

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 428 of 2008

- Uday Singh Netam, S/o Phulsingh Netam, aged about 21 years, R/o Jalampur Ward, Dhamtari, Police Station Dhamtari, District Dhamtari.

---- Appellant (In Jail)

Versus

- State Chhattisgarh, through the District Magistrate, District Dhamtari.

---- Respondent

For Appellant	:	Shri C.R. Sahu, Advocate
For Respondent	:	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement

Per P. Diwaker, J

19/06/2017

1. This appeal arises out of the judgment of conviction and order of sentence dated 22.2.2008 passed by the Sessions Judge, Dhamtari in S.T. No.4/07 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for life.
2. As per the prosecution case, there was old dispute between the accused/appellant and deceased regarding payment of some amount of liquor business. On 3.10.2006 at 4.00 p.m. the accused/appellant, acquitted accused Nirmal and the deceased had together consumed liquor and it is said that thereafter accused/appellant gave three knife blows to the deceased on his stomach as a result of which his intestines came out from the stomach. Incident was witnessed by number of

persons including lodger of FIR Bothu @ Sarju Satnami (PW-10) and Bishesar (PW-11). Immediately after the incident at 5.30 p.m. FIR (Ex.P-22) under Section 307 IPC was registered against the accused persons at the instance of Bothu (PW-10). Deceased was taken to the hospital where he succumbed to the injuries at 4.40 p.m. Merg Intimation (Ex.P-23) was registered on the same day at 5.45 p.m. at the instance of Ward Boy - Jogeshwar Das. Inquest was prepared on 3.10.2006 vide Ex.P-10. Body was sent for post-mortem examination which was conducted by Dr. J.S. Khalsa (PW-14) vide Ex.P-21A and noticed following injuries;-

- Stab wound of 2½” at a distance of 4” from the umbilicus.
- Stab wound below 5” of the right nipple.
- Four stab wounds on the upper and inner part of the right elbow of 2 to 2½” in size.

The autopsy surgeon has opined the cause of death to be shock due to stab injuries and perforation of major vessel and the death was homicidal in nature. Statements of witnesses were recorded in the course of investigation.

3. After investigation, charge sheet against three accused persons including present appellant was filed. The Court below framed the charges under Sections 294 & 302/34 of IPC against acquitted accused Nirmal and present appellant, whereas charge under Section 201 IPC has been framed against another acquitted accused Dhanesh Kumar Netam. The prosecution in order to bring home the charges levelled against the accused persons examined 15 witnesses in all. Statements of accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.
4. After hearing counsel for the parties and considering the material available

on record, the trial Court while acquitting co-accused Nirmal Kumar Netam & Dhanesh Kumar Netam from all the charges, convicted & sentenced the accused/appellant herein by the impugned judgment in the manner as described above.

5. Counsel for the accused/appellant submits that;

- except Biseshar (PW-11) other eyewitnesses of the incident have not supported the prosecution and even the testimony of PW-11 does not appear to be reliable.
- appellant had no intention to commit murder of the deceased as the alleged weapon of offence was not carried by the appellant and it is acquitted accused Nirmal who gave knife to him and instigated the appellant to commit murder of the deceased. Had there been any intention of the appellant to commit murder of the deceased, he would have carried the knife. In these circumstances, the act attributed to the appellant would fall within the purview of Section 304-I of IPC and not under Section 302 IPC, as has been done by the trial Court.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that the accused/appellant not only caused injury to the deceased at the place of occurrence but when the deceased tried to escape to save his life, the accused/appellant chased him and gave two knife blows on his stomach which resulted into his death. He further submits that Biseshar (PW-11) has categorically stated as to the manner in which the deceased was done to death by accused/appellant. He further submits that PW-2 has also stated that there was quarrel between the appellant and the deceased.

7. We have heard learned counsel for the parties and perused the impugned judgment and record of the trial Court.
8. Govind Patre (PW-1), Sunil Dewangan (PW-2), Harish Chandra (PW-4), Anup (PW-5), Shyam Patre (PW-7), Shankar Gwaal (PW-8), Gopi (PW-9), Bothu @ Sarju (PW-10), lodger of FIR, and Prabharam (PW-13) have not supported the prosecution case and turned hostile. However, PW-2 has admitted that the fact that he saw the quarrel between the appellant and the deceased in the liquor kiln. Likewise, though eyewitness Bothu (PW-10), lodger of FIR, did not support the prosecution case but mentioned in the FIR that incident was also witnessed by PW-10 Biseshar.
9. B.R. Sinha (PW-6) is the investigating officer who has duly supported the prosecution case.
10. Biseshar (PW-11) is an eyewitness of the incident. He has stated that on the fateful day some dispute between the accused/appellant and the deceased took place at Jalampur liquor kiln. Accused/appellant left the spot and after some time he returned back and assaulted on the stomach of the deceased with knife and when the deceased tried to escape by entering into the kiln, the accused/appellant followed him and again assaulted him by knife and thereafter he left the spot. In the cross-examination this witness remained very firm and nothing incriminating could be elicited by the defence which makes his testimony untrustworthy or unreliable.
11. Dr. J.S. Khalsa (PW-14) is the doctor who conducted post mortem examination on the body of deceased and noticed the injuries as described above. This witness has opined that cause of death was shock due to stab injuries present on the body of deceased and the death was homicidal in nature.
12. Vasudeo Bhoi (PW-15) is the Patwari who prepared the spot map (Ex.P-

24).

13. Close scrutiny of the evidence makes it clear that on 3.10.2006 at 4.00 p.m. the accused/appellant had assaulted the deceased with knife and injuries suffered by him led to his death. The incident was witnessed by Biseshar (PW-11), who has categorically stated that it is the accused/appellant who firstly caused stab injury in the stomach of deceased outside the liquor kiln and when deceased tried to save his life by entering into the liquor kiln, the accused/appellant came inside the kiln and gave two knife blows on the body of deceased. Statement of this witness finds corroboration not only from the facts stated in the promptly lodged FIR (Ex.P-22) but also from the medical evidence wherein it has been stated that cause of death was shock due to stab injuries present on the body of deceased. Query raised by the prosecution as to whether the injuries present on the body of the deceased could be caused by the seized knife, was also answered by the doctor in affirmative. Evidence of this witness further gets corroboration from the statement of hostile witness Sunil Dewangan (PW-2), who has categorically stated that on the fateful day he was present in the liquor kiln and in his presence a quarrel took place between the accused/appellant and the deceased. It is now well settled that even evidence of hostile witness also to the extent it corroborates the prosecution version can be relied upon. Furthermore, on the basis of disclosure statement (Ex.P-16) made by accused/appellant, bloodstained full pant was recovered vide seizure memo of Ex.P-2 and there is no explanation from the accused/appellant as to how the blood stains are there in the articles seized from his possession. Since nothing has been brought on record by the defence to controvert the stand of the prosecution, this Court does not find any reason to disbelieve statement of this witness (PW-11) who have described the incident in a lucid manner.

14. True it is that some of witnesses cited as eyewitness by the prosecution including PW-10 Bothu alias Sarju, lodger of FIR and another eye-witness to the incident, have not supported the prosecution and turned hostile, but eye-witness Biseshar (PW-11) has consistently deposed before the Court as to the manner in which he witnessed the whole incident and the appellant committing murder of the deceased. It is the mandate of Section 134 of Evidence Act that quality and not quantity of evidence is material. Section 134 enshrines the well recognized maxim 'evidence has to be weighed not counted'. The matter thus depends upon the circumstances of each case and the quality of evidence even of a single witness whose testimony has either to be accepted or rejected. If such a testimony is found by the Court to be entire reliable, there is no legal impediment to the conviction of the accused person on such proof.

15. Further, we find no substance in the argument of counsel for the accused/appellant that in the facts and circumstances of case the accused/appellant is liable to be held guilty under Section 304 Part-I of the IPC for the reason that after inflicting first knife blow, when the deceased tried to escape by entering into the liquor kiln, the accused/appellant chased him and gave repeated knife blows on his vital part of body i.e. stomach, which resulted into his death. This goes to show that the accused/appellant had intention to cause death of the deceased and had every knowledge that the injuries being inflicted by him on the deceased were sure to result in his death.

16. Thus, considering the totality of facts and circumstances of case, the un-rebutted eyewitnesses' account which finds due corroboration from the medical evidence, this Court is of the considered opinion that the trial Court was fully justified in convicting and sentencing the accused/appellant under Section 302 of IPC for causing murder of the deceased.

17. In the result, the appeal being devoid of substance is liable to be and is, accordingly, dismissed. Since the accused/appellant is already in custody no extra direction is needed regarding his surrender etc.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

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