

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 593 of 2008**

- Vinod Kumar, aged about 26 years, S/o Santram, R/o VIP Nagar, Risali, House No.498/2/11, Police Station - Newai, District Durg (CG)

**---- Appellant**

**In Jail**

**Versus**

- State Of Chhattisgarh, through District Magistrate, Durg, District Durg (CG)

**---- Respondent**

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For appellant : Shri Awadh Tripathi, Advocate.  
For Respondent/State : Shri Vinod Deshmukh, Dy.G.A.

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**Hon'ble Shri Justice Pritinker Diwaker**  
**Hon'ble Shri Justice I.S. Uboweja**

**Judgment On Board By Justice Pritinker Diwaker**

**29/02/2016**

This appeal arises out of the judgment of conviction and order of sentence dated 30.4.2008 passed by the Sessions Judge, Durg in S.T.No.241/06, convicting the accused/appellant under Sections 302, 307 of IPC and sentencing him to undergo imprisonment for life, pay a fine of Rs.1000/- and RI for 5 years, to pay a fine of Rs.1000/- with default stipulations respectively.

02. In the present case, name of the deceased is Shantibai, aunt of the accused/appellant whereas injured Kotabai is his grand-mother. As per prosecution case on 5.6.2006 the deceased along with injured Kotabai

had gone to Sector-9 Hospital, Bhilai for treatment of Kotabai where the appellant reached carrying knife in his hand and upon suspicion of playing witchcraft by Kotabai caused her several injuries. When deceased Shantibai intervened, she too was assaulted by the appellant as a result of which she died. Upon receiving information from Dr.RK Shrivastava (PW-3) from the hospital, on 5.6.2006 at 1.20 pm mereg intimation Ex.P/2 was recorded and immediately thereafter at 1.30 pm FIR (Ex.P/6) was lodged by PW-15 Rajendra Kumar Kurre, son of the deceased, against the appellant under Sections 302 and 307 of IPC. In the meanwhile, injured Kotabai was medically examined on 5.6.2006 vide Ex.P/17 by Dr. Praveen Kumar (PW-14) who noticed as many as 11 injuries, including eight incised wounds, on the body of the injured and opined that the said injuries were grievous in nature and could have resulted in her death had the same been not operated. Inquest over the body of the deceased was prepared vide Ex.P/21 and thereafter, the dead body was sent for postmortem which was conducted by PW-18 Dr. P. Akhtar vide Ex.P/24 who noticed as many as 9 incised wounds on her person and opined that the cause of death was hemorrhage due to injuries to great vessels of neck, heart and liver. On the memorandum of the appellant Ex.P/3, bloodstained full shirt, handkerchief and one knife were seized vide Ex.P/4 and as per FSL report Ex.P/28, blood was found on these articles, however, as per serological report Ex.P/29 origin of the blood could not be determined due to disintegration of the same. After completion of investigation, charge sheet was filed against the accused/appellant under Sections 307, 302 of IPC and accordingly, charges were framed.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 19 witnesses. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, he examined two witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits as under:

(i) that the sole eyewitness to the incident Kotabai (PW-16) has not supported the prosecution case and has been declared hostile.

(ii) that PW-15 Rajendra Kurre, lodger of FIR and witness to extrajudicial confession, has also not supported the prosecution case.

(iii) that the other witness to extrajudicial confession PW-10 Santram is also not reliable and based on his evidence, the appellant cannot be convicted under Sections 302 & 307 of IPC.

(iv) that based on the memorandum of the appellant Ex.P/3, seizure of his shirt, handkerchief, knife was made (Ex.P/4), but witnesses to the said documents (PW-4 and PW-5) have not fully supported the prosecution case.

(v) though as per FSL report (Ex.P/28), blood was noticed on the articles seized from the appellant i.e. shirt, handkerchief, knife, but the same is of no consequence because as per serological report Ex.P/29

origin of the same could not be determined due to disintegration.

(vi) alternatively it has been submitted that even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 304 Part-I of IPC and considering the fact that he is in jail for the last more than 9 years, after conversion of the conviction, he may be sentenced to the period already undergone by him.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in it.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Smt. Pramila Frelin, a nursing sister of Sector-9 Hospital, Bhilai, has stated that on the date of incident when she was performing her duties and was examining the patients along with the doctor, after hearing commotion she reached the place of occurrence and saw two injured ladies drenched with blood, serious one who was lying on the floor was immediately taken to ICU. At this stage this witness was declared hostile by the prosecution. In further examination she has stated that after reaching the place of occurrence when she asked the old injured lady as to what had happened, then she informed her that it is her grand-son who assaulted her. She has stated that the lady who was admitted in ICU expired subsequently.

