

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 646 of 2012**

1. Santram S/o S/O Subelal @ Billu Kumeti Aged About 23 years, Occupation- Cultivation R/O Imlipara, Sambalpur , P.S. Bhanupratappur , Distt. Kanker C.G.

---- Appellant**Versus**

1. State Of Chhattisgarh, Through - The Station House Officer, P.S. Bhanupratappur , Distt. Kanker C.G.

---- Respondent

For Appellant	:	Mr. D.N.Prajapati, Advocate
For Respondent/State	:	Mr. Ramakant Pandey, P.L.

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

Judgement on Board by T.P.Sharma, J**26/03/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 26th July, 2012 passed by the Sessions Judge, North Bastar, Kanker in Sessions Trial No.74/2011 whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of Ramprasad Patel, the Court below convicted the appellant under Section 302 of the I.P.C. and sentenced him to life imprisonment with fine of Rs.1000/- and in default to undergo additional RI for three months.

2. Conviction is impugned on the ground that without there being any iota of any evidence against the appellant, the Court below convicted and sentenced the appellant and thereby committed illegality.

3. As per case of the prosecution, on 20.03.2011 at 3.00 pm on account of some suspicion, appellant assaulted deceased – Ramprasad by some object upon the face,

as a result of which, he became unconscious. Pritram and Pintu, who were present there, took him to his house and thereafter he regained consciousness. He took his meals and went for asleep and on second day the deceased was serious and he died on 21.03.2011 at about 4.00 pm. P.W.5 Pawan Kumar Patel went to Police Station Bhanupratappur and lodged F.I.R. vide Ex.P.9 and merg was recorded vide Ex.P.8.

4. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P.14, inquest over the dead body was prepared vide Ex.P.15. Spot map was prepared vide Ex.P.10. Dead body was sent for autopsy to Community Health Center, Bhanupratappur, P.W. 2 Dr. A.K.Dhruw conducted autopsy vide Ex.P. 4 and found following injuries:

- i) Swelling over the left ear and cheek of 6 x 5 cm. With abrasion over left maxillary bone.
- ii) Abrasion over mid nose of 2 x 1 cm.
- iii) Abrasion of 1 x 2 cm over supero lateral portion of right side of frontal bone.
- iv) Abrasion over right shoulder of 1 cm. X ½ cm.
- v) Abrasion over right shoulder of 1 cm x ½ cm. below injury No.4

Injuries were ante-mortem and cause of death was Asphyxia due to Aspiro Pneumonia and Pulmonary arrest (Chemical Pneumonia). Death was accidental due to heavy alcohol.

5. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

6. After completion of investigation, charge sheet has been filed before the Court of J.M.F.C., Bhanupratappur, who in turn committed the case to the Court of Sessions, North Bastar, Kanker.

7. In order to prove the guilt of the appellant, prosecution examined as many as 9 witnesses. Accused person was examined under Section 313 of the Code, in which,

he denied the circumstances appearing against him and innocence and false implication in crime in question was claimed. He has also examined defence witnesses Pintu Kumeri (D.W.1) and Shaambai (D.W.2), who have deposed that deceased consumed liquor after the incident.

8. After providing an opportunity of hearing to the parties, learned Sessions Judge has convicted and sentenced the appellant as aforementioned.

9. We have heard learned counsel for the parties and perused the record of the Court below including judgment impugned.

10. Mr. D.N.Prajapati, learned counsel for the appellant, vehemently argued that as per autopsy report cause of death was accidental, as a result of excessive drinking and it was the Chemical Pneumonia and not as result of any injury. Even otherwise, the injury found over the body of deceased was not fatal or grievous injury, i.e., fracture of maxillary bone. After the incident, the deceased was alive for more than 24 hours. He further submits that the act attributed to the appellant does not travel beyond the scope of Section 325 of the I.P.C.

11. On the other hand, Mr. Ramakant Pandey, learned counsel for the State, argued that the evidence of P.W.4 Pritram Uike, P.W.5 Pawan Kumar and P.W.7 Hirobai Patel is sufficient for drawing an inference that the appellant caused homicidal death of deceased – Ramprasad.

12. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the present case, death of deceased – Ramprasad has not been disputed on behalf of the appellant, on the other hand, it was also established by the evidence of P.W.2 Dr. A.K.Dhruw and autopsy report Ex.P.4.

13. As regards complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of P.W.4 Pritram Uike, P.W.5 Pawan Kumar and P.W.7 Hirobai Patel. As per their evidence, appellant assaulted deceased

by iron spoon over the face of Ramprasad, which finds support from the evidence of P.W.2 Dr. A.K.Dhruw and autopsy Ex.P.4 showing that by some flat object appellant caused injury to deceased, as a result of fracture of maxillary bone. The injury caused was neither fatal injury nor serious in nature. The deceased was alive for more than 24 years and death was not as a result injury caused to him. Consequently, death of deceased cannot be considered as homicidal in nature. As per autopsy report Ex.P.4, death of deceased was due to Chemical Pneumonia for which appellant is not responsible, but, the act attributed to the appellant squarely falls within Section 325 of the I.P.C. for causing grievous injury. While convicting the appellant, the trial Court has not considered the aforesaid facts and thereby committed illegality.

14. As a result, the appeal is partly allowed. Conviction of the appellant under Section 302 of the I.P.C. is hereby altered to Section 325 of the I.P.C. and the appellant is sentenced to RI for three years, instead of sentence imposed by the Court below. Appellant is in custody since 22.03.2011. He be released forthwith, if not required in any other case.

JUDGE

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