

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 596 of 2012**

1. Mahangu Ram @ Churendra S/o Hriday Ram Churendra, aged about 26 years, R/o Village Ramputola, Police Station Doundilohara, District Durg, at present Village Kesla, Police Station Mohla, District Rajnandgaon, CG

---- Appellant**Versus**

1. State of Chhattisgarh through the Station House Officer, Police Station Mohla, District Rajnandgaon, CG

---- Respondent

For Appellant: Smt. C.K. Navrang, Advocate
 For Respondent/State: Shri Rahul Tamaskar, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice RCS Samant****Judgment on Board by Pritinker Diwaker, J****20/06/2017**

This appeal has been filed against the judgment of conviction and order of sentence dated 12.4.2012 passed by the Sessions Judge Rajnandgaon, in Sessions Trial No. 45/2010 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life with fine of Rs. 3000/-, plus default stipulations.

2. Facts of the case in brief are that the accused/appellant herein happens to be the son-in-law of Rambai and was residing in her house permanently. On 26.4.2010 marriage of Mahendra - the son of Rambai was to be solemnized and a day prior thereto some musical concert was fixed. When the said concert was going on, at about 1.45 AM, the accused/appellant committed the murder of one

Kamal Prasad who too had come there to enjoy the celebration. Incident was witnessed by Vinod Kotparia (PW-12) who had heard the cries of the victim and also saw him being assaulted by the accused/appellant with knife. On hearing the shout raised by Vinod Kotparia, other family members including Champu Yadav (PW-2) also reached the place of incident. Further case of the prosecution is that deceased made oral dying declaration before Champu Yadav (PW-2) and Vinod Kotparia (PW-12) that it is the accused/appellant who had assaulted him with knife. Victim is said to have died on the way to hospital. Merg intimation Ex. P-12 was recorded at the instance of Vinod Kotparia (PW-12) on 27.4.2010 at 9.10 AM followed by registration of FIR Ex. P-12-A. Thereafter, on the same day body was sent for postmortem examination which was conducted by Dr. S.S. Manthare (PW-8) vide report Ex. P-8. After filing of charge sheet, the trial Court framed the charge against the accused/appellant u/s 302 IPC.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 16 witnesses. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

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

(i) That the eyewitness to the incident namely Vinod Kotparia

(PW-12) has not supported the case of the prosecution and therefore the accused/appellant is entitled for acquittal.

(ii) That the witnesses to the oral dying declaration namely Champu Yadav (PW-2) and Vinod Kotparia (PW-12) are not reliable.

(iii) That even if the entire case of the prosecution is taken as it is, the act of the accused/appellant falls under Section 304 (Part-I) or 304 (Part-II) IPC as the incident appears to have taken place all of a sudden under the influence of liquor at the time when celebration was going on.

(iv) That the accused/appellant is in jail for last seven years and therefore by convicting him either under Section 304 (Part-I) or 304 (Part-II) IPC, he may be sentenced to the period already undergone.

6. On the other hand, State counsel while supporting the judgment impugned has submitted that the findings recorded by the Court below convicting the accused/appellant under Section 302 are strictly in accordance with law and there is no infirmity in the same. He submits that though the eyewitness (PW-12) has not supported the case of the prosecution so far as assault by the accused/appellant is concerned but he has categorically stated that deceased himself had made oral dying declaration before him to the effect that it is the accused/appellant who caused injuries to him with knife. State counsel further submits that apart from PW-12, there is another witness namely Champu Yadav (PW-2) before whom the deceased had made oral dying declaration attributing the assault to the accused/appellant and thus has duly supported the case of the prosecution. He submits that on the memorandum of accused Ex. P-1, seizure of knife was made under Ex. P-2, that of torch, shirt and full pant under Ex. P-3 which as per the FSL report

Ex. P-17 contained blood. According to the State counsel, though there is no serological report on record but since the seizure of articles is very much there, the FSL report can be treated as additional evidence in the absence of serological report. According to him, the accused/appellant has not taken any plea that the incident occurred on account of a sudden fight, his conviction under Section 302 is just and proper.

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

7. Vinod Kotparia (PW-12) – the lodger of merg Ex. P-12 and the FIR Ex. P-12-A has first stated that he had seen the accused/appellant assaulting the deceased. Soon thereafter he resiled from his version and refrained himself from supporting the case of the prosecution to the extent of witnessing the assault made by the accused/appellant on the deceased. He has stated that on hearing the cries of the deceased he came out of the house and saw the deceased crying making the utterance by name that it was the accused/appellant who assaulted him and also made a request to save him. Though he has stated that several persons were present in the celebration and consumed liquor including the deceased but the postmortem report does not reflect the presence of liquor in his stomach. This witness has however been declared hostile. Champu Ram (PW-2) – another witness before whom the oral dying declaration was made by the deceased has stated that when the celebration was going on, Vinod Kotparia (PW-12) asked everyone present there to stop the same and told that accused/appellant had assaulted the deceased with knife and

thereafter when he (this witnesses) rushed to the spot, deceased was lying on the ground and had told him that it was the accused/appellant who assaulted him. According to this witness, there was injury on the stomach of the deceased and he was drenched with blood. In cross-examination also, this witness remained firm to what has been stated by him in the examination-in-chief. He has categorically stated that all the persons present in the celebration had consumed liquor but he was not aware whether deceased was also one of them. Dr. S.S. Manthare (PW-8) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-8 stating that he noticed punctured (stab) wound over left 5th intercostal space, incised wound over anterior of abdomen caused by hard, sharp and pointed object and the cause of death was shock due to excessive loss of blood from vital organ (lung) and the death was homicidal in nature. On the memorandum of the accused/appellant Ex. P-1 seizure of blood stained knife was made under Ex. P-2, that of torch, blood stained shirt and full pant was made under Ex. P-3. Though witness to memorandum and seizure namely Shiv Prasad (PW-3) has been declared hostile but he has admitted his signatures on all these documents. Another important witness to memorandum and seizure namely Ramchand (PW-5) however has duly supported the case of the prosecution. FSL report Ex. P-17 categorically confirms the presence of blood on the seized articles such as knife, shirt and pant. Girish Dhurve (PW-13) is the investigating officer who has duly supported the case of the prosecution.

9. Thus from the perusal of the evidence of the witnesses and

other material available on record it is apparent that in the intervening night of 26/27.4.2010 it is the accused/appellant who inflicted fatal knife blows on the body of the deceased including the vital parts leading to his death on the way to hospital. Though the eyewitness to the incident (PW-12) has not supported the case of the prosecution to the extent of having seen the accused/appellant assaulting the deceased yet he has categorically stated that while being alive the deceased had told him that it is the accused/appellant who had assaulted him. Another witnesses (PW-2) has also supported the case of the prosecution by stating that when he reached the spot, deceased was lying on the ground and had told him that it was accused/appellant who caused injuries to him. FSL report Ex. P-17 is also specific about the presence of blood on the seized articles such as knife, shirt and pant. Though there is no serological report to prove the origin of the blood yet in view of the other material collected by the prosecution, the FSL report does not lose its value as a whole and can be looked into as an additional evidence. Postmortem report (Ex.P-8) also proves the case of the prosecution indicating the stab and incised wounds on vital parts of the body of the deceased. Thus the prosecution has proved its case beyond reasonable doubt to prove the complicity of the accused/appeallant in commission of murder of the deceased. Evidence of (PW-2) and (PW-12) before whom the deceased had made oral dying declaration regarding infliction of deadly wounds on his body by none else but the accused/appellant alone, appears to be quite trustworthy and there is no reason for this Court to disbelieve and discard the same. Conclusion arrived at by the Court below, therefore, appears to be based on proper appreciation of the evidence of the witnesses and being so there is no need to interfere

with the same.

10. In the result, the appeal has no substance and therefore, it is hereby dismissed and the judgment impugned is maintained. As the accused/appellant is already in jail, no order to arrest him etc is necessary.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge