

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1773 of 2019**

- Shera @ Rakesh Yadav, S/o Shri Ramkumar Yadav, aged about 19 Years, R/o Katora Talab, Police Civil Lines, Raipur Chhattisgarh.

----Appellant**Versus**

- State of Chhattisgarh, through the Station House Officer, Police Station Telibandha, Raipur Chhattisgarh.

---- Respondent

For Appellant

Shri Vivek Bhakta, Advocate.

For Respondent/State

Shri Pawan Kesharwani, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Shri Gautam Chourdiya J.****17/12/2019**

1. This appeal arises out of the judgment of conviction and order of sentence dated 28.12.2006 passed by the 11th Additional Sessions Judge (FTC), Raipur (CG) in Sessions Trial No.97/2006 convicting the accused/appellant under Section 302 read with Section 34 of IPC and sentencing to imprisonment for life and fine of Rs.5,000/- and in default of payment of fine, one year simple imprisonment.
2. Case of the prosecution in brief is that on 21.10.2005 at 11:30 pm, co-accused Madan @ Tulsi @ Bhurwa, Tulsi Yadav and Sanju Kumar who were tried in Sessions Trial No.97/2006 and convicted vide judgment dated 29.07.2006 and two other co-accused namely Gajju @ Arun Yadav and Shera @ Rakesh Yadav, the appellant herein, alleged to have restrained deceased Narendra Yadav and demanded money for consuming liquor. On being denied, firstly, co-accused Tulsi Yadav

slapped Narendra Yadav, thereafter, Narendra Yadav came with gas pipe in his defence and tried to assault Sanju and Tulsi Yadav, then accused Madan, Shera, Tulsi and Gajju after abusing Narendra Yadav, took out Gupti and assaulted Narendra Yadav 3-4 times and caused his death.

3. Jitu Singh Thakur (PW-4) lodged first information report vide Ex.P-3 and merged vide Ex.P-4. The Investigating Officer left for the scene of occurrence and after summoning the witnesses, conducted inquest over the dead body of the deceased. Inquest Report Ex.P-2 was prepared. Spot map was also prepared vide Ex.P-21. Blood stained soil and plain soil were seized from the spot. After the incident, the accused/appellant remained absconding and accordingly absconding panchanama was prepared vide Ex.P-28. The accused/appellant was arrested on 02.05.2006 vide arrest memo Ex.P-29. The dead body was sent for autopsy to Dr. B. R. Ambedkar Hospital vide Ex.7. where Dr. Shivnarayan Manjhi (PW-9) conducted autopsy vide Ex.P-9 and found the following injuries:

- i) Stab wound present over left side of chest, 4 cm left to midline and 14 cm lower to the clavicle vertically in the size of 2 x 6 cm, extending into chest cavity cutting tissue in the passage and entered into left lung and membrane of the heart;
- ii) Stab wound of 2.5x0.5 cm below injury No.1 into cavity deep, cutting issue of the passage entered into pericardium into heart in the left vertical in the side of 3.5x1cm;
- iii) Incised wound over right chest 4cmx0.4cmx2cm;
- iv) Incised wound over right chest, 2cm right to injury No.3.
- v) Red colour abrasion present on 2cm above from right anterior superior spine region of 0.5cm;
- vi) Abrasion over left elbow of 0.5cm.

And opined that injuries were ante-mortem, mode of death was shock & hemorrhage and death was homicidal in nature.

4. Sealed clothes and viscera were seized during the course of investigation and accused Madan was taken into custody. He made a disclosure statement of Gupti vide Ex.16 and the same was recovered at his instance vide Ex.17. Black colour shirt of appellant Madan was seized vide Ex.18.
5. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'Code') and after completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Raipur who, in turn, committed the case to the Court of Sessions Judge. Learned Additional Sessions Judge received the case on transfer for trial.
6. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 14 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.
7. After providing opportunity of hearing to the parties, learned XI Additional Sessions Judge, Raipur, convicted and sentenced the appellant as aforementioned.
8. Learned counsel for the appellant submits that in this case the other co-accused Tulsi Yadav was acquitted of the charge under Section 302 read with 34 and accused Sanju died during trial. Only accused Madan was liable for committing the murder of deceased and his appeal was dismissed. Looking to the evidence available on record, no offence was committed by appellant Shera @ Rakesh Yadav and his name was also not mentioned in the statements of the witnesses. He further submits that as per PW-4 Jitu Singh Thakur and PW-5 Sanjay, there is no unlawful assembly for committing the murder of the deceased nor

any common object or intention was shared by the appellant with the other accused persons. PW-6 Jaqir Ali has also not supported the prosecution case, therefore, the appellant also deserves to be acquitted of the charge under Section 302 read with Section 34 of IPC.

9. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
10. We have heard learned counsel for the parties and perused the material available on record.
11. Accused Madan @ Tulsi @ Bhurwa had filed CRA No.683 of 2007 and Accused Tulsi Yadav had filed CRA No.835 of 2007 against the judgment dated 29.07.2006 passed in ST No.97/2006 which were decided by the Co-ordinate Bench vide judgment dated 28.11.2011 whereby the CRA No. 683 of 2007 filed by the accused Madan was allowed in part altering his conviction from under Section 302/34 to under Section 302 of IPC and CRA No.835 of 2007 filed by accused Tulsi Yadav was partly allowed altering his conviction from under Section 302/34 to under Section 323 of IPC and sentencing to undergo R.I. for one year.
12. CRA No.976 of 2012 filed by accused Gajju @ Arun Yadav against the judgment dated 28.12.2006 passed in ST No.97/06 was decided by the Co-ordinate Bench vide judgment dated 06.01.2018 whereby the appeal was allowed and accused Gajju was acquitted of the charge under Section 302 read with Section 34 of IPC.
13. It is not in dispute that one of the accused namely Sanju committed suicide during course of trial.
14. Jitu Singh Thakur (PW-4) has stated before the Court that on the

fateful day at 11 pm near Katora Talab, he and Annu reached near Shyam Nagar, Raipur then Sanju and Tulsi- co-accused, came and demanded money from Narendra Yadav for consuming liquor which was denied by deceased Narendra yadav, then Sanju slapped Narendra Yadav and thereafter, co-accused Tulsi, Gajju, Madan and Shera- the present appellant came and started abusing them and immediately thereafter, Madan took-out dagger from his waist and caused 3-4 dagger blows to Narendra Yadav and immediately thereafter, Shera also caused dagger blow to Narendra Yadav. Narendra Yadav fell down on the spot and co-accused Gajju was seen shouting '*maro maro*' and then they fled from the scene of occurrence.

15. Sanjay Yadav (PW-5) has similarly stated that dagger blow was caused by Madan on the abdomen area of Narendra Yadav and also by Shera and other co-accused standing there were shouting '*maro maro*'.
16. Vikku Baghel (PW-7) has corroborated the statements of other witnesses that dagger blow was caused by Madan and Shera and other co-accused were shouting '*maro maro*'.
17. Similar is the statement of Ashwani Kumar (PW-13) that dagger blow was caused by Madan and Shera and other co-accused were instigating Madan and Shera to kill deceased Narendra Yadav.
18. Looking to the consistent and uncontroverted statements of eye-witnesses PW-4 Jitu Singh Thakur, PW-5 Sanjay Yadav, PW-7 Vikku Baghel and PW-13 Ashwani Kumar which proves that accused appellant Shera @ Rakesh Yadav assaulted the deceased, the injuries found on the body of the deceased as per PM report, the FIR Ex.P-3 so lodged by PW-4 Jitu Singh Thakur naming the appellant as the person who assaulted the deceased by means of Gupti, this Court is of

the opinion that the trial Court was fully justified in convicting the appellant under Section 302 read with 34 of IPC.

19. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. The appellant is reported to be in jail, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge