

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 416 of 2009

Shaniram Aghariya S/o. Budhram Aghariya, Aged about 36 Years,
R/o. Village Ongna, Police Station Dharamjaigarh, District Raigarh
(C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Gharghoda, District
Raigarh (C.G.)

---- Respondent

For Appellant : Ms. Nirupama Bajpai, Advocate
For Respondent : Mr. Vijay Bahadur Singh, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

28.04.2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 30.03.2009 passed by the Sessions Judge, Raigarh, Session Division Raigarh (C.G.) in Sessions Trial No.95/2008, wherein the said Court convicted the accused/appellant under Section 304 Part-I of the IPC and sentenced him to undergo R.I. for 10 years.

2. In the present case, name of the deceased is Amar Sai. As per the prosecution case, on 30.05.2008 a report was lodged in Police Station Gharghoda wherein it is alleged that on the marriage ceremony of daughter of Itwar Singh, the appellant and

Amar Singh were invited. On the date of incident the appellant and Amar Singh went to pond for bath but Amar Singh did not return after bath. After inquiring about Amar Singh, the appellant stated that he killed Amar Singh and thrown him near Primary school under construction. Further case of the prosecution is that the dead body of the deceased was found near Primary School under construction and as per extra judicial confession of the appellant he was charge sheeted as mentioned above to which the appellant did not plead guilty. The trial Court conducted the trial and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C. was recorded and after completion of trial, the trial Judge considering the material available on record by the impugned judgement convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant submits that the case of the prosecution is based on circumstantial evidence and chain of circumstance is incomplete. The witnesses of memorandum and seizure have not supported the case of the prosecution. He further submits that the statement of the prosecution witnesses are contradictory in nature and the same cannot be relied upon.

4. Per contra, learned State counsel supporting the impugned judgement has submitted that the judgement of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. I have heard counsel for the parties and perused the material on record.

6. Postmortem of the deceased was conducted by Dr. Vijay Kumar Lakda (PW-19) and he noticed the following injuries

(I) Multiple depressed and lacerated wound left side face and swelling.

(ii) Lacerated wound left side forehead two sites and welling over maxillary prominence.

(iii) Lacerated wound (multiple) various sizes blood put on left side of face nasal bone fracture and depressed.

(iv) Left side temporal region marked swelling.

(v) Left side of mandible bone deformed and swelling.

(v) Blood nasal cavity fall and dried blood. Multiple lacerated wound variable size.

As per version of this witness all the injuries were caused within 24 hours of the examination. All the injuries were antimortam in nature. He further opined that the caused of death due to hemorrhagic shock due to head injury and excessive blood loss and nature of death is homicidal. Version of this witness is unshaken during cross examination and there is no other expert evidence to rebut the same. It is established that the death is homicidal.

7. Kartikram Aghariya (PW-11), Manglai Bai (PW-12) and Firmet (PW-13) all the three witnesses deposed before the trial Court

that the appellant made extra judicial confession before them and thereafter, the body of the deceased was found in pool of blood. These witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence. There is nothing on record to show that these witnesses have any grudge against the appellant to rope him in a false charge. The trial Court opined that the injuries were inflicted by the appellant to the deceased is unintentional but within the knowledge of the appellant that it may cause death of the deceased. In the opinion of this Court, the findings of the trial court is based on proper marshaling of the evidence and the same is not liable to be interfered with and looking to the evidence adduced by the prosecution, conviction of the appellant is hereby affirmed.

8. It is informed by the learned State counsel that the appellant has already been released from the jail after remission. As the appellant suffered full terms of jail sentence, therefore, no further order is required.

Sd/-
(Ram Prasanna Sharma)
JUDGE