

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRIMINAL APPEAL No. 990/2008**

(Arising out of judgment of conviction and order of sentence dated 23-7-2008 passed by Additional Sessions Judge, Janjgir, Distt. Janjgir Champa (CG) in ST No. 70/2008)

...

1. Kartik Ram S/o. Mahadev Sidar, aged about 25 years, R/o. Village Latia, Police Station- Akaltara, Distt. Janjgir- Champa (CG)
2. Sunil Kumar S/o. Mani Ram Jagat, aged about 25 years, R/o. Village Latia, Police Station Akaltara, Distt. Janjgir- Champa (CG)

---Appellants**-Versus-**

State of Chhattisgarh through Police Station, Akaltara, Distt. Janjgir- Champa (CG)

---Respondent

For appellant : None.

For State : Shri Vasim Miyan, 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 23-7-2008 passed by Additional Sessions Judge, Janjgir, Distt. Janjgir Champa (CG) in ST No. 70/2008 whereby and whereunder he convicted both the appellants for the offence punishable u/s 304 (part – 2) of the Indian Penal Code (in short “the IPC”) and sentenced them to undergo RI for 10 years and to pay fine of Rs. 1,000/- each, in default of payment of fine, to further undergo additional RI for 3 months.

2. In brief, case of the prosecution is that on 28-2-2008 at about 2

pm near Irrigation Colony, Pamgarh, the appellants had beaten deceased Rohit Kumar by hands and fists and pushed him from stairs. When he was being taken for treatment to Gidhoury, he died on the way. A mereg intimation was lodged in Akaltara police station. After completion of the investigation a charge sheet was filed against the appellants. The Trial Court framed charge against the appellants under Section 302/34, IPC. Appellants abjured the charge and faced trial.

3. After conclusion of the trial, Trial Court acquitted the appellants of the charge punishable under Section 302/34, IPC, but convicted and sentenced appellants as aforesaid.

4. Counsel for the State argued that the conviction and the sentence of the appellants are based on clinching evidence. The conviction and sentence of the appellants do not call for interference by this Court.

5. As per the PM report Ex. P-14-A, P.W. 9 Dr. S.P. Dahariya had conducted the autopsy on the dead body of deceased. He had found 4 abrasions on the right leg of the deceased which were ante mortem. He had also found one fracture above the left eye. On internal examination he had found that there was fracture in C-4, C-5 of neck bone. He opined that the death of the deceased was due to hemorrhagic shock as a result of fracture in neck bone.

6. There is no such evidence on record on strength of which it can be said that Ex. P-14-A is not believable. Thus, this Court believes on Ex. P-14-A.

7. P.W. 3 Sanjay says in para 1 of his statement that he had seen

that the appellants were beating deceased Rohit by hands and fists.

8. P.W. 6 Ku. Anganmati says in para 1 of her statement that the deceased Rohit had told that quarrel happened with the appellants.

9. P.W. 7 Bharat Singh says in para 1 of his statement given on oath that the appellant Sunil and deceased Rohit were quarreling.

10. P.W. 12 Rambharos Yadav says in para 1 of his statement given on oath that the appellants and the deceased Rohit were quarreling in front of the shop of Tijau.

11. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W. 3 Sanjay, P.W. 6 Ku. Angan Mati, P.W. 7 Bharat Singh, P.W. 12 Ram Bharos Yadav are not simple, not natural, not normal. Thus, this Court believes on the aforesaid statements of P.W. 3 Sanjay, P.W. 6 Ku. Anganmati, P.W. 7 Bharat Singh, P.W. 12 Ram Bharos Yadav.

12. 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 appellants. 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.

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

14. As per report of the Central Jail, Bilaspur dated 17-9-2018

appellants have been released on 26-1-2013 after getting the benefit of remission extended to them. The appellants have deposited fine amount. Thus, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge