

XII-158/(Jail)  
C.J.P.R.—5,000-9-81

CA 3380/99



High Court of Madhya Pradesh  
JABALPUR. ②  
10 DEC 1999  
Reg. No. 32  
Receipt Clerk  
High Court of Madhya Pradesh

## APPEAL OF PRISONER

No. 63 Name रविशंकर  
Father's name लज्जू शर्मा  
Residence पटिया, बारा, कजिया Age 19 वर्ष  
Sentenced to मुंबई जेल कारागार 27-11-99  
Under section 302 by ए. डी. जे. लक्ष्मण नागर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not be heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

- 1 Date of Application for copy of Judgement 27-11-99
- 2 Date of which copy received 4-12-99
- 3 Date on which Appeal sent 6-12-99
- 4 Whether the prisoner wishes to be represented or not - Yes/No.

आवेदन में निवेदन है कि मैं अपने वकील से संपर्क में रहने की योजना कर रहा हूँ।

No. 63 Name रविशंकर  
Continued in 5-3-99 Jail उप जेल लक्ष्मण नागर  
No. 781 dated 4-12-1999

Forwarded to the CHIEF JUDICIAL MAGISTRATE माननीय रजिस्टर्ड मैजिस्ट्रेट उच्च न्यायालय  
to gather with a copy of judgement or order passed in the case for favour of लक्ष्मण नागर  
transmission to the proper Appellate Court.

हस्ताक्षर - निर्देश प्रविष्टि  
1 अति

Superintendent-Central/ Distt./Sub-Jail  
लक्ष्मण नागर

Date of receipt in C. J. M. S. Office  
Date of receipt of record to accompany  
Memo of Appeal of the Appellate Court.  
No. \_\_\_\_\_ Dated \_\_\_\_\_ 1998

Forwarded to the \_\_\_\_\_  
C.J. Magistrate \_\_\_\_\_

Date of receipt in Appellate Court \_\_\_\_\_

(P.T.O.)

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

CORAM :- Hon'ble Shri L.C. Bhadoo, J &  
Hon'ble Shri V.K. Shrivastava, J

CRIMINAL APPEAL NO. 3389 OF 1999

Ravishankar

Vs.

State of Madhya Pradesh  
(Now Chhattisgarh)

Judgment for consideration

Sd/-  
V.K. Shrivastava  
Judge

Hon'ble Shri Justice L.C. Bhadoo

Sd/-  
L.C. BHADOO  
Judge

25-09-2006

Post for 26-09-2006

Sd/-

Judge

25-09-2006

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CORAM :-** Hon'ble Shri L.C. Bhadoo, J &  
Hon'ble Shri V.K. Shrivastava, J

**CRIMINAL APPEAL NO. 3389 OF 1999**

Ravishankar

Vs.

State of Madhya Pradesh  
(Now Chhattisgarh)

**Present :-** Smt. Usha Chandrakar, counsel for the appellant.

Shri U.N.S. Deo, Addl. Public Prosecutor for the State.

**JUDGMENT**

(Delivered on 26 September, 2006)

**Per V.K. Shrivastava, J**

This is an appeal under Section 374 (2) of the Code of Criminal Procedure directed against the judgment of conviction and order of sentence dated 27-11-1999 passed by the Additional Sessions Judge, Jashpurnagar, in Sessions Trial No.113/1999, whereby learned trial Judge holding the appellant guilty for committing the offence punishable under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life and to a fine of Rs.5000/-, in default of payment of fine to undergo additional simple imprisonment for five years.

2) The prosecution case, in brief compass, is that minor daughter of Raimohan Lohar namely, Fuleshwari and appellant had some affairs. Earlier to the date of incident, also the appellant took Fuleshwari and kept her. Appellant is by caste Ghasi. Appellant was willing to marry Fuleshwari and had also proposed for it, but Raimohan on the ground that he being different in caste did not agree to it and sent his daughter to his

matrimonial home at Harradipa. Due to all these reasons, the appellant was annoyed. On 2-3-1999, in the evening around 6 to 7 p.m., while Holy festival was being celebrated, Raimohan along with his wife Sukhmani Bai, Father Lallu Ram, cousin brother Sukhan Ram and father-in-law, were sitting in his house and they were consuming *Hadiya* (intoxicant). Soharan Ram and appellant came there to settle their dispute. Some altercation took place between them. Lallu Ram slapped Soharan Ram, who left the place. Appellant who was carrying a knife stabbed on the stomach of Raimohan and attempted to flee away from there. Lallu Ram chased and tried to catch him, but the appellant assaulted him also with knife and fled away from the spot. Raimohan was seriously injured; his intestine came out from his wound. Village Kotwar Silvestar Lakda, on being received information came and saw the condition of injured Raimohan. For want of conveyance facility Raimohan could not be taken to hospital in the night. On the next morning he died on the way when he was taken to Police Station.

3) Village Kotwar Silvestar Lakda lodged merg intimation and First Information Report. Paltu Singh Markan, Officer-in-charge, Police Station Sanna, recorded merg intimation and First Information Report, went to the spot for conducting inquest and to investigate into the crime. On the spot he conducted inquest, prepared his inquest report and forwarded the dead body of Raimohan to Primary Health Center, Manora, for autopsy. Dr. Ramdhan Singh Pekra, conducted autopsy on the body of the deceased Raimohan and opined that Raimohan died on account of septic shock haemorrhox due to rupture of internal organs and death was homicidal in nature. He describing all the injuries found on the body of

Raimohan, prepared postmortem report and along with apparel of Raimohan sent it to the Police Station.

4) During investigation, the spot map was prepared. On the memorandum of appellant, one knife was seized from the appellant and got examined by the Medical Officer. One lungi and towel found on the spot were recovered. All the articles collected were sent to the Forensic Science Laboratory, Raipur, for examination. The Assistant Chemical Examiner, on examination found blood stains on knife and other articles. The statements of witnesses under Section 161 of the Cr.P.C. were recorded and after due investigation police filed challan against the appellant in the Court of Chief Judicial Magistrate, Jashpurnagar, who committed the case to the Court of Sessions for trial.

5) Appellant was charged for committing offence punishable under Section 302 of the IPC. Charge was framed, read over and explained to him who abjured the guilt and his defence was that he is innocent, he was inclined to marry the daughter of Raimohan, therefore, as a result of that animosity, the family members of Raimohan have falsely implicated him in this case.

6) Learned trial Judge after appreciating the evidence on record held the appellant guilty for committing murder of Raimohan, convicted and sentenced accordingly.

7) Appellant did not dispute the homicidal death of deceased Raimohan. Even otherwise, from the evidence of Dr. Ramdhan Singh Pekra (PW-7) and postmortem report (Ex-P/7), it is established that death

of Raimohan was homicidal in nature. Raimohan had sustained following injuries :

- (i) Elliptical bruises (contusions) were present both side of left trachea and over neck. They were three in left side and one in right side.
- (ii) One stab wound over lower chest directed obliquely upward toward the midline. Near about 6.5" from midline and 6" below left nipple having  $1\frac{1}{4}$ " x  $\frac{1}{2}$ " x 5".
- (iii) On internal examination left side of diaphragm was found punctured. Large intestine at junction of transverse and descending colon are punctured and interior surface of 8<sup>th</sup> rib were found fractured.

8) Sukhmani Bai (PW-3), Lallu Ram Lohar (PW-4) and Sukhan Ram (PW-6) are the eye witnesses examined by the prosecution. They have categorically deposed in their statement that the appellant took knife and stabbed Raimohan, who sustained injuries on his stomach and from that wound intestine came out. In their cross-examination nothing has been elicited so as to discredit their version.

9) Village Kotwar Silvestar Lakda (PW-1) in his statement deposed that in the night at around 8 p.m., wife of Raimohan came and informed him that the appellant stabbed Raimohan by knife and from that wound intestine has come out. He went and saw the injuries and found that Raimohan had sustained injury on his stomach and intestine came out of it. For want of conveyance he could not take the injured to Police Station

in the night. On the next morning, when the injured was being taken to Police Station he died on the way. Village Kotwar Silvestar Lakda (PW-1) went to the Police Station and lodged the report. The First Information Report (Ex-P/1) has been proved by Silvestar Lakda (PW-1) and Paltusingh Markam (PW-9). Evidence of Silvestar Lakda (PW-1) and Paltusingh Markam (PW-9) does not suffer from any infirmity and the ocular evidence is duly corroborated by the evidence of Silvestar Lakda (PW-1) and FIR (Ex-P/1).

10) As per the memorandum statement of the appellant (Ex-P/4) one knife was recovered at the instance of the appellant. From Ex-P/13, it is also evident that the knife was sent for chemical examination and according to the report of the Assistant Chemical Examiner, blood stains were found on the knife.

11) From the aforesaid discussion, it is established that the appellant was the person who stabbed Raimohan with knife and Raimohan sustaining injuries succumbed.

12) Learned counsel for the appellant contended that the appellant had no intention to kill Raimohan, he was compelled to exercise his right of private defence to defend himself. He inflicted single stab injury on Raimohan, therefore, the offence against the appellant does not travel beyond Section 304 Part-II of the IPC. On the other hand, learned counsel for the State, vehemently opposed the contention on the ground that the injury caused by the appellant was dangerous, therefore, the case of the appellant does not fall within any of the exception as enumerated under Section 300 of the IPC.

13) Sukhan Ram (PW-6), cousin brother of deceased Raimohan, in his evidence deposed that when the appellant accompanied with a person came, his sister-in-law asked both the persons to go out of their home. He further stated that the other person left the spot, but the appellant remained there. He also stated that at that time Raimohan stood, caught the appellant and threw him down by saying that "*why are you coming again and again to my house*". Thereafter, appellant stabbed knife on his stomach and fled away from the spot.

14) From the evidence of prosecution itself it is clear that deceased was the aggressor who not only scolded the appellant, even threw him on the ground, therefore, the right of private defence of person accrued in favour of the appellant, but his right was subject to restrictions contained in Section 99 of the IPC and other provisions contained in chapter IV of it. Deceased Raimohan had only thrown the appellant on the ground, therefore, the right of private defence of the body does not extend to the voluntary causing of death of Rajmohan. He had only right of private defence up to extent of saving himself, but he exceeded his right and caused culpable homicide of Rajmohan. Evidently this is not a case of premeditation and also it appears that the appellant has no intention to murder Rajmohan, but all of a sudden he in exercise of his right of private defence stabbed Rajmohan, therefore, although the appellant was guilty of committing culpable homicide, but his act falls within the exception-2 as envisaged under Section 300 of the IPC, therefore, the appellant was not guilty for the offence of murder, but was guilty for the offence punishable for culpable homicide not amounting to murder i.e. under Section 304 Part II of the IPC.



15) In the result, the appeal partly succeeds, the conviction recorded by the trial Court under Section 302 of the IPC and punishment imposed for committing that offence by the trial Court are set aside instead the appellant is held guilty for committing offence punishable under Section 304 Part-II of the IPC and he is sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1000/-, (Rupees one thousand), in default of payment of fine to further undergo rigorous imprisonment for 6 (six) months. The appellant shall be entitled to set off the period of detention in accordance with law.

Sd/-  
L.C.BHADOO  
Judge

26-09-2006

Sd/-  
V.K. Shrivatava  
Judge

Gowri