

NAFRHIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No. 733 of 2002

- Babulal S/o Tijram, aged about 22 years, R/o Baksara, P.S. : Janjgeer, Distt. Jangeer Champa (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh, Through Police Station, Janjgeer-Champa (C.G.)

---- Respondent

For appellant : Shri S.C. Verma, Advocate

For State : Shri Vinod Tekam, Panel Lawyer

JUDGMENT ON BOARDHon'ble Shri Sharad Kumar Gupta, Judge

(25-9-2018)

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 14-5-2002 passed by Fourth Additional Sessions Judge, FTC Janjgir Sessions Division Bilaspur in ST No. 210/2001 whereby and whereunder he convicted appellant u/s 304 part II of the Indian Penal Code (hereafter called as 'IPC') and sentenced him to undergo RI for 5 years and fine Rs. 1,000/-, in default of payment of fine, to further undergo RI for 3 months.
2. In brief the prosecution story is that deceased Bhuri Bai was the resident of village Baksara. On 03-05-2001 at about 10 am a dispute was arisen between appellant, coaccused Dashelal, Gendulal, Jhapelhin Bai and deceased Bhuri Bai regarding cutting of mango bow which fell on the roof of the house of deceased Bhuri Bai. Appellant and said coaccused caused

injuries to deceased Bhuri Bai by pelting stones. As a result of injuries deceased Bhuri Bai died. After completion of the investigation, a charge-sheet was filed against the appellant and said co-accused. Trial Court framed charges against the appellant and said coaccused u/s 302 alternatively 302 r/w 34 IPC. After conclusion of the trial, Trial Court convicted and sentenced appellant as aforesaid and acquitted the said co-accused from the offence punishable under Section 302 r/w 34 IPC.

3. Being aggrieved, the appellant has preferred this Criminal appeal.
4. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentence of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charge.
5. Counsel for the State argued that the conviction and sentence of the appellant is based on clinching evidence. The conviction and sentence of the appellant do not call for interference by this Court.
6. As per the alleged post mortem report Ex. P 10, PW10 Dr. Arvind R. Dwivedi had conducted the autopsy on the dead-body of the deceased Bhuri Bai. He opined that deceased Bhuri Bai had died of Syncope due to laceration in the heart. The nature of the death was homicidal.
7. There is no such evidence on record on strength of which it can be said that Ex. P10 is not believable. Thus, this Court believes on Ex. P10.
8. PW13 Amrit Bai says in para 1 of her statement given on oath

that appellant was beating deceased Bhuri Bai by stone and brick.

9. PW14 Horil Bai says para 1 of her statement given on oath that appellant was beating Bhuri Bai by bricks and stones.
10. PW16 Mahettar says in para 1 of his statement given on oath that Horil Bai had told him that appellant had killed deceased Bhuri Bai by bricks and stones.
11. There is no such evidence on record on strength of which it can be said that aforesaid statements of PW13 Amrit Bai, PW13 Horil Bai, PW16 Mahettar are not believable.
12. Looking to above mentioned facts and circumstances of the case, this Court finds that prosecution has succeeded to prove the charge punishable under Section 304 part II IPC against the appellant. Thus the trial Court has not committed any illegality in convicting and sentencing the appellant as aforesaid. Hence, the appeal is dismissed and aforesaid conviction and sentence of the appellant are hereby affirmed.
13. As per the report of Central Jail, Bilaspur, the appellant has been released from jail on 13-08-2004 on completion of jail sentence extending him benefit of remission and he has already deposited the fine amount in jail, thus no further order is required.

Sd/-

(Sharad Kumar Gupta)
Judge