

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 11-08-2017

Judgment delivered on 01-09-2017

Criminal Appeal No. 862 of 2004

Mangalram S/o. Sadhurar Mahar, aged about 45 years, R/o. Village Dakkatola, Police Station- Ambagarh Chowki, District Rajnandgaon (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station – Ambagarh Chowki, District Rajnandgaon (C.G.)

---- Respondent

For Appellant	:	Mrs. Anju Ahuja, Advocate.
For Respondent/State	:	Mr. V. A. Goverdhan, Panel Lawyer.

**Coram: Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

- 1) This appeal is directed against the judgement of conviction and order of sentence dated 08.09.2004 passed by the First Additional Sessions Judge, Rajnandgaon, Session Division, Rajnandgaon (C.G.), in Sessions Trial No. 125 of 2002, convicting the accused/appellant under Section 302 of the IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs. 2000/-, with default

stipulation under Section 25 of the Arms Act, 1959 sentencing him to undergo rigorous imprisonment for two years and to pay fine of Rs. 1000/- with default stipulation and under Section 27 of the Arms Act, 1959, sentencing him to undergo rigorous imprisonment for four years and to pay fine of Rs. 2000/- with default stipulation.

- 2) Name of the deceased is Jangaliya in whose house wife of the accused/appellant Shyamvati was residing after quarrel with the appellant.
- 3) As per the prosecution case, on 05.06.2002 at about 00.30 am in the night, Kotwar of the village Amatola Ramsai was sleeping in his house and suddenly he heard sound of explosion and voice of *Chor Chor*, as it was the voice of Jangaliya he called the people of the locality that Jangaliya (deceased) is calling. The people of the village went to see Jangaliya and saw that Jangaliya was lying below the cot and had suffered bullet injury in his left rib and left leg. There was smell of gun powder and some pieces of clothes were burnt and gunshot was fired by someone and Jangaliya was dead. The matter was reported by Kotwar Ramsai to Police Station Ambagarh Chowki on 06.06.2002 wherein the information regarding death is registered as 23 /2002 and, thereafter, the First Information Report was registered as Crime No. 87/2002 under Section 302 of the IPC. On discovery statement of the accused/ appellant one single muzzle gun (Bharmar Bandoon) was seized under the sand from the canal region of village Marartola and bullets were seized four in number from the house of the appellant. Statements of the witnesses were recorded and as per the report of ballistic expert it is found that the gunshot caused to the deceased might be fired

from this gun and the gunshot was fired from the same gun. During autopsy two bullets were removed from the body of the deceased which were sent for forensic examination; statements of the witnesses were recorded under Section 161 of the Cr.P.C.

- 4) After completion of the investigation, charge sheet was filed against the accused/ appellant in the Court of Judicial Magistrate First Class, Ambagarh Chowki, who, in turn, committed the case to the Court of Sessions Judge, Rajnandgaon. The appellant was charge sheeted under Section 302 of the IPC and Sections 25 and 27 of the Arms Act, 1959, to which he did not plead guilty, therefore, trial was conducted. After completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C. was recorded and after completion of trial, the trial Court considering the material available on record by the impugned judgement convicted and sentenced the accused/appellant as mentioned above.
- 5) Learned counsel appearing for the accused/appellant submits as under:
 - (i) That the house of the accused/ appellant was searched twice/ thrice by the Police and they did not find anything in the house and when they again searched the house then they found bullets from the house of the accused/ appellant and the same seems to be pre-planned for implicating the accused/ appellant in a false charge and the gun is seized from open place.
 - (ii) That no rivalry has been shown between the deceased and the accused/ appellant and there is no motive for commission of murder of the

deceased.

- (iii) That the case is based on circumstantial evidence and the evidence adduced is not sufficient to bring home the guilt of the accused/appellant.
 - (iv) That the judgement of the trial Court is not in the fitness of factual matrix and legal aspects of the matter and the same is liable to be reversed and the appellant be acquitted from the charge levelled against him.
- 6) *Per contra*, learned State counsel supporting the impugned judgement has submitted that the judgement of the trial Court is well founded and there is no illegality or infirmity in it warranting any interference by this Court.
- 7) We have heard counsel for the parties and perused the material on record.
- 8) Ramsai (PW-1) is the kotwar of the Village of Amatola and neighbour where the incident took place. As per this witness, he heard the sound of explosion at about 12.30 in the night and also heard voice of "*Chor Chor*". After hearing cry of deceased Jangaliya he wokeup and asked Jangaliya as to what happened but he did not reply then he called the villagers namely Pyariram, Jethu, Sitaram and others, informed them about the incident, thereafter they went to the house of Jangaliya where they found smell of explosive and found that Jangaliya fell down from the cot and the blood was oozing from the injury and found that Jangaliya was dead. He further deposed that on the next day morning he reported the matter to

the Police Station Ambagarh Chowki, where the information of death is registered as (Ex.P-1) and First Information Report was registered as (Ex.P-2). The version of this witness is supported by Hariram (PW-3), Sukhiram(PW-11) and again it is supported by Chaitbai (PW-2) wife of the deceased.

- 9) As per Chaitbai (PW-3) she had gone to village Dongargaon in her maternal uncle Haridas's house, there one Bhojiram informed her that her husband is not well and when she reached house at about 7.00 am, she found that her husband dead and he sustained bullet injury on the chest and legs.
- 10) Dr. R.K. Pasi (PW-8) conducted autopsy of the deceased Jangaliya on 07.06.2002 at about 10am. The dead body of the deceased was brought by constable No. 278, Ashok Kumar of Police Station Ambagarh Chowki. After examination of the body of deceased Jangaliya, he found the following injuries:-

- (I) Moderate built is following ante-mortem in injuries seen in lower part of chest (2) wound of entire of RT lower part of chest at the level of rib in the line of anterior axilla fold of shape 1cm diameter 12 cm deep in mortem inverted blackening and tattooing around wound of entry present. Fracture of 9th rib at the level of anterior axilla fold lung laceration 5x2x3 lower lobe of right lung around clotted blood seen. Basal part of right 3X2x1cm laceration seen around clotted blood seen, right hematoma present.
- (ii) Diaphragm right rib 2x1cm thickness of diaphragm present right clotted blood present.
- (iii) Liver laceration right lobe 5x2x3cm mentioned clotted blood seen in above region are bullet found preserved advised for chemical analysis.

(iv) Right leg of middle part and Right leg wound of entry 1 cm diameter margin inside in blackening and tattooing seen around entry wound. Depth up to tibia and bone fracture of fibula middle 3rd part clotted blood seen are kept for this region, preserved for chemical analysis.

As per the report of doctor he found two bullets in the body, one near liver and another to leg and both bullets were sealed by him in packet and clothes of the deceased in another packet for forensic examination. Doctor opined that the deceased died due to gunshot injury on vital organs i.e. liver and right leg and the same was caused since 24 to 48 hours of the examination. From the statement of the witnesses who reached the spot after the incident and expert report, it is established that Jangaliya died due to bullet injuries on the vital parts. No gun was found in the house of the deceased, from the evidence it is established that someone has entered in the house of the deceased and caused bullet injuries to him, therefore, firing of gun is neither accidental nor suicidal and it can be easily inferred that the death of the deceased is homicidal in nature.

- 11) The case of the prosecution is based on circumstantial evidence as there is no eye-witness account to the incident. As per the evidence of Shyambati (PW-13) the appellant married her after the death of her previous husband Ramdas and after marriage with the appellant she was living with the appellant in village Dhakkotola. As per her version before two years of the incident the appellant beat her and asked to leave his house. After quarrel with the appellant she left the house of the appellant and shifted to the house of

Jangaliya(deceased) with her daughter Vandana. As per her version Jangaliya(deceased) was his brother-in-law (*Jija*). She deposed that Jangaliya (deceased) provided his house free of rent. Version of Shyambati (PW-13) is supported by the version of her daughter Vandana (PW-15). The witnesses are firm during the cross-examination and it is established from their statement that the wife of the accused/appellant was residing with the deceased and the same is connecting evidence between the appellant and the deceased.

- 12) The other piece of evidence is seizure of the gun and the bullets seized from the possession of the appellant. H.L.Shukla (PW-14) is Investigating Officer/Sub-Inspector of Police Station Ambagarh Chowki. He deposed that the accused/ appellant made discovery statement and on the basis of his statement one gun was seized under the sand from the canal region of village Marartola. The version of this witness is supported by independent witness Sevaram(PW-6). Sevaram (PW-6) deposed that on the discovery statement of the accused/appellant he went to the canal region of village Marartola and the appellant searched the place and produced a gun before police in his presence and the same was seized before him. In the cross-examination, Sevaram (PW-6) deposed that the gun was hidden in depth of sand and the same was recovered from the hidden place. Again from the statement of Sub-Inspector H.L. Shukla (PW-14) four bullets and 10 grams of explosive were seized from the appellant and the version of this witness is supported by independent witness Devaji (PW-5). The version of these witnesses is unshaken during lengthy cross

examination and all the witnesses are firm in their statement and there is nothing to discard the same.

- 13) As per the version of Sub-Inspector H.L. Shukla (PW-14) seized gun, bullets, explosive, clothes and other articles were sent to Forensic Science Laboratory, Sagar vide memo of Superintendent of Police, Rajnandgaon (Ex.P-22), soil and clothes were sent to Forensic Science Laboratory, Raipur, as per memo (Ex.p-23). Report of Forensic Science Laboratory, Sagar vide Ex.P-25 was received and bullets seized from the house of the appellant and removed bullets from the body of the deceased can be fired by this gun and the gun is fired. When there is evidence of firing from the gun, the accused/appellant was under obligation to explain as to when the gun is fired and for what purpose the same is fired but the accused/appellant did not explain the same and his version is bald denial. It has been held by Hon'ble Apex Court in the matter of **State of Maharashtra v. Suresh (2000) 1 SCC 471**, that the incriminating circumstances which point to the guilt of the accused had been put to the accused, yet he could not give any explanation under Section 313 of the Code of Criminal Procedure except choosing the mode of denial. It has been held that when the attention of the accused is drawn to such circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for completing the chain of circumstances.
- 14) It is contended by the counsel of the defence that the house of the accused/appellant was searched twice by the Police and they did not find anything and when it is searched again they found bullets

and the same is planted by the authorities and the gun is seized from the open place.

- 15) In view of this Court, the bullets removed from the body of the deceased were sent for forensic laboratory and it is opined that the same can be fired by the same gun seized from the possession of the appellant. Again, from the evidence of the prosecution it is established that the gun was kept in depth of sand and the same is traced out by the appellant and it was kept in hidden place and it can not be said the same is seized from any open place. It is established that the hiding of the gun was in special knowledge of the appellant and it is recovered only on the basis of discovery statement of the appellant. Bullets were also seized from the house of the appellant in presence of independent witness Devaji (PW-5) and there is nothing on record to show that the independent witness and police have any grudge against the appellant to rope him in a false charge.
- 16) It is contended on behalf of the defence that there is no motive or commission of murder of the deceased, in view of this Court, it is established from the evidence of Shyambati (PW-13) that she was living in the house of the deceased after quarrel with the appellant and from the evidence of Shyambati (PW-13) it can be safely inferred that since wife of the appellant was living with the deceased the same led to differences between them, resulting in incident for which the appellant is charged and the same is motive for the offence is question.
- 17) From the evidence adduced by the prosecution the following facts have been firmly established;

(I) Shyambati was wife of the appellant and after quarrel with the appellant she was living in the house of the deceased.

(ii) Upon discovery statement of the accused/ appellant gun was seized and bullets were seized from the house. Again the bullets were removed from the body of the deceased.

(iii) The evidence of forensic laboratory established that the bullets which were found from the house of the appellant and the bullets which were removed from the body of the deceased can be fired from the gun seized from the appellant. The gun seized from the appellant had been used.

(iv) The date of offence is intervening night of 5/6/2002 and 6/6/2002 and the gun is seized on 08/06/2002 as per (Ex.P-13) i.e. two days after the incident.

(v) The question had been put to the appellant in his examination under Section 313 of the Cr.P.C. regarding use of gun by him but he failed to offer appropriate explanation.

- 18) The prosecution is not required to meet each and every hypothesis to be forwarded by the accused. Combined effect of all these facts taken together is conclusive in establishing that there was difference between the appellant and the deceased because the wife of the appellant was residing in the house of the deceased and the fact established is consistent only with the hypothesis of the guilt of the appellant and the trial Court

was right in convicting the appellant under Section 302 of the IPC.

- 19) So far as the offence under Section 25 and 27 of the Arms Act, 1959 is concerned, the gun and the bullets were seized from the appellant for which he was not having valid licence and the same is offence under Section 25 of the said Act, again the gun is used in commission of murder of the deceased and the same is offence under Section 27 of the said Act, the District Magistrate, Rajnandgaon has proved sanction for prosecution under Section 25 and 27 of the Arms Act, 1959 which is required under Section 39 of the Act and conviction for the same is not liable to be interfered with.
- 20) In our considered view, the findings recorded by the trial Court do not suffer from any legal flaw warranting inference in this appeal. Resultantly, the appeal being without any force is liable to be dismissed and it is dismissed as such with the affirmation of the judgment impugned.
- 21) The appellant is reported to be in jail, therefore, no fresh order of his arrest etc. is required.

Sd/-
(Pritinker Diwaker)
 JUDGE

Sd/-
(Ram Prasanna Sharma)
 JUDGE