

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2451 of 1999

Chamar Singh, son of Munchun Satnami, aged about 33 years, resident of Village Medhapali, P.S. Dabra, District Janjgir - Champa

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh)

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate
For State/Respondent	:	Shri U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

31/3/2016

1. The Appellant stands convicted under Section 302 IPC to life imprisonment with fine of Rs.5,000/-, in the event of failure to pay which he was required to undergo one year further rigorous imprisonment, as ordered on 20.8.1999 by the Additional Sessions Judge, Sakti in Sessions Trial No.520 of 1998.

2. PW-1, Chheduram lodged the First Information Report, Exhibit P-1 at about 15:20 hours with regard to assault on deceased Manoj by the Appellant on 11.10.1998.

3. The Post Mortem Report, Exhibit P-21 by PW-21, Dr. N.P. Mishra, found the following injury on the deceased:

“Incised wound on right supra cleviculer region at medial 1/3 of clevice measuring 1”x1½”x3” obliquely vertically divected edge everted.”

4. On dissection of the body, it was found during post mortem that the deceased had suffered an internal incised wound on the right side of the

plural cavity to the right lung also because of the single assault. Death was opined as having been caused due to shock and external and internal hemorrhage.

5. Learned Counsel for the Appellant submitted that PW-1, Chheduram was not an eyewitness both for the reason that his house was not opposite to that of the deceased but was also at a distance and it was not possible for him to have viewed the assault from his house. PW-6, Naresh, the brother of the deceased has deposed that he went and called PW-1, Chheduram, who was his uncle after witnessing the assault. It would be unsafe and unreliable to base conviction on his statement as an alleged eyewitness.

6. It was next submitted that even if PW-2, Samarinbai, the married sister of the deceased was at home, she was also not an eyewitness to the assault. She deposed that on hearing shouts she came out, which signifies that it was after the assault. More importantly, she has claimed that she was home alone which contradicts PW-6, Naresh as an eyewitness because she has made no reference to his presence. PW-6, Naresh has also not stated with regard to the presence of PW-2, Samarinbai. Therefore both PW-2, Samarinbai and PW-6, Naresh are unreliable eyewitnesses and it cannot be said with certainty that they had witnessed the incident. Additionally, both of them are related witnesses whose evidence has to be examined with caution requiring further independent corroboration.

7. Without prejudice to the aforesaid, it was next submitted that one day earlier the deceased had teased the wife of the Appellant. The Appellant never had the intention to kill the deceased but only to teach him a lesson to desist from such behaviour. If the Appellant was armed with a sharp cutting weapon and had the intention to kill, surely he would have made more than one assault on the deceased. Conviction of life imprisonment was therefore not sustainable and it ought to be reduced to under Section 304 Part II IPC

to the period undergone considering that he had already spent six years two months in custody, before being enlarged on bail in appeal.

8. Learned Counsel for the State submitted that even if PW-1, Chheduram was not an eyewitness and was called by PW-6, Naresh as suggested, nonetheless PW-2, Samarinbai and PW-6, Naresh are reliable eyewitnesses and their evidence cannot be rejected merely because they are related. The sequence of events reveal that PW-6, Naresh came out of his house to wash his hands after his meals when he saw the deceased being assaulted. The Appellant threatened the witness who was a young boy of about 16 to 17 years of age and he ran away. At this stage, on the commotion, PW-2, Samarinbai came out and obviously did not find PW-6, Naresh present. There is no contradiction between the evidence of the two witnesses. Considering that the assault was made with a sharp cutting weapon on the neck, a sensitive part of the human body and at times a single assault may be sufficient to invoke Section 302 IPC also it cannot be said in every case that merely because a single assault had been made, conviction under Section 302 IPC was not justified. Referring to the defence of alibi under Section 313 Cr.P.C. but not leading evidence in support of the same, it was submitted that taking a false defence was an additional incriminating factor.

9. We have considered the submissions on behalf of the parties.

10. PW-6, Naresh has specifically stated that he came out from inside the house after his meals when he saw the assault. The Appellant threatened him to go away lest he would be assaulted also. The witness then ran to his uncle PW-1, Chheduram and informed him. Since PW-1, Chheduram is a related witness whose evidence must be taken with caution, we do find a material discrepancy between his evidence and that of PW-6, Naresh raising doubts about the former being an eyewitness.

11. But, PW-2, Samarinbai indisputably was home as it is not the case of the Appellant that she had not come visiting to her maternal house. Reading together the evidence of PW-2, Samarinbai and PW-6, Naresh what transpires is that the latter after his meals stepped near the door to wash his hands when he witnessed the assault. When he was threatened, he ran away to the house of PW-1, Chheduram. At this stage, on the commotion, PW-2, Samarinbai came out of the house. Obviously, she did not find PW-6, Naresh present there. We do not find any material contradiction in the evidence of PW-2, Samarinbai and PW-6, Naresh to outrightly reject their evidence on the ground that they are related and interested witnesses and could not be believed. In our view, being the sister and younger brother of the deceased, the occurrence having taken place inside their house, they would be the most interested persons to ensure that the real culprit is brought to book rather than allow him to go free and implicate another falsely. It is obvious that the assault took place at the door of the house and there would be no other independent witness available.

12. The Appellant took a false defence under Section 313 Cr.P.C. that he was not at home and had come back from the market in the evening. But, he led no evidence in support of his plea of alibi which thus becomes an additional incriminating factor against him. We therefore find no reason to interfere with the conviction of the Appellant as the assailant.

13. That brings to the fore the question of sentence in view of the submission made that he gave only a single blow which caused only external and internal injury both and that he had no intention to kill. Considering that they were all residing in the same locality and earlier the deceased had allegedly misbehaved with the Appellant's wife, while it cannot be said that under all circumstances a single injury may not invoke Section 302 IPC but yet in the facts of each case it may warrant interference

with sentence, if there is a single injury. The Appellant was possessed of a sharp cutting weapon. Nothing prevented him from repeating the assault if he really had intention to kill rather than running away from the place of occurrence after the single assault. We are therefore inclined to hold that the Appellant really had no intention to kill the deceased though he had the intention to teach him a lesson by causing injury designed to be more than simple. In absence of any evidence that the Appellant acted on a grave and sudden provocation especially when the deceased had misbehaved with the Appellant's wife a day earlier, it is difficult to give him benefit of Section 304 Part II IPC. We are therefore satisfied that in the entirety of the facts and circumstances of the case that the sentence of the Appellant is required to be modified to one under Section 304 Part I IPC and he is sentenced to imprisonment for ten years.

14. The appeal is dismissed with the aforesaid modification of sentence.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE