

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 365 of 2010**

(Arising out of judgment dated 25.9.2009 in ST No.267/2008 of the learned Sessions Judge, Sarguja)

1. Dharamram @ Dharam @ Ghuran, son of Kashiram Panika, aged about 42 years, Occupation Driver.
2. Anil @ Anil Kumar Das S/o Dharam Das Panika, aged about 21 years, Occupation Student, resident of village Tinadfai Chirmiri, Police Station Chirmiri, District Korea, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh, through Police Station Lakhanpur, Sarguja, District Sarguja, Chhattisgarh.

---- Respondent

For Appellant : Shri Dharmesh Shrivastava, Advocate.
For Respondent : Shri Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****24/07/2017**

1. The appellants have been convicted under Sections 365/34 and 304 Part-I read with Section 34 of the IPC and sentenced to undergo RI for 5 years and 10 years respectively with fine of Rs.1,000/- for each of the offence and in default thereof to further undergo RI for 6 months.
2. The appellants kidnapped deceased Dalbir with intent to secretly and

wrongfully confine him and have thereafter killed him which may amount to culpable homicide. Deceased Dalbir lodged FIR against the accused persons, inter alia, stating that his son Kailash is married with Sharda, daughter of Dharam Ram of Chirmiri. On 18.5.2008, Sharda committed suicide in his house for the reason that she was not able to procreate the child, however, the parents of Sharda are wrongly alleging that he is responsible for the suicide of Sharda. On 22.5.2008, the appellants abducted Dalbir Das and assaulted him. He was taken to Ambikapur on motorcycle and left him near the Court building after severely beating him. Dalbir died in course of treatment on 10.6.2008.

3. In course of trial, the prosecution examined 10 witnesses, out of whom, (PW-3) Kashi Das, who happens to be elder brother of the deceased and (PW-4) Kailash Das, son of the deceased, are eyewitnesses. The appellants abjured the guilt and pleaded false implication. The trial Court has recorded finding of guilt under Sections 365/34 and 304 Part-I read with Section 34 of the IPC and sentenced both the appellants as mentioned in para-1 of this judgment.
4. FIR lodged by Dalbir has been proved by (PW-8) K.S. Tiwari, ASI, who recorded unnumbered FIR (Ex.-P/15), which was later on transferred to Police Station Lakhanpur and registered on Crime No.54/2008. This witness has stated that at the time of lodging FIR, Dalbir was fully conscious.

5. Eyewitnesses (PW-3) Kashi Das and (PW-4) Kailash have supported the prosecution case by stating that after commission of suicide by Sharda on 18.5.2008, the accused persons came to the house of the deceased at about 5-6 am on 22.5.2008 and assaulted him by lathi and thereafter abducted him. Though Kashi Das has been produced as eyewitness but he appears to have met the deceased for the first time in the District Hospital, Ambikapur during his treatment. Thus (PW-4) Kailash Das is the only eyewitness. The evidence of Kailash Das has been discussed in detail by the trial Court. I have not found any defect in the manner of evaluation of his evidence by the trial Court. His evidence is fully supporting the prosecution. Although Kashi Das is not an eyewitness but he appears to be a witness of oral dying declaration because the deceased had informed him about the incident.
6. (PW-6) Ramesh Chandra Mishra operates a betel shop near the Court premises, Ambikapur, where the deceased was lying unconscious at about 10 am on the date of the incident. Similarly, Suraj Kumar Yadav (PW-9) is the son of Tea Stall Owner near the place where unconscious body of the deceased was lying near the Court premises. The other witnesses examined by the prosecution are either witnesses of memorandum and seizure or the Police Officers who have conducted the investigation.
7. Postmortem report (Ex.-P/2) was submitted by Dr. K.R. Tekam (PW-2) who has stated that the deceased died on account of cardio respiratory

arrest due to injuries over lungs. At the time the deceased was admitted for treatment at District Hospital, Ambikapur, he was medically examined by Dr. A.K. Bansal (PW-1) who found blood clots over his back; abrasions over both thigh with pain; abrasion over right elbow and right forearm; one lacerated wound over right forearm; swelling and pain over left wrist.

8. From the evidence available on record, it appears, the deceased did not sustain any serious or grievous external injury nor he was assaulted by the appellants by using any sharp edged weapon. It further appears, the appellants had gone to the house of the deceased to question him about the death of Sharda. The appellants had no previous enmity with the deceased and were probably disturbed and perturbed because of the death of their daughter/sister Sharda.
9. In view of the above set of evidence, the appellants have rightly been convicted for committing culpable homicide not amounting to murder after abducting the deceased secretly and wrongfully with intent to cause his death. The appellants have been acquitted of the charges under Sections 302 or 302/34 of the IPC, however, the State has not preferred any appeal, therefore, I have only examined as to whether the appellants' conviction under Sections 365/34 and 304 part-I read with Section 34 of the IPC is justified or not.
10. As found in the preceding paragraphs, there is evidence to the effect

that the appellants have assaulted the deceased by hands, fists and lathi. They dragged him out of his house, abducted him and took him near Ambikapur Court Premises on motorcycle. At this place the deceased was further assaulted and when he became unconscious, they threw him on the ground and ran away. From the evidence of (PW-3) Kashi Das and (PW-4) Kailash Das as also the medical opinion rendered by Dr. A.K. Bansal (PW-1) and Dr. K.R. Tekam (PW-2), it is established that the deceased had sustained injuries and died on account of cardio respiratory failure due to injuries over left lungs. Thus, it was the case of culpable homicide not amounting to murder because the appellants were aware that by assaulting the deceased by means of lathi, they may cause his death but they had no intention to commit his murder.

11. Having held that the appellants have rightly been convicted, it is now to be considered as to whether the trial Judge has adequately sentenced the appellants or it requires further reduction.

12. Considering the fact that the appellants are relatives of the deceased Sharda, who committed suicide in the house of the deceased due to which they were disturbed and perturbed as also for the reason that they were not armed and had not taken any undue advantage or acted cruelly after the deceased became unconscious and further for the reason that they have already undergone pre-trial detention of about one year during trial and thereafter about 8 years after the impugned judgment which comes to more than 9 years of jail sentence, ends of justice

would be served if the sentence is reduced to the period already undergone by them.

13. Accordingly, the Appeal is allowed in part. While maintaining the conviction under Sections 365/34 and 304 Part-I read with Section 34 of the IPC, the appellants are sentenced to the period already undergone by them. They be set at liberty forthwith unless required to be detained in any other case.

Sd/-
Judge
(Prashant Kumar Mishra)

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