

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1063 of 2012**

1. Smt. Somari Bai, W/o Manglu, age 45 years.
2. Ku. Palo Bai, D/o Manglu Madiya, age 20 years.
3. Ubaru, S/o Bondku, age 22 years.
4. Somaru, S/o Bhadu Madiya, age 48 years.

All R/o Patelpara, Belar, Thana- Badanji, Jagdalpur, District-Bastar (C.G.).

---- Appellants

Versus

State of Chhattisgarh, Through Police Station- Badanji, District-Bastar (C.G.).

---- Respondent

For Appellants : Mr. Alok Dewangan, Advocate.

For State/respondent : Mr. Vinod Kumar Tekam, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

06/12/2018

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 03.11.2012 passed by First Additional Sessions Judge, Bastar at Jagdalpur (C.G.) in Session Trial No. 16/2011, wherein the said court convicted all the four appellants for commission of offence under Sections 304 (Part-II)/34 & 341 of IPC, 1860 and sentenced to R.I. for 5 years and fine of Rs. 2000/- and R.I. for 6 months respectively each with further default stipulations.
2. As per case of the prosecution, the appellants and the deceased namely Narsu were resident of Village- Belar and were residing at Patelpara of the said village. On 27.09.2010

at about 7:30 p.m. deceased Narsu was coming from Village-Belar Degpara towards his home in a drunken condition. On the way to his house, he entered in the house of accused appellant No.1- Somari Bai, and hold her daughter Ku. Palo Bai- appellant No. 2 from back side with intend to outrage her modesty, thereafter, all the appellants assaulted him. The deceased was admitted to Maharani Hospital, Jagdalpur where he died during treatment. Matter was reported and investigated. The appellants were charge-sheeted and after completion of trial, the trial court convicted all the four respondents as mentioned above.

3. Learned counsel for the appellants submits as under:-

(i) The incident took place on self defence of body by appellants when the deceased tried to outrage modesty of Ku. Palo Bai, holding her from back side in a drunken condition.

(ii) The injuries cased to the deceased were simple in nature and it cannot be said that the appellants exceeded their right of self defence.

(iii) The prosecution has failed to prove necessary ingredients and benefit of doubt should have been extended to them.

(iv) There is no connecting evidence of witnesses regarding involvement of all the appellants and their motive, therefore, with principle of criminal jurisprudence, the appellants are entitled to be acquitted.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same is not liable to be interfered with invoking jurisdiction of the appeal.
5. Dr. Pawan Tekade (PW-4) conducted autopsy of the deceased- Narsu Boga on 28.09.2010 at Government Maharani Hospital, Jagdalpur and noticed following injuries on the body of the deceased.
 - (i) Lacerated wound over right ear.
 - (ii) Lacerated wound in web of right ear.
 - (iii) Abrasion (graze) over right cheek.
 - (iv) Contusion over right temporo occipital region.
 - (v) Contusion over right angle of mandible.
 - (vi) Ligature mark over neck.
 - (vii) Abrasion on right lateral aspect on neck.
 - (viii) Contusion over right side of chest.
 - (ix) Two lacerated wound over dorsum of right hand.
6. As per version of this medical expert, cause of death is asphyxia due to strangulation. Version of this witness is unshaken during cross-examination and there is no other expert opinion in record contrary to this expert, therefore, it is established that death of the deceased was caused due to asphyxia/ strangulation.
7. Jahdi Bai (PW-2) is eyewitness account to the incident. Rest of the witnesses are either hearsay witnesses to whom Jahdi

Bai (PW-2) informed about the incident or they assisted during investigation after registration of FIR. From evidence of Jahdi Bai (PW-2), it is established that the appellant No. 2 - Palo Bai assaulted the deceased and appellant No. 1 - Somari Bai strangled the deceased. This eyewitness has not deposed against rest of two appellants namely Ubaru (appellant No. 3) & Somaru (appellant No. 4).

8. Gokul Ram Kashyap (PW-1) deposed that the incident was informed to him by Jahdi Bai (PW-2) and again, it was informed to him by Narsu himself. Though, this witness deposed that Narsu informed him that all the four respondents assaulted him, but the fact remains that version of this witness is hearsay in nature, therefore, version of Jahdi Bai (PW-2) which is eyewitness account to the incident, prevailed over statement of this witness.
9. Gajanand (PW-3) has also received information about the incident through Jahdi Bai (PW-2). Munnaram Baghel (PW-6) deposed that he has not seen the incident. Khemwati (PW-7) deposed that Narsu informed that all the four appellants assaulted him.
10. Looking to the entire evidence on record, it is clear that Jahdi Bai (PW-2) is the sole eyewitness of the incident and as per version of this witness, only appellant No. 1- Somari Bai & appellant No. 2- Palo Bai have participated in commission of crime which resulted into death of Narsu.

11. On overall assessment, it is established beyond shadow of doubt that the appellant No. 3- Ubaru & appellant No. 4- Somaru have not participated in commission of crime, therefore, finding arrived at by the trial court against these two appellants are not sustainable. While looking to the involvement of appellant No. 1- Somari Bai & appellant No. 2- Palo Bai, their appeal *sans* merit and the same is liable to be dismissed.
12. Conviction and sentence passed by the trial court against appellant No. 1- Somari Bai & appellant No. 2- Palo Bai is affirmed. As the trial court has awarded sentence of 5 years, it cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The whole sentence part is also not liable to be interfered with.
13. Conviction and sentence passed against appellant No. 3- Ubaru & appellant No. 4- Somaru is liable to be and is hereby set aside. They are acquitted of the charges under Sections 304 (Part-II)/34 & 341 of IPC.
14. Accordingly, the appeal filed with respect to appellant No. 1- Somari Bai & appellant No. 2- Palo Bai is dismissed. It is reported that appellant No. 1- Somari Bai & appellant No. 2- Palo Bai have suffered full jail sentence and have been released from jail on 01.05.2014, therefore, no order for their arrest etc. is required.
15. The appeal filed with respect to appellant No. 3- Ubaru & appellant No. 4- Somaru, the same is allowed. The conviction

and sentence of appellant No. 3- Ubaru & appellant No. 4- Somaru is set aside and they are acquitted of the charges framed against them under Sections 304 (Part-II)/34 & 341 of IPC. They are reported to be on bail. Their bail bonds shall continue for a further period of six months from today in view of Section 437-A of Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun