

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.515 of 2010

Shivhari Nai, S/o Ganpat Ram Nai (Ganga Ram Nai), aged 39 years, R/o Village
Pondi Khurd, Chowki Korbi, P.S. Pasan, District Korba (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Chowki Korbi, P.S. Pasan, District Korba (C.G.)

---- Respondent

For Appellant:	Mr. Dheerendra Pandey, Advocate.
For Respondent/State:	Miss Pushpa Dwivedi, Panel Lawyer.

Hon'ble Shri Justice T. P. Sharma and
Hon'ble Shri Justice Inder Singh Uboweja

Judgment on Board

25/03/2015

T.P. Sharma, J.

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 7-7-2010 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Korba, in Special Sessions Trial No.20/2008, whereby & whereunder learned Special Judge after holding the appellant guilty for causing homicidal death amounting to murder of Veer Sai, convicted the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life and pay fine of Rs.5,000/-, in default of payment of fine to further undergo RI for one year. The trial Court has also awarded compensation of Rs.3,000/- to Bundeshwari Bai, wife of deceased Veer Sai, out of the amount of fine imposed upon the appellant.
2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant and thereby committed an illegality.
3. As per case of the prosecution, on the fateful day of 2-7-2008 at about 3 p.m., cattle of the appellant were grazing the crop of the field of deceased Veer Sai, Veer Sai was ousting the cattle from his field then altercation took place between both the appellant and deceased Veer Sai. The appellant came with axe and caused injury upon head and back of Veer Sai on which Veer Sai fell down then his relatives came and brought him to his house. On second day i.e. 3-7-2008 at 9.05 a.m., injured went to

Police Outpost Korbi (Pasan), 8 Kms. away from the place of incident, and lodged FIR vide Ex.P-5. Finally, numbered FIR was recorded vide Ex.P-9. Injured Veer Sai was sent for medical examination to Primary Health Centre, Pondi Uprora. He was examined by Dr. (Smt.) K.B. Sonkar (PW-5) vide Ex.P-6 and following injuries were found on his person: -

1. Laceration 3" x 0.5 c.m. on top of head up to 2" x 0.5 c.m. from left ear to little-bit mid-line.
2. Laceration 1" x 0.5" over dorsal aspect of upper part of left forearm.
4. Injured Veer Sai was referred to District Hospital, Korba for further treatment. Spot map was prepared vide Ex.P-4. During the course of treatment at Korba, Veer Sai died on 6-7-2008 at 1 a.m.. Death was intimated and inquest was prepared.
5. Dead body of the deceased was sent for autopsy to District Hospital, Korba. Dr. R.K. Divya (PW-12) conducted autopsy vide Ex.P-11 and found following injury: -
 - A stitched wound over middle part of both parietal bone scalp region size 4 c.m. in length, vertically bone deep.

Mode of death was shock due to compression of brain due to head injury and death was homicidal in nature.

6. During the course of investigation, the appellant was taken into custody, he made disclosure statement of axe vide Ex.P-1 and same was recovered at his instance vide Ex.P-2. Statements of the witnesses were recorded under Section 161 of the CrPC.
7. After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Katghora, who committed the case to the Court of Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Korba where trial of the case was conducted.
8. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 12 witnesses. The accused was examined under Section 313 of the CrPC in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question. He has tried to take defence that the deceased assaulted him upon his head, he fell down, he went to the police station for lodging report, he was examined by doctor, but he was not treated properly, therefore, he left the Government Hospital and went to a private hospital for treatment.
9. After providing opportunity of hearing to the parties, learned Special Judge convicted & sentenced the appellant as aforementioned.
10. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.

11. Learned counsel for the appellant frankly admits that in the light of evidence of Itwar Sai (PW-1) and Jailal (PW-2), eyewitnesses, he is not disputing the fact that the appellant has caused injury to the deceased, but submits that as per evidence of Jailal (PW-2) and investigating officer Rajesh Tiwari (PW-11), the appellant has also sustained injuries, he was sent for medical examination and he was admitted in hospital which shows that serious injury has been caused to the appellant by the deceased. The deceased himself has lodged FIR vide Ex.P-5 which shows that he was not serious at the time of lodging report that too on second day. Only offence punishable under Sections 294, 506 and 323 of the IPC has been registered against the appellant, but after death of the deceased, the appellant has been charged for the offence punishable under Section 302 of the IPC. The deceased died after four days of incident. Therefore, the appellant is entitled for acquittal on the ground that the appellant was having the right of exercise of private defence and in case of exceeding the right of private defence, his act squarely falls within the ambit of Section 304 Part-II of the IPC.
12. On the other hand, learned State counsel opposed the appeal and submitted that evidence of Itwar Sai (PW-1) and Jailal (PW-2) are sufficient for proving the guilt of the appellant that the appellant has caused fatal injury to the deceased amounting to murder. Therefore, the trial Court has rightly convicted and sentenced the appellant in the aforesaid manner.
13. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
14. In the present case, homicidal death as a result of fatal injury found over the body of deceased Veer Sai has not been substantially disputed on behalf of the appellant. On the other hand also, it is established by evidence of Itwar Sai (PW-1), Jailal (PW-2), FIR Ex.P-5, evidence of Dr. (Smt.) K.B. Sonkar (PW-5), injury report Ex.P-6, evidence of Dr. R.K. Divya (PW-12) and autopsy report Ex.P-11, that death of deceased Veer Sai was homicidal in nature.
15. As regards complicity of the appellant in the crime in question, conviction of the appellant is substantially based on the evidence of Jailal (PW-2). As per his evidence, cattle of the appellant were grazing the crop of the deceased, the deceased was ousting the cattle, at that time, the appellant came with axe, he assaulted the deceased by axe and the deceased fell down then the appellant fled away from the spot. In para 2 of his cross-examination, he has specifically admitted that the deceased has also assaulted the appellant by spade (rapa) over his head.
16. Rajesh Tiwari (PW-11), Assistant Sub Inspector, who has sent the deceased for medical examination, has specifically admitted in para 5 of his cross-examination that

the appellant has also came to Police Outpost Korbi for lodging report, but he did not record his report, he was sent to the doctor for his medical examination and after examination, he was admitted in hospital for treatment, but he absconded from the hospital.

17. These evidence clearly reveal that during the course of incident, the appellant has also sustained injury, it was not simple and on account of injury, he was admitted in hospital. This shows that both the persons i.e. the appellant and the deceased, have sustained injury at the time of incident. The deceased was alive for four days. He himself has lodged report on second day of incident. Although injury found over the body of the deceased was serious and has been caused by axe which shows that during the course of quarrel on the ground of grazing of cattle, the incident took place, otherwise, there was no cause for causing injury to the deceased which shows that the appellant has caused homicidal death of the deceased, but not amounting to murder. At the time of causing injury, the appellant was having knowledge that by his act the deceased may die. Consequently, the act attributed to the appellant squarely falls within the ambit of Section 304 Part-II of the IPC.
18. After appreciating the evidence available on record, learned Special Judge has convicted and sentenced the appellant, but while convicting and sentencing the appellant, the trial Court has not considered the facts and circumstances of the case and thereby committed an illegality.
19. Consequently, the appeal is partly allowed. Conviction of the appellant under Section 302 of the IPC is altered to Section 304 Part-II of the IPC and the appellant is hereby sentenced to RI for the period already undergone by him and fine of Rs.5,000/-, in default, additional RI for one year. The appellant is in custody since 1-8-2008, thereby he is in custody for more than six years. As directed, Rs.3,000/- out of the amount of fine imposed upon the appellant, shall be paid to wife of the deceased namely Bundeshwari Bai.

JUDGE

JUDGE