

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1128 of 2015**

- Korram Chandraiyya S/o Sukaiyya, aged about 34 years, caste - Gond, R/o village - Lingapur, Police Station - Bhopalpatnam, District Bijapur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through : Station House Officer, Police Station Bhopalpatnam, District Bijapur (C.G.)

---- Respondent

For Appellant.	:	Shri Sudhir Bajpai, Advocate.
For Respondent.	:	Shri Vaibhav Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgment on Board**By Pritinker Diwaker, J****20/02/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 16.07.2015 passed by the Sessions Judge, South Bastar Dantewara (C.G.), in S.T. No.132/2008 convicting the accused/appellant under Section 302 IPC and sentencing him to undergo imprisonment for life.

02. As per the prosecution case, on 25.03.2008 at 11.30 PM, in the house of Torram Samaiyya some religious function known as “Kandabori” was going on and most of the villagers were present in drunken condition. It is alleged that the accused/appellant was pushed by the deceased Atram Nalaiyya resulting annoyance to him, who in turn, went to his house, picked up a knife and caused injuries to him. After the incident, injured Atram Nalaiyya was taken to Community

Health Center, Bhopalpatnam where he was medically examined by Dr. Shailendra Singh (PW/7) vide Ex.P/13 noticing stab wound of 2" x 1" on right side of abdomen. Looking to his serious condition, he was referred to Maharani Hospital, Jagdalpur where he succumbed to his injuries on 28.03.2008 during treatment. In the meanwhile, at the instance of deceased, FIR (Ex.P/6) was registered on 26.03.2008 against the accused/appellant under Sections 324, 307 IPC and Section 25 of the Arms Act. After the death of deceased, unnumbered dehati merg was recorded on 28.03.2008 vide Ex.D/1 and thereafter numbered merg Ex.P/8 was recorded on 09.04.2008. Inquest on the body of deceased was conducted on 28.03.2008 and dead body was sent for postmortem examination to Maharani Hospital, Jagdalpur vide Ex.P/17 which was conducted by Dr. Sanjay Basak (PW/6) who gave his report (Ex.P/12) noticing following injuries:-

- (i) One stab wound with colostomy in right hypogastric region in the size of 2" x 1"
- (ii) Distension of abdomen with colostomy and bad blood mixed.

Autopsy Surgeon opined the cause of death of deceased to be sepsis shock and hemorrhage due to stab injury on right hypogastric region.

03. In the incident, knife alleged to have been used in the commission of crime was sent for examination to Dr. Shailendra Singh (PW/7), who gave his query report Ex.P/14 opining that injuries sustained by the deceased could have been caused by the said knife. The weapon of offence i.e. knife was seized from the possession of

accused/appellant vide Ex.P/1 and the same was sent for its chemical examination to FSL, Raipur vide Ex.P/10, however, no report thereof could be obtained. After filing of the charge sheet, the trial Judge has framed the charge against the accused/appellant under Section 302 of IPC.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 08 witnesses. Statement of the accused/appellant 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned above. Hence, this appeal.

06. Learned counsel for the appellant submits :

- (i) That out of three eye-witnesses i.e. PW/1, PW/2 and PW/3, atleast PW/1 and PW/2 have not seen the actual occurrence.
- (ii) That the incident took place in dark night and, therefore, also question of seeing the occurrence by any witness does not arise. It has been argued that all the villagers were in drunken condition, the incident occurred all of a sudden, there was no premeditation on the part of the accused/appellant and, therefore, he is liable to be convicted for lesser offence.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State as under:-

- (i) That FIR (Ex.P/6) was lodged by the deceased himself and after

his death, the said FIR can be treated as his dying declaration.

(ii) That PW/3 is completely reliable witness and remained intact.

(iii) That minor variation in the statements of PW/1 and PW/2 is required to be ignored considering the fact of their being rustic villagers.

08. We have heard learned counsel for the parties and perused the material available on record.

09. Koram Chalmaiyya (PW/1) has been examined by the prosecution as eye-witness to the incident. He has stated that he saw the accused/appellant inflicting knife blow on the abdomen of the deceased. He has further stated that about 50-60 villagers were dancing and all of them had drunk. In cross-examination, he states that he did not see the accused/appellant assaulting the deceased but saw him carrying knife in his hand, whereas the deceased was lying in the injured condition.

10. Atram Malaiyya (PW/2) is brother of the deceased. In examination-in-chief, he has stated that it is the accused/appellant who caused injuries to the deceased but in cross-examination he states that he was informed by Somaiyya (not examined) that accused/appellant had caused injuries to his brother Atram Nilaiyya. He has further stated that he had not seen the accused/appellant causing injuries to the deceased.

11. Konda Gurla Nagaiyya (PW/3), another eye-witness to the incident, has duly supported the prosecution case and stated as to the manner in which the deceased was done to death by the accused/appellant. This witness has stated that though there was no electric light but he has clarified that the earthen lamp was burning. He has been confronted from his diary statement wherein also he has duly supported the prosecution case.

12. Sonauram Salam (PW/4) is a Patwari who prepared spot map vide Ex.P/4.
13. Kumar Singh Usendi (PW/5) - Investigating Officer, has duly supported the prosecution case.
14. Dr. Sanjay Basak (PW/6) conducted postmortem examination on the body of deceased and gave his report Ex.P/12 opining the cause of death of deceased to be sepsis shock and hemorrhage due to stab injury on right hypogastric region.
15. Dr. Shailendra Singh (PW/7) did MLC of the deceased vide Ex.P/13 noticing stab wound in the size of 2"x 1" over right side of abdomen.
16. Nakul Ram Sahu (PW/8) - Head Constable, did part of investigation.
17. Close scrutiny of the evidence available on record, makes it clear that on 25.03.2008, on the eve of religious function known as "*Kandabori*", when deceased, accused/appellant and other villagers were dancing, the accused/appellant was inadvertently pushed by the deceased as a result of which the accused/appellant caused injuries to the deceased resulting into his death. Immediately after the incident, FIR (Ex.P/6) was lodged by the deceased himself naming the accused/appellant to be the perpetrator of crime and after his death the same can be treated as his dying declaration. That apart, the incident was witnessed by Koram Chalmaiyya (PW/1), Atram Malaiyya (PW/2) and Konda Gurla Nagaiyya (PW/3), who have narrated the incident. Though there is some contradiction in the statements of PW/1 and PW/2 but PW/3 remained intact and has specifically stated as to the

manner in which the deceased was done to death by the accused/appellant. Evidence of PW/3 gets corroboration from PW/1, PW/2 and medical evidence according to which injuries on vital part i.e. abdomen of the deceased were noticed and the same were caused by hard and blunt object. Furthermore, Dr. Shailendra Singh (PW/7) in his query report (Ex.P/14) has opined that the injuries sustained by the deceased could have been caused by knife. This witness has also done MLC of the deceased vide Ex.P/13 noticing stab wound on right side of abdomen. Considering the statements of eye-witnesses coupled with the medical evidence, the complicity of accused/appellant in crime in question stands proved beyond reasonable doubt and we have no reason to disbelieve the statements of these witnesses.

18. We find no substance in the argument of counsel for the appellant that he is liable to be convicted for lesser offence. As per the evidence available on record, some quarrel took place between the accused/appellant and the deceased, accused/appellant went back to his house, took out a knife and while he was coming, he was resisted by his father and brother not to carry knife but he caused injury to them, reached the place of occurrence and stabbed the deceased by knife.

19. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.

20. The appeal thus has no substance and it is liable to be

dismissed. Dismissal recorded accordingly. Appellant is reported to be in jail and therefore no further order regarding his arrest etc. is required.

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Sanjay Agrawal)
JUDGE

Vijay