

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 780 OF 2002

Sanjay Singh, S/o Late Faujdar Singh, aged about 28 years,
occupation- Private Service, R/o Deepak Nagar, P.S. Mohan Nagar,
District Durg (C.G.)

... Appellant

Versus

State of Chhattisgarh, through S.H.O., P.S. Mohan Nagar, District Durg.

... Respondent

For Appellant	:	Mr. Awadh Tripathi, Advocate.
For Respondent-State	:	Ms. Smita Ghai, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Deepak Gupta, C.J.

22/09/2016

1. This appeal by the convicted Appellant is directed against the judgment dated 27.6.2002 passed by Special Judge & Additional Sessions Judge, Durg in Sessions Trial No. 383 of 2001, whereby the Appellant has been convicted for the offence under Section 302 of IPC and sentenced to undergo imprisonment for life with fine of Rs.1000/- and in default of payment of fine amount to undergo further simple imprisonment for six months.

2. The facts which are not in dispute are that a fight took place between the deceased Pankaj and the accused Sanjay Singh. Pankaj suffered three injuries; one incised wound on the right hand and two stab injuries on his chest. Pankaj died as a result of his injuries. The accused Sanjay Singh along with two co-accused persons was charged with murder of Pankaj. After trial, the other two co-accused persons

have been acquitted. But, the present accused Sanjay Singh has been convicted for the offence of murder. Hence this appeal.

3. We have heard Shri Awadh Tripathi, learned Counsel for the Appellant and Ms. Smita Ghai, learned Panel Lawyer for the State, and perused the record of the case including the impugned judgment.

4. There is no eye-witness to the occurrence. The prosecution story is that the occurrence took place near Kali Badi Mandir. PW-8, Gulab Verma informed the father of the deceased Pankaj about the occurrence. However, PW-8 Gulab Verma turned hostile and according to him he knew nothing about the occurrence. PW-3, Basant Kumar is the father of the deceased and he states that on 25.7.2001 when he was at his home at around 6pm in the evening then PW-8, Gulab Verma came to him and informed that his son had a fight with somebody and his son had been stabbed with a knife near Kali Badi Mandir. He immediately, along with his wife, went to the place of occurrence. He found his son lying at the spot. His son had received injuries on both sides of his chest and the ribs, and blood was coming out. He asked his son what had happened and he told him that Sanjay Singh and his two companions had stabbed him. The witness further states that at the distance of 10-15 ft., Sanjay Singh was also sitting there and he was also bleeding. At that time the police officials came to the spot and seized the knife which was in the hand of Sanjay Singh. Thereafter, both Sanjay Singh and Pankaj were taken to the hospital. Pankaj was referred to Sector-9 Hospital where he expired after 30-40 minutes. He also states that Sanjay Singh was also referred to Sector-9 Hospital.

5. Statement of PW-4, Prabha Devi, mother of the deceased, is somewhat similar to that of PW-3, Basant Kumar, father of the deceased. She also states that PW-8, Gulab Verma came and told

them that their son had been stabbed near Kali Badi Mandir. She then went along with her husband to the spot. Her statement is that by the time they reached the spot the police had already reached the spot and then Pankaj was taken to the hospital in rickshaw. Sanjay Singh was also lying there in injured condition. She states that in the rickshaw she asked Pankaj what had happened and then he told that Sanjay Singh had stabbed him. She further states that Pankaj had also told her that Sanjay Singh's brother, Basant Singh was also present at the spot. She further states that Pankaj also told that Jameer had used a belt to make him fall and had instigated the others to kill her son Pankaj.

6. PW-5, Rajbir is the widow of deceased Pankaj. However, she did not go to the spot herself and her evidence is not very relevant. She does state that Pankaj had told her that Sanjay Singh used to trouble him and used to put mud on his motorcycle and used to tear his motorcycle's tyre. But, when she was confronted in the course of her statement under Section 161 of CrPC she had not mentioned this fact.

7. PW-15, Poshan Singh, Head Constable, told that he received an information on wireless that some fight has taken place between Sanjay Singh and Pankaj near Kali Badi Mandir and he rushed to the spot. His version is that he was the first to reach the spot. He found them in injured condition at the place of occurrence. He thereafter put the Pankaj in a rickshaw and then Pankaj talked to his parents. He also states that Sanjay Singh was bleeding and had a knife in his hand. According to him, Sanjay Singh had also sustained injuries and was taken to hospital.

8. The medical evidence with regard to Pankaj is that of PW-12, Dr. S.K. Fating, who carried out the post-mortem and has found the following injuries on the person of the deceased :

- “1. Incised wound distal palm of left hand, proximal phalanx of index & middle finger on palm side left hand, 8 x 1¼cm x bone deep. Cutting flexion tenders of index & middle finger of left hand.
2. Abrasion on nose left side, 2 x ½cm.
3. Abrasion on left knee, 2.5 x 1.2cm, on lower part anterior aspect.
4. Linear abrasion on left frontal area of 2cm in size.
5. Stab wound on back below left scapula, 4 x 2cm in size. Depth through & through chest wall, extends anterior downward & medially between 9th & 10th ribs penetrating into lower lobe of lung. Collapse of left lung haemo thorax.
6. Stab wound 3 x 2cm in size on posterolateral aspect of right side of lower part of chest. Depth extends anterior downward & medially through and through chest wall between 10th and 11th ribs cutting. Posterolateral margin of liver penetrating the transverse colon (perforation), contusion of mesentery. Haemo Peritoneum. Viscera pale.”

9. The evidence of PW-17, Dr. S. Hiran is also relevant because he has also proved that Sanjay Singh remained in hospital initially for two days from 26th to 28th, July and thereafter, he remained admitted in hospital for three days from 29th July to 1st, August.

10. Medical evidence with regard to Sanjay Singh shows that he had suffered head injuries with a blunt object. That seemed to be the main injury and a CT Scan was also conducted. That did not disclose any internal injury. However, in one of the document there is a mention of stab injuries received by Sanjay Singh and in another document there is also a mention of two lacerated injuries on his person. Therefore, it is apparent that Sanjay Singh had also received injuries.

11. Neither the parents of the deceased nor the police had witnessed the occurrence. There is no witness to the occurrence. The two co-accused who were charged with Sanjay Singh had been acquitted and rightly so because there is virtually no evidence against them. The version of PW-3, Basant Kumar, father of the deceased, that he reached the spot first does not appear to be correct because even the mother of the deceased states that the police had reached the place of

occurrence before them. Therefore, if any declaration or dying declaration had to be made it would have been made to the policemen also. However, assuming that a declaration has been made by the deceased Pankaj to his parents that he was stabbed by Sanjay Singh, this fact only proves that Sanjay Singh stabbed Pankaj. It does not in any way tell us what was the genesis of the occurrence. Why did Sanjay Singh stab Pankaj that question remains unanswered.

12. The other question which remains unanswered is how Sanjay Singh sustained injuries. In his statement recorded under Section 313 of CrPC, Sanjay Singh had stated that Pankaj had hit him and he had not hit Pankaj. This does not even help us in any manner. However, what is clear from the statement of Sanjay Singh is that a fight did take place between Sanjay Singh and Pankaj. Pankaj had three injuries. One injury on the hand is one which could have been caused when he caught hold of the knife which was being used to stab him. Two injuries have been caused to his lungs and due to bleeding he died. But, the issue that arise is whether on the basis of this we can uphold the conviction under Section 302 of IPC. We are in agreement with the learned Trial Court that the injuries on the person of the deceased have been caused by Sanjay Singh. However, the issue is whether this by itself is sufficient to convict the accused for an offence punishable under Section 302 of IPC.

13. As noted by us above, we are totally in the dark as to how the occurrence started. Nobody has explained how Sanjay Singh was injured. His injuries were also serious. They were not self-inflicted injuries. He remained at the spot with the knife in his hand till the police arrived at the spot. This could only lead to two conclusions either he was so badly injured that he could not leave or he was in a state of

shock himself and was unable to move because he was in a state of shock. Whichever of the two options is seen it makes it more than apparent that his intention was not to kill the deceased.

14. Another aspect of the matter is that in all probabilities, Sanjay Singh could not have received injuries on his head and the other injuries after he had stabbed Pankaj, because the injuries on Pankaj are so serious that he would have fallen down instantaneously. This would indicate that whoever may have started the fight, Pankaj also inflicted some injuries on Sanjay Singh before Sanjay Singh inflicted the fatal injuries on Pankaj. This would mean that the case would fall under one of the *Exceptions* to Section 300 of IPC and the offence would not be culpable homicide amounting to murder but would be a plain culpable homicide falling under Section 304 of IPC.

15. This brings us to the question as to whether the case is one which falls under Section 304 Part-I or Part-II of IPC. In this regard, we may mention that the two fatal injuries are on both sides of the chest which clearly shows that even if the accused did not have the intention of cause death, he had the knowledge that the injuries which he had caused were likely to cause death. But, because we have held that there may have been some provocation for the inflicting of the injuries, the conviction would be under Section 304 Part-II of IPC. Therefore, we convert the conviction under Section 302 of IPC to one under Section 304 Part-II of IPC.

16. That brings us to the question of sentence. The occurrence took place in 2001. More than 15 years have been passed. The accused was 22 years at the time when the occurrence took place and would be about 40 years now. In the meantime, he had got married and has children and therefore it would be highly unjust to send him behind bars

at this juncture. He has already undergone imprisonment for seven years and three months.

17. We, therefore, while convicting the accused under Section 304 Part-II of IPC limit his sentence to the period already undergone. But, we also make him liable to pay a fine of Rs.50,000/- and in default of payment of fine amount he shall undergo imprisonment for two years. In case the fine is deposited the same shall be paid to the legal heirs of the deceased. The fine amount to be deposited within three months from today.

18. The appeal stands allowed with that modification of conviction and sentence.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge