

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 359 of 2015**

1. Devram Vishwakarma son of Anturam Vishwakarma, aged about 35 years, R/o Gadhpichhawadi, Police station - Kanker, Civil & Revenue District - Kanker, Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station, Kanker, District Kanker, Chhattisgarh.

---- Respondent

For Appellant	:	Shri C.P. Lahre, Advocate
For Respondent/State:		Shri Ravindra Agrawal, GA

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment On Board by Pritinker Diwaker, J**10/08/2018**

This appeal has been filed against the judgment of conviction and order of sentence dated 15.01.2015 passed by Sessions Judge, North Bastar, Kanker, in Sessions Trial No. 80/2013 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life and pay fine of Rs. 3000/-, plus default stipulation.

2. Case of the prosecution in short is that on 1.5.2013 wife of the accused/appellant namely Rain Bai (PW-7) had gone to the house of Satya Shori (PW-8) and Priyanka (PW-13) where at about 9.30 PM the accused/appellant also came after consuming liquor and knocked at the door. As PW-7 refused for opening the door, the accused/appellant gained entry

through the back door carrying *Kakoni* (sort of iron hook used by labourers). First he caused several injuries to PW-7 and on intervention by the deceased - the son of the accused and PW-7, he also assaulted him with the help of the said iron hook carried by him and caused injuries on his neck which resulted in his death while being taken to hospital. FIR Ex. P-14 was lodged on the same day by Setkumar Jain (PW-6) - the Up Sarpanch of the village at the relevant time, against the accused/appellant under Section 302 IPC. Soon thereafter, *merg* Ex. P-13 was recorded at his instance. After drawing inquest Ex. P-3, body of the deceased was sent for postmortem examination which was conducted by Dr. Vijay Shukla (PW-4) who gave his report Ex. P-10. Rain Bai (PW-7) was also medically examined by Dr. J.S. Sahu (PW-3) who gave his report Ex. P-9. Clothes of the accused were seized under Ex. P-5 whereas the iron hook (*Kakoni*) was seized under Ex. P-4, and as per the FSL report Ex. P-19 blood was found on the clothes of the accused/appellant. As per the serological report Ex. P-19-A the group of the blood appearing on the clothes of the accused/appellant and that of the deceased was found to be "B". Though at the time of evidence wife of the accused (PW-7), Sughan Bai (PW-1) and Satya (PW-8) have turned hostile, Ku. Priyanka (PW-13) - the niece of the accused has duly supported the case of the prosecution stating about the manner in which the deceased was killed by the accused. After completion of investigation, police filed the *challan* against the accused/appellant u/s 302 IPC followed by framing

of charge by the Court below accordingly.

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 13 witnesses. Statement of the accused/appellant 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.

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

(i) That Priyanka (PW-13) appears to be a tutored witness.

(ii) That That other important witnesses being PW-1, PW-7 and PW-8 have not supported the case of the prosecution.

(iii) That even if the entire case of the prosecution is taken as it is, the accused/appellant cannot be convicted under Section 302 and at the most his act would make him guilty for the offence punishable under Section 304 (Part-I) or 304 (Part-II) IPC as he had no intention to cause death of the deceased. Only intention of the accused, according to his counsel, was to beat his wife (PW-7) but as the deceased came in between he too suffered injuries which unfortunately proved fatal to his life.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC are based on due appreciation of the evidence on record and

there is no infirmity in the same. He submits that looking to the evidence of the witnesses in particular that of (PW-13), case of the accused would not fall under any exception to section 300 IPC. He submits it is not a case where the deceased suffered accidental injuries, rather the evidence shows that the accused/appellant first caused certain injuries to his wife (PW-7) and when the deceased came to save his mother, the accused/appellant brutally assaulted him also with the help of iron hook as a result of which he died while being taken to hospital. State counsel further submits that considering the FSL report and serological report (Ex. P-19 and P-19-A respectively) also, findings recorded by the Court below are fully justified.

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

8. Sudhan Bai (PW-1) - mother of the accused, Rain Bai (PW-7) - wife of the accused who too had suffered injury in the assault opened by the accused, and Ku. Satya (PW-8) - niece of the accused - all eyewitness to the incident have not supported the case of the prosecution and have been declared hostile. Ku. Priyanka (PW-13) - another niece of the accused aged about 13 years at the relevant time and an eyewitness to the incident has duly supported the case of the prosecution stating that on the fateful night when she and all at home were asleep, at about 10 PM the accused knocked at the door and when PW-8 refused from opening the door, he came

inside from the back door carrying an iron hook like weapon. He is also stated to have started assaulting his wife (PW-7) and when on seeing this the deceased woke up and came to rescue of his mother, the accused pounced upon him and caused injuries on his neck leading to profuse bleeding. Thereafter, according to this witness, the ambulance was called but by that time the deceased had died. Cross examination of this witness also contains the same version as the examination-in-chief. Anitram Netam (PW-2) is the witness to inquest Ex. P-2, seizure made under Ex. P-4, P-5, PW-6 and arrest memo Ex. P-7. Dr. Vijay Shukla (PW-4) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-10 stating that one sharp wound was found over left side of he neck in the size of 1 x .3 cm x muscle deep, blood was present on chest and right side of neck and an abrasion was found on the shoulder. Cause of death has been opined to be haemorrhage and shock due to injury on left carotid artery. Death, according to this witness, was homicidal in nature. Set Kumar Jain (PW-6) is the lodger of merg and the FIR has supported the case of the prosecution. Naresh Singh (PW-9) and Anand Komra (PW-11) are the witnesses who assisted in the investigation. Kishore Soni (PW-10) is the investigating officer who has duly supported the case of the prosecution. Nannu Yadav (PW-12) is a hearsay witness who has been declared hostile.

9. After hearing the counsel for the parties and perusing the material available on record, it is apparent that on the

fateful night of 1.5.2013 the accused/appellant went to the house of PW-8 where his wife (PW-7) and the deceased were already sleeping. Record also shows that when PW-8 refused to open the door, the accused/appellant gained entry therein from the back door, started assaulting his wife PW-7 and when his son (the deceased herein) came to the rescue of his mother, he (accused) assaulted him with the iron-hook like weapon causing injury on his neck as a result of which he died while being taken to hospital. Though some of the eyewitnesses have turned hostile, PW-13 has clearly supported the case of the prosecution stating that when the deceased tried to save his mother (PW-7), the accused started assaulting him and thereby causing the fatal injury with the iron-hook like weapon carried by him. Postmortem report mentioning the injuries on neck and opining the cause of death to be shock and haemorrhage, has also supported the case of the prosecution. In addition, the FSL report and the serological report (Ex. P-19 and P-19-A respectively) also support the case of the prosecution mentioning that the blood found on the clothes of the accused and that of the deceased was of group "B". Thus the act of the accused/appellant in eliminating his son when he came to the rescue of his mother is well enough for holding him guilty under Section 302 IPC. Since the fatal injuries were not caused to the deceased accidentally, there is no force in the argument of the counsel for the appellant that the act of the accused makes him liable for conviction either under Section 304 (Part-I) or 304 (Part-II) IPC.

10. In the result, this Court does not find any illegality or infirmity in the findings recorded by the Court below convicting the accused/appellant under Section 302 IPC and being so they are hereby affirmed. Accordingly, the appeal being without any substance is hereby dismissed. As the appellant is already in jail, no order to surrender etc. is needed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge