

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.659 of 2010

Janlal Rawat, s/o Bhuwano Rawat, aged about 35 years,
Occupation- Labour, R/o Village – Boirguda, Police Station-
Deobhog, District- Raipur (CG)

– Appellant

Versus

State of Chhattisgarh, through the District Magistrate, District-
Raipur (CG)

– Respondent

For Appellant : Shivendu Pandya, Advocate

For Respondent / : Shri Roshan Dubey, Panel Lawyer
State

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

JUDGMENT

15.04.2015

Per **T.P. Sharma, J.:-**

- 1) Challenge in this appeal is to the judgment of conviction & order of sentence dated 14.07.2010 passed by the Additional Sessions Judge, Gariyabandh, District- Raipur in Sessions Trial No.6 of 2010, whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of Shridhar Rawat, the trial Court has convicted the appellant under Section 302 IPC and sentenced him to

undergo imprisonment for life and fine of Rs.100/-, in default, additional RI for ten days.

- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
- 3) As per case of prosecution, on the fateful night of 08.01.2010 at about 10 pm, the appellant while discussing with unfortunate deceased Shridhar on account of some land dispute, assaulted him by *Musal* (wooden plank) on head, face and caused his instantaneous death. Chandrai Bai (PW-8) and Himbai (PW-9), wife of the deceased have witnessed the incident. They informed Jagannath Nagesh (PW-1), who went to the Police Station Deobhog and lodged FIR vide Ex.P/15 & Morgue Intimation vide Ex.P/3. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P/1, inquest over the dead body of the deceased was prepared vide Ex.P/2. Spot map was prepared vide Ex.P/4. Bloodstained and plain soil were recovered from the spot vide Ex.P/6. Dead body of the deceased was sent for autopsy to the Community Health Centre, Deobhog vide Ex.P/16. Dr.H.K.Chouhan (PW-13) conducted autopsy vide Ex.P/16-A and found following injuries:-

- i) Lacerated wound of 6 x 1 ½ x 1 cm over left fronto parietal region;
- ii) Lacerated wound of 3 x .5 x .5 cm over left parietal region ;
- iii) Lacerated wound of 4 x 1 .5 cm over right side of chin ;
- iv) Lacerated wound of 2 x .5 cm over left side of chin;
- v) Lacerated wound of 2 x .5 x .5 cm over right cheek;
- vi) Lacerated wound over left forehead of 1 x .5 cm;
- vii) Abrasion of 1 x 1 cm over right elbow joint;
- viii) Lacerated wound over left ribs which depress in the mandible bone;
- ix) Fracture of right and left maxillary area and right of mandible bone;

Mode of death was haemorrhagic shock and death was homicidal in nature.

- 4) During the course of investigation, the appellant was taken into custody, he made disclosure statement of *Musal* (wooden plank) vide Ex.P/7 and the same was recovered at his instance vide Ex.P/8.
- 5) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge-sheet was filed before the Court of Judicial Magistrate First Class, Deobhog, who in turn, committed the case to the Court of Additional Sessions Judge, Gariyabandh, Raipur.
- 6) In order to prove the guilt of the accused/appellant, the prosecution has examined as many as fifteen witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code, in which he denied the

circumstances appearing against him and pleaded innocence and false implication in the crime in question.

- 7) After providing opportunity of hearing to the parties, the trial Court has convicted & sentenced the appellant as aforementioned.
- 8) We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
- 9) Learned counsel for the appellant vehemently argued that conviction of the appellant is substantially based on the evidence of Chandrai Bai (PW-8) and Himbai (PW-9), but their evidence does not inspire confidence and is not trustworthy. They have not witnessed the incident. Their evidence is based on conjunctures and surmises. Evidence of the above witnesses is not sufficient for definite conclusion. Even otherwise, as per their evidence, on account of some land dispute, some altercation took place, thereafter, the appellant assaulted the deceased by the weapon, which was already lying there. This is not the case where the appellant has some vengeance on the deceased and caused injuries. In the present case, the appellant assaulted the deceased with a weapon *Musal* (wooden plank) already available on the spot in a natural manner. Therefore, the act attributed to the appellant does not travel beyond the scope of Section 304 Part-II of the IPC.

- 10) On the other hand, learned Panel Lawyer for the State opposes the appeal and submits that evidence of Chandrai Bai (PW-8) and Himbai (PW-9) is sufficient for drawing inference that the appellant has caused homicidal death of the deceased.
- 11) In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the parties.
- 12) In the present case, homicidal death as a result of fatal injuries found over the body of the deceased has not been substantially disputed on behalf of the appellant. Even otherwise, it is also established from the evidence of Chandrai Bai (PW-8), Himbai (PW-9), FIR (Ex.P/15), Morgue Intimation (Ex.P/3), Dr.H.K.Chouhan (PW-13) and autopsy report (Ex.P/16A), that death of the deceased was homicidal in nature.
- 13) As regards the complicity of appellant in crime in question, conviction is substantially based on the evidence of Chandrai Bai (PW-8) and Himbai (PW-9), wife of the deceased. As per their evidence, at about 10 pm on the date of the incident, the deceased went to the house of the appellant, both of them were fighting on account of some land dispute, thereafter, the appellant assaulted the deceased by *Musal* (wooden plank) on his head and caused his instantaneous

death. Defence has cross-examined these witnesses at length, but has not been able to elicit anything in their cross-examination to discredit their testimonies that the appellant has not assaulted the deceased. Their evidence clearly reveals that they were present on the spot and witnessed the incident, which is sufficient for drawing inference that the appellant caused homicidal death of the deceased

- 14) As regards the question of motive, in case of direct evidence motive loses its importance. Even otherwise, motive is only an aid in criminality and can be inferred on the basis of nature of injury, kind of weapon used, part of the body effected and other similar circumstances. Motive is a state of mind of person at the time of commission of offence and only the person concerned would be in a position to explain that what was his intention or motive behind commission of any act.
- 15) In the present case, the appellant and deceased, both are relatives. Their houses are adjoining. This is not a case that appellant has caused injury by some stick, but has caused fatal injuries by *Musal* (wooden plank), which shows his grave intention for causing homicidal death amounting to murder of the deceased.

- 16) After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant as aforementioned.
- 17) On close scrutiny of the evidence, it reveals that the appellant has caused homicidal death amounting to murder of deceased Shridhar. We do not find any illegality and infirmity in the judgment impugned.
- 18) Consequently, the appeal, being devoid of merit, is liable to be dismissed and is hereby dismissed.

(T.P.Sharma)
JUDGE

(I.S.Uboweja)
JUDGE