

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1379 of 2017

Ban Singh, aged 60 years, son of Kariya Ram, resident of Village Golawand,
Thana Kondagaon, District Kondagaon, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station House Kondagaon, District
Kondagaon, Chhattisgarh

--- Respondent

For Appellant	:	Shri Gajendra Sahu, Advocate
For Respondent	:	Shri Sanjay Pathak, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

Per Arvind Singh Chandel, J.

26.10.2021

1. The instant appeal has been preferred against the judgment dated 5.8.2017 passed by the Sessions Judge, Kondagaon in Sessions Trial No.356 of 2012, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 302 of the Indian Penal Code	Imprisonment for life and fine of Rs.200; in default of payment of fine additional rigorous imprisonment for 3 months

2. Prosecution case, in brief, is that deceased Shivilal was step son of the Appellant. Parvati (PW4) is mother of Shivilal. She, after death

of her first husband Ramdhar, was married with the Appellant. It is the case of the prosecution that the Appellant was in the habit of consuming liquor and thereafter quarreling with his wife Parvati (PW4) and beating her. Shivilal used to inculcate the Appellant and prevent him to do so. In the morning of 9.2.2010 also, the Appellant quarreled with Parvati (PW4). Shivilal inculcated the Appellant. On this, a dispute took place between the Appellant and Shivilal. Shivilal got annoyed and slapped the Appellant twice. For this reason, the Appellant assaulted Shivilal with a knife and gave him a knife blow on the chest. This incident took place in the *badi* (fencing) of the house of Shivilal at about 3 p.m. As a result of the assault, Shivilal shouted and fell down. Subrat (PW1) and Vijay (PW2) reached on the spot. Subrat (PW1) snatched the knife from the hand of the Appellant. Injured Shivilal was taken to the police station where he lodged First Information Report (Ex.P6). Offence under Section 307 of the Indian Penal Code was registered against the Appellant. During treatment in the hospital, dying declaration (Ex.P1) of Shivilal was recorded by Sub-Divisional Magistrate K.C. Devsenapati (PW3). Shivilal died during treatment in the hospital. Morgue intimation (Ex.P11) was recorded. Inquest proceeding (Ex.P3) was conducted. Post mortem examination was conducted on the dead body of Shivilal by Dr. K.K. Nag (PW11). His report is Ex.P18 in which it is opined that the cause of death was excessive haemorrhagic shock and coma which took place due to injury in the lung. Nature of the death is reported to be homicidal. On completion of the investigation, a charge-sheet was filed against the Appellant for the offence punishable under Section 302 of the

Indian Penal Code. The Trial Court framed a charge against him under Section 302 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 11 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 there is no eyewitness in this case. The Trial Court has recorded its finding only on the basis of dying declaration (Ex.P1) of the deceased. Referring to the statement of Sub-Divisional Magistrate K.C. Devsenapati (PW3), Learned Counsel argued that the dying declaration (Ex.P1) does not contain thumb impression or signature of the deceased and, therefore, it is suspicious document and conviction cannot be sustained on the basis of a suspicious document. It is further argued that from the evidence adduced by the prosecution it appears that there was no previous enmity between the Appellant and the deceased and the alleged incident took place on a sudden provocation and there was only a single blow and the relation between the Appellant and the deceased was of father and son. Therefore, the act committed by the Appellant falls within the ambit of Section 304 Part II of the Indian Penal Code.

6. Learned Counsel appearing for the State opposes the above submission and supports the impugned judgment of conviction and sentence. He submits that on the basis of the evidence adduced by the prosecution, the Trial Court has rightly convicted the Appellant. Though the written dying declaration (Ex.P1) does not contain thumb impression or signature of the deceased, there is nothing in the statement of K.C. Devsenapati (PW3) on the basis of which his statement could be disbelieved. It is further argued that Subrat (PW1) and Vijay (PW2) categorically deposed that when they reached on the spot, they saw that the Appellant was standing there with a knife and the deceased was lying down. Having seen them, the Appellant left the knife there and ran away. Both Subrat (PW1) and Parvati (PW4), brother and mother of the deceased, respectively and Surajabai (PW5) also deposed that injured Shivilal told them that the Appellant assaulted him with a knife and ran away. Thus, there is also an oral dying declaration of the deceased made before these witnesses. Hence, it is argued that the Trial Court has rightly convicted the Appellant.
7. We have heard Learned Counsel appearing for the parties and perused the statements of the witnesses and other evidence available on record with due care.
8. It is not in dispute that the deceased was step son of the Appellant. Subrat (PW1) is brother of the deceased and Parvati (PW4) is his mother. It is also not in dispute that Vijay (PW2) is nephew of the deceased.

9. Though there is no eyewitness in this case, in their Court statements Subrat (PW1) and Vijay (PW2) categorically deposed that at the time of incident Shivilal (deceased) shouted that “मर गया”. Having heard the shout, they went to the spot and saw that the Appellant was standing there with a knife in his hand and Shivilal had suffered an injury on the chest and he was alive at that time. Having seen them, the Appellant fled from the spot. Both these witnesses remained firm during their cross-examination. Subrat (PW1) further deposed that Shivilal told them that the Appellant assaulted him. This statement is duly corroborated by Parvati (PW4) and Surajabai (PW5). On the point of assault also, the above statements of witnesses Subrat (PW1), Parvati (PW4) and Surajabai (PW5) are not duly rebutted during their cross-examination. Therefore, it is also established that the deceased had made an oral dying declaration before these witnesses.
10. On a minute examination of the above evidence, it is clear that though there is no eyewitness in this case, Subrat (PW1) and Vijay (PW2), who reached on the spot immediately on being shouted by the deceased, saw that the Appellant was standing there with a knife in his hand and the deceased was lying down and he had suffered an injury on the chest and having seen both these witnesses the Appellant fled from there. From their statements and from the statements of Parvati (PW4) and Surajabai (PW5), it is also well established that at that time the deceased had made an oral dying declaration before these witnesses. Furthermore, the First Information Report (Ex.P6) against the Appellant was also

lodged by the deceased himself. During the course of treatment also, he made a written dying declaration (Ex.P1) in the hospital before Sub-Divisional Magistrate K.C. Devsenapati (PW3) in which he stated that he was assaulted by the Appellant with a knife. Thus, from the entire evidence adduced by the prosecution, it is well established that it was the Appellant who assaulted the deceased with a knife due to which he died.

11. Now, the question remains that whether the act committed by the Appellant falls within the ambit of Section 302 of the Indian Penal Code or Section 304 Part II of the Indian Penal Code. It is not in dispute that the deceased was step son of the Appellant. According to the case of the prosecution itself, the Appellant was in the habit of consuming liquor and thereafter quarreling with his wife Parvati (PW4) and beating her. The deceased inculcated and prevented the Appellant from doing so. On the date of incident also, the Appellant was quarreling with Parvati (PW4). At that time, the deceased inculcated the Appellant. During that time, the deceased slapped the Appellant twice. Thereafter, the Appellant assaulted the deceased with a knife. Thus, it appears that the incident was a result of a sudden provocation. From perusal of the post mortem report (Ex.P18), it also appears that only one injury was suffered by the deceased. Therefore, it appears that there was no intention on the part of the Appellant to commit murder of the deceased. Hence, in our considered view, the act committed by the Appellant falls within the ambit of Section 304 Part II of the Indian Penal Code. Therefore, the conviction of the Appellant is altered from

Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code.

12. As regards the sentence, it is reported that the Appellant is still in jail and he has already served more than 10 years of jail sentence. The maximum prescribed jail sentence for the offence under Section 304 Part II of the Indian Penal Code is 10 years and the Appellant has already served more than 10 years. Therefore, he be released from jail immediately, if not required in any other case.
13. Consequently, the appeal is allowed in part to the extent indicated above.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Arvind Singh Chandel)
Judge