

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1098 of 2014**

- Hemla Budhu S/o Nanga Aged About 42 Years R/o Village- Gangalur, Dowalipara, P.S.- Gangalur, District- Bijapur, Civil District- South Bastar (Dantewada), Revenue District- Bijapur, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through P.S. Gangalur, District- Bijapur, Chhattisgarh

---- Respondent

For Appellant	:	Mr. A.K. Prasad, Advocate.
For State	:	Mr. Rajendra Tripahti, Panel Lawyer.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment On Board****Per Manindra Mohan Shrivastava, J.****27/07/2021**

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 26.09.2014 passed by Sessions Judge, South Bastar (Dantewada), C.G. in Sessions Trial No.32 of 2011, by which, the appellant has been held guilty of commission of offence and sentenced as described below:-

Conviction	Sentence
Under Section 302 of IPC	Life imprisonment and fine of Rs.100/-, and in default of payment of fine amount, further R.I. for one month.

2. (PW-1) Hemla Sannu lodged morgue/FIR in the Police Station on 23.06.2010 at 7:30-7:40 a.m. stating that deceased Hemla Somlu was assaulted and stabbed to death by appellant Hemla Budhu. On such report lodged, police reached the place of occurrence and inquest of dead body was

prepared and dead body was sent for postmortem which was conducted by Dr. Tushar Markam (PW-9), who found three stab injuries, one on the palm, other on the right chest and third one on the left chest piercing into lungs and heart. The doctor opined that cause of death was bleeding due to injury and damage to vital part of the body, namely, heart and lungs. The police then seized the knife which was said to have been used in the commission of offence from Mahesh Hemla (PW-3) and the investigation was carried out recording case diary statements and finally charge sheet was filed which led to trial of the appellant on the charges of commission of offence of murder of deceased Hemla Somlu. The prosecution case rested on three eyewitnesses Hemla Sannu (PW-1), Hemla Sukki (PW-2) and Mahesh Hemla (PW-3) which were relied upon by learned trial Court leading to order appellant's conviction.

3. Learned counsel for the appellant would argue that the conviction is founded on the testimony of the eyewitnesses which is not reliable and trustworthy because the background, in which, the assault is alleged to have been given by the appellant on the deceased is completely different, as stated in the morgue/FIR, lodged by Hemla Sannu (PW-1), one of the eyewitnesses. He would argue that according to the story in the morgue/FIR, when the appellant was attempting to commit suicide, the deceased came in to stop him from committing suicide and it is stated in the morgue/FIR that the appellant assaulted the deceased whereas a different story has been carved out in the Court's statement of which the incident stated in the morgue/FIR is only a small part. The entire story was not disclosed. This is what has been stated by Investigating Officer G.P. Patel (PW-10) that the story what has been deposed in the Court was not stated before him by these witnesses. Therefore, the witnesses are not reliable because they are not speaking truth and all have joined to falsely implicate the appellant. The other submission of learned counsel for the appellant is that even according to the case of the prosecution, the knife alleged to be used in the commission of offence was seized from Mahesh Hemla (PW-3) vide Ex.-P-13. That means, no weapon was seized from the appellant. If the case of the prosecution is that the appellant assaulted the deceased, the weapon could have been seized either from the appellant or from some other place but seizure of the same from the possession of one of the eyewitnesses without explaining as to how this eyewitness came in possession of the weapon also raises serious doubt with regard to involvement of the appellant but on the other hand, it appears to be

a case of false implication that someone else, probably Mahesh, might have committed the offence but the appellant was made scape goat and falsely implicated for the reason that the prosecution witnesses carried impression that the appellant was keeping an evil eye on the wife of the deceased Hemla Sukki (PW-2).

