

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 398 of 2009**

Amar Say, S/o Dayaram Uranw, aged about 41 years, Occupation Agriculture, R/o Village- Kanchothipara Damdam Chowki Kotamikala, Police Station- Pendra, District- Bilaspur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through: Police Station Pendra, District-Bilaspur (C.G.)

---- Respondent

For Appellant : None.

For State/respondent : Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

14/12/2018

1. Ms. Meenakshi Sharma, Advocate has been engaged for arguing the case on behalf of the appellant. Despite repeated calls, she has not appeared when the case is called for final hearing, therefore, Mr. Keshav Dewangan, Advocate, who is present in the Court has been appointed as *Amicus Curiae* to argue the case on behalf of the appellant.
2. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 04.04.2009 passed by Additional Sessions Judge, Pendraroad, District-Bilaspur (C.G.) in Session Trial No. 46/2008, wherein the said court convicted the appellant for commission of offence under Section 304 (Part-II) of IPC, 1860 and sentenced to undergo R.I. for 7 years.
3. In the present case, name of the deceased is Chandra Kunwar who is wife of the appellant. As per version of the

prosecution, on 28.05.2008 at about 3.00 p.m., there was quarrel between appellant and his wife regarding cooking of food and thereafter, the appellant assaulted mercilessly which resulted into her death. The matter was reported, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

4. This appeal is preferred on the following grounds :-

(i) The eyewitness account to the incident namely Shiv Narayan (PW-7) has deposed in his cross-examination that he had not seen the incident because, he was in room of the house whereas the incident took place at outside of the room and on inner court yard of the house, therefore, his version is not dependable. The other witnesses reached the spot after the incident and their version is not supportive piece of evidence.

(ii) The trial court did not ponder of the fact that there is no evidence that the injuries were inflicted by the appellant, therefore, the finding arrived at by the trial court is not sustainable and the same is liable to be reversed.

5. Learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

6. Dr. Dilip Singh Paikra (PW-13) examined the deceased. As per version of this witness, he found that 3rd, 4th & 5th ribs are

broken and muscles were smashed. He further found a number of abrasions in different part of the body and as per version of this medical expert, all the injuries are caused by hard and blunt object. He further opined that death is homicidal in nature. Version of this witness was subjected to searching cross-examination, but he remained unshaken. There is no other medical expert opinion contrary to the opinion of this medical expert, therefore, it is established that death of Chandra Kunwar is homicidal in nature.

7. Shiv Narayan (PW-7) is son of the appellant. He was present at the same house where the incident took place. As per version of this witness, the appellant assaulted his mother. Though, he deposed that he was in some other room but the fact remains that presence of father and mother in the same house is evident by this witness, therefore, it is established from his evidence that the appellant assaulted the deceased and no one else.
8. It is settled law that for proving any guilt, no minimum number of witnesses shall be required as per Section 134 of the Indian Evidence Act, 1872. It has enshrined the well recognized maxim that evidence has to be weighed and not counted. Though, the other witnesses have not seen the incident, but it is not essential that any witness should be seen by a number of person. Again, there is no material contradiction or omission in the statement of Shiv Narayan (PW-7), which go to the root of the case. Any minor contradiction which do not

go to the route of the case are insignificant and the same is not adversely affect the case of the prosecution.

9. It appears that the incident took place on account of quarrel between wife and husband and act of the appellant is unintentional. Looking to the unintentional act of the appellant, the trial court opined that case of the appellant falls within mischief of Section 304(Part-II) of the IPC and this Court has not reason to record contrary finding. For commission of offence under Section 304(Part-II), the trial court convicted the appellant and the same is not liable to be interfered with and conviction of the appellant is hereby affirmed.

Heard on the point of sentence

10. The trial court awarded R.I. for 7 years which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
11. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge