the accused and the deceased indulging in quarrel

and then he informed the same to their father Medini Prasad (PW-1). It is alleged that on 16.7.2009 in between 6-7 PM the accused/appellant committed the murder of his younger brother Punau Ram Kashyap causing six injuries on his body with club. Immediately after coming to know about the quarrel between the accused and the deceased, their father (PW-1) rushed to the spot and found the dead body of his son Punau Ram Kashyap. At about 9.30 PM he lodged FIR (Ex. P-1) categorically stating that it is the accused/appellant who who has killed the deceased. Based on this report, offence under Section 302 IPC was registered against the accused/appellant. Postmortem examination was conducted on the body of the deceased by Dr. Avita Dhruv (PW-6) who gave her report Ex. P-13 stating that number of injuries were noticed on his body - most of them on vital parts. On 17.7.2009 the accused/appellant had surrendered before the police with the weapon used in the commission of crime. *Rojnamcha* Ex. P-26 was prepared and the articles such as club and umbrella, both stained with blood were seized on being produced by him vide Ex. P-11. On completion of investigation, charge sheet was filed by the police for the offence punishable under section 302 IPC followed by framing of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 08 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above.

5. Counsel for the accused/appellant submits that in the FIR lodged by Medini Prasad (PW-1) it is categorically stated that when he reached the place of incident, accused/appellant was not there but while deposing in the Court he has improved himself and stated that he saw the accused/appellant fleeing the spot carrying club in his hand. He thus submits that as there is contradiction in the FIR and the deposition of Medini Prasad (PW-1), he cannot be said to be a reliable witness. He further submits that on coming to know about the incident Teejram Kurmi (PW-4) and Medini Prasad (PW-1) rushed to the spot but Teejram Kurmi (PW-4) has categorically stated that he did not see the accused/appellant at the place of occurrence. According to the counsel for the appellant, even if the blood was noticed on the seized articles vide FSL report Ex. P-24 but in the absence of serological report the same has no value in the eye of law. Lastly, he submits that the appellant is in jail since 17.7.2009 and therefore after convicting him under Section 304 (I) or 304 (II) IPC his sentence may be reduced to the period already undergone.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that in the present case FIR was lodged by the father of the accused and the deceased himself in which he has categorically stated that the appellant and the deceased used to quarrel over some land dispute and a day prior to the date of incident also there was a quarrel between the deceased and the wife of the accused/appellant. He submits that minor contradictions in the FIR and the Court statement of Medini Prasad (PW-1) are required to be ignored when he is consistent on other material particulars. State counsel further submits that just before the incident one Manoj Kashyap (PW-2) had seen the deceased and

the accused quarreling and thus it stands proved that it is the accused/appellant who killed the deceased. According to the State counsel, though there is no serological report yet once the FSL report confirms the presence of blood on the seized articles like club, umbrella, shirt, *lungi* etc. the same is very much admissible in the evidence so as to hold the accused/appellant guilty for commission of murder of his own brother.

7. Heard counsel for the parties and perused the evidence available on record.

8. Medini Prasad (PW-1) - the father of the accused and deceased has admitted the lodgment of FIR Ex. P-1 and the *merg* intimation Ex. P-2 recorded at his instance. After describing the family tree, he has stated that after partition of the land there was some dispute between the accused and the deceased and a day prior to the incident also there was a quarrel between the deceased and the wife of the accused namely Urmila Bai where they were abusing each other. He has stated that the deceased had asked the wife of the accused not to abuse him. On the second day when he went to the betel shop, Manoj Kashyap (PW-2) informed him about the quarrel between the deceased and the accused in the field and on coming to know this he immediately rushed to the spot and saw the dead body of his another son (deceased) with multiple injuries on it with bleeding. He is also stated to have seen the accused/appellant running away carrying lathi in his hands. In cross examination also he stood firm to what he has stated in the examination-in-chief barring certain minor contradictions. Manoj Kashyap (PW-2) is the witness who had seen the accused and the deceased quarreling just before the incident and after seeing this he immediately went to Medini Prasad (PW-1) and informed him

about the same. He has also been firm in the cross examination and reiterated the things as in the examination in chief. Nandram (PW-3) is the Patwari who prepared spot map Ex. P-6. Teejram Kurmi (PW-4) is the witness who accompanied Medini Prasad (PW-1) to the place of occurrence where body of the deceased was found. He has stated that when he reached the spot along with Medini Prasad (PW-1), he saw the body of the deceased but the accused/appellant was not there. Rajaram Kurmi (PW-5) is the witness to seizure of various articles made under Ex. P-9 to P-11 who has duly supported the case of the prosecution. Dr. Avita Dhruv (PW-6) is the witness who conducted postmortem examination on the body of the deceased and noticed the following injuries on it vide Ex. P-13:

- (i) Body is supine in position;
- (ii) left eye closed, right eye ball protruded;
- (iii) fracture in the nasal bone, both nostrils bleeding mucus discharged;
- (iv) bone - rib is cut off;
- (v) Lacerated wound (i) frontal part of the skull bone size 6 x 7 cm, fracture seen; (ii) bones, parietal part of the skull bone size 7 x 6 cm, 7 x 8 cm fracture seen (iii) occipital part of the skull bone size 8 x 7 cm hand clinched.
- (vi) ear both, bleeding.

Cause of death was head injury due to cerebral haemorrhage.

R.K. Shukla (PW-7) is the investigating officer who has duly supported the case of the prosecution. Deendayal Singh (PW-8) is the witness who did initial part of the investigation. He has stated that after surrender of the accused/appellant Rojnamcha Ex. P-26 was prepared.

9. Close analysis of the evidence on record goes to show that

on 16.7.2009 owing to some old existing land dispute the accused/appellant committed the murder of the deceased who happened to be his own brother, by assaulting him with club. There is evidence adduced by the prosecution to the effect that a day prior to the incident there was some quarrel between the deceased and the wife of the accused. Manoj Kashyap (PW-2) has also stated that just before the incident, he saw the accused and the deceased quarreling in the field and then he immediately went to their father - Medini Prasad (PW-1) and informed about the same. On coming to know about this, Medini Prasad (PW-1) also rushed to the place of incident and found the dead body of his deceased son. Though in the FIR he has stated that when he reached the place of incident, accused/appellant was not there but in the Court he has clearly stated that he had seen the accused/appellant running away holding club in his hand. Normally, no close relative particularly the father utters anything against his own son but here is a case where father of the accused and the deceased himself went to the police station and lodged the report against his one son (accused) for committing the murder of his other son (deceased), and there is no reason for this Court to disbelieve the same. Medical evidence also goes to show that there were several injuries on the body of the deceased including the vital parts like head. There is nothing on record to show that the defence has made any effort or adduced evidence so as to falsify the case of the prosecution and derive benefit therefrom making this Court to arrive at some other conclusion other than holding him guilty.

10. Evidence thus clearly demonstrates that it is none else but the accused/appellant himself who is the author of the crime in question owing to certain old land dispute. Findings of the Court

below convicting the accused/appellant under Section 302 IPC appear to be based on due appreciation of evidence on record and no infirmity in the same is visible.

11. Judgment impugned is thus affirmed and the appeal meets the fate of dismissal. Appellant is already in jail and therefore no order regarding his surrender etc. is necessary.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(P.S. Koshy)

Judge