

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 88 of 2011

- Nagendra Devburman, S/o. Gourmohandev Burman, Aged about 42 yers, Occupation -Constable CRPF Betalion (Suspended), r/o. Suter mohra, P.S.Vishramganj, District West Tripura, Tripura

---- Appellant

Versus

- State Of C.G. Through: P.S. Bande, Distt.-Kanker, C.G.

---- Respondent

For Appellant	: Shri Subash Yadav, Advocate
For Respondent/State	: Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

Per Pritinker Diwaker, J.

11/09/2017

This appeal has been preferred against the judgment and order dated 28.10.2010 passed by the Additional Sessions Judge, North Bastar, Kanker in Sessions Trial No. 139/2008 convicting the accused/appellant for the offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1,000/- plus default stipulation.

2. As per prosecution case, deceased Prashanta Gogoi was working as Constable in CRPF Betallion No. 175 F Camp at Bande, district North Bastar Circle. On 05.02.08, accused/appellant after consuming liquor came to his barrack and got asleep however when he

woke up in the evening again he was going to consume liquor but his colleagues tried to stop him and at that time, it is alleged that he stabbed the deceased Prashanta Gogoi with knife on the left side of his abdomen. Injured was immediately rushed to the hospital where his MLC was conducted vide Ex.P-10 by Dr. D.S.Nareti (PW-6) who referred him to Medical College, Raipur. Statement under Section 161 Cr.P.C. of injured Prashant which was recorded vide Ex.P-12 and simultaneously FIR Ex.P-2 was registered against the appellant on 05.02.2010 under Section 324 IPC. Considering the physical condition of the injured he was referred to higher medical center at Government Medical College, Raipur where during treatment he succumbed to his injuries on 06.03.08 i.e. after about a month of the incident. Merg intimation Ex.P-7A and numbered merg intimation Ex.P-7 were recorded on 06.07.08, inquest on the dead body was prepared and postmortem examination was conducted by Dr. Shiv Narayan Manjhi (PW-7) vide Ex.P-13 and according to him, cause of death was due to cardio respiratory failure as a result of septicemia. After filing of charge sheet, the trial judge has framed charge against the appellant under Sections 302 IPC.

3. In order to establish the guilt of the accused/appellant, prosecution has examined 11 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellant is that

i) even if the entire prosecution case is taken as it is, at best the appellant is liable to be convicted under Section 326 IPC.

ii) the appellant is in jail since 07.02.08 and thereby has completed almost 9 years and 7 months and therefore after converting his conviction to Section 326 IPC, his sentence be reduced to the period already undergone by him.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

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

8. Dudhai Singh Yadav (PW-1) at the relevant time was company commander, has stated that at the relevant time the accused/appellant was working as constable in the battalion. On 05.02.08, at 8.00 p.m. accused/appellant was brought back to the camp by him in intoxicating condition and laid down on the bed and when he went towards the office for making preparation to conduct medical examination, constable Suresh Ojha came to him running and informed that the accused had stabbed deceased Prashant Gogoi with knife on his abdomen. He has stated that the deceased was immediately rushed to the hospital and the report was lodged. He has further stated that considering the serious condition of the deceased he was shifted to Dr. Bhimrao Ambedkar Hospital, Raipur where he died on 06.03.08. Suresh (PW-2) has made almost similar statement as has been made by PW-1. He is

also a witness to seizure of knife. He however has stated that upon coming to know about the incident when he reached the spot, he noticed blood oozing from the abdomen of Prashanta Gogoi who informed him that it is the accused/appellant who had inflicted knife injury on him and he was standing 5 mtrs. away from the injured, carrying knife in his hand. Shiv Kumar Mandavi (PW-4) has recorded the merg. M.M.Minj (PW-5) is the Investigating Officer who has duly supported the prosecution case. Dr. D.S.Nareti (PW-6) conducted MLC of the injured vide Ex.P-10. Dr. Shiv Narayan Manjhi (PW-7) conducted post mortem examination on the body of the deceased vide Ex.P-13 and opined that cause of death was due to cardio respiratory failure as a result of septicemia. Dr. Praveen (PW-9) and Dr. Brijesh Singh (PW-11) are the doctors who have stated that the deceased was operated twice and they have proved the admission ticket Ex.P-16. Lakhan Lal Sahu (PW-10) assisted in the investigation.

9. Close scrutiny of the evidence makes it clear that on 05.02.08 it is the accused/appellant who caused knife injury to the deceased, he was immediately rushed to the hospital and considering the serious condition was further referred to higher medical centre at Raipur where he died on 06.03.08. From the statement of the witnesses, involvement of the accused/appellant in the crime in question, has been duly proved by the prosecution. Thus the complicity of the appellant in the commission of the offence has been duly proved.

10. Now the only question which arises for consideration before this Court is as to what offence has been committed by the appellant. As per medical report and other documents related to medical treatment of the deceased it is apparent that only single injury was caused by the

accused/appellant on the abdomen of the deceased.

11. Considering the facts and circumstances of the case, we are of the view that accused/appelwrapin costumelant is liable to be convicted under Section 304 Part II IPC instead of Section 302 IPC as has been imposed by the trial court. As regards sentence, keeping in mind the fact that the appellant is in jail since last about 9 years and seven months, ends of justice would be served if the sentence imposed on him is reduced to the period already undergone by him. As the accused/appellant is reported to be in jail he be set free forthwith if not required in any other case.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge