

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1595 of 1999**

1. Nandu Yadav s/o. Bhagwat Yadav aged about 24 years, occupation Halwai, r/o. Subhash Road, Dongardah, Thana Dongargarh, District Rajnandgaon (CG).
2. Jila Yadav, s/o. Sukhu Yadav, aged about 32 years, occupation Halwai, r/o. Dhimrapara, Dongargarh, District Rajnandgaon (CG)

--Appellants**Versus**

- State of Chhattisgarh

---- Respondent

For Appellants : Mrs. Savita Tiwari and Mrs. Smriti
Shrivastava, Advocates.

For Respondent/State : Mrs. Madhunisha Singh, Panel Lawyer.

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Hon'ble Shri Pritinker Diwaker,
Hon'ble Shri Ram Prasanna Sharma, JJ

Per P. Diwaker, J**22-08-2017**

1. This appeal arises out of the judgment of conviction and order of sentence dated 16-4-1999 passed by the Special Judge, Rajnandgaon, in Special Case No. 51 of 1998, convicting the appellants under Sections 323, 304 Part II of the IPC read with Section 3 (2)(v) of the Scheduled Castes and Castes Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act, 1989")

and sentencing them to undergo RI for four months, to pay fine of Rs.500/-, in default of payment of fine to further RI for 15 days and life imprisonment and to pay fine of Rs.5000/-, in default of payment of fine to undergo further RI for two years with a direction to run both the sentences concurrently.

2. Brief facts of the case are that in the intervening night of 30-31/5/1998 accused/appellants had gone to the house of Mahendra Borkar (PW/2) to cook the food. It is said that at about 12.00 in the night, Kamlesh Thakur (PW/4) had asked accused/appellant No.2 Jila Yadav for his cycle, however, the same was refused and when it was being taken against the wish of accused/appellant No.2, some quarrel took place in which appellant No.1 Nandu Yadav was beaten by Kamlesh Thakur and others and thereafter, Kamlesh Thakur (PW/4), Rajesh Kumar Banjare (PW/8), Umesh, Laladas Manikpuri (PW/7), Sanjay, Suresh Meshram (PW/6) and Rajesh Shinde reached there carrying clubs in their hands and chased both the accused/appellants. Further case of the prosecution is that appellant No.1 was thrown on the ground and then appellant No.2 threw hot water on the opposite party. During the said quarrel, appellant No.1 assaulted Dharmendra (PW/12) and the quarrel was intervened by one Sashi. In the meanwhile, appellant as No.1 Nandu was wielding the firewood, it hit Sashi which resulted into his death.
3. Merg intimation was recorded vide Ex.P/6 on 31-5-1998 at 2.40

am, thereafter first information report (Ex.P/14) was registered against accused/appellants on the report lodged by PW/12 Dharmendra under Section 302/34, 294 of the IPC read with Section 3(1)(v) of the Act, 1989. Inquest of the dead body was conducted vide Ex.P/1 on 31-5-1998 and dead body was sent for postmortem which was conducted by Dr. N. Sachdev (PW/11) vide Ex.P/13 and single injury on the occipital region was noticed by Autopsy Surgen. Autopsy Surgeon further opined that cause of death of the deceased was due to head injury.

4. After filing of the charge-sheet, the trial Court has framed the charges against the accused/appellants under Sections 323, 294 on two counts and Section 302 of the IPC read with Section 3 (1) (x) of the Act, 1989 on two counts and Section 3(1)(v) of the Act, 1989.
5. So as to hold the accused/appellants guilty, the prosecution examined 16 witnesses in all. Statements of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.
6. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above.
7. At the out set, learned counsel for the appellants submits that

she is not pressing this appeal on merits and she would confine her arguments to the sentence part thereof only. She submits that during trial the appellants were in jail for about 10 months and 14 days and thereafter they remained in jail from 16-4-1999 to 6-3-2008. It has been argued that though bail was granted to the appellants on 6-3-2003, but thereafter also they remained in jail for about few days.

8. On the other hand, State counsel supporting the impugned judgment has submitted that the judgment impugned is strictly in accordance with law and there is no illegality or infirmity in it warranting any interference by this Court.
9. Heard counsel for the respective parties and perused the material on record.
10. PW/4 Kamlesh Thakur is eye-witness to the incident and has described the entire episode. According to him, accused person caused injury on the head of the deceased as a result of which he fell down and latter on he was declared dead. PW/12 Dharmendra Yadav is an injured eye-witness to the incident, has not supported the prosecution case. Postmortem report of the deceased also supports the prosecution case wherein PW/11 Dr. N. Sachdev noticed one lacerated wound on occipital region in the size of 1/2" x 1/2" skin thickness deep margin irregular, obliquely placed, bleeding out, clotted blood seen in hair.
11. PW/5 Dr. Rajesh Shende conducted MLC of PW/12 Dharmendra Yadav and noticed one lacerated wound of 3x5 cm behind left

ear over scalp and one linear abrasion 2.5 long over front of left elbow. PW/16 Rohit Kumar Kurre is the Investigating Officer has also supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that in the intervening night of 30-31/5/1998 there was some quarrel between accused/appellants and Dharmendra and in the incident initially accused/appellants were beaten and then single injury is alleged to have been caused by appellant No.1 Nandu on the head of the deceased Sashi when he intervened in the matter. Though Dharmendra PW/12 has not supported the prosecution case, but considering the post-mortem report of the deceased, we are of the view that the trial Court was justified in convicting the appellants under Section and 304 part II of the IPC.

13. So far as conviction of the appellants under Section 323 of IPC is concerned, as Dharmendra PW/12 has not supported the prosecution case, therefore, conviction of the appellants under Section 323 of the IPC is set aside. Likewise, conviction of the appellants under Section 3(2)(v) of the Act, 1989 is concerned, same is not sustainable in the eye of the law as it is not the case of the prosecution that because the deceased belongs to a particular caste he was killed. There is no evidence in such nature and basic ingredients of Section 3 (2)(v) of the Act, 1989 are completely missing. Accordingly, the appellants are acquitted of the charges under Section 323 and Section 3(2)(v)

of the Act, 1989.

14. Now the question that arises for consideration before us is as to what would be the appropriate sentence to be imposed on the appellants under Section 304 Part II of the IPC. Looking to the facts and circumstances of the case, in particular the fact that the incident took place 19 years back and the appellants have already remained in jail for about more than 4 years and ten months, we are of the view that it will not be appropriate to send the appellants back to jail after 19 years and ends of justice would be served if the appellants are sentenced to the period already undergone by them.
15. Accordingly, the appeal is partly allowed. While maintaining conviction of the appellants under Section 304 Part II of the IPC, they are sentenced to the period already undergone by them. However, the fine amount imposed by the trial Court shall remain as it is.
16. The appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.P. Sharma)
Judge

Raju