



HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1710 of 2021

- Sanjay Yadav S/o Beeru Yadav, Aged About 23 Years R/o Sarvodaya Nagar, Jhanda Chowk, Pachpedi Naka, P.S. New Rajendra Nagar, District : Raipur, Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh Through Station House Officer Of Police Station New Rajendra Nagar, District Raipur Chhattisgarh

---- Respondent

For Appellant : Shri Raza Ali, Advocate

For Respondent/State : Ms. Anuradha Jain, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri &

Hon'ble Smt. Justice Rajani Dubey

Judgment on Board

Per Goutam Bhaduri, J

18/06/2024

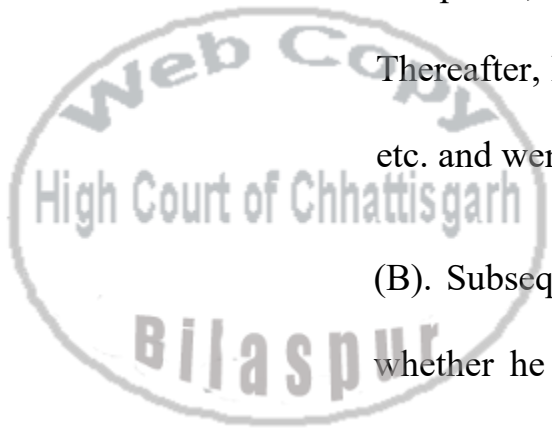
Heard.

1. This criminal appeal preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure is directed against the impugned judgment dated 26/11/2021 passed by the 1st Additional Sessions Judge Raipur, District Raipur, C.G., in Sessions Trial No.241/19 whereby the appellant has been convicted under Section 302 of the IPC and sentenced for Life Imprisonment and was directed to pay fine of Rs.1000/- and in default of payment of fine amount to undergo R.I. for 3 months.



2. (A). The case of the prosecution, in brief, is that Paleshwar Sahu (PW-2) runs a coffee shop near Ramkrishna Care Hospital. The deceased Jaikumar Sahu was his younger brother. On 17/07/2019 Paleshwar Sahu went to get her wife treated to one Anjali Hospital near Pachpedi Naka and while he was coming back the appellant Sanjay Yadav met him wherein he passed certain comments and stared at his wife with same gesture. After dropping his wife at home he went back to his shop. Subsequently, at about 10.00 pm Sanjay Yadav along with one friend Deepak came to his shop. Paleshwar complained about the behaviour of Sanjay Yadav about starring at his wife to Deepak. On such complaint, Deepak assured that he will make Sanjay understand. Thereafter, Deepak and Sanjay Yadav purchased water pouch, cigarette etc. and went back.

(B). Subsequently, Paleshwar made a phone call to Deepak and asked whether he has explained to control the behaviour of the accused to which Deepak replied that Sanjay Yadav has consumed liquor in excess and is abusing then Paleshwar asked Deepak to talk to Sanjay Yadav and thereafter Paleshwar and Sanjay Yadav had a talk wherein abusive language was exchanged in between them which was heard by the brother of Paleshwar namely Jai Kumar who was accompanied by his friends namely Ayush Kumar and Mehal Chandravanshi. At about 11.45 in the night Paleshwar, Jai Kumar, after closing the shop they were going to their home and Ayush Singh & Mehal Chandravanshi also followed them to enquire about the wellness of the wife of Paleshwar. At about 11.15 in the night when they reached near Jhanda

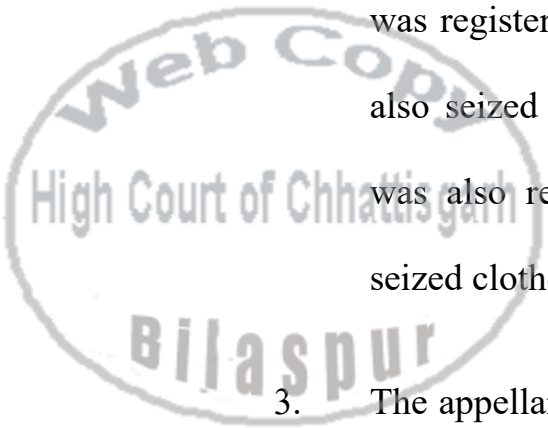




Chowk as Jai Kumar, the deceased, was going upfront at a distance saw that Sanjay Yadav was sitting alone in the square. Sanjay called the deceased Jai Kumar and started quarreling and the accused assaulted Jai Kumar on his abdomen by way of knife thereby the deceased fell down on the spot itself. Thereafter, when the deceased was taken to the hospital he was declared dead.

(C). Thereafter, the merg intimation was sent from the hospital and on that basis the merg was registered; panchnama inquest was prepared; and the dead body was subjected to postmortem thereafter on the statement of the initial disclosure, the offence under Section 302 IPC was registered. The knife/weapon used for commission of offence was also seized on the memorandum of the accused and the query report was also received by the prosecution. Thereafter, the weapon and seized clothes were sent for FSL.

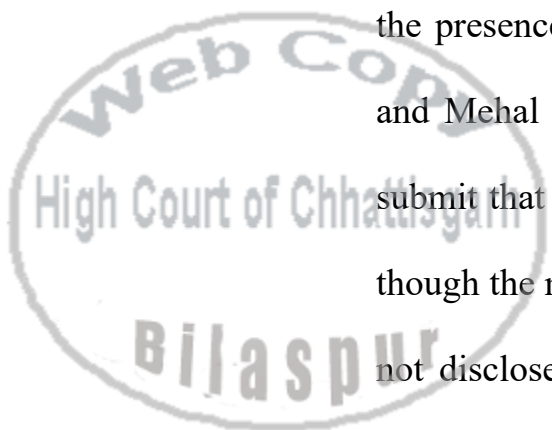
3. The appellant abjured his guilt during trial and claimed to be tried. The prosecution on its behalf examined as many as 19 witnesses and exhibited 22 documents. The learned trial Court after evaluating the facts & evidence convicted the accused as aforesaid. Hence this appeal.
4. Learned counsel for the appellant would submit that the prosecution has heavily relied on the ocular testimony of the eye witness i.e. Ayush Kumar Singh (PW-1), Paleshwar Sahu (PW-2) and Mehal Chandravanshi (PW-8) whereas the statement of the witnesses would show that they have contradicted the happening of the incident by their own statement. He would further submit that Paleshwar Sahu (PW-2),





who is the interested witness being the brother of the deceased was available on 18/07/2019 when the memorandum Ex. P/7 was recorded his statement under Section 161 Cr.P.C. was not recorded immediately, though he was available and for the first time on 30/07/2019 his statement was recorded and false allegations have been attributed.

5. Learned counsel referring to the merg intimation would submit that Ex. P/14, the injured Jai Kumar was brought by Nihali Sahu, the maternal uncle and not by Paleshwar Sahu (PW-2) or Ayush Kumar Singh (PW-1) or Mehal Chandravanshi (PW-8) to the hospital and in the hospital it was written that unknown persons have assaulted Jai Kumar, therefore, the presence of Ayush Kumar Singh (PW-1), Paleshwar Sahu (PW-2) and Mehal Chandravanshi (PW-8) was eliminated. He would further submit that the appellant was first time named in the FIR subsequently though the merg intimation was immediate the name of the accused was not disclosed. He would further submit that on 18/07/2019 at about 08.10 am the FIR Ex. P/15 was registered and initially despite there being much time, the name of the accused was not disclosed in the merg and subsequently the name was disclosed. He would further submit that no explanation has been given by the prosecution as to why the statement of Paleshwar Sahu (PW-2) was recorded on 30/07/2019 though the incident alleged to be of 17/07/2019.
6. Learned counsel for the appellant would further submit that Ex. P/10 & P/11, the merg intimation, do not disclose the name of the accused which was recorded at 2.00 am and subsequently on 08.00 am and in both the merg the name of the appellant is missing. He would further





submit that under those circumstances when the witnesses were available and statement were not recorded then it would be a fatal. He placed his reliance in the law laid down in the matter of *Narendrasinh Keshubhai Zala Vs. State of Gujarat {2023 LawSuit (SC) 258}* and would submit that in such case the statement was recorded after 4 & ½ hours that was held to be fatal when the eye witness have seen the incident and the reason has not been assigned. He would further submit that the statement of Mehal Chandravanshi (PW-8), the another eye witness, do not establish the presence of Paleshwar Sahu (PW-2) on the scene of crime and the statement of Narendra Kumar Sahu (PW-12) would show that Paleshwar Sahu (PW-2) himself has stated that unknown persons have assaulted, therefore, the burden is on the prosecution to establish. He would further submit that the weapon i.e. the knife was recovered immediately and was sent for FSL but on the clothes of the deceased and the knife no blood was found.

