

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRIMINAL APPEAL No. 765/2001**

(Arising out of judgment of conviction and order of sentence dated 17-7-2001 passed by Third Additional Sessions Judge, Ambikapur, Surguja (CG) in ST No. 71/2000)

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Kabeer Ram S/o. Gundruram Nagvanshi aged 40 years, occupation Agriculture, caste Tribe, R/o. Village Gautiyapara Patela, P.S. Sitapur, Distt. Surguja (Ambikapur), CG **----Appellant**

-Versus-

State of Chhattisgarh through P.S. Sitapur, Distt. Surguja (Ambikapur), CG **----Respondent**

For appellant : None.

For State : Shri Suryakant Mishra, PL.

Hon'ble Shri Sharad Kumar Gupta, Judge**ORAL JUDGMENT****3-10-2018**

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 17-7-2001 passed by Third Additional Sessions Judge, Ambikapur, Surguja (CG) in ST No. 71/2000 whereby and whereunder he convicted the appellant for the offence punishable u/s 304 (part – 2) of the Indian Penal Code (in short “the IPC”) and sentenced him to undergo RI for 5 years.

2. This is admitted by the appellant that he is the father of deceased Dilbandhu.

3. In brief, case of the prosecution is that on 10-1-2000 at about 8 – 9 pm at village Patela, the appellant caused head injury to the deceased on account of land dispute. On 11-1-2000, when he was taken to hospital, Ambikapur, doctor told that he had already died. A mere intimation was lodged in police station Sitapur. After completion of the investigation a charge sheet was filed against the appellant. The Trial Court framed the charge against the appellant u/s 302, IPC. Appellant abjured the charge and faced trial.

4. After conclusion of the trial, Trial Court acquitted the appellant of the charge punishable under Section 302, IPC, but convicted and sentenced the appellant as aforesaid.

5. Counsel for the State argued that the conviction and the 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 PM report Ex. P-9, P.W. 5 Dr. M. Nikunj had conducted the autopsy on the dead body of deceased. He had found a lacerated wound on the forehead of the deceased size 5 cm x 3 cm x ½ cm. On internal examination he had found a fracture on the forehead of the deceased size 5 cm x 3 cm. He opined that the death of the deceased was due to hemorrhagic shock as a result of fracture of forehead.

7. There is no such evidence on record on strength of which it can be said that Ex. P-9 is not believable. Thus this Court believes on Ex. P-9.

8. P.W. 2 Phool Kuwari says in para 1 of her statement given on oath that the appellant had caused the injury on the head of her husband by club.

9. P.W. 1 Luri Ram says in para 6 of his statement given on oath that wife of the deceased had told him that her father-in-law had caused injury on the body of the deceased.

10. P.W. 6 Pattu Ram says in para 7 of his statement given on oath that the appellant had told that he had beaten the deceased.

11. P.W. 8 Tihul Das says in para 1 of his statement given on oath that wife of the deceased had told him that the appellant had beaten the deceased by club. Injury was caused on the head of the deceased.

12. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W. 2 Phul Kuwari, P.W. 1 Luri Ram, P.W. 6 Pattu Ram, P.W. 8 Tihul Das are not simple, not natural, not normal. Thus, this Court believes on the aforesaid statements of P.W. 2 Phul Kuwari, P.W. 1 Luri Ram, P.W. 6 Pattu Ram, P.W. 8 Tihul Das.

13. Looking to the above mentioned facts and circumstance of the case this Court finds that prosecution has succeeded to prove beyond reasonable doubt the charge punishable under Section 304 (part-2) of the IPC against the appellant. The sentence awarded by the Trial Court is just and sufficient, and not excessive. Consequently the aforesaid judgment of the conviction and order of the sentence are hereby affirmed.

14. Consequently, the appeal being devoid of merit, deserves to be and is hereby dismissed.

15. As per report of the Central Jail, Ambikapur dated 7-12-2017 appellant has been released on 27-3-2004 after completion of sentence, thus, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge