

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1137 of 2013

Judgment reserved on 16-09-2017

Judgment delivered on 06-10-2017

Arun Yadav @ Doma S/o Lakhan Yadav Aged About 28 Years R/o Near Rajiv Lochan Mandir, Rajim, Ps Rajim, Civil And Drev. Distt. Raipur C.G. At Present Raipur Naka, Udia Basti, Durg, Ps, Civil And Rev. Distt. Durg C.G.

---- Appellant

Versus

State Of Chhattisgarh Through SHO, P.S. Patan, Civil And Rev. Distt. Durg C.G.

---- Respondent

For Appellant : Mr. Rakesh Pandey, Advocate.
For Respondent/State : Mr. Anant Bajpai, Panel Lawyer.

**Coram: Hon'ble Shri Justice Manindra Mohan Shrivastava
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 03.01.2013 passed by the Third Additional Sessions Judge Durg, Session Division, Durg (C.G.), in Sessions Trial No. 46 of 2012, convicting the accused/appellant under Section 302 of the IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs. 1000/- with default stipulation for commission of murder of one Manish Rao Sinda.

- 2) As per the prosecution case, deceased Manish Rao Sinda was residing in Durg (near Anganbadi). On 27.10.2011 at about 7.00 PM, deceased Manish Rao Sinda, Rohit @ Parmeshwar and accused/appellant Arun Yadav @ Doma were standing near the house of Sandhya Sahu. After some time, quarrel started between the appellant and the deceased and during quarrel the appellant assaulted the deceased by knife on his stomach. The deceased was referred to District Hospital Durg for treatment but he died on the same day during the course of his treatment. Merg intimation was given to the Police as per Ex. P-13, Dehatinalshi Ex.P-24 was recorded by Sub-Inspector P.P. Awadhiya on the basis of Dehatinalshi Ex.P-24, First Information Report ExP-26 was registered against the appellant. During investigation statements of the witnesses were recorded under Section 161 of the Cr.P.C and certain articles were seized. After completion of the investigation, charge sheet was filed against the accused/ appellant in the Court of Judicial Magistrate First Class, Durg, who, in turn, committed the case to the Court of Sessions Judge, Durg. The appellant was charge sheeted under Section 302 of the IPC 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.
- 3) Learned counsel appearing for the accused/appellant submits as under:

- (i) That as per the evidence during altercation the appellant gave single blow by knife on the stomach of the deceased and the offence under Section 302 of the IPC would not be made out in absence of any evidence of intention or knowledge.
 - (ii) That Parmeshwar @ Rohit (PW-5) who has been cited as eye witness to the incident has not attempted to rescue the deceased and was also not raised alarm to ask anyone for saving the deceased and looking to the conduct of Parmeshwar@ Rohit, he is not reliable witness.
 - (iii) That the place of incident is an open place and no other eye-witness has been cited by the prosecution, therefore, evidence of Parmeshwar @ Rohit (PW-5) has become doubtful.
 - (iv) That the prosecution has completely failed to establish the motive of the appellant to kill the deceased.
- 4) *Per contra*, learned State counsel supporting the impugned judgement has submitted that the judgement of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.
 - 5) We have heard counsel for the parties and perused the material on record.
 - 6) To substantiate the charge prosecution has examined as many as 18 witnesses. The appellant did not examine any witness in his defence.
 - 7) Dr. N. P. Jangde (PW-6) conducted the postmortem on the dead body of the deceased on 24.06.2012, the dead body of the

deceased was brought by constable No. 196, Onkar Prasad, Police Station Padmanabhpur, Durg, after examination he noticed the following injuries.

Rigor mortise was present in both limbs, external punctured wound seen in the size of 4cm above from umbilan in anti wall of abdomen size measuring 1½ x1.0x5.0cm was deep into the spleen and lunge.

He opined that the above punctured wound could be caused by sharp pointed long object and the cause of death is haemorrhage and shock as a result of injury on vital organ and the time of death is approximately 20 hours since post-mortem.

- 8) Smt. Mala Shinde (PW-1) deposed that on 27.10.2011 at about 6 PM, she was sitting in front of her house with her husband and at that time her brother in law (*jeth*) Manish came there and informed that appellant had caused knife injury on his stomach. At that time, appellant reached there and on being asked he replied that small injury is caused to the deceased. Smt. Rekha Shinde (PW-2) is the wife of the deceased. She deposed that on the date of incident at about 7.30 PM her husband came to his house in pool of blood and he was brought by Rohit and Arun @ Doma (appellant). They left the deceased at the door of the house. Upon her crying the deceased informed her that the appellant assaulted him thereafter her brother-in-law Janik Rao called the riksha and took the deceased to hospital for treatment.
- 9) Parmeshwar @ Rohit (PW-5) is the eye-witness of the incident. Who has deposed that on 27.10.2011 at 6-7 PM he was standing near the house of deceased at that time appellant came there and some

altercation took place between the appellant and the deceased. For a moment he left the place to answer the call of nature and while he was returning he saw that hands of the appellant were projected towards the stomach of the deceased, thereafter the deceased caught hold his stomach moved from the place and he accompanied the deceased up to his house and the brother of the deceased took him to Government Hospital Durg where doctor informed that Manish is dead. Mannurao (PW-9) deposed that at about 7.30 PM in front of the house of Janik Rao, appellant told that some minor injury is caused to the deceased. Assistant Sub Inspector J.L. Sahu (PW-15) is the investigation officer he deposed that on discovery statement of the appellant one knife of stainless steel was seized and its length was 18 cm.

- 10) All the witnesses examined by the prosecution have been subjected to incisive and searching cross-examination but nothing could be elicited which help the defence side. From the statement of Parmeshwar @ Rohit (PW-5) who was the eye-witness to the incident and from the oral dying declaration made by the deceased before Smt. Mala Shinde (PW-1) and Smt. Rekha Shinde (PW-2), it is clearly established that it is the appellant who inflicted knife injury on the stomach of the deceased and after some time of the incident the deceased died due to injury on his vital organ. Therefore, involvement of the appellant in commission of offence is clearly established beyond reasonable doubt.
- 11) Now the point is whether the case of the appellant falls under exception 4 of section 300 of the IPC. There is evidence to show that on the date of the incident there was some hot exchange of

words between the appellant and the deceased and at the same time the appellant inflicted single injury on abdomen of the deceased. From the evidence of eye-witness it is reflected that there was no premeditation on the part of the appellant and the incident took place on the spur of moment. As the appellant being not dealt with repeated blow, we are of the view that the case of the appellant falls under exception 4 of section 300 of the IPC. As the injury is caused on vital part i.e. the stomach of the deceased the same indicates that the appellant had intention and knowledge that the injury may cause death and this case falls under Section 304 Part-I of the IPC. In the circumstances, we set-aside the conviction under Section 302 of the IPC, but found the appellant guilty for offence under Section 304 Part 1 of the IPC and in our opinion proper sentence in the case would be to the appellant to suffer R.I for a period of 10 years along with a fine of Rs. 1,000/- as imposed by the trial Court.

- 12) In the result, this appeal is partly allowed and the conviction of appellant under Section 302 of the IPC is altered to under Section 304 (Part-I) of the IPC. The appellant is convicted under Section 304 (Part-I) of the IPC and sentence to undergo rigorous imprisonment for 10 (ten) years and the fine amount imposed by the trial Court shall remain as it is.
- 13) The appeal is partly allowed to the extent indicate above.

Sd/-

(Manindra Mohan Shrivastava)
JUDGE

Sd/-

(Ram Prasanna Sharma)
JUDGE