

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.511 of 2011

Ratiram Ekka, s/o Pema Ekka, aged about 45 years, Caste
Urao, R/o Village Mirigudda, PS Dharamjaigarh, Tahsil
Dharamjaigarh, Distt. Raigarh (CG)

--- Appellant

Versus

State of Chhattisgarh, Through the Incharge Officer PS
Dharamjaigarh, Tahsil Dharamjaigarh, Distt. Raigarh (CG)

---- Respondent

For Appellant : Shri Vinod Deshmukh
For Respondent / State : Ms Pushpa Dwivedi, Panel Lawyer

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

JUDGMENT

18/03/2015

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

- 1) Challenge in this appeal is to the judgment of conviction & order of sentence dated 23.06.2011 passed by the Sessions Judge, Raigarh in Sessions Trial No. 90 of 2009, whereby and whereunder after holding the appellant guilty for causing homicidal death amounting to murder of Manbodh, the trial Court has convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life.
- 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 fateful day of 03.08.2009 at about 5.30 pm the appellant assaulted his *Samdhi* Manbodh , who is father of Balram (PW-3) and caused his death. The incident was witnessed by Balram (PW-3) and Amarsai (PW-4), who were present on the spot. Balram provided water to the deceased when he was alive and thereafter, he died. Balram went to the Police Station, Dharamjaigarh and lodged FIR vide Ex.P/3 and Morgue Intimation vide Ex.P/4. Investigating Officer left for scene of occurrence and after summoning the witnesses vide Ex.P/2, inquest over the dead body of the deceased was prepared vide Ex.P/1. Dead body of the deceased was sent for autopsy to the Civil Hospital, Dharamjaigarh vide Ex.P/11-A. Dr.A.S.Thakur (PW-7) conducted autopsy vide Ex.P/11 and found following injuries :-

- i) Abrasion of post aspect of right wrist;
- ii) Curve, linear abrasion on right lateral middle neck of 1 x 1 cm;
- iii) Trachea was pressed.

Mode of death was asphyxia as a result of compression of air passage (throttling) and death was homicidal in nature.

- 4) Lungi of the appellant was seized from the spot vide Ex.P/8 and sealed clothes of the deceased were seized vide Ex.P/9.
- 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, Dharamjaigarh, who in turn, committed the case to the Court of Sessions, Raigarh.

- 6) In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 11 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 is substantially based on the evidence of Balram (PW-3) and Amarsai (PW-4), but their evidence does not inspire confidence and is not trustworthy. Even as per case of the prosecution, appellant has assaulted the deceased by hands, fists and kicks. He has not used any weapon. 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 the appellant has acted

in cruel manner and has caused injury by legs when deceased was lying on the floor. He has caused fatal injury by his legs on his chest and neck, which shows the cruel act of the appellant causing death of the deceased. Therefore, on the basis of aforesaid evidence, the Court below has rightly convicted and sentenced the appellant as aforementioned.

- 11) In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution.
- 12) In the present case, homicidal death as a result of fatal injuries found over the body of deceased Manbodh has not been substantially disputed on behalf of the appellant. Even otherwise, it is also established from the evidence of Balram (PW-3), Amarsai (PW-4), FIR (Ex.P/3), Morgue Intimation (Ex.P/4), Dr.A.S.Thakur (PW-7) and autopsy report (Ex. P/11), that death of deceased was homicidal in nature.
- 13) As regards the complicity of appellant in crime in question, conviction is substantially based on the evidence of Balram (PW-3) and Amarsai (PW-4). As per both the witnesses, they were informed by other witnesses that the appellant was assaulting the deceased, then they reached to the spot, where they saw the appellant, assaulting the deceased. The deceased was lying on the floor and the appellant was

jumping upon his neck and chest. When Balram (PW-3) tried to intervene, then the appellant also tried to assault him. Thereafter, when the appellant left the deceased, Balram provided water to the deceased. Thereafter, he also assaulted the appellant by stick. After sometime, the deceased died. Defence has cross-examined these witnesses at length, but has not been able to elicit anything to discredit their testimonies that the appellant has not assaulted the deceased by hands, fists, legs and was not jumping upon the neck and chest of the deceased, which shows the cruel act of the appellant while causing injury to the deceased without using any weapon.

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

JUDGE

JUDGE