

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1167 of 2014**

- Shyam Charan S/o. Daras Ram Ongre Aged About 30 Years R/o. Vill. Garhumariya, P.S. Out Post Jutmill, Raigarh, Distt. Raigarh C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through P.S. Kotwali, Raigarh C.G.

---- Respondent

For Appellant	:	Shri Manoj Mishra, Advocate
For State	:	Shri Lalit Jangde, Dy.G.A.

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

Order On Board**11/06/2021**

This appeal is directed against impugned judgment of conviction and order of sentence dated 12/10/2009 passed by the Sessions Judge, Raigarh, District - Raigarh (CG) in Sessions Case No.124/2008 whereby and whereunder, the appellant has been held guilty of commission of offence and sentenced as described below -

	<u>Conviction</u>	<u>Sentence</u>
1.	U/s 302 of IPC	Life imprisonment

2. An incident of quarrel and assault on one Manglu took place in Ambedkar Chowk of Village – Garhumaria on 19/10/2008 at around 11 AM in respect of

which, an FIR in Ex.P/1 was lodged in the police station by Samaaru (PW1). In the FIR, it was stated that when the FIR informant was in his house, the appellant – Shyam Charan Ongre came to his brother – Manglu and informed that he has assaulted his father near a cycle shop of Sitaram at Ambedkar Chowk. Thereafter, Manglu and Ishwar went to Ambedkar Chowk. After sometime, he came to know that appellant – Shyam Charan assaulted Manglu with knife due to which Manglu died. On this, FIR informant rushed to the spot and found that his brother – Manglu was lying on the road sustaining deep injury on his chest and blood was oozing out. It is further stated by the FIR informant that Manglu was assaulted by Shyam Charan.

3. The dead body was sent for post mortem after inquest and Dr. Tarun Kumar Tonder (PW8) conducted post mortem at 3 PM. Taking into consideration the nature and extent of injury found on the body of the deceased, the doctor opined that cause of death was rupture in the heart due to stab wound. Time since death was stated to be 2 to 8 hours. As the appellant was named in the FIR itself, he was taken into custody. According to the case of the prosecution, on the memorandum of the appellant, knife used in the alleged commission of offence was recovered from a hidden place behind the trees. The wearing apparels were also seized. From the spot, blood stained simple soil foot wear were seized. Scene of crime was prepared and spot map was also prepared. After completion of usual investigation, charge sheet was filed against the appellant before the jurisdictional Magistrate who in turn committed the case for trial. On the basis of material contained in the charge sheet, learned Trial Court framed charges against the appellant on the allegation of commission of murder which was denied. The appellant having abjured guilt, was put to trial.

4. As many as 11 witnesses were examined. Thereafter, the appellant was examined under Section 313 CrPC in respect of the incriminating evidence and circumstances appearing against him in the evidence of the prosecution witnesses which were denied by him. He stated that he is innocent and falsely implicated. Though he stated that he intends to lead defence witness, no defence witness was examined.

5. Learned Trial Court, relying upon the evidence of prosecution witnesses, particularly Sarita Bai (PW2) and Ishwar Singh (PW3) as also recovery of knife, held the appellant guilty of commission of offence of murder.

6. Assailing legality and validity of impugned judgment of conviction and order of sentence, learned counsel for the appellant would argue that the prosecution has failed to prove its case beyond reasonable doubt. He would submit that as far as Sarita Bai (PW2-wife of the deceased) is concerned, she has admitted in her evidence that she went to the spot on foot whereas according to the evidence of Ishwar (PW3), deceased – Manglu, appellant – Shyam Charan and he himself were on bicycle. Referring to the evidence of Bhagwat Yadav (PW9), it is submitted that the place of incident is said to be distant from the house of the deceased – Manglu. Therefore, it is wholly improbable that those on bicycle and Sarita Bai (PW2) who was on foot, would reach the spot at the same time, as according to Sarita Bai (PW2), no sooner, the appellant and the deceased reached the spot on bicycle, assault was given and as other witnesses have stated that Sarita Bai (PW2) reached little later, it is wholly improbable that Sarita Bai (PW2) might have witnessed the incident. She is, therefore, a concocted witness.

Learned counsel for the appellant further contended that as far as Ishwar Singh (PW3) is concerned, though he claims to have accompanied the

deceased on bicycle towards Ambedkar Chowk, he stated that after he reached Ambedkar Chowk, then he went to keep his cycle on stand and when he looked behind, he saw Manglu lying on the road. This renders the prosecution case doubtful that the appellant actually stabbed Manglu. It is next contended that Ishwar is well known since decades to the deceased as he was associated with him in work and therefore, he stands in the category of interested witness even though he is not directly related to the deceased though he reached the Court to give evidence along with relative of the deceased. Therefore, it would not be safe to hold the appellant guilty of commission of offence on the evidence of such concocted and unreliable evidence. He further argued that the incident, according to the prosecution witnesses, happened in the broad day light at the village square and there were many other independent witnesses who were witnessing the incident of stab on Manglu but the prosecution has not examined any of those independent witnesses to involve the appellant in the alleged commission of offence. Therefore, present is a case of false implication at the instance of family members and interested witnesses of the deceased. He further argued that even seizure of knife alleged to be involved in the alleged commission of offence have not been proved beyond doubt because the statement of seizure witness and the investigating officer on the aspect of recording memorandum and recovery of knife is contradictory. It is also argued that though a knife is said to have been recovered but it was recovered from a place which was an open place and was accessible to all. Knife and clothes though sent for report of FSL, but no report was placed before the Trial Court to involve the appellant by any incriminating evidence in the forensic evidence. Last, but not the least, learned counsel for the appellant would submit that present is a case of single injury. The evidence on record shows that the appellant was drunk. Therefore, in these circumstances, conviction of the

appellant would not travel beyond the scope of Section 304 IPC as culpable homicide not amounting to murder. It is submitted that the appellant has already undergone more than 12 years of jail sentence, therefore, his conviction may be altered and the appellant may be ordered to be released.

7. On the other hand, learned State counsel would argue that the prosecution case is proved from the evidence of as many as 2 eye witnesses. He would submit that the wife of the deceased, Sarita Bai (PW2) clearly stated regarding she having witnessed the incident. Many other prosecution witnesses stated that the house of the deceased was at a short distance from Ambedkar Chowk and will not take much time whether on foot or bicycle. Sarita Bai (PW2) has stated that she had seen the incident from a distant place though an incident of quarrel did not take place but when she reached, she saw the appellant assaulting the deceased with knife on his chest due to which, he fell down. It is next submitted that the doubt on the evidence of Sarita Bai (PW2) is cleared in view of evidence of another eye witness Ishwar (PW3) who accompanied the deceased on bicycle and he has clearly stated that while he and Manglu were proceeding to Ambedkar Chowk and as soon as they reached, the appellant took out a knife, straightway assaulted the deceased on his chest which clearly shows his intention to cause death. He would argue that the evidence of other witnesses including Ishwar (PW3) clearly shows that the appellant had rushes to the house of Manglu to provoke him so that he rushes to Ambedkar Chowk and there, he may be assaulted. The evidence on record also proves that the appellant had first assaulted the father of Manglu. That shows that the appellant had not only planned but also executed his plan to assault Manglu as soon as he reached Ambedkar Chowk. He submits that recovery of knife on the memorandum of the appellant has been proved from

the evidence of investigating officer and also from reliable evidence of Ishwar (PW3). Knife was also examined by the doctor who has clearly opined in his query report that fatal injury on the chest of the deceased could be caused by that knife. Learned State counsel submits that the cold blooded manner in which the appellant straightway assaulted on the chest of the deceased with a long knife clearly proves the intention of the appellant to kill the deceased. There is no evidence of fight between the appellant and the deceased. Therefore, Exception 4 of Section 300 of IPC would not be attracted and merely because of single injury, no benefit could be claimed by the appellant seeking alteration of his conviction from Section 302 of IPC to Section 304 IPC.

8. We have heard learned counsel for the parties and perused the relevant records of the case.

9. The cause of death and nature and extent of injury found on the body of the deceased could not be substantially disputed and from the evidence of Dr. Tarun Kumar Tonder (PW8), Manglu died of injury. Dr. Tarun Kumar Tonder (PW8) has deposed that he conducted post mortem of the dead body of Manglu on 19/10/2008 and found two injuries, one lacerated wound on the left hand and other a stab wound. 1 x ¼ inch bone deep on the left part of the chest above the heart. Internal examination also disclosed that there was stab injury found in the heart. In his opinion, cause of death was excessive bleeding due to injury caused in the heart. He has also deposed that one knife was brought for examination and after having examined the knife, its length and breadth, he opined in his query report (Ex.P/10) that the injury could be caused by that knife. The doctor has proved his report in Ex.P/9. In the cross-examination, what has been elicited is that blood stain was not found on the knife but denied that the knife was not sent in sealed condition. He has admitted that he has not written

with regard to injury being anti mortem or post mortem in his report (Ex.P/9). However, the post mortem report which has been duly proved by the doctor and evidence of the doctor leaves no manner of doubt that the injury in the heart of the deceased was anti mortem which resulted in death. It is, thus, proved that manglu died due to stab injury on his chest which could be caused by the knife which was seized.

10. As to whether the prosecution succeeded in proving beyond doubt that the stab injury which resulted in death of Manglu was caused by the appellant, the prosecution has come out with prompt FIR lodged by Samaaru (PW1), brother of the deceased. He has deposed in his evidence that on the date of incident, when Manglu was present, the appellant came in and told Manglu that he has assaulted Manglu's father and threatened Manglu that if he goes to Ambedkar Chowk, he would also be assaulted. Manglu objected to appellant assaulting an aged person. Thereafter, Ishwar and Manglu went to Ambedkar Chowk to take their father back. Behind Ishwar and Manglu, appellant also chased. He further deposed that when he reached Ambedkar Chowk, his brother Manglu was lying unconscious and there was injury on his chest and it was bleeding. His sister-in-law Sarita Bai (wife of Manglu) was also lying unconscious. Ishwar, Munnu and Nehru were also present at the spot and about 40-50 persons were there to form a crowd and Ishwar told him that Shyam Charan assaulted his brother- Manglu with knife. He, then, went to police station – Jutmill to lodge FIR and he has proved his signature in the FIR.

11. Investigating Officer Bhagwat Yadav (PW9) has deposed that on 19/10/2008, while he was posted as Assistant Sub-Inspector in the Police Jutmill Chowki, Samaaru came to the police station, lodged FIR and he has proved his signature in the FIR. The incident is said to have happened at around 11 AM

and FIR has been lodged very promptly at about 11:50 AM i.e. within a very short time of incident of assault on deceased Manglu. In the FIR, it has been recorded regarding appellant coming to the house of Manglu, disclosure that he had assaulted his father, his brother Manglu going towards Ambedkar Chowk along with Ishwar and then FIR informant coming to know regarding assault on Manglu by appellant – Shyam Charan. Thus, involvement of the appellant in the FIR is prompt and soon after the incident, therefore, no possibility of false implication on afterthought grounds.

12. Prosecution, in order to prove its case, has come out with two witnesses. Sarita Bai (PW2 – wife of the deceased) has been examined as eye witness and she has deposed in her evidence that while she was at home, the appellant came in at around 11 AM and disclosed that he assaulted Manglu's father. At that time, Ishwar was also there. Thereafter, Ishwar and her husband – Manglu went on bicycle and she also followed. She further deposed that the appellant also chased on bicycle. She has deposed that when she reached Ambedkar Chowk, the appellant assaulted her husband on chest, due to which, bleeding started and he started fainting. Looking to the condition of her husband, she also fainted. She further deposes that at the spot, Ishwar was also present and when she regained consciousness, Samaaru was also there. From the evidence of this witness, it has been elicited that she could not actually see the incident because when her husband had gone towards Ambedkar Chowk with Ishwar on bicycle and they were immediately chased by the appellant on bicycle, she proceeded on foot. It has also been elicited in her evidence that she had seen the incident from a distance of 10 feet and denied suggestion that she had not seen the incident. From her cross-examination, it has also been elicited that Ambedkar Chowk is not visible from her house and it takes 5

minutes on foot and about 1 minute on bicycle. Ambedkar Chowk situated at a distance of about 1 km, was denied. The suggestion that she reached at the spot little later and she could not see as to who assaulted her husband, was also denied.

Learned counsel for the appellant vehemently argued that the evidence of this witness does not render probable that she was present at the spot at the time of actual assault because she has admitted that she had proceeded to the spot on foot whereas her husband, Ishwar and Shyam Charan had left on bicycle and there was bound to be some time gap in those reaching the spot on bicycle and one on foot. This submission of learned counsel for the appellant carries considerable force because there is nothing in the evidence of Sarita Bai that she reached the spot running with a great speed nor is there any evidence to show that bicycles were so slow in motion that there was hardly any time gap between arrival of the deceased, appellant and Ishwar on one side and this witness on the other. It is highly probable that Sarita Bai reached the spot after arrival of deceased Manglu, appellant – Shyam Charan and Ishwar at Ambedkar Chowk. Ishwar (PW3) has also deposed in para 4 of his evidence that Sarita Bai had also arrived at the spot after them. However, it does not disclose what was the time gap. In his cross-examination, it has been elicited that the house of Manglu is at a distance of about 200 mtrs from Ambedkar Chowk and it takes 2-3 minutes on bicycle. A suggestion that the distance is about 1 – 1 ½ kms has been denied. In para 7, it has been elicited that it takes about 2 minutes to reach Ambedkar Chowk from the house of Manglu. He has also deposed that he was riding the cycle and Manglu was sitting behind. It has also been elicited from the cross-examination that he had seen Sarita Bai following. Upon consideration of aforesaid evidence and that Sarita Bai was on foot whereas those three were on bicycle, it would be unsafe to rest conviction only on the

evidence of Sarita Bai. Therefore, corroboration would be necessary.

13. The other eye witness Ishwar (PW3) has been cited as another eye witness and he has deposed that while he was sitting in the house of Manglu and talking to him, the appellant reached there on a bicycle and told Manglu that he had assaulted his father. He was drunk and trembling. Then, Manglu decided to go towards the square. He and Manglu went to Ambedkar Chowk. He was riding the cycle and Manglu was sitting behind. When they reached the Chowk, the appellant also reached there who was following them. Then he left the cycle on road and as soon as Manglu came down from the bicycle, the appellant came in and assaulted him with a knife on his chest, due to which, Manglu fell down and started bleeding. He has stated regarding presence of many other persons. He further deposed that after assaulting, the appellant ran away on the bicycle. In the cross-examination, it has been elicited that he had worked in the house of Manglu for 25-30 years. In cross-examination, he has further reiterated that the appellant had reached the house of Manglu in the morning at about 11 AM and no quarrel taken place between them.

Referring to the deposition of this witness, as stated in para 10 of the cross-examination, learned counsel for the appellant would argue that according to this witness, after reaching Ambedkar Chowk, this witness had taken the cycle near cart of one Munnu and when he looked behind, he saw Manglu falling down. This he had seen from a distance of about 10-15 feet away. This shows, it is argued, that Ishwar could not actually see who had assaulted Manglu because he was busy in keeping the cycle near cart of Manglu and only when he looked behind, he saw Manglu falling down. This argument of learned counsel for the appellant cannot be accepted because Ishwar, in his examination-in-chief, has clearly deposed regarding assault on the chest by the

