

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1099 of 2007**

1. Tirath Prasad, aged about 36 years, son of Harchhat Rathore,
R/o Village Girwar, PS Gaurela, District Bilaspur, CG

---- Appellant**Versus**

1. State of Chhattisgarh through the PS Gaurela, District Bilaspur,
CG

---- Respondent

For Appellant	:	Shri Yogendra Chaturvedi, Advocate
For Respondent/State	:	Shri Vivek Sharma GA & Shri Vaibhav Goverdhan, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice RCS Samant****Judgment on Board by Pritinker Diwaker, J****02/02/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 31.10.2007 passed by Additional Sessions Judge (FTC) Pendra Road, District Bilaspur, in Sessions Trial No. 145/2006 convicting the accused/appellant under Sections 302 and 307 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 1000/- u/s 302 and rigorous imprisonment for 07 years with fine of Rs. 1000/- u/s 307 IPC, plus default stipulation.

2. Facts of the case in brief are that marriage of the accused/appellant was solemnized with Kunti Bai (PW-1) - the sister of Sukhram (PW-4) and Mohit Lal Rathore (PW-12). Allegedly, there was some dispute between the accused/appellant and his wife Kunti Bai for which a criminal case under Section 498-A IPC was filed against the appellant by Kunti Bai. She also filed an application

under Section 125 of the Code of Criminal Procedure seeking maintenance from the appellant where the Court ordered him to pay Rs. 500/- per month to her as maintenance. Further case of the prosecution is that as the appellant did not pay any amount and he was subjected to face the criminal proceedings, he was annoyed not only with Kunti Bai but also with her brothers Sukhram (PW-4) and Mohit Lal Rathore (PW-12). According to the case of the prosecution, on 19.10.2005 the accused/appellant kept a mini music player (popularly known as deck) in a bag and put the same in the kitchen garden of Sukhram which he picked up and took inside the room. It is alleged that the moment he tried to switch on the said deck, it got exploded and resulted in the death of Chhotu alias Raja Bhaiya – the son of Sukhram aged about 3 years then. *Dehati Nalisi* (Ex.P-3) was recorded on the same day at about 10.15 AM at the instance of Sukhram (PW-4) alleging that on account of a dispute and filing of criminal case against the appellant by his sister Kunti Bai he (Sukhram) had the suspicion that it is the accused/appellant who was the mastermind behind the said explosion. Based on this *Dehati Nalisi*, FIR (Ex. P-18) was registered against the accused/appellant under Section 302 IPC and sections 3 and 5 of the Explosive Substance Act. Inquest on the body of the deceased was made vide Ex. P-4 followed by postmortem examination conducted by Dr. A.L. Korram (PW-8) who gave his report Ex. P-10. After investigation, charge-sheet was filed against the accused/appellant along with accused Ashwani, Mandhari and Ayodhya Patel for the offences under Sections 302, 115, 120-B and 304 IPC and 3, 5 and 6 of the Explosive Substances Act. Charges were however framed against accused Tirath Prasad u/s 302, 307, 302/120-B IPC and section 3 of Explosive Substances Act; against

accused Ashwani and Mandhari u/s 302/109, 302/120-B IPC and section 6 of Explosive Substances Act, and against accused Ayodhya Patel u/s 302/109, 302/120-B IPC and section 6 of Explosive Substance Act.

3. In order to prove the complicity of the accused prsons in the crime in question, the prosecution has examined 19 witnesses. Statements of the accused persons under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case. That apart, one Chandrabhan (DW-1) has also been examined by the defence in support of its case.

4. After hearing the parties, the Court below acquitted the other accused persons of the charges levelled against them but has convicted and sentenced the accused/appellant as mentioned above. The Court below however acquitted the accused/appellant also of the charges u/s 302/120-B IPC and u/s 3 of the Explosive Substance Act.

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

- (i) that the accused/appellant has been implicated in a completely false case that too on the basis of suspicion;
- (ii) that there is no legally admissible evidence to show that it is the accused/appellant who put the said mini deck containing the explosive in the kitchen garden of Sukhram;
- (iii) that there is absolutely no evidence to show that the deck was converted into an explosive device by the accused/appellant; and
- (iv) that as on the basis of the same set of evidence the other

accused persons have already been acquitted, present appellant is also entitled for the same relief.

6. State counsel however support the judgment impugned and submit that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same.

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

8. Kunti Bai (PW-1) - the wife of the accused/appellant herein and aunt of the deceased has stated that her marriage with the accused/appellant was solemnized about 7-8 year prior to recording of his evidence and that on account being harassed by him, she started living in the house of her father where her brothers Sukhram (PW-4) and Mohit (PW-12) also lived. According to this witness, on the date of incident when her brother Sukhram came back from the kitchen garden, there was a bag in his hand and on being asked by her he disclosed that it contained deck, pulses, sweet and potato. This witness has stated that on being asked by her father as to who had kept the said bag, Sukhram went to his room followed by his wife, daughter and niece where his deceased son was also playing on a cot, and some time thereafter some explosion took place in the said room. On hearing explosion and the shrieks of inmates, she, her father and mother rushed to the spot where nothing was visible on account of the smoke. According to her, when the deceased boy was taken out, he was badly injured and blood was oozing from his body and that on being asked by her, Sukhram told her that as soon as he switched on the deck, the same got exploded. Immediately thereafter, the injured boy was

taken to the hospital where he was declared dead. She however has stated that it is her husband (the accused/appellant herein) who was the mastermind of the said explosion and nobody else could have done that. Subhash Kumar (PW-2), Bhim Singh Rathore (PW-3), Bholu Shankar Rathore (PW-6), Sonelal (PW-7), Ramji Rathore (PW-9) and Beeranlal (PW-15) have not supported the case of the prosecution and have been declared hostile. Sukhram (PW-4) – the father of the deceased has stated that on the date of incident when he went to the kitchen garden to collect ginger for preparing tea, he noticed a bag containing a carton and when opened, it was found containing a mini deck. Apart from the carton, the said bag also contained potato, sweet and pulse. He has further stated that the moment he switched on the deck, it got exploded and resulted in the injuries of his minor son playing nearby who ultimately succumbed to the same while being taken to hospital. This witness has further stated that there was a talk among the villagers that on the fateful day accused/appellant had come to the house of one Sonu and in the next morning he left for Gourela on motorcycle. He has stated that in the year 2003 the accused/appellant had driven out his wife (sister of this witness) and thereafter he used to threaten them of being done away with. Amarjeet Singh (PW-5) is the Patwari who prepared spot map Ex. P-5. Dr. A.L. Korram (PW-8) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-10 stating therein that he noticed five lacerated wounds on chest, neck, back and thigh of various diameters and one bruise on chest; and the cause of death was syncope due to vasovagal shock and injury on vital organs like chest and neck. Balaram (PW-10) – the grandfather of the deceased has stated that on the date of incident his son Sukhram found a

bag containing deck, sweet, potato and pulse and when he tried it to play by plugging in the switch board, all of a sudden it got exploded as a result of which the deceased who was playing nearby suffered injuries on his entire body and while being taken to the hospital succumbed to the same. According to this witness, there was a talk in the village that on that day the accused/appellant left for Gourela on the motorcycle of one Sonu and for that he had suspicion that it is he who had put the bag containing the deck laden with explosive. He has stated that on many occasions the accused/appellant had threatened of eliminating the entire family. Naresh Kumar Rathore (PW-11) is the witness who made recovery of receipt of bill of the deck vide Ex. P-11. Mohit Lal Rathore (PW-12) - the brother-in-law of the accused/appellant has stated that on the date of incident when he was going towards the village pond, he heard some explosion and on getting back he noticed smoke coming out of his house. According to him, his nephew was badly injured and while being taken to hospital he succumbed to the injuries suffered by him. This witness also suspected the accused to be the mastermind of this incident as on earlier occasion he had threatened of doing away the entire family with. Rameshwar Prasad Shukla (PW-13) - the owner of the electric shop has stated that the deck was purchased by the accused/appellant but as the full amount was not paid, he did not give him the receipt. He has stated that the deck being a commonly available object can be purchased from any shop. P.N. Gupta (PW-14), R.S. Paraste (PW-17) and Umend Ram Khande (PW-18) are the the head constables who assisted in the investigation. H.L. Niranjana (PW-16) is the investigating officer who has duly supported the case of the prosecution. Lalman (PW-19) has stated that he did not purchase

any deck from the shop of Rameshwar Prasad Shukla. Chandrabhan (DW-1) – is the brother-in-law of the accused/appellant who has stated that about six months prior thereto the accused/appellant was living in his village and that he had brought with him the deck of Vijeta Company which is apparent from Ex. D-1 which was purchased 2-3 months therebefore.

9. Perusal of the entire evidence of the witnesses thus goes to show that on the fateful day when Sukhram (PW-4) switched on the mini deck picked up by him from his kitchen garden, it got exploded as a result of which his minor son who at the relevant time was playing closer-by sustained injuries on various parts of his body and ultimately succumbed to the same while being taken to the hospital. There is also evidence to the effect that there was some dispute between accused/appellant and his wife Kunti Bai (PW-1) which made her live in the house of her parents where this unfortunate incident took place. However, the prosecution has utterly failed to prove its case that the said mini deck was put by the accused/appellant herein in the kitchen garden of Sukhram (PW-4) after conversion into an explosive device. Even the ownership of the said deck with the accused/appellant has not been proved by the prosecution, rather his statement recorded under Section 313 of the Code of Criminal Procedure reflects that the musical instrument purchased by the accused/appellant was still with him and if needed he could even produce the same. Though according to some of the witnesses there was a talk among the villagers about the presence of the accused/appellant in the village but not even a single witness has been examined by the prosecution who claims to have seen him in the village on the fateful day. Almost all the material witnesses have just shown their

apprehension with respect to the involvement of the accused/appellant in the crime in question for the reason that there was some dispute between Kunti Bai and the accused/appellant and also pendency of criminal case against the accused/appellant at the instance of Kunti Bai. Court below while recording the finding holding the accused/appellant guilty of commission of murder of a minor child has completely ignored the fact that the prosecution has not been able to prove its case beyond all reasonable doubt and all the witnesses have just raised their suspicion against him. Court below has further mis-stepped itself in ignoring the settled legal position that how-so-ever strong the suspicion is, it cannot take the place of evidence for holding one guilty.

10. In the aforesaid analytical view of the matter, this court arrives at the conclusion that the findings recorded by the Court below convicting the accused/appellant under Sections 302 and 307 IPC being not based on proper appreciation of the evidence of the witnesses are liable to be set aside.

11. Appeal is thus allowed, judgment impugned is hereby set aside and the accused/appellant is acquitted of the charges levelled against him. Appellant being already on bail, does not need any order to be set free etc. Bonds so furnished by him stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(RCS Samant)
Judge