

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 07 of 2017**

1. Sunil Kumar Sood, son of Kamal Kumar, aged about 44 years, resident of Line Para, Sukma, District Sukma, CG

---- Appellant**Versus**

1. State of Chhattisgarh

---- Respondent

For Appellant	:	Shri Surendra Singh learned Sr. Counsel with Shri Parag Kotecha, Advocate
For Respondent/State	:	Shri Vaibhav Goverdhan, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri RCS Samant****Judgment on Board by Pritinker Diwaker, J****11/05/2017**

This appeal arises out of the judgment and order dated 9.12.2016 passed by Additional Sessions Judge (FTC) South Bastar, Dantewada in Sessions Trial No. 46/2009 convicting the accused/appellant under Section 120-B read with Section 302; under Section 302 read with Section 149; under Section 147 and under Section 148 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 5000/- u/s 120-B r/w 302; imprisonment for life and pay fine of Rs. 5000/- under Section 302 r/w 149 and RI for six months under Sections 147 and 148 IPC each plus default stipulations.

2. Case of the prosecution in brief is that on 18.1.1998 there was some dispute between Ram Pratap Singh (PW-6) and the accused/appellant herein over some trivial issue where the

accused/appellant had threatened Ram Pratap Singh of dire consequence. It is alleged that when deceased Jai Prakash alias Dudha tried to pacify these disputing fellows accused Shyam Sundar Khatri who was also present there at the relevant time got annoyed with him and the deceased as well. When accused Shyam Sundar Khatri called Jai Prakash alias Dudha, it is Dipak Chouhan (PW-11) who went to him and told that as the dispute between the young guys has already been settled, it should not be aroused again. However, he did not swallow the advisory of Dipak Chouhan and remained over-brimmed with anger towards Jai Prakash alias Dudha. Prosecution story further reveals that on 20.1.1998 when Jai Prakash alias Dudha was taking rest in his room along with Vinod Tiwari (PW-5) and Sayed Akbar (PW-8), at about 11.30 PM the accused/appellant herein and accused Nimmo came there and called Jai Prakash alias Dudha. On being called, Jai Prakash alias Dudha accompanied them followed by Vinod Tiwari (PW-5) and Sayed Akbar (PW-8) and as soon as they reached near the shop of some Tapadia and Parasmal Jain (PW-2) situated at crossroads, the accused/appellant, accused Raj Kishore, Nimmo, Dhananjay, Shyamsundar Khatri and others opened assault on him with dagger, knife and sword. Accused Shyamsundar Khatri is alleged to have assaulted Jai Prakash alias Dudha on his head with dagger; accused/appellant with sword and others with knife. Even after Jai Prakash alias Dudha somehow managed to free himself from the clutches of accused persons and run home-wards, accused Shyamsundar Khatri again dealt a dagger blow on his chest and then all ran away on the vehicle of accused Happy. All this bloodshed is said to have been seen by Vinod Tiwari (PW-5) and Sayed Akbar (PW-8) as they were on the spot throughout. Second

episode of the incident which took place near the house of Jai Prakash alias Dudha was witnessed by Dipak Chouhan (PW-11) and Ramvilas (not examined in this case as he died on 12.1.2010). Jai Prakash alias Dudha was taken to hospital in a jeep where he succumbed to the injuries. On 21.1.1998 at 12.05 AM FIR Ex. P-14 was lodged by Ramvilas (not examined) - the father of the deceased against the accused/appellant, accused Raj Kishore, Nimmo, Dhananjay and Shyamsundar Khatri for the offence under Section 302, 34 IPC. Immediately thereafter at 12.10 AM *merg* intimation Ex. P-14-A was also registered. Inquest on the dead-body was conducted on 21.1.1998 vide Ex. P-9 and thereafter the body was sent for postmortem examination on that very day which was conducted by Dr. R.K. Kuruvanshi (PW-09) who gave his report Ex. P-15. After investigation, charge-sheet was filed by the police followed by framing of charge by the Court below under Sections 120-B r/w 302, 302 r/w 34, 302 r/w 149, 147, 148 IPC and sections 25 and 27 of the Arms Act.

3. In order to prove its case the prosecution has examined 12 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above by the judgment impugned.

5. Counsel for the accused/appellant submit as under:

(i) That the FIR is ante dated which is evident from the fact that though all the accused persons were available in the village, they

were interrogated by the police but yet their arrest was made three days after the incident and the statements of most of the witnesses under Section 161 of the Code of Criminal Procedure (hereinafter referred to as "Code") were also recorded three days after the incident.

(ii) That a highly improbable story has been put forth by the prosecution that the deceased was killed by a number of persons but he did not raise any hue and cry because there is no evidence to this effect.

(ii) That the house of two police officers namely P.B. Tirki and one Rai, Assistant Sub Inspector were nearby but they were not called by the deceased or his parents.

(iii) That at the time of incident both the police officers were available and fully awake but yet they could not hear any screams of the deceased nor were they called by his father.

(iv) That there is total non compliance of Section 157 (1) and (2) of the Code of Criminal Procedure.

(v) That there are material contradictions and omissions in the statements of the eyewitnesses PW-5, PW-8 and PW-11.

(vi) That though a reference of Rojnamcha has been given in the merg intimation but the said Rojnamcha is not the part of challan.

(vii) That weapon dagger has been seized vide seizure memo Ex. P-19 from an open place on the memorandum of accused Shyamsundar Khatri Ex. P-18 on 23.1.1998 but the same was sent to the Forensic Science Laboratory on 1.4.1998 and there is no evidence that during this period where the same was kept. Furthermore, there is no serological report on record.

(viii) That the evidence of conspiracy against the accused/appellant is very weak.

(ix) Reliance is placed on the decisions of the Apex Court in the matter of **Bir Singh and others v. State of Uttar Pradesh AIR 1978 SC 59**, in the matter of **Shivlal and another v. State of Chhattisgarh AIR 2012 SC 280**, in the matter of **Rameshwar Singh v. State of Jammu and Kashmir AIR 1972 SC 102**, in the matter of **Mohanlal Gangaram Gehani v. State of Maharashtra AIR 1982 SC 839**, in the matter of **Pohalya Motya Valvi v. State of Maharashtra AIR 1979 SC 1949**, in the matter of **The State of Rajsthan v. Daulat Ram AIR 1980 SC 1314**, in the matter of **Mohd. Aman and another v. State of Rajsthan (1997) 10 SCC 44** and in the matter of **Ganesh Bhavan Patel and another v. State of Maharashtra AIR 1979 SC 135**.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits as under:

(i) That the findings recorded by the Court below are strictly in accordance with law and there is no infirmity in the same.

(ii) That there is no documentary evidence to show that the FIR is ante dated.

(iii) That immediately after sustaining injuries, the victim was taken to hospital where he expired.

(iv) That prompt FIR Ex. P-14 has been lodged within 35 minutes of the incident by Ramvilas (not examined in this case). Likewise, prompt merg intimation Ex. P-14A was recorded within 40 minutes of the incident.

(v) That in the inquest report Ex. P-9 which was conducted on

21.1.1998 names of the accused persons namely Sunil, Raj Kishore, Nimmo alias Nirmal Kumar, Dhananjay and Shyamsundar Khatri are mentioned and therefore the question of FIR being ante dated does not arise.

(vi) That even in the requisition memo for sending the body for postmortem examination names of these five persons have been mentioned to be the assailants of the deceased.

(vii) That no suggestion to the investigating officer was put by the defence regarding the FIR being ante dated and had such suggestion been given to the investigating officer, *Rojnamcha* would have been produced by the prosecution.

(viii) That normally such *Rojnamchas* are not produced before the Court unless any missing report is entered in the same.

(ix) That there is no delay in recording the statements of the witnesses under Section 161 of the Code of Criminal Procedure.

(x) That from the evidence on record it becomes apparent that part of the statement under Section 161 of the Code of Criminal Procedure was recorded immediately after the incident and the part thereafter.

(xi) That except accused Shyamsundar, there is no evidence to show that the other accused persons were available in the village but yet they were not arrested.

(xii) That though accused Shyamsundar was interrogated from the very first day but his formal arrest was made on 23.1.1998.

