

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.441 of 2015**

Petala @ Gagaru, son of Vanshi, Caste Kuduk Backward Class, Occupation Agriculturist, aged about 40 years, resident of Village Ghatakwal, Junapara, Police Station City Kotwali, Jagdalpur, District Bastar, Chhattisgarh

--- Appellant

**versus**

State of Chhattisgarh through Police Station City Kotwali, Jagdalpur, District Bastar, Chhattisgarh

--- Respondent

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| For Appellant  | : | Shri Udho Ram Koshaley, Advocate     |
| For Respondent | : | Shri Rajendra Tripathi, Panel Lawyer |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**  
**Hon'ble Shri Justice Arvind Singh Chandel**

**Judgment on Board**

**Per Arvind Singh Chandel, J.**

**14.12.2021**

1. The instant appeal has been preferred by the accused against the judgment dated 7.7.2014 passed by the Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.23 of 2014, whereby the accused has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and pay fine of Rs.2,000.
2. According to the case of prosecution, deceased Maniram had agreed to purchase a piece of land from the Appellant and against that he had paid him an advance. Later on, the Appellant sold that piece of land to some other person and instead of refunding the advance in full to Maniram, he refunded him a part thereof only. On 26.12.2013, i.e., the date of incident at about 5:30 p.m., Maniram

and the Appellant met at the house of Sukru. There, Maniram made demand for refund of the balance of advance. On this, a dispute took place between them. On being incultated, the Appellant went out from there. It is the further case of the prosecution that same day at about 6:30 p.m., Maniram came out of the house of Bhushan (PW9). At that time, the Appellant came there and gave 3 blows on the stomach of Maniram with a knife and fled from there. Injured Maniram was taken to the hospital. He was first medically examined by Dr. Mahendra Prasad (PW11). His report is Ex.P11. The matter was reported by Hemkant (PW1) in Police Chowki, Maharani Hospital, Jagdalpur vide Dehati Nalishi (Ex.P1). On the basis of the Dehati Nalishi, First Information Report (Ex.P13) was registered. Dying declaration (Ex.P12) of Maniram was also recorded in the hospital. During the course of treatment, Maniram died in the hospital on 27.12.2013. Morgue intimation (Ex.P10) was recorded. Inquest proceeding (Ex.P3) was conducted. Post mortem examination over dead body of Maniram was conducted by Dr. Kiran Patil (PW6). Her report is Ex.P7. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant. The Trial Court framed charge against him.

3. To rope in the Appellant, the prosecution examined as many as 13 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded innocence. No witness was examined in his defence.

4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellant as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the Trial Court. The prosecution has failed to establish any motive of the Appellant to commit murder of Maniram. Though the eyewitnesses have supported the case of the prosecution, there are material contradictions in their statements. Therefore, their statements are not reliable. Learned Counsel further submits that even if the entire case of the prosecution is taken as it is, the act committed by the Appellant falls within the ambit of Section 304 Part II of the Indian Penal Code because from the statement of Hemkant (PW1), who was present along with Maniram at the time of incident, it is well established that on making demand of his money by Maniram from the Appellant, a quarrel took place between them on the way and as a result thereof the incident occurred. Hence, the conviction of the Appellant under Section 302 of the Indian Penal Code is not sustainable.
6. Learned Counsel appearing for the State opposes the above arguments and supports the impugned judgment of conviction and sentence.
7. We have heard Learned Counsel appearing for the parties and perused the statements of the witnesses and other evidence

available on record of the Trial Court with due care.

8. Maniram was first medically examined by Dr. Mahendra Prasad (PW11) on 26.12.2013 at 8:30 p.m., i.e., immediately after the incident. His report is Ex.P11. It was found by him that in the left lumbar region, a stab injury was present due to which omentum had come out and there was also a cut injury present on the left coastal region. He also found one cut injury on the fourth finger of left hand. Later on, after death of Maniram, post mortem examination on his dead body was conducted by Dr. Kiran Patil (PW6) on 27.12.2013. According to the post mortem report (Ex.P7), total 3 stab injuries were found on the stomach and chest of the deceased. As opined by Dr. Kiran Patil (PW6), those injuries were sufficient to cause death of Maniram in normal course and the nature of death was homicidal.
9. As regards the incident, Hemkant (PW1) deposed that at the time of incident, he was along with Maniram. He had gone to the house of the Appellant along with Maniram to take the money of Maniram from the Appellant. But, the Appellant was not found at his house. Thereafter, the Appellant met on the way. There, Maniram demanded his money from the Appellant. The Appellant assured to give his money later. On the issue, an argument took place between them. Suddenly, the Appellant took out a knife and assaulted on the stomach of Maniram with that knife and thereafter fled from there. According to this witness, the incident was witnessed by Chaman (PW8) also. The above statement of

