

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.75 of 2013**

- Budheswar Kanwar S/o Peelaram Kanwar Aged About 35 Years R/o Deragarh, Ps Baradwar, Distt. Janjgir-Champa C.G. , Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through Ps In Charge Baradwar, Distt. Janjgir-Champa C.G. , Chhattisgarh

---- Respondent

For Appellant	:	Shri Deepak Kumar Singh, Advocate
For Respondent/State	:	Shri Santosh Bharat, Panel Lawyer

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board**Per Manindra Mohan Shrivastava, J.****20/02/2019**

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 03-12-2012 passed by the First Additional Sessions Judge, Sakti, District Janjgir-Champa in Sessions Trial No.48/2012, whereby and whereunder the appellant has been held guilty for commission of offence under Section 302 of IPC and sentenced, as described below-

Section-302 IPC Life Imprisonment and fine of Rs.1,000/-, in default of payment of fine, additional R.I. for six months

2. Prosecution story, as unfolded from the impugned judgment of conviction and order of sentence and the records of the case is that FIR in Ex.P-21 was lodged by Shiv Kumar Kanwar, PW-12 in the police station, in which, it was

recorded that the appellant went to the field of Budhram Kanwar, where Budhram was engaged in agricultural activity, the appellant-Budheshwar started hurling abuses to Budhram. Thereafter, Budhram came to the field of Ram Charan and asked the appellant-Budheshwar as to why he was abusing, resultantly, there was scuffle between the appellant and the deceased-Budhram and the appellant took out a long knife and stabbed in the abdomen of Budhram Kanwar and then ran away from the spot. According to the FIR, the appellant had come with an intention of causing death stating that now he will finish deceased-Budhram, because he was harassing his brother. After recording FIR, inquest over the dead body was prepared and thereafter, the dead body was sent for postmortem. Dr. Atul Rathore, PW-8 conducted postmortem and prepared report vide Ex.P-14 and looking to the serious stab injuries, it was opined that cause of death was rupture of abdominal aorta and excessive bleeding and that death was homicidal in nature. After completion of investigation, charge sheet was filed and thereafter, the learned trial Court framed charges alleging commission of offence under Section 302 of IPC against the appellant alleging that the appellant with an intention to cause death, stabbed the deceased-Budhram Kanwar with the long knife resulting in his death. The appellant abjured guilt and demanded trial. In order to prove its case, the prosecution examined as many as 13 witnesses.

The prosecution came out with the evidence of Shiv Kumar Kanwar, PW-12 (FIR Informant) as also Bhim Shankar, PW-3 and Shyam Bai, PW-2, wife of the deceased. Shiv Kumar Kanwar, PW-12, however, did not support the prosecution case and turned hostile as he had not seen the incident and reached at the spot only after the incident and in the report lodged by him, he had not stated before the police that the assault was given by the appellant. However, Bhim Shankar, PW-3 supported the prosecution case, by stating that

he had seen the incident, in which, the appellant assaulted the deceased. Shyam Bai, PW-2, wife of the deceased also stated that she had seen the appellant running away from the spot, where her husband was lying dead. Relying upon the evidence of eye-witness account of Bhim Shankar, PW-3 and recovery of knife from the possession of the appellant on the basis of his memorandum, the learned trial Court held the appellant guilty of commission of offence of murder of Budhram Kanwar and sentenced him, as described above, giving rise to this appeal.

3. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that according to the FIR, the only eye-witness of the incident was Shiv Kumar Kanwar, PW-12, who claims to have seen the incident, but this witness has not supported the case of the prosecution and turned hostile. Next submission is that as far as Bhim Shankar, PW-3 is concerned, his evidence is liable to be disbelieved, because according to the FIR, he reached at the spot at a later point of time than Shiv Kumar Kanwar, PW-12. It is further argued that according to his own evidence, Bhim Shankar, PW-3 has stated that at the time of incident, he was in his house and it is quite improbable that he would follow the accused up to the field of the deceased Budhram Kanwar for no reason. Lastly, it is submitted that according to Shyam Bai, PW-2, wife of the deceased, Budheshwar had gone to the field of the deceased along with his knife and his wife having admitted in his cross-examination that at the time, when her husband was stabbed, she was not present at the spot, renders highly improbable that Bhim Shankar was an eye-witness to the incident. According to her, he is concocted witness of the prosecution.

4. In the alternative, submission of learned counsel for the appellant is that even if the evidence of Shyam Bai, PW-2 and Bhim Shankar, PW-3 is believed,

present is the case of single assault and therefore, only on the basis of this single assault, it cannot be said that the appellant had intention to cause death of Budhram and in the circumstances of the present case, conviction of the appellant may be altered from Section 302 of IPC to that of Section 304 Part II of IPC with the sentence, which the appellant has already undergone.

5. On the other hand, learned State counsel would support the impugned judgment of conviction and order of sentence by submitting that the prosecution is based on truthful eye-witness account of Bhim Shankar, PW-3, who had seen the incident and corroborated from the evidence of Shyam Bai, PW 2, wife of the deceased, who had seen the appellant running away from the spot, where Budhram was lying in the field bleeding heavily. He would submit that the knife was also seized from the possession of the appellant on his memorandum.