(xiii) That minor contradictions in the statements of the prosecution witnesses should be ignored because they are the natural witnesses and have not been tutored by anyone.

(xiv) That apart from eyewitnesses Sayed Akbar (PW-8), Vinod Tiwari (PW-5) and Dipak Chouhan (PW-11) evidence of last seen is also there to establish the case of the prosecution.

(xv) That medical examination of Nimmo is insignificant because he himself may not have disclosed to the police that he suffered any injury to avoid his involvement in the commission of offence alleged.

(xvi) That even if the houses of two police officers were there near the place of incident, it cannot be expected from the victim to call them more particularly when he had suffered grievous injuries including on chest with deadly weapon like dagger.

(xvii) That the motive has also been proved by Ram Pratap Singh (PW-6) and Dipak Chouhan (PW-11).

7. Heard counsel for the parties and perused the evidence available on record.

8. Sayed Akbar (PW-8) - one of the eyewitnesses to the incident supporting the case of the prosecution has stated that on 20.1.1998 around 11 PM when he was sleeping with the deceased and Vinod Tiwari (PW-5), accused/appellant herein, accused Raj Kishore Gupta, Nimmo and Hanumant came to their room and asked the deceased to accompany them up to the crossroads. This witness and Vinod Tiwari (PW-5) are also stated to have been in their company. When these four accused persons were discussing something with each other in front of Bhimraj Tapadia's shop, he and Vinod Tiwari went to a betel kiosk which was about 10-12 steps away from the place where the accused persons were having a chitchat. At that time, accused/appellant suddenly came there and dealt a sword blow on the head of the deceased. He was

accompanied by accused Raj Kishore Gupta, Nimmo, Annu alias Hanumant and Shyamsundar Khatri and they too opened assault on the deceased with knife and dagger (*gupti*) causing injuries on stomach and chest. This witness has stated that the dagger (*gupti*) held by accused Shyamsundar Khatri also injured the thigh of accused Nimmo. Thereafter, deceased somehow wriggled out of the clutches of the accused persons and ran home followed by this witness and others. While the deceased was running towards his house, accused Shyamsundar Khatri further chased him and again caused a dagger blow on the chest. This witness has specifically stated that accused Nimmo, Annu alias Hanumant, Dhananjay assaulted the deceased with knife whereas accused Raj Kishore used dagger in so doing. He has stated that when father and brother of the deceased namely Ramvilas (not examined here) and Dipak (PW-11) came to the rescue of the deceased, the assailants fled away by boarding the 407-four-wheeled vehicle brought by accused Happy who too is said to have hurled a threat to kill whosoever came in his way. The victim was then taken to the hospital where he breathed his last just 10-15 minutes thereafter. He is also the witness to inquest Ex. P-9. Though this witness was made to face a lengthy cross-examination, he remained firm-footed to the assertions made in the examination-in-chief and nothing to the contrary could be elicited by the defence. Though in paragraph No. 9 this witness is stated to have gone to the police station along with Vinod Tiwari and lodged the report, in fact the FIR Ex. P-14 was lodged by Ramvilas (not examined) – the father of the deceased. In paragraph No. 11 he has further clarified that half of his statement was recorded on the same day whereas the remaining half was recorded on the third day of the incident. Vinod Tiwari (PW-5) –

another eyewitness to the incident who was also in the house of deceased along with Sayed Akbar (PW-8) and then followed the accused persons up to the crossroads where the first part of the incident of assault took place and then came back to the place where the second part of assault was made by accused Shyamsundar Khatri after the deceased managed to free himself from the clutches of the accused persons and ran home-wards, has made almost identical statement to that of PW-5. Though there are minor contradictions and omissions in the statement of this witness, looking to his background and the lengthy cross-examination he was subjected to by the defence, they are required to be ignored. Dipak Chouhan (PW-11) - brother of the deceased has stated that on the date of incident at about 10-11 AM accused/appellant came to him and asked about the deceased saying that he was called by his angry maternal uncle Shyamsundar Khatri. According to this witness, when he asked the accused/appellant whether there was any quarrel, he told him that there was nothing like this with the deceased but it of course was with Ram Pratap Singh (PW-6). Thereupon, he went to the shop of Parasmal along with the accused/appellant and saluted accused Shyamsundar Khatri who ignoring his salutation asked him tersely as to why his nephew was beaten - whether the blood of Khatri became so cheap! On this, he tried to assuage accused Shyamsundar Khatri referring to the friendship and compromise entered into between the parties but he did not cool down and made the utterance - "blood for blood". Meanwhile, according to this witness, deceased also reached there and tried to comfort accused Shyamsundar Khatri but he remained unmoved and quipped to see in a threatening tone. This witness has stated that