appellant. The evidence of Sarita Bai (PW2) and Ishwar Singh (PW3) and what has been stated by Samaaru (PW1) clearly show that when the appellant reached the house of Manglu and found that he had assaulted his father, Manglu had come to Ambedkar Chowk along with Ishwar Singh (PW3). This is what has been stated by everybody. Further evidence of all the witnesses is that the appellant had followed Manglu and Ishwar on bicycle. That means that the appellant was continuously chasing them. The appellant assaulted the deceased, has been clearly deposed by Ishwar Singh (PW3). What has been elicited in his cross-examination is that he went near the cart of Munnu to stand the cycle and then he looked behind, does not mean that he had not seen the incident. He had denied suggestion given that he had not seen the incident. It has been elicited in his cross-examination that he has come to the Court along with Sarita Bai and other relatives of the deceased. It is also stated that the evidence of this witness should not be accepted without further corroboration from independent witnesses because he had admitted that he was closely associated with Munnu for 20-30 years. He further submits that both Sarita Bai (PW2) and Ishwar Singh (PW3) are interested witnesses and therefore, it would be unsafe to uphold conviction on the basis of evidence of these two witnesses particularly when both the witnesses have stated that the incident happened in broad day light at one of the square of the village and there were many other persons who were present at the spot.

14. There is no principle of general application that in all cases, evidence of relatives or friendly witness should not be acted upon unless they are corroborated in material particulars. Ordinarily, relatives would not allow the real culprit to go scot free and falsely implicate any other person unless the evidence on record suggests so. It is a rule of caution that where prosecution comes out

with the evidence of family members or relatives, their evidence should be scrutinized with great caution and care. In this case, Sarita Bai (PW2) and Ishwar Singh (PW3) both are relative and known. While presence of Sarita Bai (PW2) at the spot has been doubted because she was on foot and she must have reached the spot after sometime, cloud, if any, is cleared from the evidence of Ishwar Singh (PW3) who has clearly stated regarding the incident. The contents of FIR which has been read over clearly show that the name of the appellant was immediately disclosed after the incident within half an hour thereof by Samaaru (PW1) and description is of assault on the deceased with the help of knife. Seizure of knife has been proved. Moreover, the knife, though has been recovered from an open place, the place has been found behind the trees and that spot was disclosed by the appellant in his memorandum which has been proved by the prosecution. The query report of the doctor shows that the injury could be caused by the said knife.

15. The argument that the evidence with regard to recording of memorandum and seizure as given by the seizure witnesses and investigating officer are contradictory, no material contradiction is pointed out. Present is not a case where the case, in its entirety, rests on circumstantial evidence. Where the evidence of eye witnesses are reliable, prosecution case cannot be doubted only on failure of production of FSL report to prove presence of blood in the clothes and knife seized.

Last argument of learned counsel for the appellant that as it is a case of single injury, conviction may be altered to Section 304-II IPC, cannot be accepted. In order to attract essential ingredients of Exception 4 of Section 300 IPC, it has to be proved that the incident happened all of a sudden in a sudden quarrel and in sudden fight without any premeditation, assault was given and

accused having not taken undue advantage or acted cruelly. There is hardly any material to show that the appellant and the deceased had any quarrel or fight. As soon as Manglu reached at the spot, the appellant immediately assaulted him and there was no altercation between them. This shows that the appellant had clear intention. He went to the house of Manglu and informed that he had assaulted his father. Thereafter, Manglu came to Ambedkar Chowk with Ishwar. The appellant followed them and no sooner, Manglu reached the spot, he immediately assaulted on a vital part of his body i.e. chest, that too with a dangerous weapon like knife which caused serious stab injury that it pierced into the heart resulting in his death.

True that there is an evidence of appellant being drunk. That by itself is not sufficient to draw an inference without any material that there was no intention to assault. The very act of the appellant i.e. coming to the house of the deceased, then following the deceased on a bicycle, assault with the help of knife and then running away from the spot on the bicycle, completely rules out any possibility of defence taken by learned counsel for the appellant.

16. In the result, there is no merit in this appeal and is, therefore, dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge