

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 804 of 2015

Dhanesh Ram Yadav, S/o. Ful Singh Yadav, aged about 22 years, R/o. Tendumadi, P.S. - Chhal, District – Raigarh (C.G.)

---- Appellant

Versus

State Of Chhattisgarh, Through – the Police Station Chhal, District – Raigarh (C.G.)

-----Respondent

For Appellant	: Mr. Virendra Pratap Singh, Advocate
For Respondent/State	: Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

04/05/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned 2nd Additional Sessions Judge, Raigarh, District – Raigarh, passed in Sessions Trial No.09/2015, on 26.05.2015, convicting the appellant for the offence punishable under Section 304 Part-II of the Indian Penal Code and sentenced him to under go R.I. for 10 years along with fine of Rs.5,000/- with default stipulation.
2. The case of the prosecution, in brief, is that on on 05.10.2014, at about 7.00 PM in the evening, appellant and his brother Ganesh Ram Yadav were quarreling with each other and at that time, the

appellant shot arrow from his bow towards Ganesh Ram Yadav, which missed him but the arrow found its mark in the neck of Jethram Rathiya, who died immediately afterwards. After lodging of FIR and recording of morgue intimation, the investigation was completed and charge-sheet was filed before the concerned Court.

3. Appellant was charged with offence under Section 302 of the Indian Penal Code. The appellant denied the charge and prayed for trial. The prosecution examined as many as 7 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and false implication. No witnesses were examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel appearing on behalf of the appellant that the appellant has been erroneously convicted for the offence under Section 304 Part-II of the Indian Penal Code. Prosecution has failed to prove its case beyond all reasonable doubts. In fact, the deceased died due to his own negligence, who should not have come in the path of the arrow shot by the appellant. Seizure witnesses have not supported the case of the prosecution, hence, the appellant was entitled for benefit of doubt. In the alternative, it is prayed that, in case this Court is not inclined to allow this appeal, then the sentence of imprisonment imposed upon the appellant by the trial Court may be reduced in the interest of justice.

5. Counsel for the State opposes the grounds in appeal and the submissions made in this respect. It is submitted that it is a case supported by two eye-witnesses namely Raja Ram (P.W.-2) and Prahlad Behra (P.W.-3) and it is a clear case of culpable homicide not amounting to murder. Hence, no case is made out for acquittal or reduction of sentence in this case.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. Death of the deceased Jethram Rathiya by the injuries caused by arrow shot on his neck is not in dispute. It is also not disputed that this appellant has shot the arrow, which found its mark in the neck of Jethram Rathiya. Whether it is a case of negligence of deceased has to be examined and whether there is ground in support of the arguments submitted by the appellant to give him benefit of doubt has to be examined in this appeal.
8. Rajaram (P.W.-2) has stated that he saw the appellant shooting with arrow the deceased Jethram Rathiya. In cross-examination his statement has remained un-rebutted. Prahlad Behara (P.W.-3) has made it clear that the appellant wanted to shoot arrow to his brother Ganesh Ram Yadav, but the arrow missed him and the deceased Jethram Rathiya, who was nearby got injured from that arrow. This witness was declared hostile by the prosecutor on the point of seizure, which is not relevant to contradict his statement regarding the eye-witness account. In cross-examination by defence, he has denied all the adverse suggestions given by the counsel for the

appellant and has remained firm on his statement about witnessing the appellant shooting arrow, which found its mark in the neck of the deceased - Jethram Rathiya.

9. Dr. S.K. Paikara (P.W.-5) has conducted postmortem examination of the deceased and vide his report Ex.P/12 he has opined that the death of the deceased was homicidal in nature. M.R. Ratre (P.W.-7), Investigation Officer has given statement and proved the investigation procedure made by him.
10. After scrutinizing the evidence on record, it is clearly made out that the appellant has intended to cause death of his brother – Ganesh Ram Yadav, but the arrow missed and the deceased got injured and died on the spot. This appears to be inadvertent act on the part of the appellant and it can not be considered as a negligent act on the part of the appellant. Shooting arrow from a bow is implied with intention to cause death of the person to whom the arrow is shot. As it appears that this appellant had no intention to cause death of the deceased, hence, the finding given by the trial Court convicting the appellant under Section 304 Part-II of the Indian Penal Code is correct and needs no interference.
11. Considered on the submission made by the counsel for the appellant about reducing the sentence of rigorous imprisonment, as it appears that the appellant is a young man of tender age and the incident has taken place in the heat of the moment without there being any intention on the part of the appellant to cause death of the deceased and this appellant is in detention continuously from the

date he has been arrested in this case. After due consideration, I am of this opinion that the prayer made on behalf of the appellant can be allowed.

12. After due consideration on all the submissions and the material present in the case, this appeal is allowed in part. The conviction of the appellant under Section 304 Part-II of the Indian Penal Code recorded by the trial Court is maintained. Whereas, the sentence of imprisonment imposed by the trial Court is set-aside, instead of that, the appellant is sentenced with rigorous imprisonment of 7 years. The period of custody already undergone by him shall be subject to adjustment under Section 428 of Cr.P.C. The sentence of fine as imposed by the trial Court is maintained as it is.
13. Accordingly, the appeal is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge