

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 463 of 2011

1. Ram Prasad, son of Sukh Ram Rathiya, aged about 40 years, resident of village Aamapali, Police Station- Lailunga, District Raigarh (CG)

**---- Appellant
(In Jail)**

Versus

1. State Of Chhattisgarh, through Police Station Lailunga, District Raigarh (CG)

---- Respondent

For Appellant:
For Respondent:

Shri Yogeshwar Sharma, Advocate.
Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Judgement

Per P. Diwaker, J

16/03/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 28.4.2011 passed by the 1st Additional Sessions Judge, Raigarh in S.T. No.53/2010 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for Life.
2. The prosecution story, in brief, is that on 27.2.2010 a report was lodged by Abhiram (PW-7) alleging in it that on the fateful date he along with his younger brother Bharatram (since deceased), Balakram (PW-2) and other villagers had gone to the house of one Panchram Rathiya to attend the tenth day ritual. It is further alleged that at about 4.00 p.m. on account of old enmity the accused/appellant had caused knife injuries to Bharat Ram Rathiya on various parts of his body. Balakram (PW-2) had

intervened in the matter. Incident was witnessed by him, Ghasiya Rathi (PW-3), Belmati Bai (PW-6) and others. It is further mentioned in the report that after the incident, injured Bharat Ram Rathiya was taken to the hospital. This report was entered in the roznamcha sanha vide Ex.P-17C. MLC of said Bharat Ram Rathiya was conducted by Dr. Yogeshwar Singh (PW-11) on 27.2.2010 vide Ex.P-13 & Ex.P-14 and he noticed following injuries:-

- Incised wound of 2x1x4cm in size over chest anterior lower part at left side.
- Incised wound of 1cm size over anterior side of left chest.
- Incised wound of 2x1x1cm over anterior part of chest, sternum. Clotted blood was present.
- Incised wound of 3x1x4cm over left arm.
- Incised wound of 4x2x4cm over left left shoulder at upper part.
- Incised wound of 4x2x4cm over left lower side of stomach.

According to the doctor, all the injuries were caused by hard and sharp object and injuries on chest & abdomen were grievous in nature. On 28.2.2010 FIR (Ex.P-18) was registered against the accused/appellant under Section 324 of IPC. Looking to critical condition of said Bharat Ram Rathia, he was referred to the hospital at Raigarh where he died on 23.3.2010 while undergoing treatment. Intimation of death of Bharat Ram Rathia was given vide Ex.P-9 from the hospital on 23.3.2010 and based on which un-numbered & numbered merg were recorded vide Ex.P-10 & P-23. Inquest on the body was prepared vide Ex.P-2. Body was sent for post-mortem examination which was conducted by Dr. B.R. Patel (PW-10) vide Ex.P-12 and he noticed following injuries:-

- Healed wound at the lower part of chest.
- Healed wound at the middle of left arm.

- Healed wound on the right shoulder.
- Healed wound on the right buttock.
- Surgical incisor with stitching wound over middle of abdomen.
- One plastic tube drain was attached.

As per post-mortem report (Ex.P-12), the cause of death was shock due to intestinal perforation and the death was homicidal in nature.

