

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2671 OF 2000**

Judgment Reserved on: 19/12/2016

Judgment delivered on: 16/01/2017

Maniram alias Tun-Tun son of Parasram Yadav, aged about 30 years, resident of Khamariya P.S. Utai, District Durg M.P.

---- Appellant

Versus

State of M.P. (now Chhattisgarh)

----Respondent

For Appellant	:	Ms. Savita Tiwari, Advocate
For State/Respondent	:	Ms. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Sanjay Agrawal, J.****C A V Judgment****Per Sanjay Agrawal, J.**

1. This is the appeal filed by accused/appellant against the judgment dated 04/10/1999 passed by learned Fifth Additional Sessions Judge, Durg in Session Trial No. 13/1996 whereby the appellant has been convicted and sentenced as follows:-

<u>Conviction</u>	<u>Sentence</u>
U/s 302/34 IPC	Life imprisonment and fine of Rs.1000/-, in default of payment to further undergo one year simple imprisonment.
U/s 324/34 IPC	Two years rigorous imprisonment and fine of Rs.500/-, in default of payment to further undergo three months simple imprisonment.

2. The prosecution story, in short, is that on 11/02/1993 at about 9.30 A.M. when deceased Anandaram was with his wife Smt. Devantin Bai at his Verandah, the accused Maniram along with two of his associates have entered and assaulted him with a sword because of some previous enmity. Accused Maniram and his two associates also assaulted his wife Smt. Devantin Bai and his son Munna Lal Yadav (PW-13 & 6) when they had intervened in order to save Anandaram. On account of the said occurrence, Anandaram died on the spot while his wife Smt. Devantin Bai and son Munna Lal Yadav got injured.

3. Based upon the aforesaid incident, *Dehatinalishi* (Exhibit P-8) and First Information Report (Exhibits P-1 & P-14) were lodged by the complainant Munna Lal Yadav on the same day by narrating the aforesaid incident.

4. The matter was investigated and the accused Maniram along with two of his associates namely Kalyan Singh and Sukhram were charged for having commission of an offence punishable under Sections 307/302/34 of the IPC read with Sections 25 and 27 of the Arms Act.

5. All the accused persons have not accepted the charges as framed and pleaded not guilty by submitting that they have been falsely implicated in connection with the said crime.

6. In support, the prosecution has examined 15 witnesses and then 12 witnesses for the accused Maniram and also examined one absconding witness Ashok Sahu in order to establish the above mentioned crime, while none were examined by the accused persons for proving their innocence.

7. The trial Court, after considering the evidence adduced by the prosecution, has found the accused/appellant guilty for having committed an

offence punishable under Sections 302/34 and 324/34 of the IPC vide its impugned judgment dated 04/10/1999 and sentenced him as aforesaid. Other accused persons namely Kalyan Singh and Sukhram have been acquitted by the trial Court vide its respective judgments dated 03/12/1997 and 29/09/2010.

8. Being dissatisfied with the aforesaid judgment, the accused/appellant has preferred this appeal while exercising powers enumerated under Section 374 of the Code of Criminal Procedure, 1973 on the ground that the impugned judgment passed by the trial Court is perverse and illegal inasmuch as it did not appreciate the prosecution evidence in its right perspective as the used weapon (sword) was seized from other accused person i.e. Kalyan Singh and not from him i.e. appellant Maniram, and therefore, erred in convicting him.

9. On the other hand, the learned counsel for the State/respondent has supported the judgment delivered by the trial Court and argued that the same is based upon due and proper appreciation of injured eyewitnesses, therefore, does not require to be interfered.

10. We have heard learned counsel appearing for the parties and have perused the entire record carefully.

11. Smt. Devantin Bai, the wife of the deceased examined as PW-13, has stated that accused Maniram had assaulted her husband with a sword with the assistance of two others, by which, her husband had received several injuries. She has stated further that her son had also seen the said incident.

12. Her aforesaid statement is duly corroborated by Dr. Prabhat Pandey (PW-11), who had examined the dead body of the deceased Anandaram by submitting its postmortem report (Exhibits P-13 & P-16) wherein he had found as many as 13 injuries on it and had opined that Anandaram had died because

of these grievous injuries. Besides, this witness Smt. Devantin Bai had also received several injuries when she had intervened in order to save her husband as evidenced by MLC report (Exhibits P-5-A & P-17). Thus, there is no reason to disbelieve the statement of this injured eyewitness.

13. Another injured eyewitness, i.e. Munna Lal Yadav, is the son of deceased examined as PW-6, who had lodged the *Dehatinalishi* (Exhibit P-8) and First Information Report (Exhibits P-1 & P-14) immediately after the occurrence of the said incidence to the concerned Station House Officer. This witness had also received injuries and had become unconscious when intervened the alleged quarrel. There is also no material on record by which, the authenticity of this witness could be discarded.

14. It is true that both the aforesaid eyewitnesses are relatives of deceased Anandaram but merely on this ground, their evidence cannot be held to be unbelievable in view of the facts involved in the instant matter and particularly when they themselves were injured while rescuing their bread earner i.e. Anandaram. The other prosecution witnesses were not the witnesses of the said incidence and therefore, they are formal in nature.

15. From close scrutiny of the entire evidence of both the aforesaid injured eyewitnesses, it is crystal clear that the accused Maniram has not only assaulted the deceased Anandaram with the sword but has assaulted his wife Smt. Devantin Bai and son Munna Lal Yadav when they intervened in order to save him. Therefore, the considered opinion of this Court is that the reasoning of the learned Sessions Judge and the conclusion arrived at in order to convict the appellant Maniram with regard to the offence punishable under Sections 302/34 and 324/34 of the IPC, do not require to be interfered.

16. In view of the above, we find no merit in this appeal. It is dismissed accordingly.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE

Tiwari