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**(2018) 09 CHH CK 0396**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal (CRA) No. 374 Of 2015

Majji Soma

APPELLANT

Vs

State Chhattisgarh

RESPONDENT

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**Date of Decision:** Sept. 26, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 302
- Code Of Criminal Procedure, 1973 - Section 161, 313

**Hon'ble Judges:** Pritinker Diwaker, J; Gautam Chourdiya, J

**Bench:** Division Bench

**Advocate:** A. D. Kuldeep, Rahul Tamaskar

**Final Decision:** Dismissed

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### **Judgement**

Gautam Chourdiya, J

1. This appeal arises out of the judgment of conviction and order of sentence dated 21.01.2015 passed by the Sessions Judge, Dakshin Bastar

(Dantewara) in Sessions Trial No. 56/2008, convicting the accused/appellant under Sections 302 of Indian Penal Code and sentencing him to undergo imprisonment for life.

2. Facts of the case in brief are that on 16.01.2008 FIR (Ex. P/3) Cr.A. No. 374 of 2015 was lodged by Wacham Kumma (PW-4) uncle of the

accused/appellant regarding death of deceased- Karve and deceased- Kanda. On the basis of this, offence under Section 302 of IPC was registered

against the accused/appellant regarding the death of deceased- Karve and deceased- Kanda. Merg intimation in respect of deceased- Wacham Karve

vide Ex.P/2 and merged intimation in respect of deceased- Wacham Kanda were recorded at the instance of PW-4- Wacham Kumma, uncle of the

accused/appellant. Inquest on the dead body of deceased -Wacham Karve was prepared vide Ex.P/6. Inquest on the dead body of deceased -

Wacham Kanda was prepared vide Ex.P/7. The bodies of both the deceased namely Wacham Karve and Wacham Kanda were sent for postmortem

vide Ex. P/09 and Ex. P/10 respectively and the doctor opined that cause of death of deceased Wacham Karve and Wacham Kanda is coma due to

hemorrhagic shock on account of excessive bleeding and according to his opinion nature of death was homicidal. After receiving postmortem report,

FSL report and after completing the usual investigation, charge sheet was filed against the appellant under Section 302 of Indian Penal Code. While

framing charge the trial Court framed charge against the accused/appellant under Section 302 of IPC.

3. So as to hold the accused/appellant guilty, the prosecution examined 10 witnesses in all. Statement of the accused was also recorded under Section

313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No

defence witness has been examined.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment

convicted and sentenced the appellant as mentioned in para-1 of this judgment.

5. Learned counsel for the appellant submits that there is Cr.A. No. 374 of 2015 inordinate delay in lodging the FIR which was not satisfactorily

explained by the prosecution witness. He submits that the learned Court below while convicting and sentencing the accused/appellant has failed to

appreciate the fact that the prosecution witness turned hostile and not supported the case of the prosecution, particularly the wife of the appellant Smt.

Majji Mitto (PW9) has not supported the case of the prosecution and turned hostile. He further submits that there are number of omissions and

contradictions in the statements of prosecution witnesses and therefore, the judgment of trial Court is bad in law and in view of the facts and

circumstances of the case and the evidence available on record, this Court may allow the appeal and set- aside the judgment passed by the trial Court.

6. Opposing the submission of counsel for the appellant, it has been vehemently argued by learned counsel for the State that the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in light of the legal provisions and as such there is no illegality or infirmity in it warranting interference by this Court.

7. We have heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.

8. In presence of PW-4- Wacham Kumma merg information Ex. P/2 in respect of deceased Wacham Karve and merg intimation Ex.

Cr.A. No. 374 of 2015 P/4 in respect of Wacham Kanda were recorded. FIR ExP/3 lodged by him. He also proved this fact that in evening near

about 2-3 pm he was in his home when he heard cry of Budri, he reached the place of incident where he found Wacham Karve Muriya lying on the

floor in an injured condition and at that time the accused/appellant was fleeing away from the place of occurrence to river side and at that time

accused had a knife in his hand. He also stated that Gale and Budri were shouting by saying that accused is assaulting the deceased by knife and

during this incident Bodu had gone alongwith him at the place of occurrence. Thereafter, on the next day he intimated about the incident to the police

and at his instance merg intimations and the FIR were registered.

9. PW-5- Kumari Wacham Budri is the eyewitness to the incident and in her statement, she deposed that on the date of incident near about 1-2 pm

(noon) accused/appellant assaulted Wacham Karve and Wacham Kanda with knife. In paragraph 2 of her statement, she stated that she was standing

under the mango tree and playing, during that time she saw that the accused/appellant assaulting both the deceased persons with knife, after seeing

this, she cried and called for help. After listening to her voice, her uncle and brother came to the spot and at that time, accused/appellant fled away

from the spot having one knife in his hand.

10. Dr. D. P. Singh (PW07) did the postmortem of both the deceased vide Ex. P/9 and Ex. P/10 and opined that cause of death of Cr.A. No. 374 of

2015 both the deceased was hemorrhagic shock on account of excessive bleeding and the nature of death was homicidal.

11. The main contention of the learned counsel for the appellant is that the FIR was delayed by one day i.e. next day of the incident. The explanation in this regard given by lodger of FIR (PW-4) is that on the date of incident it was dark and the police station is far from the place of occurrence i.e. 10 kms away. This explanation given by Wacham Kumma (PW-4), being rustic village people living in same village, is very justified and is acceptable and further the same has not been challenged in his cross-examination. Learned counsel for the appellant also submits that wife of the appellant has not supported the prosecution case. It is true that Smt. Majji Mitto (PW-9) has not supported the prosecution case and she was declared hostile. But she being a wife of the appellant and due to emotional attachment with her husband, it is natural that she could not support the prosecution case but other prosecution witnesses Wacham Kumma (PW-4) and Kumari Wacham Budri (PW-5) have supported the prosecution case. Kumari Wacham Budri (PW-5) stated that the accused/appellant had a knife in his hand and assaulted both the deceased person, as a result of which cut injuries were found on the body of the deceased and accused was fleeing away from the place of incident. Wacham Komma (PW-4) also stated this fact that when he arrived at the spot he saw the accused running towards river side having a knife in his hand. Thus, there is no reason to disbelieve the testimony of Wacham Cr.A. No. 374 of 2015 Kumma (PW-4) and Kumari Wacham Budri (PW-5). The injuries, which were found on the body of both the deceased, are serious in nature and the death is also homicidal in nature.

12. Accused, in his statement recorded under Section 313 of Cr.P.C., has stated that he has been falsely implicated in the crime in question due to previous enmity between the parties. But there is no suggestion given to the prosecution witnesses and accused/appellant also could not prove any enmity between the parties in his defence and there is no evidence led before the trial court in that regard. Learned counsel for the appellant also submits that Kumari Wacham Budri (PW-5) is the tutored witness as per her statement in para 25.

13. On going through the entire statement of Wacham Kumma (PW-4) and Kumari Wacham Budri (PW-5) recorded firstly on 13.09.2009 and

thereafter on 19.12.2011, it is apparent that there is long distance between the complete statement of the prosecution witnesses. In theses

circumstances, few contradictions and omissions recorded in the statement of the Kumari Wacham Budri (PW-5) are not material. Kumari Wacham

Budri (PW-5), in her statement recorded under Section 161 of Cr. P.C. stated that she was examined firstly on 30.09.2009 and at that time she has

categorically stated that accused assaulted both the deceased persons, thereafter in her examination conducted on 19.12.2011, long after recording her

diary statement she has reiterated that the assault was made by accused by knife to both the deceased persons. On that point statement of Kumari

Wacham Cr.A. No. 374 of 2015 Budri (PW-5) deserves affirmation and no contradiction and omission made in that regard.

14. Considering the entire prosecution case, there is no reason to disbelieve the statements of eyewitness Wacham Kumma (PW-4) and Kumari

Wacham Budri (PW-5) which are corroborated by the postmortem report of both the deceased. Being so, the findings recorded by the trial Court

holding the appellant guilty under Section 302 of Indian Penal Code cannot be faulted with and the same are hereby affirmed.

15. Resultantly, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

16. As it is reported that appellant/accused- Majji Soma is already in jail, no further order regarding his arrest, surrender etc. is required.