4. On the other hand, learned State counsel would submit that the prosecution case is found proved and reliable by the learned trial Court in view of evidence of not only one but three prosecution witnesses including an independent witness that the assault was given on the deceased by the appellant. He would submit that the story, as stated in the morgue/FIR and what has been deposed in the Court are not contradictory but in the morgue/FIR, which was lodged soon after the incident by Hemla Sannu (PW-1), eyewitness, a summary and short story has been given, which has been spoken in detail during examination in the Court. Next submission is that the recovery of knife from Mahesh does not absolve the appellant because no suggestion has been given nor it is a case of defence that assault was given on the deceased by Mahesh. According to prosecution witnesses, at the spot, appellant was caught and also taken to police station and thereafter, in this background, the weapon seized from the possession of one of the witnesses who had caught hold of the appellant soon after the incident, does not absolve the appellant. It is lastly submitted that the witnesses Hemla Sannu (PW-1) and Hemla Sukki (PW-2) are brother and wife of the deceased and there is no reason why they would allow the real culprit to go scot free and falsely implicate the appellant.
5. We have heard learned counsel for the parties and perused judgment and the statement of the prosecution witnesses as also the appellant's examination under Section 313 Cr.P.C.
6. The contents of the morgue intimation Ex.P-2 and FIR Ex.P-1 narrated a story, as stated by Hemla Sannu (PW-1) the brother of the deceased, who states having gone to the police station and lodged intimation and FIR, is that at about 7:00 in the evening, deceased had gone to the house of the appellant Hemla Budhu who was trying to commit suicide and when deceased advised Hemla Budhu not to commit suicide, Hemla Budhu the appellant assaulted with iron knife. Lodging of morgue intimation and FIR by Hemla Sannu (PW-1)

and recorded by G.P. Patel (PW-10) have been proved from the evidence of these two witnesses. They have proved their signatures on the documents. Thus, in both morgue intimation and FIR, the appellant has been involved right from the beginning as the assailant on the deceased.

7. The prosecution story of the appellant having assaulted deceased with the help of knife is proved from evidence of Hemla Sannu (PW-1), Hemla Sukki (PW-2) and Mahesh Hemla (PW-3) who are the eyewitnesses. Out of these, Hemla Sannu (PW-1) is the brother, Hemla Sukki (PW-2) is the wife of the deceased and whereas Mahesh Hemla (PW-3) is the neighbor, though, not related to the deceased. According to Hemla Sannu (PW-1), appellant caught hold of Hemla Sukki stating that he wants to marry and she was rescued by Mahesh Hemla, Hemla Suklu and this witness, thereafter, the appellant came to the house of this witness where the deceased also resided and assaulted the deceased. In the cross-examination, he admits that the appellant Hemla Budhu was stating that he would marry Hemla Sukki, wife of the deceased and this was the cause for dispute between the deceased and the appellant. An omission with regard to this statement in case diary statement has been elicited in his cross-examination. It has further been elicited that the deceased and the appellant were scuffling and further that Hemla Somlu fell down but denied the suggestion that Hemla Somlu sustained injury while falling on the ground. Suggestion that he had not seen Hemla Somlu assaulted, has been denied. It has also been admitted that Hemla Sukki, wife of the deceased had gone to the house of Hemla Budhu and appellant caught hold of Hemla Sukki. Suggestion that because of darkness, he could not see incident, has been denied.
8. The other prosecution witness Hemla Sukki, wife of the deceased had deposed that the appellant caught hold of her stating that he wants to marry her and he was trying to take her away and at that time, her husband was in the house. She has further deposed that appellant assaulted her husband with knife on the chest and abdomen, due to which, her husband died immediately. In the cross-examination, she stated that she had gone to the house of the appellant to fetch fire wood and came back to her house and then, her husband went to the house of the appellant, she saw that at the time of assault, her husband and the appellant were scuffling. In her further cross-examination, it has been elicited that whatever she is stating in the Court was

also stated before the police. A suggestion that she was willing to have relationship with the appellant has been denied. She admits that the appellant was attempting to commit suicide and her husband had gone to save him. She has admitted suggestion that the appellant caught hold of her in house and stated that he wanted to marry her. This was the cause of dispute. She admits that the appellant had caught hold of her stated that he would marry and no other talks had taken place.

9. The third witness Mahesh Hemla is a villager and neighbor who deposes that when the appellant expressed his desire to keep the wife of the deceased with him, it led to dispute and deceased went to the house of the appellant and came back whereafter the appellant came to the house of the deceased with a knife in his hand and stabbed. In the cross-examination, he has admitted the suggestion that the incident happened inside the house of Hemla Somlu.

10. If we conjointly read the statement of three prosecution witnesses who are eyewitnesses of the incident, out of which, one is the brother and other is wife and third is neighbor, common thread which emerges is that Hemla Sukki (PW-2) had gone to the house of the accused-appellant where he caught hold of her. The appellant was willing to marry Hemla Sukki (PW-2). When this fact came to the notice of deceased, her husband, he went to the house of the appellant then the appellant was attempting to commit suicide and deceased wanted to save him against the act of suicide. There was some scuffle between the appellant and the deceased in his house. Thereafter, the deceased came back to his house and then the appellant followed deceased up to his house with a knife in his hand and gave repeated blows with the help of knife resulting in death.

The story which has been stated in the FIR and morgue is only a part of the larger details of the whole incident. Morgue and FIR state that while appellant was attempting to commit suicide deceased went to his house to save him and asking him not to commit suicide which led to dispute and assault. This, we must say, is not a contradictory story but only a part of the entire detailed picture of the whole incident as deposed by the witnesses during their examination in the Court. The morgue and FIR are not supposed to be a complete encyclopedia of the entire details of the incident. Only a part

of it was stated. This part has also been stated in the evidence of prosecution witnesses. However, what happened before that and thereafter has been completed in the evidence of prosecution witnesses. The incident happened in the house of the deceased which is clear from the suggestion which has been admitted by the witness Mahesh Hemla (PW-3). This clear evidence that after Hemla Somlu came back to his house, the appellant came to his house, armed with a knife and started assaulting Hemla Somlu, that too on very vital part i.e. chest on both the side, left and right. The background was very much available that the appellant was willing to marry or keep the wife of the deceased which had given rise to a dispute between the appellant and the deceased.

11. The argument that as the seizure of knife had taken place from the possession of Mahesh, the involvement of the appellant is doubtful and defence that the Mahesh could be actual assailant, cannot be accepted. No suggestion to this effect was given to any of the prosecution witnesses, no suggestion has been given to the Investigating Officer that Mahesh was the main culprit and he was saved for some ulterior reason by the Investigating Officer and falsely implicating the present appellant, moreover, the brother of the deceased, Hemla Sannu (PW-1) and wife of the deceased Hemla Sukki (PW-2) would not allow the main culprit to go scot free and falsely implicate the appellant. Even, it is accepted that the appellant was having an evil eye on Hemla Sukki (PW-2), even then, she would never allow the murderer of her husband to go scot free and falsely implicate the appellant because he was keeping an evil eye on her.
12. Learned counsel for the appellant submitted that this Court may consider alteration of sentence under Section 304 part II of IPC as it was a case where all of sudden, incident had happened and it cannot be said that the appellant was having any intention to cause death. This argument cannot be accepted. Firstly, there was a background, in which, the incident happened that the appellant caught hold of the wife of the deceased stating that he was willing to marry her. Secondly, deceased went to the house of the appellant before the incident and quarrel took place. Thirdly, it is not that during that quarrel or scuffle, unintentionally, some kind of injury was caused by the appellant. The evidence is that thereafter the deceased came back home and then appellant came to the house of the deceased, with a knife in his hand,

that means the appellant had come prepared with a dangerous weapon. There is nothing to show that after appellant came to the house of the deceased, again some alteration took place but according to eyewitnesses, the appellant came with knife and started assaulting. There is one incised wound in the palm and other one on right chest and third deep cutting through the lungs and heart both showing great force behind the stab. This clearly shows that the appellant had come with the intention to eliminate the deceased-husband of Hemla Sukki (PW-2) whom the appellant was willing to marry and catching hold of her.

13. In the result, we do not find any good ground to interfere with the impugned judgment of conviction and order of sentence. Appeal has no merit and is therefore dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge