

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Appeal No. 826 OF 2012

Reserved on 15/01/2018
Pronounced on 25/01/2018

Virendra Kumar Yadav S/o Jit ram Yadav, aged about 25 years, R/o Village Munund,
Police Station Janjgir District Janjgir-Champa (C.G.)

---- Appellant

Versus

State of Chhattisgarh through District Magistrate, Police Station Janjgir, District Janjgir-
Champa (C.G.)

----Respondent

For Appellant	: Mr. Manoj Kumar Jaiswal, Advocate
For State/Respondent	: Mr. Vaibhav A. Goverdhan, Panel Lawyer

Hon'ble Shri Pritinker Diwaker &
Hon'ble Shri Sanjay Agrawal, JJ

CAV Judgment

Per Sanjay Agrawal, J.

1. This criminal appeal is filed by the accused/appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') against the judgment dated 16/07/2012 passed by the learned Sessions Judge, Janjgir-Champa (C.G.) in Sessions Trial No. 72/2011, whereby the appellant has been convicted for having committed an offence punishable under Section 302 of the Indian Penal Code (hereinafter referred to as 'IPC') and sentenced to life imprisonment with fine of Rs.2000/- and in default of payment of fine amount, he has to undergo additional rigorous imprisonment for three months.

2. Briefly stated, the case of the prosecution is that on 25/05/2010, the

complainant Resham Lal Kashyap has brought "Band Party" from Shivrinarayan for solemnization of wedding of his two sons at his village Munund, police Station Janjgir. The said Band Party went to the field of one Prem Lal Tiwari along with women members of his family on the said date at 6.00 P.M. in order to perform a ceremony, known as "*Choolmati*" and when they were returning, the accused Virendra Kumar Yadav stopped Band Party and was insisting them to play the Band of his choice. The said Band Party has acted according to him but since a song was not playing of his choice, therefore, he started quarreling and used filthy words and threatened to see them. The members of said Band Party then went for sleeping at 11.00 P.M. after having their meals at the Verandah of complainant's house. Further prosecution story is that one Shobhan Bisi, one of members of the "Band Party", has got up the complainant in the night at about 2.30 A.M. and informed him that someone has severely assaulted the deceased Suraj Mahanand by some weapon. On account of the alleged assault, the deceased has received the head injury, as a result of which, huge blood was oozing, which led to his death.

3. Based upon the aforesaid incident, the information (Ex. P-1) regarding sudden and unnatural death was lodged by the complainant Resham Lal Kashyap immediately after the incident, i.e. on 26/05/2010 at 2.30 A.M. and, thereafter, a First Information Report (Ex. P-2) was lodged by him against the unknown person while doubting the involvement of the appellant Virendra Kumar Yadav in connection with the crime in question. An inquest was conducted on the body of deceased vide report (Ex. P-11) on 26/05/2010. On the basis of accused's memorandum (Ex. P-7), the used weapon (Axe) was recovered from the Verandah (*Kotha*) of his house and blood stained weapon (Axe) was seized at his behest vide seizure memo (Ex. P-8) on 04/01/2011.

4. In pursuance to the aforesaid incident, the matter has been investigated and the offence punishable under Section 302 of the IPC has been registered against the appellant Virendra Kumar Yadav by the concerned Station House Officer and, submitted its final report before the Chief Judicial Magistrate, Janjgir and the matter was thereafter committed to the District and Sessions Judge, Janjgir-Champa.

5. After finding the *prima facie* material available on record, charge under Section 302 of the IPC has been framed against the appellant on 15/04/2011.

6. The appellant pleaded not guilty in connection with the aforesaid crime, as framed, and claimed to be tried.

7. In order to prove the guilt of the appellant, the prosecution has examined as many as 18 witnesses, while none was examined by the appellant in his defence.

8. After considering the evidence led by the prosecution, the trial Court vide its impugned judgment has convicted the appellant and sentenced him as aforesaid.

9. Being aggrieved, the appellant has preferred this appeal. Mr. Manoj Kumar Jaiswal, learned counsel appearing for the appellant submits that the judgment under appeal as passed by the trial Court is perverse and illegal, inasmuch as, it did not appreciate the evidence in its proper perspective. He submits that the alleged used weapon (Axe) recovered at the behest of the accused on 04/01/2011 cannot be taken into consideration for the involvement of the appellant with regard to the crime in question as no blood stain was found on the alleged weapon, as per FSL report (Ex. P-24).

10. On the other hand, Mr. Vaibhav A Goverdhan, learned Panel Lawyer for the State/respondent has supported the impugned judgment by submitting

inter alia, that it has been passed upon due and proper appreciation of the evidence, and therefore, does not require to be interfered.

11. We have heard learned counsel appearing for the parties and perused the entire record carefully.

12. Shobhan Bisi (PW-14) is the eyewitness to the incident and was one of the members of the said 'Band Party' has stated in his evidence that they were called by complainant Resham Lal Kashyap for solemnization of his sons' marriage. He has stated that the accused present in the Court has stopped them near the school and insisted for playing a song of his choice. He has stated further that when they turned down the request of the appellant of playing a song of his choice then he started hurling filthy words. Upon hearing so, the son of complainant Resham Lal Kashyap namely Tulsi Ram Kashyap has told him not to use filthy words as village women were present at that time. The accused then started quarreling with him. He has stated further that when they were sleeping in the night at about 11.00 P.M. at the Verandah of one Rameshwar, at 2.30 A.M. he had seen the accused holding the Axe and this witness shouted upon seeing the accused dragging the Axe on the body of the deceased Suraj Mahanand. This witness has stated further specifically that he had seen the accused assaulting the deceased with Axe and he ran away from the spot after commission of murder. He was firm in his cross-examination.

13. The testimony of the aforesaid eyewitness was corroborated by Saukhi Lal Gada (Chauhan) (PW-17) who was also the member of the said Band Party. He has stated in his evidence that at about 11 to 11.30 P.M. they got up immediately after hearing the shouts of Shobhan Bisi and saw the deceased Suraj Mahanand who was killed by some weapon. He has stated further that

he had seen the accused running away from the spot. Though this witness was not an eyewitness, but has seen the accused running away from the spot. Thus, this witness has supported the testimony of the aforesaid eyewitness Shobhan Bisi (PW-14).

14. The other prosecution witnesses are not the witnesses of the said incident and have not stated much about the alleged assault, except the quarrel started by the accused with the complainant's son Tulsi Ram Kashyap, when he was stopped by using filthy words before the women members of the family.

15. Dr. R. D. Gupta (PW-10), who has conducted the postmortem on the dead body of the deceased Suraj Mahanand, has opined that the cause of death was due to syncope as a result of shock and hemorrhage on account of incised wound over skull with fracture of left occipital bone. This witness has also opined upon examination of the alleged seized weapon that the alleged head injury could be caused by the said weapon (Axe).

16. A close scrutiny of the aforesaid evidence, *vis-a-vis*, the opinion of the doctor R. D. Gupta (PW-10), makes it evident that the accused had given the blow with an Axe on the head of the deceased Suraj Mahanand, resulting into his death. Consequently, we do not find any substance in this appeal. The appeal is therefore, liable to be and is hereby dismissed. The judgment under appeal as passed by the trial Court convicting and sentencing the appellant for the offence punishable under Section 302 of the IPC is hereby affirmed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE