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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**DIVISION BENCH**

**CORAM:**

**HON'BLE MR. T.P. SHARMA &  
HON'BLE MR. R.L. JHANWAR, JJ.**

**CRIMINAL APPEAL No. 716/2002**

**APPELLANT**  
**(In Jail)**

Pitambar Mali

**VERSUS**

**RESPONDENT**

State of Chhattisgarh

**JUDGEMENT FOR CONSIDERATION**

Sd/-  
T.P. Sharma  
Judge

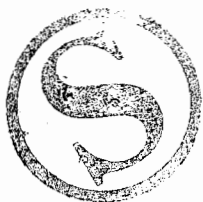
**Hon'ble Mr. R.L. JHANWAR J.**

g g r e e

Sd/-  
R.L. Jhanwar  
Judge

Post for Judgment on: 29/01/2010

Sd/-  
T.P. Sharma  
Judge

**HIGH COURT OF CHHATTISGARH AT BILASPUR****DIVISION BENCH**

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**CORAM:**                    **HON'BLE MR. T.P. SHARMA &**  
                                     **HON'BLE MR. R.L. JHANWAR, JJ.**  
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**CRIMINAL APPEAL No. 716/2002**

**APPELLANT**  
**(In Jail)**

Pitambar Mali, S/o Baisakhu  
Ram Mali, aged 32 years, caste-  
Marar, R/o Behind Bakhrupara  
School, Narayanpur, District  
Bastar (C.G.).

**VERSUS**

**RESPONDENT**

State of Chhattisgarh through  
Police Station Narayanpur,  
District Bastar (C.G.).

**APPEAL U/S 374 (2) OF THE CODE OF CRIMINAL  
PROCEDURE.**

Present:- Shri V.C. Ottalwar, Advocate for the appellant.  
              Shri Rajendra Tripathi, P.L. for the State/respondent.

**JUDGEMENT**  
**(Passed on 29/01/2010)**

The following judgment of the Court was passed by

**T.P. Sharma, J:-**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 3/6/2002 passed by Additional Sessions Judge Jagadalpur in Sessions Trial No. 21/02 whereby and where under after holding the appellant guilty for the commission of culpable homicide amounting to murder of Urmila Bai convicted the appellant under Section 302 of the Indian Penal Code and sentenced imprisonment for life.



2. The judgment is impugned on the ground that without iota of evidence Court below has convicted and sentenced the appellant aforementioned and thereby committed an illegality.
3. Case of the prosecution in brief is that on fateful day of 13/12/2001 at about 3.30 .P.M. . deceased Urmila Bai was present in her house at Bhakharupara, Narayanpur appellant who was working at Tahsil Office came to the house of the Urmila Bai for serving the notice appellant demanded liquor from the Urmila Bai, Urmila Bai told him that she is not having liquor then appellant threat her and went towards his house after some time again he came back with knife and again after threatening he assaulted her by knife over his abdomen he removed the knife from the body of the deceased and fled away. Urmila Bai was badly injured she ran towards the house of Krishna Yadav but she fell down and after some time as a result of injury she died. Mother of the deceased PW1 Ghudai Bai was staying in the house of the deceased went to the police station and lodged the First Information Report Vide Ex. P-1. Investigating Officer left for scene of occurrence and after summoning the witnesses Vide Ex. P-11, inquest over the dead body of deceased was prepared vide Ex. P-12. Dead body was sent for autopsy



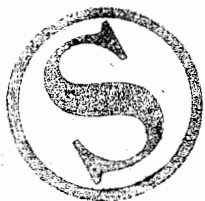
to the Community Health Center, Narayanpur vide Ex. P-4A. Autopsy was conducted by PW5 Dr. Anita Tiwari Vide Ex. P-4 and found following injuries:- (1) One stab wound over the chest 2.5 x 0.5 x 5 c.m. (2) 4<sup>th</sup> rib was found fracture (3) stab wound of 1.5 x 0.5 x 2 c.m. over right lung (4) Pulmonary artery was found cut, blood was present in thorax cavity. Death was as a syncope as a result of hemorrhage and death was homicidal in nature.

4. Blood stained and plain soil were recovered from the spot Vide Ex. P-3. Spot map was prepared Vide Ex. P-13. Accused was taken in to custody he made discloser statement of knife and notices vide Ex. P-7. Knife, cloths, brown dress, served and unserved notices of the Revenue Court was recovered at the instance of appellant vide Ex. P-8. Knife, cloths and blood stained soil were sent for examination to PW5 Dr. Anita Tiwari who examined Vide Ex. P-6. Seized articles were sent for chemical examination Vide Ex. P-14.
5. Statement of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code'). After completion of the investigation charge sheet was filed before the Judicial Magistrate First Class, Narayanpur who in turn committed the case to the Court of Sessions, Jagdalpur. Learned



Additional Sessions Judge has received the case on transfer for trial.

6. In order to prove the guilt of the appellant/accused prosecution examined as well as 8 witnesses. Accused was examined under Section 313 of the Code where he denied the circumstances appearing against him, innocence and false implication is claimed.
7. After affording an opportunity of hearing to the parties learned Court below convicted and sentenced the appellant aforementioned.
8. Learned counsel for the parties are heard. Judgment impugned and record of Court below perused.
9. Learned counsel for the appellant vehemently argued that although homicidal death as a result of fatal injury is not disputed by the appellant but only on the ground of homicidal death of the deceased appellant could not be held liable for the offence of culpable homicide amounting to murder without any evidence to connect the appellant in crime in question.
10. In the present case conviction is based on evidence of alleged eye witnesses PW1 Ghudai Bai & PW4 Ku. Santoshi alleged mother and daughter- of the deceased who are chance witnesses their presence were not natural. PW1 Ghudai Bai is not a resident of the place of the incident appellant was not known to her, she did



not know hindi language, she has not gone to police station for lodging the report but First Information Report Ex. P-1 and evidence of PW8 Amrit Kirketta. (Paras-12 & 13) reveal that she has gone to police station and has lodged the First Information Report that too in hindi which are patently false. PW4Ku. Santoshi was studying in the school at the time of incident and she was not present on the spot her evidence also does not inspire confidence. Prosecution has not proved the motive of the offence only one injury was found over the body even if the evidence of the witnesses are admitted as gospel truth then even the act of the appellant does not traveled beyond the scope of 304 Part-II of the Indian Penal Code.

11. Learned counsel for the appellant placed reliance in the matter of **Tholan v. State of Tamil Nadu**<sup>1</sup> in which Apex Court has held that single knife blow over the chest on the spur of the moment without any previous dispute shows the absent intention under Section 300 of the Indian Penal Code conviction of the accused may be under Section 304 Part -II of the Indian Penal Code.
12. Learned counsel for the appellant further placed reliance in the matter of **Ratan Singh v. State of M.P.**<sup>2</sup>

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<sup>1</sup> 1984 SCC (Cri.) 164

<sup>2</sup> M.P. Weekly Notes 1997 Note 76



in which High Court of M.P. has held that the occurrence outcome of abuses and altercation between victim and accused and single blow of knife shows the absence of intention to cause death. The case falls under Section 304 Part-II of the Indian Penal Code.

13. Learned Counsel for the appellant also placed reliance in the matter **Mahindra Mulji Kerai Patel v. State of Gujrat**<sup>3</sup> in which Apex Court has held that after exchange of the words between accused and deceased inflicting single injury leading to death of the deceased by small *dharia (faga)* shows that offence proved is not punishable under Section 302 of the Indian Penal Code but he is punishable under Section 304 Part-II.
14. On the other hand, learned counsel for the State/respondent opposed the appeal and submits that PW1 Ghudai Bai mother of the deceased, PW4 Ku. Santoshi daughter of the deceased were present at the time of incident they are natural witnesses. PW1 Ghudai Bai understands hindi both are rustic villagers residing in dense forest area are discrepancy in their statement or natural but they does not effect the root of the case.

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<sup>3</sup> (2008) 14 SCC 690

15. In order to appreciate the argument advanced on behalf of the parties we have examined the evidence adduced on behalf of the prosecution.
16. In the present case homicidal death as a result of fatal injury of the deceased Urmila Bai has not been substantially disputed by the appellant on the other hand, otherwise also established by the evidence of PW5 Dr. Anita Tiwari and autopsy report Ex. P-4 which reveal that stab wound was found over the chest, 4<sup>th</sup> rib was found fracture and right pulmonary artery was found cut. Death was homicidal in nature.
17. As regard the complicity of the appellant in crime in question is concerned the conviction is based on evidence of eye witnesses PW1 Ghudai Bai mother of the deceased and PW4 Ku. Santoshi a child witness daughter of the deceased. PW1 Ghudai Bai has deposed in her evidence that she was present in the house of the deceased her daughter Urmila Bai, appellant came to the house of the deceased and assaulted her by knife deceased fell down and died, after some time she went to the police station and lodged First Information Report Ex. P-1 and also lodged the marg intimation. Defence has cross examined this witness she has stated in Para-3 of her cross examination that she has not gone to police station personally but Krishna Yadav





has gone to the police station for lodging the report and Krishna Yadav had lodged the report. She has also admitted that she understands hindi, she has stated that she do not know the cause of the incident. In Para- 5 of her cross examination she has admitted earlier she had not seen the accused. In Para- 6 she has denied the suggestion that she has not seen the incident.

18. PW4 Ku. Santoshi is a child witness trial court has taken due care before her examination and after satisfying himself that she know the duty to speak the truth and she is able to answer the question trial Court has examined this witness. PW4 Ku. Santoshi has deposed in her evidence that at the time of the incident she was present in her house for taking her meal at that time accused came he was holding knife her mother was standing in front of her house her mother told to the accused that what he will do then appellant assaulted her by knife over her chest, blood came out from the body she fell down and died. In her cross examination she deposed that she was present at the time of incident in her house. She has specifically deposed that accused assaulted her mother after quarreling with her and he fled away. Court has examined PW1 Ghudai Bai with the help of translator on the ground that Ghudai Bai is not able to



understand the hindi but in her cross examination Para-3 she has specifically deposed that she understands hindi. She has deposed that she has not gone to the police station and has not lodged the report at police station but PW3 Krishna Yadav has also deposed that he had informed the police then also came to the village and inquired from the PW1 Ghudai Bai then they lodged the report but same has been denied by the PW8 Amrit Kirketta, investigating officer in Para-12 & 13 of his evidence. According to his statement Ghudai Bai came to the police station and has lodged the report. PW1 Ghudai Bai is a rustic villager aged about 58 years, she is resident of dense forest area there may be misunderstanding about lodging of the report but she has specifically deposed that accused is a person who had caused fatal injury to her daughter. She has also admitted that accused was not known to her prior to the incident but she has specifically deposed that accused who is present in the court is a person who has caused injury to her daughter. PW4 Ku. Santoshi a child witness has specifically deposed in her evidence that after some altercation took out the knife and caused injury over the chest of her mother. Evidence of two witnesses inspire confidence trustworthy.



19. PW8 Amrit Kirketta has deposed that accused has made disclosure statement of knife vide Ex. P-7. He has seized the knife and notices from the accused vide Ex. P-8. *Panch* witnesses PW6 Motilal and PW7 Ramsingh have not corroborated the disclosure statement and seizure prosecution has declared them hostile. They have admitted their signature but have not explained why they have signed over the document and under which circumstances they have signed over the papers which shows that they are concealing the truth. In these circumstances only evidence of PW8 Amrit Kirketta, Investigating Officer who also is remain for consideration. Police Officer is also witness and his statement cannot be discarded only on the ground that he is Investigating Officer and he is interested and outcome of the case unless the interestness or departure from the procedure prescribed is shown, in the present case defence has not brought anything to show that PW8 Amrit Kirketta is a interested witness or has not compiled the procedure prescribed. He has arrested the accused and has produced before Court for judicial remand. Knife was sent for examination to doctor and also Forensic Science Libratory in these circumstances evidence of PW8 Amrit Kirketta relating



to discloser statement made by the accused and recovery of weapon inspire confidence.

20. PW1 Ghudai Bai the mother of the deceased was residing with her, her presence at the time of incident is not unnatural. PW4 Ku. Santoshi the daughter of the deceased was present in her house for taking her meal her presence was also natural. Both the witnesses are not chance witnesses even in case of chance witness their evidence can not be discarded only on the ground that they are chance witness as a role of caution their evidence required close scrutiny and they are required to explain their presence at the place of occurrence. The evidence of PW1 Ghudai Bai and PW4 Ku. Santoshi corroborated by the disclosure statement of the knife made by the accused are sufficient for drawing an inference that appellant has caused fatal injury to the deceased at the time of incident.
21. As regard the question of motive is concerned the motive is only aid in criminality and loses its importance. In case of direct evidence even otherwise motive can be inferred on the basis of the nature of injury, part of the body where injury was caused, weapon used and other like circumstances.
22. In the present case deceased was standing in front of her house accused came with knife after some



altercation accused assaulted the deceased over her chest and caused fatal and stab wound resulting into fracture of 4<sup>th</sup> rib of right lung and cut injury of right pulmonary artery. The injury found over the body of the deceased is not superficial and was fatal to the life even fracture of rib has been caused shows the force used by the appellant. **In case of Tholan v. State of Tamil Nadu, Ratan Singh v. State of M.P. and Mahindra Mulji Kerai Patel v. State of Gujrat (Supra)** in which High Court of M.P. and Apex Court have held that under mitigating circumstances the death on account of single injury would not sufficient for conviction under Section 302 of the Indian Penal Code and act of the accused does not traveled beyond under Section 304 Part-II of the Indian Penal Code. Present case is not a case of inflection of injury on account of sudden quarrel or altercation. In the present case appellant came with knife from his house and has assaulted the injury over the chest it shows that with intent to causing such injury by dangerous weapon knife he came form his house and caused injury over the vital part of the body. The aforesaid cases are distinguishable on the ground of fact. The act of accused clearly shows that accused/appellant has

caused homicidal death with intent to causing murder of the deceased.

23. After appreciating the evidence available on record learned Additional Sessions Judge has convicted the appellant under Section 302 of the Indian Penal Code and imposed minimum sentence prescribed under the law. The conviction of the appellant is based on credible, clinching and legal evidence sustainable under the law.
24. On close scrutiny of the evidence, we do not find any substance in the appeal. Consequently, the criminal appeal is liable to be dismissed and it is hereby dismissed.

Sd/-  
T.P. Sharma  
Judge

Sd/-  
R.L. Jhanwar  
Judge