3. After completion of investigation, charge sheet was filed against the accused/appellant under Sections 324 & 302 of the IPC, however, the trial Court has framed the charge under Section 302 of IPC against the accused/appellant.
4. So as to hold the accused/appellants guilty, the prosecution examined as many as 12 witnesses. Statements of the accused/appellant was 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.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, convicted & sentenced the accused/appellant as mentioned in para-1 of this judgment.
6. Learned counsel for the accused/appellant submits that though Balakram (PW-2) & Abhiram (PW-7) have been examined by the prosecution as eyewitnesses to the incident but their evidence do not inspire confidence. He further submits even if the entire prosecution case is taken as it is, at best the accused/appellant can be held guilty under Section 304 Part-I or II of the IPC and not under Section 302 of the IPC because the incident had occurred all of sudden, in the spur of moment and without any premeditation and the deceased died after 26 days of the incident.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that there is no reason for this Court to disbelieve statements of Balakram (PW-2) & Abhiram (PW-7) , who are eyewitnesses of incident. He further submits that from the injuries caused by accused/appellant on the vital parts of the body of deceased it is apparent that accused/appellant had not only intention to kill the deceased but also had the knowledge that the injuries being inflicted by them on the deceased were sure to result in his death.
8. We have heard learned counsel for the parties and perused the material available on record.
9. Amarjeet Bhoi (PW-1) is the witness of inquest (Ex.P-2).
10. Balakram (PW-2) has stated on the date of incident he had gone to the house of Panchram Rathiya. Accused/appellant and deceased were also present there. He has further stated that after staying for 5-7 minutes in the house of Panchram, the deceased came out and just thereafter he also left the said place. He has further stated that on coming out, he saw the accused/appellant assaulting the deceased by knife. He has further stated that at that time the deceased shouted for help and though in one of his hands he was holding a child, but he intervened in the matter with his other hand. Abhiram & Ghasiyram also reached there and thereafter we have rescued the deceased. Abhiram had snatched knife from accused/appellant. Thereafter accused/appellant fled away from the spot. This witness has further stated that they took the deceased to hospital at Lailunga where he was treated for about 10-12 days, however, looking to the serious condition of the deceased, he was referred to the hospital at Raigarh where he died during the course of

treatment. Though this witness has been declared hostile by the prosecution but the defence has not been able to elicit anything incriminating in his cross-examination which could make his testimony unreliable or doubtful.

11. Ghasiyaram (PW-3) is the person who reached on the spot after the incident had taken place. However, he has stated that on hearing the cries of deceased, he rushed to the spot and saw the deceased lying on the ground in injured conditions. He was informed by Abhiram (PW-7) that accused/appellant had caused knife injuries to the deceased.

12. Suresh Kumar (PW-4) is the Patwari who had prepared the spot map of Ex.P-4.

13. Ganesh (PW-5) is hear-say witness and reached the place of occurrence after it had taken place.

14. Belmati Bai (PW-6) is the witness who had offered drinking water to the deceased immediately after the incident. She has further stated about the presence of Ganeshram, Balaram (PW-2), Abhiram (PW-7) and Ghasiyram (PW-3) on the spot and that the deceased was lying in the lane.

15. Abhiram (PW-7) is also an eyewitness of the incident. While supporting the prosecution case he has stated that on the date of incident, tenth day ritual was going on in the house of Panchram. At about 4.00 p.m. the deceased and accused/appellant had left the house of Panchram and just thereafter he also left the place and when he reached the lane, he saw the accused/appellant assaulting the deceased with knife. He has further stated that he, Balaram & Ghasiya had intervened in the matter. He had snatched knife from accused/appellant and thereafter the accused/appellant fled away from there. He has further stated that Belmati provided drinking water to the deceased. Thereafter they have

taken the deceased to the police station and thereafter to the hospital at Lailunga. The knife snatched by him from accused/appellant was seized by the police vide seizure memo of Ex.P-3. The deceased remained hospitalized at Lailunga for 10-12 days and thereafter he was referred to the hospital at Raigarh where he died during the course of treatment. In the cross-examination this witness remained very firm and nothing could be elicited by the defence from him.

16. Uma Gupta (PW-8) is the witness who recorded merg.

17. Dr. B.R. Patel (PW-10) is the person who conducted post-mortem on the body of deceased and gave his report (Ex.P-12). According to this witness, the cause of death was shock due to intestinal perforation and the death was homicidal in nature. This witness has stated that if the hole in the intestine was treated in time, the deceased could have survived.