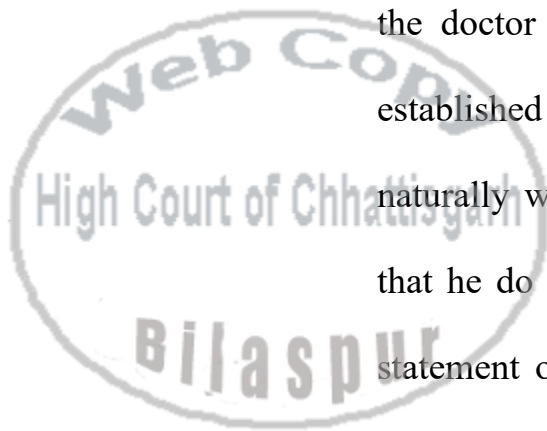
7. Learned counsel for the appellant placed reliance in the law laid down in the matter of *N Ramkumar Vs. State {2023 AIR (SC) 4246}* to submit that when the presence itself is eliminated the intention and knowledge which are contradicted by the statement of the eye witnesses about the presence of the accused on the crime scene the benefit should have been leaned in favour of the accused. He would also submit that when the presence of the eye witnesses are eliminated by contradictory statement of each other and Paleshwar Sahu (PW-2), who claimed to be the eye witness, is the relative i.e. the brother of the deceased, his statement should not have been accepted by the learned Sessions Judge





and the accused who has falsely been implicated for the previous enmity he is liable to be acquitted. He further placed his reliance in the law laid down by the Supreme Court in the matter of *Javed Masood & Anr. Vs. State of Rajasthan {2010 AIR (SC) 979}* and at the end he would submit that since the doubt has been raised in the statement and the evidence brought by the prosecution, the appellant was liable to be acquitted.

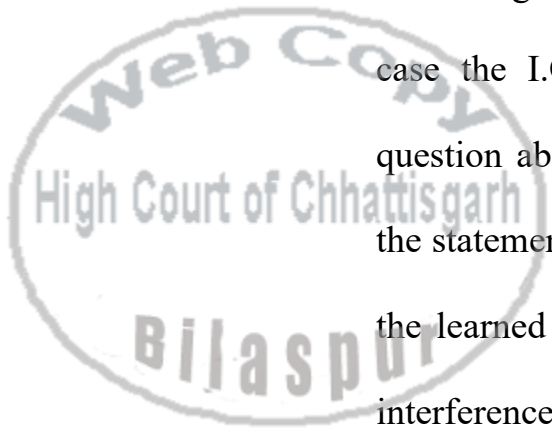
8. *Per contra*, learned State counsel would submit that though Ex. P/14 it was written that by unknown persons the assault is made and it was by Nihali Sahu (DW-2), who was not an eye witness and the statement of the doctor Omprakash Dubey who was examined as DW-1, clearly established that Nihali Sahu has not seen the incident, therefore, naturally when the injured was taken to the hospital it was disclosed that he do not know the assailant. She would further submit that the statement of Nihali Sahu (DW-2) further would show that Paleshwar Sahu (PW-2) has categorically disclosed over phone to him that the deceased was assaulted by the present appellant and after receiving the phone call, he rushed to the hospital and thereafter in the hospital such statement was recorded but it is not expected that in the hospital all disclosure would be made. She would further submit that the statement of Paleshwar Sahu (PW-2) is been established by Ayush Kumar Singh (PW-1) and Ayush Kumar Singh (PW-1) & Paleshwar Sahu (PW-2) in categorical terms have stated that the assault was made by the present appellant.
9. Learned State counsel referring to the postmortem report Ex. P/3 which





is proved by Dr. M. Nirala (PW-10) and would submit that the postmortem report shows that the nature of death was homicidal in nature as it was a stab injury which could not have been occurred due to fall. With respect to the seized weapon, learned State counsel would submit that the query report Ex. P/12A would show that the nature of injury which was on the body of the deceased could have been caused by such weapon. She further placed reliance in the ratio laid down by the Supreme Court in the matter of *Vijay Kumar Arora Vs. State (Government of NCT of Delhi) {2010 (2) SCC 353}* to submit that the delay in recording the statement cannot be fatal unless explanation has been sought for from the I.O. and the witness, whereas in the instant case the I.O. Ajay Shankar Tripathi (PW-18) was not put to any question about the delay, therefore, the delay of 15 days in recording the statement could not be fatal. Consequently, the judgment passed by the learned Sessions Judge is well merited which do not call for any interference.

10. We have heard learned counsel for the parties and perused the evidence.
11. The prosecution has relied on the evidence of eye witness Ayush Kumar Singh (PW-1), Paleshwar Sahu (PW-2) & Mehal Chandravanshi (PW-8). On the contrary the the defence raised the ground that while the injured was taken to the hospital it was initially disclosed that unknown persons have assaulted such document is Ex. P/14. Perusal of Ex. P/14 would show that the injured was brought by Nihali Sahu (DW-2). According to his statement he received a phone call on 17th of July, 2019 from Paleshwar Sahu, who disclosed that Sanjay Yadav, the



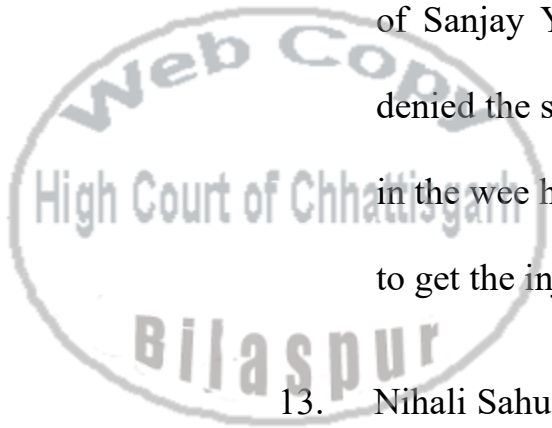


accused, has stabbed Jai Kumar, the deceased and he is been taken to the hospital. Thereafter, Nihali Sahu reached to the hospital where he saw that Jai Kumar, the deceased, was lying on a stature. He talked to the doctor and it was disclosed that he is dead.

12. Dr. Om Prakash Dubey, who was present in the hospital is examined as DW-1. In the cross-examination he states that whatever is written in Ex. P/14 was disclosed by the family members and the person Nihali Sahu had stated that he has not seen the incident. Statement of Nihali Sahu (DW-2) would show that he signed the document Ex. P/14 on the ground that he was related. On a suggestion given to him that the name of Sanjay Yadav was inserted at the instance of Paleshwar Sahu, he denied the same. It is also quite obvious that in a state of affair like that in the wee hours the first concentration of the family members would be to get the injured treated so that he can survive.

13. Nihali Sahu (DW-2), at whose instance Ex. P/14 was recorded, was not an eye witness but one of the eye witnesses who was there Paleshwar Sahu (PW-2) corroborates such statement.

14. Statement of Ayush Kumar Singh (PW-1), Paleshwar Sahu (PW-2) & Mehal Chandravanshi (PW-8), who are the eye witnesses, would show that Ayush Kumar Singh (PW-1) on the date of incident along with Jai Kumar, the deceased, and they were going to see his wife as she was treated and discharged. While they were going to their home, Jai Kumar was ahead and this witness Ayush Kumar Singh (PW-1) and Mehal Chandravanshi (PW-8) were on the other motorcycle and were

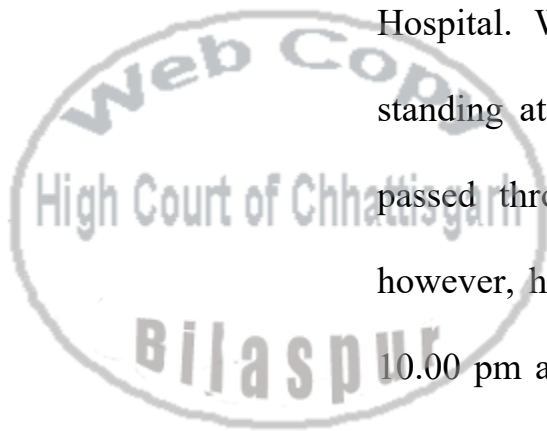




going behind the deceased and Paleshwar Sahu (PW-2) was on another motorcycle. When they reached near Jhanda Chowk they saw that Jai Kumar was quarreling with someone. Thereafter, Paleshwar Sahu (PW-2), his brother tried to intervene to separate them. At that time they saw that Jai Kumar fell down. Paleshwar Sahu tried to pull him but Jai Kumar was unconscious. He stated that the person who was quarreling with Jai Kumar was Sanjay Yadav, thereafter in a rush he was brought to the hospital.

15. Paleshwar Sahu (PW-2), brother of the deceased, states that on 17/07/2019 at about 7.00 pm to get his wife treated went to Anjali Hospital. While he was coming back Sanjay Yadav, the appellant, was standing at Jhanda Chowk and was staring his wife, the moment he passed through Sanjay Yadav, he made certain noises 2-3 times, however, he dropped his wife in the house and came back. At about 10.00 pm at that time Sanjay Yadav along with Deepak came to their shop and purchased certain disposal glasses, water pouches, cigarette and some munching foods and at that time he disclosed to Deepak that Sanjay Yadav, the accused, has made certain obscene noises upon which it was advised by Deepak that he will make Sanjay Yadav understand. Thereafter, they went away.

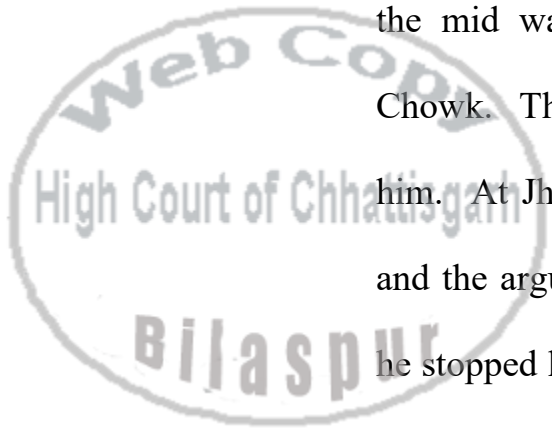
16. Deepak Viswakarma was examined as PW-4. He supports such contention that before the incident they went to the shop of Paleshwar Sahu purchased water pouchs, disposal glasses and thereafter they both i.e. Deepak and Sanjay Yadav, the accused, consumed liquor and he subsequently dropped Sanjay Yadav in the Pachpedi Naka and he





received a phone call from Paleshwar Sahu and asked whether he has made the accused understand or not. Thereafter, Paleshwar had a direct talk with Sanjay Yadav, the accused and Sanjay Yadav went to certain distance and talked to Paleshwar Sahu, thereafter gave him the mobile. He further states that he do not know what happened thereafter. So the first incident of trigger of dispute which is been disclosed by Paleshwar Sahu (PW-2) is corroborated by Deepak Vishwakarma (PW-4).

17. The statement of Paleshwar Sahu (PW-2) further would show that near 11.30 to 11.45 pm he closed his shop and he along with the deceased, Mehal Chandravanshi and Ayush Kumar Singh left for their house. In the mid way they saw that Sanjay Yadav was sitting near Jhanda Chowk. The deceased Jai Kumar was ahead and they were following him. At Jhanda Chowk Sanjay Yadav stopped his brother Jai Kumar and the arguments started in between them. Having seen the situation he stopped his vehicle and rushed towards his brother Jai Kumar at that time Sanjay Yadav assaulted Jai Kumar on his abdomen. He separated Sanjay Yadav, at that time Jai Kumar fell down on the ground. Having seen that he left Sanjay Yadav and went to Jai Kumar and made him to sit on a platform. Thereafter, the deceased had his hiccups and went unconscious. Thereafter, this witness pulled his shirt and saw an injury in the abdomen of Jai Kumar and also saw that small part of the intestine was coming out. Thereafter, he with the help of Mehal and one another took him to the hospital, wherein the doctor said that he has zero pulse and was advised to take him to Ramkrishna Hospital on such advise he took the deceased to Ramkrishna Hospital.

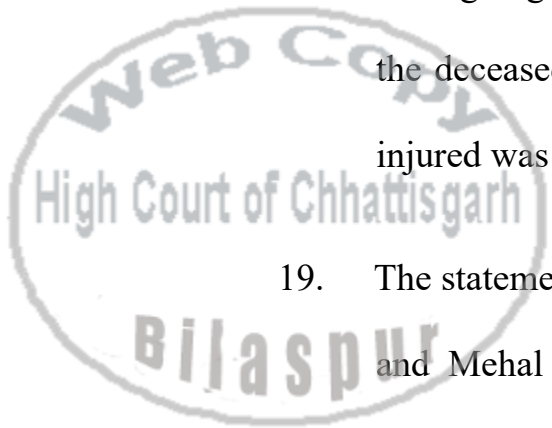




18. The another eye witness Mehal Chandravanshi (PW-8) supports the same contention that while he was following Jai Kumar and when he reached near Jhanda Chowk he saw that Jai Kumar and Sanjay Yadav were fighting. He along with Ayush stopped the vehicle and when they alighted they saw Jai Kumar fell down there. They reached near Jai Kumar and saw on the left side of the abdomen hole was found and blood was also oozing out. Thereafter, they took the deceased to the hospital. The submission though is made that he has eliminated the presence of Paleshwar, but the statements if are read in entirety, it would show that Paleshwar along with Ayush, Mehal and Jai Kumar were going to see the wife of Paleshwar towards Pachpedi Chowk and the deceased was ahead and they followed him. Thereafter, when the injured was taken to the hospital he was declared dead.

19. The statements of Ayush Kumar Singh (PW-1), Paleshwar Sahu (PW-2) and Mehal Chandravanshi (PW-8), therefore, if are read together it would show similar line of happening and nowhere it has been stated that the present appellant has not assaulted the deceased and proximity of time of quarrel; to fall on ground of deceased; and immediately injury on abdomen was noticed. Therefore, their statements corroborate to each other that while the deceased was going ahead a quarrel was going on in between the deceased and the appellant and fatal injury was caused.

20. The incident as has been narrated was seen at point blank distance by Paleshwar Sahu (PW-2) the submission is made that Paleshwar Sahu (PW-2) is a relative and and his presence has been eliminated but the



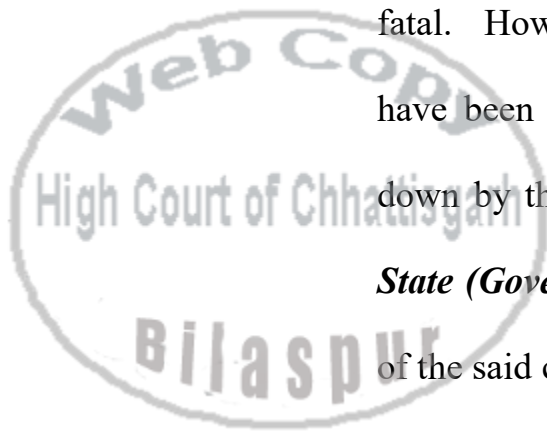


evidence of Ayush Kumar Singh (PW-1) & Mehal Chandravanshi (PW-8) are read together we are not agreeable to accept the contention of the appellant. It is true that Paleshwar Sahu is a witness to the memorandum on the basis of which the knife was recovered and the said memorandum and seizure was of 18/07/2019 and the statement of the witnesses were recorded after near about 12-13 days on 30/07/2019 which is corroborated by the I.O. Ajay Shankar Tripathi (PW-18). The cross-examination of I.O. Ajay Shankar Tripathi (PW-18) would show that no question was put to him seeking explanation.

21. Mere recording of the statement after certain point of time would not be fatal. However, in order to make it doubtful the explanation should have been sought for. We follow the proposition from the law laid down by the Supreme Court in the matter of *Vijay Kumar Arora Vs. State (Government of NCT of Delhi) {2010 (2) SCC 353}* and para 55 of the said case is reproduced hereinbelow:-

55. On reappraisal of the evidence, this Court finds that it is true that the police statements of the abovenamed three witnesses were recorded after one month from the date of the death of the deceased. However, neither an explanation was sought from any of the witnesses as to why their police statements were recorded after a delay of one month nor the investigating officer was questioned about the delay in recording statements of those witnesses. The law on the point is well settled. Unless the investigating officer is asked questions about delay in recording statements and an explanation is sought from the witnesses as to why their statements were recorded late, the statements by themselves did not become suspicious or concocted.

22. We also find it quite logical that in absence of any question for the explanation it cannot be presumed *ipso facto* that only for the reason the delay has been caused though he was available that would be a fatal to





the prosecution.

23. Paleshwar Sahu (PW-2), the brother has categorically explained the assault made from the shortest distance as he separated the accused and the appellant and after the incident happened it is quite obvious that he being the brother must have been tied up in the rituals or other post death ceremonies, therefore, his statement might not have been recorded. Had there been any question could have been put to him or the I.O. Ajay Shankar Tripathi (PW-18) the proper appreciation could have been made. Second merely because Paleshwar Sahu (PW-2) is the relative of the deceased his statement cannot be discarded.

24. The Supreme Court in *Mahesh v. State of Maharashtra (2008) 13 SCC 271* held thus:

54. This Court in **Salim Sahab v. State of M.P.** held that : (SCC pp 701 & 703, Paras 11 & 14-15)

“11..... [mere relationship] is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.”

14. ... **In Masalti v. State of U.P.**, this Court observed : (AIR pp. 209- 0, Para 14)

'But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be





laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.'

15. To the same effect are the decisions in *State of Punjab v. Jagir Singh*; *Lehna v. State of Haryana* and *Gangadhar Behera v. State of Orissa.*”

55. As regards non-examination of the independent witnesses who probably witnessed the occurrence on the roadside, suffice it to say that testimony of PW Sanjay, an eye-witness, who received injuries in the occurrence, if found to be trust worthy of belief, cannot be discarded merely for non-examination of the independent witnesses. The High Court has held in its judgment and, in our view, rightly that the reasons given by the learned trial Judge for discarding and disbelieving the testimony of PWs 4, 5, 6 & 8 were wholly unreasonable, untenable and perverse. The occurrence of the incident, as noticed earlier, is not in serious dispute. P.W. Prakash Deshkar has also admitted that he had lodged complaint to the police about the incident on the basis of which FIR came to be registered and this witness has supported in his deposition the contents of the complaint to some extent. It is well settled that in such cases many a time, independent witnesses do not come forward to depose in favour of the prosecution. There are many reasons that persons sometimes are not inclined to become witnesses in the case for a variety of reasons. It is well settled that merely because the witnesses examined by the prosecution are relatives of the victim, that fact by itself will not be sufficient to discard and discredit the evidence of the relative witnesses, if otherwise they are found to be truthful witnesses and rule of caution is that the evidence of the relative witnesses has to be reliable evidence which has to be accepted after deep and thorough Scrutiny.”

25. Now coming back to the postmortem report which is Ex. P/3, wherein the following injuries were found, which is proved by Dr. M. Nirala (PW-10):-

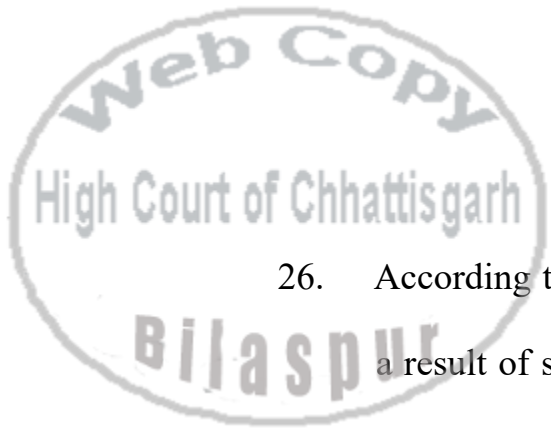




Description of injuries:-

- A stab wound of size 2 x 0.5 cm was present in the left middle quadrant region of the abdomen of the deceased. The intestine was protruding from the stab wound. Blood was coming out from the stab wound.
- A piercing puncture wound of 1.5 x 0.5 cm size was present in the large intestine (from the upper surface of the stomach to the intestine).
- Ecchymosis (redness) was present in the Intestinal wall.
- Blood and blood clot were present in the peritoneal cavity.