in the night at about 11/11.30 PM when he was watching TV along with Ram Pratap Singh (PW-6), screams of the deceased fell in his ear and after coming out he saw that the deceased had fallen flat in the veranda. He also saw accused Shamsundar Khatri coming there holding dagger (*gupti*), inflicting a blow on the chest of the deceased and then getting back. After this witness came in the veranda and tried to chase the assailant, he saw the accused/appellant, accused Hanumant, Nimmo, Raj Kishore and Dhananjay standing outside the gate - all were armed with weapons who ran away along with accused Shyamsundar Khatri on the way leading to Kota. After he along with Vinod Tiwari followed them up to 40 steps, the accused persons boarded a 407 model vehicle and went towards Kerlapal village. This witness has stated that when he along with Vinod Tiwari was trying to follow the assailants, accused Happy warned them sitting on the driving seat not to move further or else he would crush them all. Immediately thereafter the victim was taken to the hospital where he succumbed to the injuries suffered by him. Cross-examination of this witness also contains the same thing as in the examination-in-chief and the minor contradictions and omissions, if any, being insignificant to the decision of the case, are not required to be given much weightage keeping in mind the background they hail from. Dr. R.K. Kuruvanshi (PW-09) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-15 stating that he noticed following injuries thereon:

- (i) one stab wound present on left chest just 3 cm medially from the left nipple - size 3 cm x 1.5 cm, clear cut margin transversely in direction.
- (ii) one stab wound present on left posterior fold of axilla, transversely in direction, clear cut margin, size - 3 cm x 2 cm.

- (iii) one stab wound present on left chest (left laterally 4 cm below from left nipple) transverse in direction – size 3 cm x 1 cm clear cut margin.
- (iv) one stab wound present on left upper abdomen, directed longitudinally, clear cut margin – size 3 x 2 cm.
- (v) one stab wound present on lateral side of right chest (9 cm down laterally from right nipple) transversely directed, clear cut margin – size 2 cm x 1 cm.
- (vi) one clear cut incised wound present on right parietal region above right ear directed transversely.
- (vii) one clear cut incised wound present on dorso lateral surface of left elbow, skin with soft tissues cut, size 3 x 2 cm.
- (viii) one abrasion present on middle aspect of medial aspect of base of toe of left foot size 2 x 2 cm.

Cause of death, according to this witness, is cardio respiratory arrest as hypovolemic and neurogenic shock due to grievous injury on the vital organs by sharp and hard object and the death was homicidal in nature.

9. On the memorandum of accused Shyamsundar Khatri Ex. P-18 seizure of dagger (*gupti*) was made under Ex. P-19; on memorandum of accused Raj Kishore Gupta Ex. P-16, seizure of knife was made under Ex. P-17; on the memorandum of accused Dhananjay Ex. P-20 seizure of knife was made under Ex. P-21, and as per the FSL report Ex. P-27 blood was found on the dagger (*gupti*) seized from the possession of accused Shyamsundar Khatri, sword seized vide Ex.P-12 from the house of accused/appellant on being produced by his father. However, there is no serological report on record.

10. To establish the conspiracy alleged to have been hatched by the accused persons, the prosecution has examined Vijay Singh

(PW-7) who has stated that a day prior to the date of incident at about 7 PM he had gone to the hotel of Raj Kishore Gupta to have dinner where accused Happy, Sunil, Shyamsundar Khatri and Radha Mohan were also dining. 2-4 minutes thereafter accused Munnu is also said to have come there and patting the back of the accused/appellant he asked him as to what he was doing, on which he told him to do on the morrow what he was expecting him to do. Thereafter, accused Munnu suggested that the purpose would not be served in killing Ramu (Ram Pratap Singh PW-6) as the bone of contention was Dudha (the deceased). This is stated to have been approved by accused Radha Mohan, and thereafter he left the hotel. In cross-examination there appear to be some contradictions and omissions in the statement of this witness. He has admitted the fact that he was acquainted with Dipak Chouhan (PW-11) but has denied the acceptance of any amount from him. He is further stated to have disclosed this conversation between the accused persons to the deceased only and none else. After the incident involving the death of Dudha, this witness is said to have informed about the said conversation to Dipak Chouhan (PW-11) also.

11. In order to prove motive, the prosecution has examined Ram Pratap Singh (PW-6) who has stated that he knew the accused persons and that two days prior to the incident i.e. on 18.1.1998 at about 7-7.30 PM he was asked by accused Hanumant alias Annu to get the petrol for Maruti Van from the petrol pump of accused Radha Mohan and when he went to the said petrol pump, brother of Radha Mohan was there who told him that Radha Mohan had gone towards the locality. While returning this witness met the deceased and asked him about accused Radha Mohan on which he informed him that Radha Mohan was standing at a betel shop near the State

Bank. Thereafter, he went to accused Radha Mohan where accused/appellant herein was also standing, and asked for the petrol on which he (Radha Mohan) asked him to go and he would follow him. According to this witness, when he told accused Radha Mohan of being in hurry, the accused/appellant abused him and asked to get away. When he asked the accused/appellant as to why he was abusing, he gave a punch on his face and accused Radha Mohan held his color. While returning, he met accused Hanumant alias Annu and informed him about the act of the accused/appellant and accused Radha Mohan, and in the meanwhile deceased also came there. Then the accused/appellant abused and threatened accused Hanumant alias Annu of being killed, however, the deceased tried to assuage him. Thereafter, according to this witness, the accused/appellant took out the knife and again abused, on which he picked up a stone and aimed at him which hit his head. Deceased then took the accused/appellant to the clinic for treatment. Khem Singh Thakur (PW-1) is the Patwari who prepared spot map Ex. P-1. Parasmal Jain (PW-2) has stated that on the date of incident at about 12 noon accused Shyamsundar Khatri came to his house and called out his maternal nephew who was passing through nearby and asked him to call the person who had beaten him. On this, the accused/appellant called Dipak Chouhan (PW-11) who however told accused Shyamsundar Khatri of the compromise arrived at, but he persisted upon calling the person who had beaten his nephew. Thereafter, the accused/appellant called the deceased but at that time one Bhimraj Tapadia reached there and rebuking accused Shyamsundar Khatri took him along. Shakti Singh (PW-4) is the witness to inquest Ex. P-9 and seizure of plain and blood stained soil made under Ex. P-22 and P-23. N.K.

Gautam (PW-10) and Dilip Kumar Markam (PW-12) are the witnesses who carried out the investigation have duly supported the case of the prosecution.

12. This Court has heard counsel for the parties at considerable length and also gone through the material available on record including the evidence of the witnesses with utmost care. Apart from the witnesses to memorandum, seizure, inquest and other procedural formalities, there are three eyewitnesses to the incident namely Sayed Akbar (PW-8), Vinod Tiwari (PW-5) and Dipak Chouhan (PW-11) and if their statements are viewed in a composite way, it becomes crystal clear that it is the accused/appellant herein who was actively involved in the bloodshed of the deceased. They have categorically stated that on the fateful day in the night hours the accused/appellant herein, accused Raj Kishore Gupta, Nimmo and Hanumant came to the house of the deceased and took him up to the crossroads. PW-5 and PW-8 also went after the deceased and accused. After reaching the appointed place, accused/appellant suddenly came there and dealt a sword blow on the head of the deceased. Thereafter, accused Raj Kishore Gupta, Nimmo, Annu alias Hanumant and Shyamsundar Khatri already present at the relevant time along with accused Sunil also opened assault on the deceased with knife and dagger (*gupti*). Evidence of the eyewitness further specifies that accused Nimmo, Annu alias Hanumant, Dhananjay assaulted the deceased with knife whereas accused Raj Kishore used dagger in so doing. Assault did not stop here. When the deceased somehow managed to free himself from the clutches of the accused persons and ran home-wards, accused Shyamsundar Khatri further chased him and when he (victim) entered the gate and fell down, he again dealt a dagger (*gupti*)