6. We have heard learned counsel for the parties and perused the records.

7. The FIR, Ex.P-21 contain allegation against the appellant for assaulting Budhram with an intention to cause death, because according to the FIR, the appellant had decided to kill Budhram as Budhram was harassing his brother. However, the FIR informant, Shiv Kumar Kanwar, PW-12 had not supported the case of the prosecution and turned hostile.

But, then the prosecution case finds full support from the evidence of Shyam Bai, PW-2 and Bhim Shankar, PW 3, in which, Bhim Shankar, PW-3 clearly deposed that at about 9 to 10 am, when he was in his house, he saw the appellant Budheshwar Kanwar abusing Budhram while going toward his field, whereafter, he also followed Budheshwar. When appellant-Budheshwar reached the field of Budhram, he was hurling abuses and thereafter, Budhram came to the field of Ram Charan and asked as to why he was abusing, resultantly, there was scuffle between the appellant and the deceased and Shiv Kumar Kanwar was trying to pacify and during this period, the appellant took out

a knife, which was about a feet long and stabbed Budhram in his abdomen and thereafter, he ran away from the spot. He says that he had seen the incident from a distance of 30 to 40 feet away and at that time, wife of deceased, who was coming back from her house, was also present at some distance from the place of incident. In his cross-examination, the evidence of this witness could not be impeached despite various suggestions given. The evidence of this witness cannot be doubted on alleged inherent improbability of he following Budheswar. This witness states that Budhram was his cousin. Having heard Budheshwar hurling abuses for Budhram and upon hearing this, this witness following Budheshwar cannot be said to be improbable conduct. On this ground alone, the statement of this witness cannot be doubted.

8. Shyam Bai, PW 2, wife of the deceased, has stated that on the date of the incident, she was engaged in collecting crops and carrying it to her house, for which purpose, she was taking round from the agriculture field to her house. She has also deposed that in the field, her husband was engaged in reaping the crop. Though, in the examination-in-chief, she claims to have seen the assault made by appellant to the deceased, but, in her cross-examination, she admits that at the time, when her husband was assaulted, she was not present at the spot. Bhim Shankar, PW 3 had stated that when he was witnessing the incident of assault, he had seen Shyam Bai standing at some distance from the place of incident. Shyam Bai, PW-2 has stated that Bhim Shankar was also going towards her field. From the evidence of these two witnesses, it is clear that Shyam Bai was engaged in carrying crops from the field and when she was going towards her field, Bhim Shankar was also going along with her and while she lagged behind, Bhim Shankar witnessed the incident, in which, appellant was giving assault to Budhram and at that point of time, Shyam Bai was lagging behind. It is explained from the evidence that Shyam Bai was standing at some

distance from the place of the incident. Shyam Bai, PW-2 has also clearly stated that the appellant was seen running away from the spot holding knife in his hand. The evidence of Shyam Bai that when her husband was assaulted, was not present at the spot, cannot be read in isolation. Entire evidence of Shyam Bai is required to be looked into. Before Shyam Bai reached the place of incident, assault was given on her husband. But, then she had seen the appellant running away from the spot. There may be some doubt as to whether she actually witnessed the incident or reached at the spot immediately thereafter, but there is no doubt that the version of Shyam Bai, PW-2 is reliable and finds corroboration from the evidence of Bhim Shankar, PW 3. We notice that what has been elicited in the cross-examination, is not that she had not seen the incident, but she could not reach the place of incident. In any case, in view of the evidence of Bhim Shankar, PW-3, the appellant has no escape. Long knife measuring about 12 inches (1 foot) was also seized from the possession of the appellant.

9. Argument of learned counsel for the appellant that in the circumstances, conviction of the appellant may be converted from Section 302 of IPC to that under Section 304 Part II of IPC, is liable to be rejected. It is not a case that all of a sudden, some dispute had arisen and without premeditation, any assault was given, which led to death. According to the prosecution evidence, the appellant was going towards the field of Budhram, hurling abuses for him and at the spot, when he reached, he entered into quarrel and took out a long knife and stabbed into the abdomen. Moreover, carrying a long knife, hurling abuses for deceased and reaching in his field, clearly proves intention and preparation both. These facts proved from the evidence of prosecution unmistakably lead to inference that the appellant had an intention of causing death and nothing else. Merely because, only one stab injury was given, cannot be made a basis to

draw an inference that there was no intention to cause death. In any case, giving an assault in the abdomen by using the knife, which is about 1 feet long, is sufficient to attribute knowledge that bodily injury was likely to cause death. In the absence of there being any evidence, the present case would not cover under any of the exceptions of Section 304 of IPC. The only conclusion is that the appellant would be held guilty of commission of offence of murder. Reliance placed by the learned counsel for the appellant on the decision of this Court in the case of ***Ram Ratan Suryavanshi vs. State of C.G., 2017 (4) C.G.L.J. 384 (D.B.)***, is misplaced for the reason that the factual background and genesis of dispute in that case are entirely different. That was a case where two brothers suddenly entered into fight in the background that one of the brothers misbehaved and insulted his wife.

10. In view of foregoing, we do not find any ground to interfere with the impugned judgment of conviction and order of sentence passed by the learned trial Court. In the result, the appeal is dismissed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor)
Judge