09. PW-2 Sorendra Yadav, Police Constable, was on duty in Sector-9 Hospital at the relevant time, he has not stated anything specific

against the appellant. PW-3 Dr. RK Shrivastava is lodger of merg intimation Ex.P/2. PW-4 Dwarika Prasad Sahu, a witness to memorandum of the appellant Ex.P/3 and seizure Ex.P/4, though has not supported the prosecution case but admitted his signature on these documents. PW-5 Ramkumar Yadav is also a witness to seizure Ex.P/4, though he has been declared hostile but has admitted his signature on the document. PW-6 Nand Kumar Chaturvedi, Patwari, prepared the spot map Ex.P/5. PW-7 Umesh Awasthi, Assistant Sub Inspector, recorded merg intimation and FIR. He also helped in initial investigation.

10. PW-10 Santram Kosewada, father of the appellant, has stated that injured Kotabai was his mother whereas deceased Shantibai was his sister. He has stated that he was taken by the police from his house and informed him that his son/appellant has committed murder. He has stated that he saw the dead body of his sister and was informed that the appellant killed her and then the doctor informed him that somebody assaulted his mother with knife. He has admitted that his mother Kotabai did not inform him as to who assaulted her with knife. After declaring this witness hostile when he was cross-examined by the public prosecutor, he has admitted that after an hour of the incident the accused/appellant came to his house and confessed that he had caused injuries to Kotabai and Shantibai, however, he was not cleaning the knife with his handkerchief in front of him. He has further stated that immediately thereafter he received information that somebody has caused injuries to his mother and sister. He has also

stated that prior to 15 days of the incident, his son/appellant could not sleep for more than 2-3 hours and that he was mentally puzzled. When this witness was confronted with his case diary statement (Ex.P/12) he has stated that no such statement was recorded. PW-11 Dr. KH Ramesh did MLC of injured Kotabai vide Ex.P/13 and noticed following injuries:

- (i) deep cut wound upper lip of about 3 cm size, 1 cm cut wound over angle of mouth on the right side,
- (ii) deep lacerated wound in right cheek,
- (iii) 3 x 1 x 1 cm right shoulder, penetrating wound,
- (iv) 2 x 1 x 1 cm, penetrating wound over right upper arm,
- (v) 3 x 2 x 2 cm penetrating wound over sternal region,
- (vi) 2 x 2 x 1 cm penetrating wound over sternal region,
- (vii) 2 x 1 x 1 cm, penetrating wound over left breast,
- (viii) 2 x 1 x 2 cm, penetrating wound over left breast,
- (ix) 3 x 2 x 5 cm penetrating wound over left side of abdomen,
- (x) 3 x 2 x 4 cm penetrating wound over left lumbar region,
- (xi) 2 x 1 x 1 cm penetrating wound over left scapular area,
- (xii) 2 x 1 x 1 cm penetrating wound over left lumbar region posteriorly.

In his opinion, the aforesaid injuries were caused by hard and sharp edged weapon, were grievous in nature and were sufficient in the ordinary course of nature to cause death.

11. PW-12 Dr. SJ Rizvi, had treated the injured along with other doctors and performed her surgery as well. PW-13 Dr. CS More had examined the weapon of offence knife and found blood like stains on it and therefore, he advised for chemical examination of the same. PW-

14 Dr. Praveen Kumar reached the place of occurrence immediately and saw Kotabai severely injured and the deceased lying on the examination bed, who died subsequently. On 5.6.2006 he had examined injured Kotabai and vide Ex.P/17 noticed following injuries:

- (i) 3 cm incised wound over right shoulder,
- (ii) 3 cm incised wound over right arm,
- (iii) 2 cm incised wound medial to right breast,
- (iv) 2 cm incised wound over upper part of sternum,
- (v) 2 cm incised wound medial to left breast,
- (vi) punctured wound over lower sternum 2 cm length,
- (vii) punctured wound over left hypochondrium,
- (viii) 2 cm punctured wound over left iliaa fossa,
- (ix) 4 cm incised wound on upper lip
- (x) 1 cm incised wound on upper limb right side,
- (xi) 3 cm incised wound lateral to right angle of mouth.

In his opinion, all the injuries were grievous in nature, caused by hard and sharp edged weapon. In his report he has opined that if the patient had not been operated for the above injuries, she would have died.

12. PW-15 Rajendra Kurre, lodger of FIR, is son of the deceased, has proved lodging of FIR, however, he appears to have improved while deposing in the Court. In the Court he has stated that the accused/appellant confessed before him that it is he who has committed murder of the deceased and caused injuries to Kotabai by knife, however, this fact was neither disclosed by him in the FIR nor in his statement under Section 161 of Cr.P.C. PW-16 Kotabai, injured

eyewitness to the incident, has not supported the prosecution case and has been declared hostile. PW-17 Biharilal had sent the seized articles for chemical examination. PW-18 Dr. P. Akhtar conducted postmortem on the body of the deceased on 6.6.2006 vide Ex.P/24 and noticed following injuries:

- (i) incised wound right side chin extending vertically downwards to neck of size 6 x 1 x 1 cm, muscle deep,
- (ii) stab incised wound front of neck just below and lateral to thyroid cartilage (right supra-clavicular region of size 4 x 3 x 2 cm, on dissection carotid artery, subclavicular artery and jugular vein is found to be cut in two pieces and huge haematoma in muscles,
- (iii) stab incised wound left side breast in right upper quadrant region of size 2 x ½ x 2 cm up to left lung upper lobe and incised wound 2 x 2 x 2 cm,
- (iv) incised stab wound over left lower quadrant left breast of size 2 x ½ x 1 cm fatty layer deep,
- (v) stab incised wound over right lower quadrant of left breast 2 x ½ x 1 cm fatty layer deep,
- (vi) stab incised wound left side chest 4 cm from midline opposite 6th ICS of size 3 x 2 cm, passing through left lower lobe of lung and making a stab of size 2 x 2 x 4 cm and then penetrating the left ventricle making a stab of size 2 x 1 x 1 cm,
- (vii) stab incised wound left side epigastric region of size 2 x 1 cm and penetrating the ant surface of right lobe of liver of size 2 x 1 x 2 cm, blood clots around the liver,
- (viii) incised wound left side upper arm, lateral aspect mid 1/3 of size 3

x 1 x 1 cm, muscle deep,

(ix) incised wound left upper arm, post. aspect lower 1/3 of size 4 x 2 x 2 cm, muscle deep.

In his opinion the cause of death was hemorrhage due to injuries to great vessels of neck, heart and liver.

13. PW-19 Sachin Dev Shukla, investigating officer, while supporting the prosecution case has also stated that he had recorded diary statement of PW-10 Santram also, and no cross-examination has been done by the defence in relation to this point.

14. As per FSL report Ex.P/28, blood was found on Articles, B, C & D i.e. shirt, handkerchief and knife seized at the instance of the appellant. However, serological report Ex.P/29 could confirm origin of the blood found on these articles due to disintegration of the same.

15. Close scrutiny of the evidence makes it clear that on 5.6.2006 when deceased Shantibai along with injured Kotabai had gone to Sector-9 Hospital for treatment of Kotabai, the accused/appellant armed with knife reached there and assaulted them, which resulted in instantaneous death of Shantibai and severe injuries to Kotabai. Though PW-16 Kotabai has turned hostile, but PW-10 Santram, father of the appellant, supporting the prosecution case has stated about the extrajudicial confession made by the appellant before him that it is he who has committed murder of the deceased and caused injuries to Kotabai with knife. We find no infirmity in the finding recorded by the trial Court while passing the impugned judgment placing reliance on

the statement of PW-10. Even PW-1 Smt. Pramila Frelin has supported the prosecution case to the extent that when she reached the place of occurrence, it was informed to her by the old lady (deceased) that her grand-son has assaulted her.

Based on the memorandum of the appellant Ex.P/3, seizure of his shirt, handkerchief and knife was made (Ex.P/4), witnesses to these documents have also admitted their signatures on the documents, the investigating officer has duly supported recording of memorandum and effecting of seizure. Medical evidence further corroborates the prosecution case, according to which corresponding injuries were noticed on the body of the deceased and the injured. As per FSL report (Ex.P/28), blood was found on the aforesaid articles. The appellant has failed to offer any plausible explanation, except making bald denial, as to how such bloodstained articles were seized from his possession. In these circumstances, even though in the serological report Ex.P/29, origin of blood on the seized articles could not be determined due to disintegration, the same cannot be held fatal to the prosecution case.

16. As regards argument of the appellant that in the facts and circumstances of the case, at best the appellant is liable to be convicted under Section 304 Part-I or II of IPC, considering the fact that the appellant went to the place of occurrence armed with a deadly weapon knife and made repeated assault on the deceased with it causing as many as nine grievous injuries to her, it cannot be said that he had no intention to commit her murder or had no knowledge that such injuries would result in her death. Being so, his conviction under Section 302 of IPC needs no alteration.

17. On the basis of aforesaid discussions, we are of the view that the prosecution has been successful in proving guilt of the accused/appellant based on the evidence adduced by it and the findings recorded by the trial court holding him guilty under Section 302 of IPC for committing murder of Shantibai and 307 of IPC for attempting to murder Kotabai are the outcome of proper appreciation of the entire evidence on record. Accordingly, the appeal being without any substance is liable to be dismissed and is hereby dismissed. The appellant is reported to be in jail, therefore, no further order regarding his surrender etc. is required.

Sd/

**(Pritinker Diwaker)**

**Judge**

Sd/

**(I.S. Uboweja)**

**Judge**