

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 117 of 2016

- Mahesh Kumar Kaushal S/o Late Anandi Lal Aged About 25 Years R/o Village Muriyapara, Police Station And District Narayanpur, Chhattisgarh., Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Narayanpur, District Narayanpur, Chhattisgarh.

---- Respondent

For Appellant : Shri SK Guha, Advocate.

For Respondent/State : Shri Vivek Sharma, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board by Justice Pritinker Diwaker

18.06.2018:

This appeal arises out of the judgment of conviction and order of sentence dated 30.11.2015 passed by the Additional Sessions Judge, Kondagaon, Distt. Kondagaon (CG) in S.T. No.62/2012, convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.5000/- with default stipulation.

02. As per prosecution case, on 7.9.2009 at about 6 pm on account of some money dispute the accused/appellant killed Sukhdev

(deceased) by causing him knife injuries. The incident was witnessed by PW-1 Harendra Yadav, PW-4 Smt. Sunita Yadav and PW-5 Basant Usendi. At the instance of PW-2, FIR (Ex.P/3) was registered against the appellant on the same day under Section 302 of IPC. Prior to lodging of FIR, mere intimation (Ex.P/2) was recorded on 7.9.2009 at 7.30 pm at the instance of PW-2. Inquest on the dead body was conducted on 8.9.2009 vide Ex.P/5 and thereafter, the body was sent for postmortem which was conducted on the same day by PW-7 Dr. MK Suryavanshi vide Ex.P/16 who noticed stab injury over neck on left side and one cut injury below the stab injury and that blood vessels of the neck were cut. In his opinion, the cause of death was syncope due to excessive bleeding and the death was homicidal in nature. On the memorandum of the accused/appellant recorded on 10.9.2009 (Ex.P/8), one bloodstained knife was seized vide Ex.P/9. After completion of investigation, charge sheet was filed against the appellant under Section 302 of IPC followed by framing of charge accordingly.

03. So as to hold the accused/appellant guilty, the prosecution examined 7 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

05. Counsel for the appellant submits as under:

- (i) that the appellant has been falsely implicated in the crime in question.
- (ii) that the eyewitnesses to the incident are not reliable and they have exaggerated their version in the Court.
- (iii) even if the entire prosecution case is taken as it is, the appellant cannot be convicted under Section 302 of IPC and at best he is liable to be convicted under Section 304 Part-I or II of IPC. Further, considering the detention period of the appellant, which comes to more than 8 ½ years, after conversion of his conviction, he may be sentenced to the period already undergone by him.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the incident has been witnessed by as many as three witnesses (PW-1, PW-4 & PW-5) and all these witnesses have categorically stated as to the manner in which the appellant killed the deceased. This apart, medical evidence also supports the prosecution case. It is submitted that looking to the nature of injuries and the manner in which the appellant assaulted the deceased which led to his on-the-spot death, his conviction under Section 302 of IPC cannot be faulted with.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Harendra Yadav, nephew of the deceased and eyewitness to the incident, while supporting the prosecution case has stated that on the date of incident at about 6 pm he saw the appellant and the

deceased quarreling and upon his intervention, they were separated. However, after about 10 minutes, he saw the appellant throwing the deceased on the ground and then the appellant caused knife injury to the deceased. The deceased was taken to hospital immediately, however, he was declared brought dead. In cross-examination, this witness remained firm and nothing could be elicited from him to render his evidence untrustworthy or shaky.

09. PW-4 Smt. Sunita Yadav, another eyewitness to the incident, too has categorically stated that the appellant sat on the chest of the deceased and caused him knife injury on his neck. In cross-examination she denied all the adverse suggestion and remained intact. Likewise, PW-5 Basant Usendi is also an eyewitness to the incident. While supporting the prosecution case he has stated as to the manner in which the deceased was done to death by the appellant.

10. PW-2 Farasram Yadav is the lodger of FIR and merg intimation. He has partially supported the prosecution case. He saw the deceased lying in injured condition on the ground. PW-6 RK Patre, investigating officer, has duly supported the prosecution case. PW-7 Dr. MK Suryavanshi conducted postmortem on the body of the deceased on 8.9.2009 vide Ex.P/16 and noticed stab injury over neck of the deceased on left side and one cut injury below the stab injury and that blood vessels of the neck were cut. In his opinion, the cause of death was syncope due to excessive bleeding and the death was homicidal in nature. He also examined the knife seized from the appellant and opined that the injury suffered by the deceased could be caused by the said knife vide Ex.P/14.

11. Close scrutiny of the evidence makes it clear that on the date of incident it is the accused/appellant who on account of there being money dispute with the deceased had a quarrel with him and then he assaulted the deceased with knife on his vital part – neck which led to his instantaneous death. There are as many as three eyewitnesses to the incident namely PW-1 Harendra Yadav, PW-4 Smt. Sunita Yadav and PW-5 Basant Usendi. All of them have unequivocally stated as to the manner in which the appellant killed the deceased by inflicting knife injury on his neck. Defence has utterly failed to elicit anything from them to discredit their testimony. Moreover, their version finds due corroboration from the medical evidence as well. As per postmortem report of the deceased, he suffered stab injury on the neck which proved to be his cause of death. In view of all this, complicity of the appellant in crime in question stands proved beyond all reasonable doubt.

12. As regards conviction, we find no substance in the argument of counsel for the appellant that in the facts and circumstances of the case, the appellant is liable to be convicted for lesser offence. Keeping in view the fact that the appellant caused injury with a lethal weapon knife on vital part – neck of the deceased with such a force that blood vessels of the neck were cut leading to his on-the-spot death, it can safely be inferred that while inflicting such injury on the deceased, the appellant had not only intention of killing the deceased but also had every knowledge that infliction of such injury would result in his death. Being so, his conviction under Section 302 of IPC is strictly in accordance with law and calls for no interference.

13 In the result, the appeal being bereft of any substance is liable to be dismissed and is dismissed accordingly. As the appellant is already behind the bars, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(Gautam Chourdiya)

Judge