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IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

Cr. A. No. 402 /2004

APPELLANT

(IN JAIL)

: Murha, S/o. Juiya Madiya
Aged 35 years, R/o. Village
Dabpal, Dengpara, P.S.
Lohandiguda, District Bastar
(C.G.)

Filed on
by Shri

23.04.04
Sangeeta Mishra
Advocate

R. to D.R. (J)

VERSUS

RESPONDENT

: The State of Chhattisgarh
Through P.S. Lohandiguda
District Bastar (C.G.)

CRIMINAL APPEAL U/S. 374 (2) OF Cr.P.C.

AGAINST THE JUDGEMENT DATED 02.04.2004
PASSED IN S.T. NO.508/2003 BY THE SESSIONS

JUDGE BASTAR, AT JAGDALPUR (C.G.)



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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 402 of 2004

• Murha

---- Appellant

Versus

• State

---- Respondent

For Appellant : Ms. Sangeeta Mishra, Advocate
For Respondents-State : Shri S. Majid Ali, PL for the State

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Anil Kumar Shukla

Order On Board By

Prashant Kumar Mishra, J

20/02/2017

1. Appellant has assailed the legality and validity of his conviction under Section 302 IPC for committing murder of deceased Kesharu at about 5pm on 22.07.2003. He has been sentenced to undergo RI for life.
2. There are not too many facts in the case. Suffice it would be to mention that the appellant Murha, deceased Kesharu and Baisakhu went to the house of Samalmani (PW-2) at about 5 pm on the date of incident. They were already drunk, yet they demanded liquor from this witness, to which she answered that liquor is not available. On the veranda of her house, the appellant and the deceased raised quarrel whereupon the appellant allegedly caught hold of the neck of the deceased and gave two fist blows over his chest. The deceased fell down and became unconscious and later

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on succumbed to death.

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3. The above story has been recorded in the FIR and Merg Intimation lodged by Gundaru (PW-1) husband of Samalmani (PW-2). The postmortem examination was conducted by Dr. Virendra Singh Thakur (PW-8) at about 4 pm on 23.07.2003, however, he did not find any injury either internal or external over the person of the deceased.
 4. The trial Judge has convicted the appellant on the statement of eye-witness Samalmani (PW-2).
 5. The entire prosecution case revolves around the statement of Samalmani (PW-2) and Dr. Virendra Singh Thakur (PW-8), who conducted the postmortem. While Samalmani (PW-2) would support the case of the prosecution, Dr. Virendra Singh Thakur (PW-8) has proved the postmortem report (Ex-P/6A). In the postmortem report all organs were found healthy and on external as well as internal examination no injuries were found, therefore, the doctor preserved viscera for chemical analysis, however, the report of chemical analysis is not available. Dr. Virendra Singh Thakur (PW-8) could not accord any definite opinion about cause of death for want of any evidence of external or internal injury.
 6. In view of the medical report, the statement of Samalmani (PW-2) can be used only to the extent of fist blow and pressing of neck by the appellant, however, they do not correlate to the cause of death firstly because the doctor has not given any opinion about the cause of death and secondly there is no external or internal injury found on the person of deceased. Even if the statement of eye-witness Samalmani (PW-2) is believed and applied to its fullest possible magnitude, it will only prove offence against the appellant for causing simple hurt, which is punishable under Section 323

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IPC. We have formed this opinion because the appellant was neither armed nor used any weapon and the deceased has not suffered any injury which is attributable to the fist blow or pressing of neck by the appellant, therefore, it only falls within the definition of simple hurt and not more than that.

7. For the foregoing, we accordingly convert appellant's conviction from Section 302 IPC to Section 323 IPC. The appellant had remained in jail for about 8 months and 12 days during pendency of the trial and thereafter from 02.04.2004 (date of judgment) to 26.08.2008 when this Court directed appellant's release on bail. Thus, he has already undergone more than 5 years of jail sentence. The offence under Section 323 IPC is punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. Since the appellant has already undergone more than the maximum period of imprisonment, we direct that the period of imprisonment suffered by the appellant being more than the maximum period of imprisonment for offence under Section 323 IPC, the entire sentence deserves to be undergone.

8. In the result, the appeal is allowed in part in the terms stated above. His conviction under Section 302 IPC is set aside and instead he is convicted under Section 323 IPC and sentenced to the period already undergone by him. The appellant is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-

Judge

Prashant Kumar Mishra

Sd/-

Judge

Anil Kumar Shukla

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