Hemkant (PW1) is duly corroborated by Chaman (PW8). In his Court statement, Chaman (PW8) deposed that at the time of incident, on being shouted by Maniram, he reached near the house of Bhushan (PW9). At that time, the Appellant had caused Maniram to fall down and he had mounted over him and he was assaulting him with a knife and thereafter he fled from there. Bhushan (PW9) also deposed that the incident took place in front of his house. He further deposed that at that time when Maniram came out of his house, the Appellant caught him and assaulted him with a knife which was seen by this witness. However, during cross-examination, he admitted that at the time of incident, he was inside his house and when he came out of his house, he saw that injured Maniram was lying down and the Appellant was standing there with a knife.

10. On a minute examination of the above evidence adduced by the prosecution, it is clear that Maniram sustained total 3 stab injuries on his stomach and chest and as opined by Dr. Kiran Patil (PW6), those injuries were sufficient to cause his death in normal course. As further opined by her, the nature of death was homicidal. The eyewitnesses of this case, i.e., Hemkant (PW1) and Chaman (PW8) have supported the entire case of the prosecution. They have categorically deposed that it was the Appellant who assaulted Maniram on the stomach with a knife. Both the eyewitnesses remained firm during their cross-examination. There is nothing on record on the basis of which their statements could be disbelieved. From the unrebutted statement of Bhushan (PW9), it is also

established that when he reached on the spot, at that time, Maniram was lying down in injured condition and the Appellant was standing there with a knife. Therefore, it is well established that the injuries sustained by Maniram were caused by the Appellant himself and those injuries were sufficient to cause his death.

11. From the evidence adduced by the prosecution, it is established that at the time of incident, the Appellant was laced with a knife. From the statement of Hemkant (PW1), who was at the time of incident present with Maniram, it is also established that first Maniram along with this witness had gone to the house of the Appellant to take his money from him. On not finding the Appellant there, when they were returning, the Appellant met with them on the way. At that time, on being demanded his money by Maniram from the Appellant, a dispute took place between them. At that time, the Appellant suddenly took out a knife and assaulted Maniram with the knife on his stomach and thereafter fled from there. Thus, it is clear that the Appellant was laced with the knife at the time of incident. On the way, Maniram met with him and demanded his money. On the issue, an argument took place between them and during the argument the incident occurred. If Maniram had not met with the Appellant on the way, the incident would not have occurred. Therefore, it cannot be said that the Appellant had gone on the way laced with a knife with an intention to kill Maniram and assaulted him there. Looking to the above facts as stated by Hemkant (PW1), in our considered opinion, the act committed by the Appellant covers by Exception 4 of Section 300 of

the Indian Penal Code. Since there were 3 knife injuries caused by the Appellant and all the injuries were caused on the stomach and chest and as opined by Dr. Kiran Patil (PW6) those injuries were sufficient to cause death of Maniram in natural course, it is established that the Appellant caused the said injuries to Maniram with the intention of causing his death or of causing such bodily injury as was likely to cause his death. Thus, the act committed by the Appellant falls within the ambit of Section 304 Part I of the Indian Penal Code. Hence, the conviction of the Appellant is altered from Section 302 of the Indian Penal Code to Section 304 Part I of the Indian Penal Code.

12. As regards sentence, for the offence under Section 304 Part I of the Indian Penal Code, the Appellant is sentenced with rigorous imprisonment for 10 years and fine of Rs.5,000 (Five Thousand). In default of payment of the fine, he shall be liable to undergo additional rigorous imprisonment for 6 months. If any amount has already been paid towards fine, the same shall be adjusted against the fine imposed today.
13. Consequently, the appeal is allowed in part to the extent indicated above.

Sd/-

**(Rajendra Chandra Singh Samant)**  
**Judge**

Sd/-

**(Arvind Singh Chandel)**  
**Judge**