blow on his stomach. Thereafter, the victim was then taken to the hospital where he succumbed to the injuries soon. First part of the incident taken place at the cross-roads was witnessed by PW-5 and PW-8 whereas the second part occurred near the house of the deceased was witnessed by PW-11. Of course, there are certain contradictions and omissions in the statements of the witnesses, but on material particular they remained very firm and nothing to the contrary could be elicited by the defence. Since these witnesses hail from the tribal dominated and Naxalite affected area, such contradictions and omissions become irrelevant and are required to be ignored. Most important aspect of the case is that the statements of these eyewitnesses get full corroboration from the statement of Dr. R.K. Kuruvanshi (PW-9) who conducted postmortem examination on the body of the deceased and gave his report Ex. P-15 scribing as many as eight injuries, most of them, on vital parts.

13. As regards motive on the part of the accused persons including the appellant herein behind the brutal assault, Ram Pratap Singh (PW-6) has been examined by the prosecution. Evidence of this witness goes to show that prior to the incident of assault, there was a dispute between the accused/appellant and himself which infuriated the accused persons in particular accused Shyamsundar Khatri to such an extent that he was determined to take blood for blood as his nephew (appellant herein) was beaten by PW-6. Fury of accused Shyamsundar is further evident from his involvement in the assault at two places, first at the cross-roads where the victim was assaulted by him, the appellant herein and the other accused persons as well with the deadly weapons, and secondly in the house of the deceased where he chased him and

gave a dagger blow on his stomach while the latter had fallen down with injuries. Further, on the memorandum of the accused persons seizure of dagger (*gupti*) and knife was made, all stained with blood vide FSL report Ex. P-27. Sword was seized vide Ex.P-12 from the house of the accused/appellant on production by his father and that also contained blood vide FSL report Ex. P-27. Though the serological report has not been produced by the prosecution yet looking to the ample inculpatory evidence against the accused/appellant his involvement in the commission of crime in question is writ large and in the absence of the report of serologist case of the prosecution would not suffer any serious legal flaw as in such a situation the FSL report can be treated as an additional evidence. Though the blood on knife (article-I) has been opined to be insufficient for the chemical examination, but its presence has very much been proved by the seizure witnesses as also the FSL report Ex. P-27.

14. This Court does not find any substance in the argument of the counsel for the accused/appellant that FIR is ante dated and also that once the accused persons were available in the village itself; police was in their touch but yet the arrest has been made on the third day. This is because the requisition memo for sending the body of the deceased for postmortem examination as also the inquest report dated 21.1.1998 Ex. P-9 clearly mention the names of the accused persons including the present appellant as the assailants of the deceased, therefore, to hold the FIR as ante dated merely on the ground that the arrest of the accused persons was made on 23.1.1998 is without any substance. Another important aspect of the case is that in the *merg* Ex. P-14A which

was recorded on 21.1.1998 after receiving information from the hospital vide Ex. P-24, names of the accused persons further find place and therefore also the FIR cannot be termed as ante dated.

15. Thus there is ample evidence to hold accused/appellant guilty for committing the murder of Jai Prakash alias Dudha by hatching beforehand conspiracy while sitting in a hotel and being so the findings recorded by the Court below convicting and sentencing him for the offences detailed above cannot be said to be faulted with warranting interference by this Court. Judgments tried to be taken support of by the counsel for the accused/appellant have been gone through but as the facts involved therein are altogether on different footing, they do not, in any way, help the accused persons herein and thus lose their applicability in the case in hand.

16. In the result, the judgment impugned convicting and sentencing the accused/appellant as described above is hereby maintained and his appeal stands dismissed. As he is already in jail, no further order to send him to jail etc. is necessary.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge