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CRA-7177-2018

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE RATNESH CHANDRA SINGH BISEN

ON THE 6th OF JANUARY, 2026CRIMINAL APPEAL No. 7177 of 2018*MUKESH VISHWAKARMA**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

*Shri Neelam Kumar Shah - Advocate for the appellant.**Shri B.K. Upadhyay - Government Advocate for the respondent/State.*
.....

JUDGMENT

Per. Justice Ratnesh Chandra Singh Bisen

Learned counsel for the appellant prays for withdrawal of I.A. No.27944/2025, which is third application for suspension of sentence and grant of bail to the appellant.

2. Accordingly, I.A. No.27944/2025 is dismissed as withdrawn.

3. With the consent of learned counsel for the parties, case is taken up for final disposal at motion stage.

4. This Criminal Appeal under Section 374(2) of the Cr.P.C., is filed by the appellant being aggrieved of the judgment dated 13.11.2017 passed by learned Fifth Additional Sessions Judge, Bhopal (M.P.), in Sessions Trial No.34 of 2016, whereby appellant has been convicted for offence under Sections 302 of IPC and Section 25(1-B)(b) of Arms Act and has been sentenced to undergo life imprisonment and R.I. for three years respectively



with fine of Rs.1,000/- and Rs.500/-, with default stipulations.

5. The case of the prosecution in a nutshell is as under:-

5.1 On 25/09/2015, complainant Vijay Vishwakarma (PW-1) lodged a report at Police Station Kamla Nagar, Bhopal to the effect that his brother-in-law Arjun had come to his house to meet him from Devas. He told his brother-in-law that food was still being cooked, "let's go to have Rajshree," and as they started leaving the house towards the shop, his brother-in-law (*jija*) accused Mukesh Vishwakarma, whose house is also next door, was sitting by the tap outside the house; he said to bring Rajshree for him too. On the complainant's saying "you come along too," the accused said to him, "I understand what is in your mind," and after that, the accused pushed him; then the complainant also pushed the accused saying "go home." Then the accused went to his house and came back with a knife and attacked his elder brother Angoor Singh, stabbing a knife on his neck, as a result of which Angoor Singh's neck was slit, blood started flowing out; then his nephew Mohar Singh and brother-in-law took Angoor Singh to the hospital for treatment.

5.2 On the basis of aforesaid report, an offence has been registered against the appellant vide Crime No. 492/2015 under Section 307 IPC and First Information Report Exhibit P/1 was recorded. Mohar Singh (PW-4) and Arjun Singh (PW-5) took the deceased Angoor Singh to the hospital in the injured condition for treatment, where after examination by the doctor, Angoor Singh was declared as dead.

5.3 The Investigating Officer Inspector Mukhtiyar Qureshi (PW-12)



investigated the case, went to the deceased's residence, prepared Exhibit P-3 Safina form, summoned witnesses to the scene, prepared the inquest panchnama of the body as Exhibit P-4, seized blood-stained soil and plain soil from the scene in presence of witnesses and prepared seizure memo Exhibit P-5, site map Exhibit P-2 and filled P.M. form, sending the deceased's body to hospital for postmortem.

5.4 After due investigation, the charge-sheet has been filed before JMFC, Bhopal. JMFC, Bhopal committed the case to the Court of Sessions where the aforesaid charges have been framed against the appellant under Sections 302 of the IPC and 25(1-b)(b) of Arms Act.

5.5 The appellant abjured the guilt, pleaded false implication and prayed for trial.

5.6 The trial Court on appreciation of oral and documentary evidence available on record, convicted and sentenced the appellant as mentioned herein above vide impugned judgment. Hence, this appeal.

6. Learned counsel for the appellant submits that the trial Court has not appreciated the oral and documentary evidence available on record in proper perspective and committed error while convicting the appellant for the aforesaid offences. It is submitted that Mohar Singh (PW-4) and Arjun Patwa (PW-6) have stated in their statements that they were present at the spot at the time of the incident and after the incident, they took the injured to the hospital for treatment but they did not admit that the incident occurred in their presence, which makes the case of the prosecution doubtful. He further submits that Vijay Vishwakarma (PW-1) has stated that the accused stabbed



the deceased on his neck on 25/09/2015 and asked his brother-in-law Arjun Singh and Angoor Singh to take him to the hospital. Brother of the deceased namely Azad Vishwakarma (PW-2) also stated that the accused grabbed the hairs of the deceased and stabbed him with a knife; thereafter, the deceased was taken to the hospital in injured condition by his son Mohar Singh (PW-4) and Arjun Singh (PW-6), where Angoor Singh was declared as dead. Dr. Mrs. Kelu Grewal (PW-7) who performed Post Mortem of the deceased admitted in her statement that during internal examination, a liquid was found in the stomach of the deceased, which was smelling like liquor and internal/external genitals were found normal. Thus, it is clear that the incident occurred while consuming the alcohol in the house of Vijay and when the daughter of the accused arrived, Vijay pushed her in intoxicated condition as a result of which she sustained injury, which led to scuffle between the parties and then Vijay and his brother-in-law beat and pushed the accused. Thereafter, Vijay assaulted the accused by means of knife, when deceased came to rescue him, he also sustained injuries and ultimately succumbed to them.

7. Learned counsel for the appellant further submits that as per the statements of the eye-witnesses to the incident, it has been stated that during the dispute between the accused and his brother-in-law over 'Rajshree gutkha' leading to the incident and the deceased's died on account of excessive bleeding. In this, no culpable intent or act of murder on the part of the accused is apparent. The accused has been falsely implicated in this case, and the admissions made by the witnesses during cross-examination render



their chief examination statements self-contradictory and, therefore, the impugned judgment and conviction is liable to be set aside.

8. On the other hand, learned Shri B.K. Upadhyay, learned Public Prosecutor for the respondent-State, in his turn, supports the impugned judgment and submits that after analyzing the oral and documentary evidence which has been produced by the prosecution, the trial Court has properly convicted the appellant under Section 302 of IPC and Section 25(1-B)(b) of Arms Act and there is no such mistake in the finding of the trial Court and there are sufficient evidences against the present appellant to confirm his conviction and as such, the same does not call for any interference and the appeal deserves to be dismissed.

9. We have heard learned counsel for the parties and gone through the record.

10. Vijay Vishwakarma (PW-1) stated in his examination-in- Chief that his brother-in-law Mukesh Vishwakarma's house is also in his neighbourhood. Food was being cooked at home so he told his brother-in-law, Arjun that they should go and eat 'Rajshree'. He has further deposed that when they left the house and were going to the shop, the accused Mukesh Vishwakarma was sitting at the tap outside the house and said, please bring Rajshree for him also. Then he told the accused to come along with him. The accused then told him that he understood what he was thinking and after this, accused pushed him and then he also pushed the accused. This witness has further stated that the accused went to his house and was immediately came out of the house, at that time, both his hands were behind his back. As soon as the



accused came, he stabbed his brother with a knife, which hit his brother's neck. At that time his brother was filling water from the tap. When he ran to intervene, the accused stabbed him too, which hit him twice on his right hand. After that the accused ran away. Then he told his brother-in-law Arjun to take Angoor Singh to the hospital. He had lodged the report, which is an Exhibit P-1.

11. The above fact has also been corroborated by Mohar Singh Vishwakarma (PW-4) in his statement. He has also stated that he took Angoor Singh to the hospital, where the doctors declared Angoor Singh dead. He has admitted in paragraph 2 of his cross-examination that there is no dispute between accused Mukesh and deceased Angoor Singh before the incident. He has also admitted in paragraph 4 that there is no enmity between deceased Angoor Singh and accused Mukesh. There is no any fact in his cross-examination to disbelieve this witness.

12. Bheema Vishwakarma (PW-5) has also supported the prosecution story and stated that when his uncle Angoor Singh had come to wash his hands and face at the tap, accused Mukesh came to the tap and stabbed the deceased Angoor Singh on his neck with a sharp knife and then fled. After that, Arjun Singh and Mohar Singh took Angoor Singh to Hajela Hospital, where doctors declared Angoor Singh dead.

13. The above fact has also been corroborated by Arjun (PW-6) in his statement.

14. Dr. Kelu Girwal (PW-7) had conducted the postmortem. According to this witness, the diseased Angoor Singh died of shock and hemorrhage due to



neck injury. The injuries were likely caused by a sharp heavy weapon. The death was homicidal in nature.

15. Anil Kumar Rawat (PW-8) has stated that he brought the viscera, pant and shirt of the deceased Angoor Singh from Hamidia Hospital in two separate sealed bags which had seized by Head Constable Indramani Manjhi.

16. The above fact is also corroborated by the evidence of Rakesh Kumar Meena (PW-9) and Indramani Majhi (PW-13).

17. R.N. Singh Chauhan (PW-10) has stated in his examination-in-Chief that on 25.09.2015, he was posted as Sub Inspector in the Police Station Kamla Nagar and on the said date, Vijay Vishwakarma came to Police Station and lodged a report against accused Mukesh Vishwakarma stating that accused had stabbed Angoor Singh in the, resulting in slit neck. Based on the said report, he registered a First Information Report (Exhibit P-1) for Crime No.492/2015 under Section 307 of IPC. This witness has admitted in his cross-examination that it is not mentioned in the report that Mohar Singh and Arjun Singh saw the incident. But here, it would be necessary to mention that merely on the basis of the above fact, it cannot be concluded that the incident was not seen by Mohar Singh (PW-4) and Arjun (PW-6). Apart from this, it is also noteworthy that in the First Information Report, it has been mentioned that both of them took Angoor Singh to the hospital. From this, it is clear that both these witnesses were present at the time of occurrence of the incident.

18. Indramani Majhi (PW-13) has stated in his deposition that on 25.09.2015, he was posted as Head Constable at Kamla Nagar Police Station.



On the said date, the informant Mohar Singh informed that his relative had stabbed his uncle Angoor Singh. He was taken to Hajela Hospital, where after examining by the doctor, he was declared dead. On the basis of the said information, inquest number 42/15 was registered which is Exhibit P-8.

19. Thus, it is also clear from the statements of Mohar Singh Vishwakarma (PW-4) and Arjun (PW-6) that they took Angoor Singh to the hospital where doctors declared Angoor Singh as dead. Thus, in this case, Vijay Vishwakarma (PW-1), Mohar Singh Vishwakarma(PW-4), Bhima (PW-5), Arjun (PW-6) have been presented by the prosecution as eye witnesses of the incident whereas Azad Vishwakarma(PW-2) and Santosh (PW-3) were not the eye witnesses. Thus, Vijay Vishwakarma (PW-1), Mohar Singh Vishwakarma(PW-4), Bhima (PW-5) and Arjun (PW-6) have seen the accused committing the crime. The incident took place on 25th January, 2015 at 8:30 pm whereas the information was given to the police station at 21: 10 hours on the same date. The above information was given by Vijay Vishwakarma. In the F.S.L. report (Exhibit P-21), human blood has been found on the knife seized from the accused. The knife seized from the accused has been identified as D in the FSL report, whereas the blood stained soil seized from the scene of incident has been identified as A .B. group. The blood was found on on both article A and D. Thus the case of the prosecution is duly corroborated by the FSL report that the blood of the deceased was found on the knife seized from the accused.

20. The main argument put forth by the accused is that the incident took place on a spur of moment between the deceased, his brothers and the



accused. There was no pre-meditation of mind or intention of the accused to kill the deceased. For this reason, the act of appellant will not fall under Section 302 of the IPC but will fall under Section 304 Part I of the IPC. The above argument of learned counsel of the appellant is not acceptable, because in this case there is no evidence which shows that there was a fight between the deceased and the appellant. Rather, as per the evidence on record, the appellant went inside his house and immediately came back with a knife and thereafter stabbed the deceased on his neck. Number of injuries are not necessary for conviction under Section 302 of IPC, rather intention is necessary. To assess the intention, it will be seen where the injury was caused and which weapon was used and which part of the body has been injured. In this case, the accused has injured deceased Angoor Singh on his neck with a deadly weapon i.e. knife. It shows the intention of the accused. It has been held by the Supreme Court in case of **State of M.P. Vs. Kalicharan and Others (2019) 6 SCC 809** that "as held by this Court in a catena of decisions, even in case of a single blow, but on the vital part of the body, the case may fall under Section 302 IPC and the accused can be held guilty for the offence under Section 302 IPC.

21. The Supreme Court in case of **Stalin Vs. State represented by the Inspector of Police (2020) 9 SCC 524** has held as under:-

"From the decisions of the Supreme Court, it emerges, that there is no hard and fast rule, that in a case of single injury, Section 302 IPC would not be attracted. It depends upon the facts and circumstances of each case. The nature of injury, the part of the body where it is caused, the weapon used in causing such injury, are the indicators of the fact, whether the accused caused the death of the deceased with an intention of causing death or not. It cannot be laid down as a rule of universal application, that whenever the death occurs on account of a single blow, Section 302 IPC is ruled



out. The fact situation has to be considered in each case, and the events which precede, will also have a bearing on the issue, whether the act by which the death was caused was done with an intention of causing death or knowledge that it is likely to cause death, but without intention to cause death. It is the totality of the circumstances, which will decide the nature of offence."

22. Thus, in view of foregoing analysis and in the light of decision passed by the Supreme Court in case of Stalin (*supra*), we are of the opinion that the prosecution could lead credible evidence and proved beyond reasonable doubt that the present appellant is guilty for committing the aforesaid offences. Thus, we do not find infirmity or illegality in the impugned judgment, which warrants interference by this court. Therefore, appeal fails and is here by **dismissed**.

(VIVEK AGARWAL)
JUDGE

(RATNESH CHANDRA SINGH BISEN)
JUDGE

Rao