

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 12-11-2018****Delivered on 16-11-2018****CRIMINAL APPEAL No. 2560/1998**

(Arising out of judgment of conviction and order of sentence dated 22-9-1998 passed by the Addl. Sessions Judge, Manendragarh, Camp Court, Surajpur, distt. Sarguja (Madhya Pradesh) (now Chhattisgarh) in S.T. 456/1993)

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Ram Singar son of Sunder Bargah, aged about 35 years, village Dudhodih, P.S.H. Jhilmilli, Distt. Sarguja (MP) (now CG)

----Appellant**-Versus-**

State of Madhya Pradesh (now Chhattisgarh) through PSH Jhilmilli, distt. Sarguja (CG)

----Respondent

For appellant : Ms. Meena Shashtri, Adv.

For State : Mr. R.K. Pandey, PL.

Hon'ble Shri Sharad Kumar Gupta, Judge

CAV JUDGMENT

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 22-9-1998 passed by the Addl. Sessions Judge, Manendragarh, Camp Court Surajpur, distt. Sarguja (Madhya Pradesh) (now Chhattisgarh) in S.T. 456/1993 whereby and whereunder he convicted the appellant for offence punishable under Section 304 part II of the Indian Penal Code (in brevity 'IPC') and sentenced to undergo RI for 5 years and to pay a fine of Rs. 5,000/-, in default of payment of fine to further undergo RI for 2 years.

2. In brief, case of the prosecution is that appellant is son-in-law of deceased Sampatram. On 26-8-1993, deceased, his wife Dilbasia, his son Jailal Bargah had gone to appellant's house on invitation of meals.

Appellant quarreled with his wife on account of not cooking meals quickly. Jailal Bargah intervened. Appellant started beating to Jailal Bargah by hands and fists. Deceased also intervened, appellant being aggrieved caused injury on the head of the deceased from blunt side of axe. Deceased died after some time. Next day i.e. 27-8-1993, Jailal Bargah lodged report in PS Jhilmili. After completing the investigation a charge sheet was filed against him. Trial Court framed charge against him under Section 302, IPC. After conclusion of trial, trial Court acquitted him from the charge punishable under Section 302, IPC however convicted and sentenced him as aforesaid.

3. Hence, this appeal.

4. Ms. Meena Shashtri, counsel for the appellant strenuously argued that trial Court has not appreciated the evidence in its proper perspective. Thus, aforesaid conviction and sentence are bad in the eyes of law and not sustainable. Thus, aforesaid conviction and sentence may be set aside and the appellant may be acquitted of the aforesaid charge.

5. Mr. R.K. Pandey, Panel Lawyer for the State submitted that aforesaid conviction and sentence are based on clinching evidence led by the prosecution. He supported the aforesaid conviction and sentence and submitted that no interference is called for by this Court.

6. As per the post mortem report Ex. P-15, P.W. 8 Dr. Amit Saxena had conducted post mortem of the dead body of the deceased and found one lacerated wound on top of head size 3" x 1" x 1/2". On dissection he found that fracture was present in skull bone below the said injury. He opined that death was due to ante mortem injury of head and fracture of skull bone leading to coma.

7. There is no such evidence on record on strength of which it can be said that Ex. P-15 is not believable. Thus, this Court believes on Ex. P-15.

8. After appreciation of the evidence discussed herebefore, this Court finds that prosecution has proved beyond reasonable doubt that the death of the deceased was culpable homicide.

9. P.W. 1 Dilbasia who is wife of deceased turned hostile, says in para 1 of her statement given on oath that she had seen that deceased had fallen down in the courtyard of the appellant in injured condition.

10. P.W. 2 Jailal who is the son of the deceased turned hostile says in para 1 of his statement given on oath that deceased had fallen down in the courtyard of the appellant.

11. P.W. 3 Smt. Dhanmat Bai who is the daughter of the deceased and wife of the appellant turned hostile says in para 1 of her statement given on oath that her father was lying down on the ground, the deceased, Jailal, and appellant had gone out of the house in drunken condition.

12. P.W. 4 Sadharan Ram who has turned hostile says in para 1 of his statement given on oath that he saw that deceased was found dead on the ground.

13. P.W. 5 Ramlal who is son of the deceased has turned hostile says in para 2 of his statement given on oath that he saw that the deceased was lying on ground beside the house of the appellant.

14. P.W. 7 Ahibaran who is son of the deceased has turned hostile says in para 2 that he saw that deceased was lying 20 hands away from the house of the appellant.

15. P.W. 1 Dilbasia says in para 1 that appellant was not present on

the spot.

16. P.W. 1 Dilbasia says in para 5 during her cross-examination that this is true that P.W. 2 Jailal and appellant had brought the deceased from the courtyard, the appellant had not absconded. P.W. 2 Jailal says in para 1 that he and the appellant had brought the deceased to the house from courtyard. In these circumstances, this Court disbelieves aforesaid statements of para 1 of P.W. 1 Dilbasia that appellant was not present on the spot.

17. P.W. 1 Dilbasia says in para 1 that later police found appellant at village Khopa.

18. P.W. 5 Ramlal says in para 4 that next day appellant was caught hold at village Khopa by police.

19. P.W. 1 Dilbasia says in para 5 that this is true that the appellant had gone to take medicine to village Khopa. Thus, prosecution does not get any help from the aforesaid statement of para 1 of P.W. 1 Dilbasia that later on police found the appellant at village Khopa, and from aforesaid statement of para 4 of P.W. 5 Ramlal.

20. P.W. 5 Ramlal says in para 3 that this is true that he had seen appellant running away along with axe.

21. P.W. 5 Ramlal says in para 5 during her cross-examination that this is true that he had not seen appellant running away along with axe. Thus, this court disbelieves aforesaid statement of para 3 of P.W. 5 Ramlal that he had seen appellant running away along with axe.

22. P.W. 5 Ramlal says in para 3 that his mother Dilbasia, sister Dhanmat, brother Jailal, Ahibaran and Devlal had told him that appellant after causing the injury by axe to his father, ran away.

23. P.W. 1 Dilbasia, PW. 2 Jailal, PW. 3 Dhanmat Bai, P.W. 7

Ahibaran do not say that they had told P.W. 5 Ramlal that appellant after causing injury by axe to his father ran away. Thus, this Court disbelieves aforesaid statement of para 3 of P.W. 5 Ramlal that his mother, his sister Dhanmat, brother Jailal, Ahibaran and Devlal had told that appellant had run away after causing injury to his father by axe.

24. P.W. 7 Ahibaran says in para 1 that his mother shouted that 'son come, appellant is running away after killing his father'. His mother had told him that appellant ran away after causing injury to his father.

25. P.W. 1 Dilbasia does not say in his statement that she had shouted that 'son come, appellant is running away after killing his father'. She had told to PW. 7 Ahibaran that appellant ran away after causing injury to his father. Thus, this Court disbelieves aforesaid statement of para 1 of P.W. 7 Ahibaran that, his mother shouted that 'son come, appellant is running away after killing his father'. His mother had told him that appellant ran away after causing injury to his father.

26. Looking to the above mentioned facts and circumstances of the case this Court finds that from the aforesaid statements of para 1 of P.W. 1 Dilbasia, P.W. 2 Jailal, P.W. 3 Dhanmat Bai, P.W. 4 Sadharan Ram, P.W. 5 Ramlal, para 2 of P.W. 7 Ahibaran, strong suspicion is created against the appellant but it is well settled law that Suspicion, however strong it may be, cannot take the place of proof. Thus, this Court finds that from the aforesaid statements of Para 1 of P.W. 1 Dilbasia, P.W. 2 Jailal, P.W. 3 Dhanmat, P.W. 4 Sadharan Ram, P.W. 5 Ramlal, para 2 of P.W. 7 Ahibaran, the appellant cannot be fasten for commission of any offence.

27. After appreciation of the evidence discussed herebefore, this Court finds that the prosecution has failed to prove beyond reasonable

doubt the charge punishable under Section 304 para II, IPC or any other minor offence whose ingredients are included in Section 304-II, IPC, against appellant. Thus this Court finds that trial Court had committed gross illegality while convicting and sentencing the appellant as aforesaid. Hence, the appeal is allowed. Aforesaid conviction and sentence of the appellant are set aside. He is acquitted of the charge punishable under Section 304-II, IPC.

28. If the appellant has deposited the fine amount imposed by the trial Court, the same be returned to him after expiry of the prescribed period for further legal action available to the parties.

29. The appellant is reported to be on bail. His bail bonds are cancelled subject to the provisions of Section 437-A of the Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge