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Division Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 707/2014

DB

APPELLANT

(In the custody)

: Ayta Kuhrami

S/o Hunga

Aged about 38 years,

Caste- Gond,

R/o- Village- Permaraas,

Mutta Madampara, P.S- Tongpal

Dist- Sukma (C.G.)

* Civil dis #. Dakshin Bastar,
Revenue distt. - Sukma.

A.No. 707/14
Presented by Shri H.S. Alwar
dated 28.7.14

Versus

RESPONDENT

: State of Chhattisgarh

Through P.S- Tongpal

Dist- Sukma

✓ Crime No. - 28/10 ✓

MEMORANDUM OF APPEAL U/S 374 (2) OF THE CODE OF
CRIMINAL PROCEDURE.

Conviction

U/s 302 of I.P.C.

Sentence

RI for Life Imprisonment with
fine Rs. 100/- In default of
payment to under go 1 month
separately.

Being aggrieved by the impugned judgment dt. 12/6/2014 passed by the
Session Judge, South Bastar, Dist- Dantewada in Session Trail
No.53/2011, the appellant prefers this memo of appeal on the following
facts & grounds

HIGH COURT OF CHHATTISGARH AT BILASPUR

Coram: HON'BLE MR.T.P.SHARMA &
HON'BLE MR.I.S.UBOWEJA, JJ.

Criminal Appeal No.707 of 2014

APPELLANT
(In Jail)

Ayta Kuhrami

Versus

RESPONDENT

State of Chhattisgarh

(CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF
CRIMINAL PROCEDURE, 1973)

Mr.H.S.Ahluwalia, counsel for the appellant.

Mr.Roshan Dubey, Panel Lawyer for the respondent/State.

JUDGMENT

(Passed on 8th April, 2015)

T.P.Sharma, J.:-

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 12.6.2014 passed by the Sessions Judge, South Bastar Dantewada, in S.T.No.53/2011, whereby & whereunder the trial Court after holding the appellant guilty for causing homicidal death amounting to murder of his brother Bhima Madkami, convicted him under Section 302 of the IPC and sentenced to undergo imprisonment for life and fine of Rs.100/-, in default of payment of fine to further undergo imprisonment for one month.
2. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, in the intervening night of 17/18.12.2010 while unfortunate deceased Bhima Madkami was sleeping in his barn along his wife Smt.Ayte Madkami (PW-1) and children, the appellant (brother of the deceased) came, some discussion took place between them on account of land dispute, thereafter the appellant assaulted the deceased by spade and caused his death. Smt.Ayte Madkami (PW-1) has witnessed the

incident. She went to inform the incident to relatives and villagers and also went to Police Station Tongpal on second day and lodged the F.I.R. vide Ex.P/5 and merg vide Ex.P/4. Investigating officer left for scene of occurrence and after summoning the witnesses, prepared inquest over the body of the deceased vide Ex.P/1. Spot map was prepared by investigating officer vide Ex.P/7. Bloodstained and plain soil were recovered from the spot vide Ex.P/10. Dead body of the deceased was sent for autopsy to Primary Health Centre, Tongpal vide Ex.P/8. Dr.Kamal Sete (PW-9) conducted autopsy vide Ex.P/12 and found following injuries:-

- Ruptured wound of 4x3x2cm upon the right temporal region.
- Bone was damaged.

Cause of death was homorganic shock and death was homicidal in nature. During the course of investigation, patwari also prepared spot map vide Ex.P/2. The appellant was taken into custody, he made disclosure statement of spade vide Ex.P/8 and same was recovered at his instance vide Ex.P/9. Seized articles were sent for chemical examination to FSL vide Ex.P/11 and presence of blood has been affirmed by FSL vide Ex.P/14. Article was sent to serologist and as per report of serologist Ex.P/13, presence of human blood upon spade has been affirmed.

4. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'Code'). After completion of investigation, charge-sheet was filed before the Judicial Magistrate First Class, Sukma, who in turn, committed the case to the Court of Sessions, South Bastar Dantewada.
5. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as nine witnesses. Accused/appellant was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and claimed innocence and false implication in crime in question.
6. After providing an opportunity of hearing to the parties, the trial Court has convicted and sentenced the appellant as aforementioned.
7. We have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

8. Learned counsel for the appellant submits that conviction of the appellant is substantially based on the evidence of Smt.Ayte Madkami (PW-1), wife of the deceased, who was sleeping with the deceased at the time of incident, although she has deposed that she has witnessed the incident, but it was dark night and it was not possible for her to witness the incident. As per her evidence, some discussion took place between appellant and deceased, the appellant took out spade and caused single blow, thereafter he has not taken the benefit of the circumstance. Even he was having sufficient opportunity to cause repeated blow, but after causing simple blow he has left the spot, which shows that he has not caused homicidal death amounting to murder of the deceased, therefore, in the present case, the act attributed to the present appellant does not travel beyond the scope of Section 304 Part-II of the IPC. Learned counsel further submits that the appellant is in custody since 19.12.2010.
9. On the other hand, learned Panel Lawyer for the respondent/State opposes the appeal and submits that evidence of Smt.Ayte Madkami (PW-1), who has witnessed the incident, is sufficient to establish the guilt of the appellant that the appellant has caused homicidal death of the deceased and by convicting and sentencing the appellant, the trial Court has not committed any illegality.
10. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the parties.
11. In the present case, homicidal death as a result of fatal injury found over the body of deceased Bhima Madkami has not been substantially disputed on behalf of the appellant, on the other hand, same is also established by the evidence of Smt.Ayte Madkami (PW-1), F.I.R. Ex.P/5, merg Ex.P/4, evidence of Dr.Kamal Sete (PW-9) and autopsy report Ex.P/12. Death of deceased Bhima Madkami was homicidal in nature.
12. As regards the complicity of the appellant in crime in question, conviction of the appellant is substantially based on the evidence of Smt.Ayte Madkami (PW-1). As per her evidence, she was sleeping along with her husband in her barn. At about 12 at night, the appellant came, some altercation took place between him and her husband i.e. deceased Bhima Madkami relating to the land, thereafter the appellant assaulted her husband by spade and



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fled from the spot. As per her evidence, the appellant has caused five blows, which does not find support from medical evidence and as per medical evidence, only one single blow has been caused. As per F.I.R. Ex.P/5 and merg Ex.P/5, the appellant has caused injury by spade, which was keeping near the place of incident.

13. As per evidence of Smt. AYTE Madkani (PW-1), appellant and deceased are brothers and at the time of incident, some discussion took place between them relating to the land, thereafter the appellant took out spade and caused single blow, he has not caused repeated blow and has not taken the benefit of the circumstances, which clearly shows that the appellant has not caused homicidal death amounting to murder of the deceased, but at the time of causing such injury that too by dangerous weapon spade, he was having definite knowledge that by his act, the deceased may die, which shows that the act attributed to the present appellant is not murder within the meaning of Section 302 of the IPC, but squarely falls within the ambit of Section 304 Part-II of the IPC.

14. After appreciating the evidence available on record, the trial Court has convicted and sentenced the appellant under Section 302 of the IPC, but while convicting and sentencing the appellant as aforementioned, the trial Court has not considered the aforesaid fact and thereby committed illegality.

15. 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 sentenced to undergo R.I. for six years and fine of Rs.100/-, in default of payment of fine to further undergo R.I. for one month. The appellant is in custody since 19.12.2010, he is entitled for set off for the period of detention. Compensation part of the judgment is unchallenged.

Sd/-
T.P. Sharma
Judge

Sd/-
Inder Singh Uboweja
Judge