

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 365 of 2013**

Dinesh Kumar, S/o. Shri Shiv Lal Mandavi, Aged About 30 Years, R/o Village Gidhali, Police Station Mohla, District Rajnandgaon (C.G.)

---- Appellant

Versus

State of Chhattisgarh Through – Police Station Mohla, District Korba (C.G.)

----Respondent

For Appellant :- Ms. Vijay Laxmi Soni, Advocate

For Respondent :- Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

Judgment on Board

Per Ram Prasanna Sharma, J

10.03.2018

1. This appeal is directed against the judgment of conviction and order of sentence dated 20.02.2013 passed by the Second Additional Sessions Judge Rajnandgaon Session Division Rajnandgaon (C.G.), in Sessions Trial No. 15 of 2011, whereby the said Court has convicted the accused/appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs. 200/- with default stipulation.
2. In the present case, name of the deceased is Rajendra. As per prosecution case, some altercation took place between the

deceased and the appellant on the issue of consumption the liquor and at the same time the appellant inflicted injury on the occipital region of the deceased by club (*Khuta*). The injured was admitted in the hospital at Dallirajhara, where he succumbed to the injury. The matter was reported to Police Station Mohla. After completion of investigation, charge sheet was filed against the appellant. Appellant pleaded innocence, therefore, the trial was conducted. After examination of all the witnesses, statement of the appellant was recorded under Section 313 of the CrPC. After hearing the parties, the trial Court convicted the appellant as aforementioned.

3. Learned counsel for the appellant submits as under;-

(I) That there was material contradiction in two reports of medical experts namely Dr. Dipesh Gadiya (PW-1) and Dr. R. Ramteke (PW-6), however, the same has been overlooked by the trial Court.

(II) That there are material contradiction and omission in the statement of Vishnuram (PW-3), so called eye witness, but the trial Court relied on the statement of Vishnuram (PW-3) and convicted the appellant which is contrary to law.

(III) That the deceased had received only one injury on his head and he was alive for a day and in absence of proper treatment he died, therefore, the case of the appellant does not fall under Section 302 of the IPC.

4. On the other hand, learned counsel for the State/respondent submits that the finding arrived at by the trial Court is based on proper marshaling of the evidence adduced by the prosecution

and same is not liable to be disturbed while invoking jurisdiction of the appeal.

5. To substantiate the charge prosecution has examined as many as 11 witnesses. The appellant did not examine any witness in his defence.
6. We have heard learned counsel for both the parties and perused the record of the trial Court.
7. Vishnuram (PW-3) and Anil (PW-5) both are the eye-witnesses of the incident. As per version of Vishnuram (PW-3), at about 10.00 pm, he heard some noise near his house and came out of the house and saw that the appellant along with three- four persons were present when the deceased was sitting in a bullock cart, at the same time the appellant picked up a club(*khuta*) from the cart and assaulted on the head of the deceased due to which the deceased fell down. Version of Vishnuram (PW-3) is supported by version of Anil (PW-5) who deposed on the same line. Statement of both the witnesses were earlier recorded under Section 161 of the Cr.P.C. and they are firm in their version in both the statements.
8. Looking to the quality of version of both the witnesses it is established that both are the eye-witnesses and they are stable since the day of the incident. There is nothing in their searching cross-examination to discard their testimony and defence has not been able to elicit any fact in favour of accused. Version of these eye-witnesses are supported by version of Dr. R. Ramteke (PW-6) who conducted autopsy on the dead body of the deceased on 8-11-2010 at 4.30 pm. As per version of Dr. R. Ramteke (PW-6), he

found one contusion measuring 3x4" on the right parietal region of the deceased and one contusion measuring 4x4" on the occipital region of the deceased. He opined that both the injuries were antemortem in nature and he also found clot of blood on the surface of brain. After conducting the autopsy, he opined that cause of death is excessive bleeding and nature of death is homicidal and it is caused since 6 to 24 hours of the examination. Version of this witness is unrebutted in cross-examination and there is no other expert opinion contrary to the opinion of this medical expert, therefore, version of this witness is supported by version of expert, hence, we are of the view that the death is caused by the appellant.

9. Now, the next point for consideration is whether the case falls within any of the exception to section 300 of the IPC. From the evidence it is established that the altercation took place on the spur of moment and the appellant assaulted only one blow on the head of the deceased. If his intention would have been to cause death of the deceased he would have assaulted the deceased repeatedly but that is not the case here. As he assaulted the deceased only once, intention of committing murder cannot be gathered. From the evidence adduced by the prosecution and as the act of the appellant is unintentional, the case of the appellant falls under Section 304 Part-II of the IPC. In the circumstances, we set-aside the conviction under Section 302 of the IPC, but found the appellant guilty for offence under Section 304 Part II of the IPC.

10. Heard on the sentence part. The appellant is in jail since 10.11.2010 and he has completed terms of 7 years and 4 months, in our view, the period already undergone by the appellant would be sufficient for the offence under Section 304 Part II of the IPC, therefore, he is sentenced to the period of imprisonment already undergone by him. However, the fine amount imposed by the trial Court upon the appellant shall remain intact. The appellant be released forthwith, if not required in any other case.

11. The appellant is reported to be in jail. His bail bonds are not discharged at this stage and same shall remain operative for a further period of six months from today in terms of Section 437-A Cr.P.C. Accordingly, the appeal is partly allowed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)