

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 924 of 2012

- Akash Sonwani S/o Kashinath Sonwani Aged About 20 Years R/o Kondagaon Jampadar Para Distt. Bastar C.G.

---- Petitioner

Versus

- State of Chhattisgarh Through - Ps Gidam Distt. Dantewada C.G. , Chhattisgarh

---- Respondent

For Appellant	:	Mr. P.K. Tulsihyan and Mr. Parag Kotecha, Advocates.
For respondent/State	:	Mr. Lav Sharma Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

06-12-2018

1. This appeal is preferred against the judgment of conviction and order of sentence dated 29-8-2011 passed by the Sessions Judge, South Bastar, Dantewada (CG) in Sessions Trial No. 127 of 2010 wherein the said Court has convicted the appellant for commission of offence under Sections 304 Part II of IPC (culpable homicide, not amounting to murder) and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1000/- with default stipulations.

2. In the present case name of the deceased is Uday Markande. As per version of the prosecution there was some altercation between the father of the appellant namely Kasi and the deceased on account of working in “brick kiln” and after some time the appellant assaulted the deceased by axe on his death and throat resulting in death of the deceased. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) Prosecution has failed to produce any independent witness and eye-witness account to the incident is not dependable, therefore, finding of the trial Court is not sustainable.
- ii There are huge contradictions and omissions in the statements of the prosecution witnesses and the case of the prosecution is not proved beyond shadow of doubt, even then the trial Court recorded finding of conviction which is liable to be reversed.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. From the statement of Kunwar (PW/1), Raghuram Patle (PW/2), Raju Kurre (PW/3), Jitendra Kurre (PW/4), Naresh Sonwani (PW/5) and Vasudev (PW/6) it is established that the appellant assaulted the deceased on his death and throat by axe. Version of this witness is supported by version of Dr. Vijay Singh Thakur (PW/9) who conducted autopsy of the deceased on 17-3-2010 at Community Health Centre, Geedam and noticed the following injuries on the body of the deceased.

- i) Incised wound with clotted blood on forehead and frontal region about 3"x1/2"x1/2" and fracture of frontal bone present.
- ii) Incised wound with clotted blood on middle of the neck region about 3"x1/2"x1/2" and fracture of thyroid bone .
- iii) Blackish clotted blood present over both hands, chest region and wrist region.

6. As per version of this expert, deceased died due to excessive bleeding and respiratory failure. Duration of death of death was about 15 – 16 hours since examination and nature of death is homicidal. From the direct and supportive evidence of medical expert, it is established that death of the victim is caused by the appellant and same is homicidal in nature.

7. Now the question for consideration of this court is whether it is a case of murder or culpable homicide. PW/1 Kunwar deposed that father of the victim assaulted the appellant and tied him with rope and thereafter this incident occurred. PW/2 Raghuram Patle deposed on same line. As per version of this witness, deceased and father of the appellant had altercation before the incident. PW/3 Raju Kurre deposed that there was altercation between the appellant and the deceased and both have involved in assaulting each other. Jitendra Kurre (PW/4) deposed that there was scuffle between the appellant and the deceased. PW/5 Naresh Sonwani deposed on same line.

8. Looking to the entire evidence the trial Court opined that it is a case where deceased is attacked without pre-meditation in a sudden fighting in the heat of passion upon sudden quarrel, therefore, it may be a case of sudden provocation and the appellant could have deprived of the

power of self control which falls within exception 1 of Section 300 of IPC and the offence of the appellant falls under Section 304 Part II of IPC.

9. After assessing the evidence, this court has no reason to record contrary finding. It is not a case where the trial Court has recorded finding on the basis of any irrelevant or extraneous manner. Finding of the trial Court is based on relevant material placed on record and same is not liable to be interfered with. Conviction of the appellant for offence under Section 304 Part II of IPC is hereby affirmed.

10. Heard on the point of sentence.

The trial Court awarded RI for ten years for offence under Section 304 Part II of IPC which cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with.

11. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per report of the jail authorities, the appellant has suffered full jail term and after getting benefit of remission he has been released from jail, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