18. Dr. Y. Singh (PW-11) did MLC of the deceased when he was brought to the hospital at Lailunga and noticed the injuries on the body of deceased as described above. He has stated that finding no improvement in the condition of the deceased, he has referred him to the hospital at Raigarh for better treatment. Query whether the injuries present on the body of the deceased could be caused by the knife produced before him has been answered in affirmative by this witness. This witness has denied the suggestion that the deceased was not treated properly at Lailunga hospital.

19. Ramprasad (PW-13) is the person who made entry in the roznamcha sanha vide Ex.P-17C.

20. Samshuddin Khan (PW-14) is the person who lodged the FIR (Ex.P-18).

21. Sunil Ratre (PW-16) is the person who gave intimation to the police regarding death of the deceased.

22. C.L. Sidar (PW-19) is the investigating officer and he has duly supported the prosecution case.
23. Close scrutiny of the evidence makes it clear that on 27.2.2010 at about 4.00 a.m. in the evening the accused/appellant had assaulted the deceased with knife and injuries suffered by him led to his death while undergoing treatment. The incident was witnessed by Abhiram (PW-7) who has categorically stated it is the accused/appellant who had assaulted the deceased with knife. Evidence of this witness finds corroboration not only from the statement of hostile witness Balakram (PW-2), who has also stated in specific terms that it is the accused/appellant who had assaulted the deceased, but also from the medical evidence wherein it has been stated that cause of death was injuries to intestinal perforation caused by hard & sharp object. Query raised by the prosecution as to whether the injuries present on the body of the deceased could be caused by the knife seized under Ex.P-3 from Abhiram (PW-7) which he had snatched from the accused/appellant, was also answered by the doctor in affirmative. Since nothing has been brought on record by the defence to controvert the stand of the prosecution, this Court does not find any reason to disbelieve the statements of eyewitnesses who have described the incident in a lucid manner.
24. Coming to the submission of counsel for the appellant that death of the deceased was not due to injuries caused by appellant but was for want of proper medical treatment. True it is that the autopsy surgeon has stated in his cross-examination that had the deceased been treated in time, his death could have been avoided but in the re-examination by the prosecution this witness has admitted to have conducted only post-mortem of the deceased and not his treatment and therefore could not

say whether treatment of deceased was in time or not. The aforesaid fact has not been disputed by the defence in further cross-examination of this witness. This apart, statement of the treating doctor that the injuries suffered by the deceased on his stomach & chest were grievous in nature and he was provided all possible treatment renders the statement of the autopsy surgeon that had the deceased been provided timely treatment he could have survived the injuries as insignificant. Moreover, the incident was taken place on 27.2.2010 and the deceased breathed his last on 23.3.2010 and this long survival for 26 days goes to suggest that it is the effect of proper and timely treatment only that the deceased pulled-on for 26 days otherwise the injuries sustained by him were so grievous that there was no chance for his survival any longer and he would have met the instantaneous death. Thus, we have no hesitation in saying that the defence has not been able to bring on record that the injuries caused to the deceased did not result in his death during the initial fatal period and that his death happened on account of setting in of some later complications or he died for want of proper treatment in the hospital.

25. Further, we find no substance in the argument of counsel for the accused/appellant that in the facts & circumstances of case the accused/appellant can at best be held liable guilty under Section 304 Part-I or II of the IPC. Considering the manner in which the appellant had assaulted the deceased, the nature and extent of injuries i.e. hole in the intestines, there can be no doubt that the accused/appellant had not only intention to kill the deceased but also had the knowledge the injuries being inflicted by him on the deceased were sure to result in his death. Mere fact that the deceased died only after 26 days of sustaining knife injuries cannot evacuate the act out of the contours of the 2ndly clause of

Section 300 of IPC, particularly when the ultimate cause of death was shock due to intestinal perforation resulted from the knife injury inflicted by the appellant and nothing else.

26. For the foregoing reasons, the appeal being without any substance is liable to be and is accordingly dismissed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(I.S. Uboweja)
Judge

roshan/-