

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 956 of 2013

- Rajesh Sao S/o Panna Lal Sao Aged About 32 Years R/o Behind Ramnagar Joshi Lakdi Tal, Supela, PS Supela, Distt. Durg C.G

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Supela, Distt. Durg C.G.

For Appellant : Ms. Nirumapa Bajpai,
For Respondent/State : Mrs.Sunita Jain, Panel Lawyer.

Hon'ble Shri Manindra Mohan Shrivastava,
Hon'ble Shri Ram Prasanna Sharma, JJ

Per Manindra Mohjan Shrivastava, J.

16-9-2017

1. This appeal is directed against the judgment of conviction and order of sentence dated 12-7-2013 passed by Sessions Judge, Durg, District Durg, in Sessions Trial No. 4 of 2011 whereby and whereunder learned Sessions Judge after holding the appellant guilty for causing homicidal death amounting to murder of Jagish, convicted him under Sections 302 and 294 of the IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.1000/-, in default of payment of fine to undergo further RI for one year as also RI for three months and to pay fine of

Rs.100/-, in default of payment of fine to undergo RI for 15 days respectively.

2. According to prosecution story, on 18-9-2010 a tractor carrying cement and bricks got stuck into the drainage said to be in front of the house of the appellant Rajesh. While Rajesh was attempting to take out bricks, at the spot, it is said that the deceased Jagdish also arrived there. When Jagdish asked the appellant not to hurl filthy language upon women, a quarrel arose between them and then, it is alleged, the appellant gave a blow on the head of the deceased Jagdish, due to which Jagdish sustained injuries, fell down and became unconscious. Jagdish was admitted in hospital where he was treated and ultimately during the course of treatment he died on 19-9-2010. Initially first information report was registered against the appellant Rajesh for commission of offence under Sections 294, 506 and 323 of the IPC, but later-on when Jagdish died, Police registered the offence against the appellant under Section 302 of the IPC also.
3. Dead body of the deceased was examined and the Dr Anil Agrawal (PW/9) upon post mortem, opined that death was homicidal in nature on account of injury sustained by the deceased. Appellant was tried for alleged commission of offence by the trial Court by framing charges.
4. In order to prove the guilt of the appellant, prosecution examined as many as 17 witnesses. Accused/appellant was examined under Section 313 of the Code of Criminal Procedure, wherein

he denied the circumstances appearing against him and pleaded innocence and false implication in the case. Defence was taken by him that Jagdish sustained injury because of fall and he has not assaulted. No defence witness was examined. Relying upon the evidence adduced by the prosecution, particularly the evidence of eye-witnesses PW/8 Smt. Padma Tiwari, PW/10 Smt. Vimla Nishad and PW/11 Pappu Singh, the trial Court convicted and sentenced the appellant as aforementioned.

5. Learned counsel appearing for the appellant argued that the testimony of prosecution witnesses is doubtful inasmuch as there are material contradictions and omissions in the testimony of PW/8 Smt. Padma Tiwari. The evidence of other prosecution witnesses particularly that of PW/10 Smt. Vimla Nishad and PW/11 Pappu Singh also does not inspire confidence as they have not seen the incident, but they claimed to have arrived at the spot after the incident and only on suspicion that the appellant might have caused injury deposed against him. The defence taken by the appellant that Jagdish died due to fall on the road, is plausible one and cannot be ruled out. Therefore, in these circumstances, the appellant is entitled to be acquitted by giving benefit of doubt. Alternative submission of the appellant is that the even if the entire case of the prosecution including the evidence-of PW/8 Smt. Padma Tiwari is believed, it is a case where the dispute arose all of a sudden at the spot and without there being any intention to cause death and without any per-

meditation, in the heat of moment of quarrel, a single blow by a wooden plank is said to have been given by the appellant to Jagdish which resulted into unfortunate death of Jagdish. Therefore, looking into the circumstances, at the most the appellant can be held guilty of commission of offence punishable under Section 304 Part II of the IPC. The appellant has undergone more than six years rigorous imprisonment and in the given circumstances, the period already undergone by him may be imposed as sentence for commission of offence under Section 304 Part II of the IPC.

6. On the other hand, learned State counsel opposing the submissions of counsel for the appellant submits that the appellant was hurling abuses and filthy language upon woman and when Jagdish, arrived at the spot, he asked the appellant to behave properly, the appellant being enraged picked up a wooden plank and gave a blow on the vital part of the head of the deceased which clearly shows the intention of the appellant to cause death of the deceased. The case of the prosecution is supported by the evidence of eye-witness PW/8 Padma Tiwari, therefore, conviction of the appellant does not warrant any interference.
7. In order to prove the guilt of the appellant that he assaulted Jagdish resulting into death, prosecution has examined PW/8 Smt. Padma Tiwari, PW/10 Smt. Bimla Nishad and PW/11 Pappu Singh.

8. PW/8 Smt. Padma Tiwari has deposed that she knew the appellant as her neighbour and in her evidence she has stated that on 18th September, 2010 at about 3.30 p.m, in the afternoon, a tractor while crossing plunge into the drainage in front of her house. At that time, Rajesh arrived at the spot and started removing bricks. When he was removing the bricks, she advised him that he may take out the bricks but he should allow drainage, appellant Rajesh started abusing her and at that point of time, another resident of area, Jagdish (deceased) who was crossing arrived at the spot and advised appellant Rajesh not to hurl filthy language upon women. Thereafter, appellant Rajesh started abusing Jagdish and Jagdish again advised him stating that there are women around, therefore, such abuses should not be allowed. Rajesh got enraged and stated that my drainage is broken, therefore, I am abusing. Jagdish said again that one who broke the drainage will compensate you, but Rajesh should not hurl abuses. Thereafter, according to this witness, scuffle took place between Rajesh and Jagdish and at that time she went inside her house to close the gas connection and when she came out after one or two minutes, she saw that Rajesh assaulted Jagdish with the help of a club. When she tried to snatch away the club from the hand of Rajesh saying that why he should go to the extent of assaulting Jagdish on a petty matter, Rajesh warned her to leave the place, otherwise he will assault he also. She has further stated that Rajesh assaulted

Jagdish by club and because of assault Jagdish started bleeding, thereafter Rajesh threw away the club and fled away from the spot. Jagdish was taken to hospital. This witness has been examined in detail, but nothing could be elicited to doubt the testimony of this witness with regard to the incident witnessed by her wherein she has stated that in a quarrel appellant Rajesh assaulted the deceased with the help of club. This witness is not related to any of the parties. There is nothing to show that she has any reason to falsely implicate the appellant. She is a natural witness being resident to the area where the incident took place.

9. Other prosecution witness Smt. Bimla Nishad (PW/10) deposed that on the date of incident at about 3.00 pm in the after noon when she was in her house, a quarrel was going on near her house and then she came out, she saw number of persons had gathered and appellant Rajesh was holding a club in his hand and Padma was trying to snatch the club from his hand and Jagdish was bleeding and lying on the road. She further says that she does not know as to who assaulted Jagdish but she had only seen the appellant holding a club. From the evidence of this witness, all that can be proved is that when she arrived on the spot, she had seen the appellant Rajesh holding a club, Padma trying to snatch the cub from the hand of the appellant, Jagdish lying on the road and he was bleeding. This witness corroborates the evidence of PW/8 Padma Tiwari who has stated

about the complete incident. From the evidence of this witness, it is clear that this witness arrived at the spot, soon after assault was given to Jagdish.

10. The other prosecution witness Pappu Singh (PW/11) though deposed that he saw the appellant assaulting Jagdish in his cross examination, he was confronted with his case diary statement Ex.D/1, the omission of the said part of his evidence of having seen the incident. Therefore, the evidence of this witness cannot be relied as eye-witness to the incident.
11. From the aforesaid testimonies of PW/8 Smt. Padma Tiwari, PW/10 Smt. Bimla Nishad and to some extent of testimony of PW/11 Pappu Singh, it is proved beyond all reasonable doubt that it is the appellant who had assaulted Jagdish with help of club due to which Jagdish fell down, became unconscious and was taken to hospital where he was treated till he died on the next day.
12. PW/9 Dr. Anil Agrawal, who conducted post-mortem has been examined and in his evidence he has stated regarding injuries as below:

“Rigor mortis, eyes are semi open – all vital organs congested, right hand occipital bone fractured. Right parietal bone removed, clotted blood was present, stitched right parieto-temporal region, lacerated wound stitched in left side of skull. Clott and haematoma present in skull”

The doctor opined that cause of death in this case is due to cardio respiratory failure due to shock, neurogenic and haemorrhagic shock due to anti-mortem head injury.

13. Nothing could be elicited from cross examination to doubt the testimony of Doctor Anil Agrawal (PW/9) either to the extent of injury or cause of death, therefore, it has to be held that the deceased died homicidal death due to injury sustained by him.
14. It has now to be seen as to whether it is a case of homicidal death or murder. The circumstances and the back ground, manner in which the incident happened, has been narrated by eye-witnesses PW/8 Smt. Padma Tiwari, PW/10 Smt. Bimla Nishad & PW/11 Pappu Singh According to the evidence of these witnesses, when a tractor got plunged into drainage in front of the house of Rajesh, Rajesh started taking out the bricks and started hurling abuses and at that time Jagdish reached on the spot and advised him not to abuse, then scuffle took place between them. It is in this process that all of a sudden appellant is said to have given a blow on the head of deceased Jagdish. Thus, the evidence of prosecution witnesses does not show that the appellant had arrived on the spot along with club and minute scrutiny of the evidence further shows that the appellant picked up a wooden plank/club which was available on the spot and then gave a single blow on the head of Jagdish. It has to be seen that the appellant gave a single blow to Jagdish and no

other assault was given by him even after Jagdish fell down on the road.

15. From the evidence of the prosecution witnesses, it is proved that the incident was out of the said quarrel between the appellant and deceased Jagdish and in heat of passion and without any pre-meditation the appellant gave a single blow by a wooden plank on the head of Jagdish which led to unfortunate death of Jagdish in the hospital next day. Therefore, on the totality of the circumstances, we are of the opinion that present is a fit case for converting the conviction of the appellant from Section 302 of IPC to that under Section 304 Part II of the IPC, particularly when we find that there is nothing on record to show that the appellant had taken undue advantage or acted in cruel manner.
16. In so far as conviction of the appellant under Section 294 of the IPC is concerned, we do not find any reason to interfere with the conviction. Record speaks that the appellant was arrested on 21-9-2010 and he absconded on 5-7-2011 for which he was again arrested on 29-7-2012 and since then he is in jail, thereby the appellant has undergone more than six years of rigorous imprisonment. In the facts of the case, we are inclined to hold that the sentence for the period already undergone by him would meet the ends of justice while convicting the appellant under Section 304 Part II of the IPC

17. In the result, the appeal is partly allowed. Conviction of the appellant under Section 302 of the IPC is altered to conviction under Section 304 Part II of the IPC and he is sentenced to undergo RI for the period already undergone by him. The appellant is in jail since 29-7-2012 and he be released forthwith, if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(R.P. Sharma)
Judge

Raju