26. According to the doctor the death was due to hemorrhage and shock as a result of stab wound and duration of death was within 24 hours prior to postmortem. During the cross-examination of the doctor the suggestion was given that whether the injury could have been caused by fall on some sharp object, the doctor stated that the fall and the stab injury would be different and the categorical statement was made that the injury which was found on the body of the deceased was a stab injury. As per the memorandum and seizure Ex. P/7 & P/8, respectively, the seized knife was sent for query report. The query report is filed as Ex. P/12A and according to the doctor the nature of injury which was on the body of the deceased could have been caused by the knife which was seized. The clothes of the deceased along with





the knife was sent for FSL and no blood was found that cannot be the conclusive to disregard the statement of the eye witnesses. Even according to the eye witnesses when the stab was made and the deceased fell down they could realize the injury only after shirt was pull down and they saw the stab injury on the left side of the abdomen, therefore, non-presence of the blood alone cannot be a favourable situation to be held in favour of the accused.

27. It is evident from the statement of Paleshwar Sahu (PW-2) that some altercation was broke out between deceased and and the accused over the phone. Thereafter, when the deceased and Paleshwar Sahu (PW-2) was returning to home the accused was sitting near Jhanda Chowk. Thereafter, some altercation took place between the accused and the deceased, which got aggravated after which the accused has stabbed knife and after which he died. Therefore, it seems to be the case of grave and sudden provocation as the whole incident took place in spur of moment.

28. To invoke Exception 4 to Section 300 of the IPC, there are certain requirements to be fulfilled which has been reiterated by the Supreme Court in the matter of *Arjun Vs. State of Chhattisgarh, {(2017) 3 SCC 247}*, in which, the following was held vide para 20 & 21:

“20.To invoke this Exception (4), the requirements that areto be fulfilled have been laid down by this Court in Surinder Kumar v. UT, Chandigarh [(1989) 2 SCC 217 : 1989 SCC(Cri) 348], it has been explained as under:-

“7. To invoke this exception four



requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”



21. Further in the case of *Arumugam v State* [(2008) 15 SCC590 : (2009) 3 SCC (Cri) 1130], in support of the proposition of law that under what circumstances exception (4) to Section 300 IPC can be invoked if death is caused, it has been explained as under:- (SCC p.596, para 9)

“9.“18. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender’s having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the ‘fight’ occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to



what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

29. Reading of the aforesaid judgments would show that when there is intention and knowledge on the part of the accused then the offence would fall under Section 304 Part I of IPC and if there is only knowledge and no intention to cause murder or bodily injury then the offence would fall under Section 304 Part II of the IPC. Actually there lies a fine difference between two part of Section 304 IPC. Under the first part the crime of murder is first established and then the accused is given benefit of one of the exception to Section 300 of the IPC; while under second part crime of murder is never established at all. **(SEE: *Anbazhgan Vs. State represented by Inspector of Police {2023 SCC OnLine 857}*).**

30. In the instant case, it is very much clear that when the accused was sitting at Jhanda Chowk the sudden fight broke out between the accused and the deceased. Thereafter, the accused stabbed the deceased which resulted into his death. The series of events show that the accused was offended from the altercation and the same got turned to the fight and in spur of moment he has stabbed the deceased. The evidence shows that the accused stabbed the deceased single time with knife. The postmortem report shows that the deceased has injuries in quadrant





region of abdomen, even in the large intestine also in peritoneal cavity. Therefore, the injury indicate that the appellant had intention and knowledge to cause injury which could result into death. However, said act was without premeditation and in heat of passion in the altercation also accused has not acted in cruel manner. Therefore, in the facts and situation, the case would fall under Section 304 Part I of the IPC.

31. Accordingly, the appeal is allowed in part. Conviction and sentence imposed upon the appellant vide impugned judgment passed by the concerned learned Sessions Judge under Section 302 of the IPC is set aside and instead thereof his conviction is altered under Section 304 Part I of the IPC and sentenced to undergo RI for 10 years with a fine of Rs.5000/- and in default of payment of fine to undergo R.I. for six months.

SD/-

(Goutam Bhaduri)

Judge

SD/-

(Rajani Dubey)

Judge

Ashu