

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 698 of 2015

- Durgesh Nirmalkar S/o Padman Aged About 23 Years R/o Chandanbiri, Police Station - Gurur, District Dhamtari Chhattisgarh

---- Appellant

Versus

- The State Of Chhattisgarh Through Station House Office, Police Station, Bijapur, District Bijapur Chhattisgarh.

---- Respondent

For Appellant : Shri Aman Kesharwani, Advocate.

For Respondent/State : Shri Adil Minhaj, P.L.

Hon'ble Shri Pritinker Diwaker, J

Judgment On Board

08/09/2018

This appeal arises out of the judgment of conviction and order of sentence dated 31.3.2015 passed by the Additional Sessions Judge, South Bastar, Dantewada (CG) in ST No.80/2014, convicting the accused/appellant under Section 304 Part-II of IPC and sentencing him to undergo RI for 10 years and pay a fine of Rs.200/- with default stipulation.

02. As per prosecution case, on 28.11.2013 at about 10 pm the accused/appellant had a quarrel with deceased Bharat Baghel and it is

said that the appellant assaulted the deceased by hands and fists and also pushed him as a result of which he fell down on a cemented road and died. Merg intimation Ex.P/6 was recorded on 29.11.2013 at 7.30 am. Thereafter, Dehati Nalishi (Ex.P/2) & FIR (Ex.P/10) were recorded on the same day against the appellant u/s 302 of IPC. Inquest on the dead body was conducted on 29.11.2013 vide Ex.P/8 and thereafter the body was sent for postmortem which was conducted on the same day vide Ex.P/1 by PW-1 Dr. BL Sharma who noticed oozing of blood from nostrils and left ear, abrasion with black colour on left frontal region and presence of rigor mortis. In his opinion, the cause of death was asphyxia due to head injury. However, as regards the nature of death, the doctor could not give definite opinion. From the possession of the appellants, his clothes worn at the time of commission of the offence were seized and as per FSL report (Ex.P/15) blood was found on it. While framing charge, the trial Judge charged the appellant u/s 302 of IPC.

03. So as to hold the accused/appellant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

05. Learned counsel for the appellant submits that he is not pressing this appeal on merits and would confine his arguments to the sentence part only. He submits that the appellant has been awarded excessive sentence of 10 years whereas considering the act of the appellant and the manner in which the incident occurred, he ought to have been awarded lesser sentence.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction as well as sentence awarded to the appellant is based on proper appreciation of the evidence and as such, there is no scope for interference in the judgment impugned.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-2 Ashok Salam, an eyewitness to the incident, though has been declared hostile but he admits that on the date of incident there was scuffle between the appellant and the deceased. PW-5 Jugdhar Baghel, another eyewitness to the incident, has categorically stated that it is the appellant who during the course of quarrel with the deceased, assaulted him with and pushed him as a result of which the deceased fell down, sustained injury on his temporal region and in the next morning at about 4 when he (this witness) saw the deceased, he had died. In cross-examination this witness remained firm and nothing could be elicited from him by the defence to make his evidence untrustworthy or shaky.

09. PW-1 Dr. BL Sharma conducted postmortem on the body of the

deceased vide Ex.P/1 and noticed oozing of blood from nostrils and left ear, abrasion with black colour on left frontal region and presence of rigor mortis. In his opinion, the cause of death was asphyxia due to head injury. However, as regards the nature of death, the doctor could not give definite opinion. PW-3 Nakul Jaiswal, PW-4 Narayan Singh and PW-6 Anand Singh Chouhan are hearsay witnesses. PW-7 Ashish Kumar Yadav, investigating officer, has duly supported the prosecution case. PW-8 Dayanidhi Bagh, Police Constable, assisted in the investigation. PW-9 Ashok Kumar Mishra is a witness to inquest Ex.P/8. PW-10 Mahendra Jaiswal, brother-in-law of the deceased, states that upon coming to know about the incident he went to the spot and thereafter to police station Beejapur where on being asked the appellant confessed to have killed the deceased. PW-11 Bholaram is also a hearsay witness.

It is relevant to mention here that the appellant in his statement u/s 313 of CrPC has also admitted that on the date of incident there was scuffle between the deceased and himself.

10. Close scrutiny of the evidence makes it clear that on 28.11.2013 at around 10 pm there was quarrel between the appellant and the deceased as the appellant had taken the brother-in-law of the deceased for consuming liquor which was not liked by the deceased. PW-2 Ashok Salam, an eyewitness to the incident, though has turned hostile but admits quarrel between the two on the date of incident. This apart, the appellant has also admitted the said fact in his statement u/s 313 of CrPC. The act of the appellant has been categorically described by another eyewitness to the incident i.e. PW-5 Jugdhar Baghel, who

has stated that appellant during the course of quarrel with the deceased, assaulted him with and pushed him as a result of which the deceased fell down and sustained injury on his temporal region and in the next morning at about 4 he was found dead. In cross-examination this witness remained intact. The eyewitness account gets due corroboration from the medical evidence of PW-1 Dr. BL Sharma who conducted postmortem on the body of the deceased and noticed corresponding injuries as described above. Thus, considering the above ocular and medical evidence on record, it is clear that the incident occurred all of a sudden in the heat of passion upon a sudden quarrel without there being any premeditation on the part of the appellant and he did not act in a cruel or unusual manner. However, considering the injuries inflicted on the deceased by the appellant it is clear that he had knowledge that causing of such injury to the deceased would result in his death. As such, his conviction u/s 304 Part-II of IPC recorded by the trial Court is based on proper appreciation of evidence on record and deserved to be affirmed.

11. As regards the sentence, considering the facts and circumstances of the case giving rise to the incident, the age of the appellant, the manner in which the offence was committed and the fact that there is no minimum sentence prescribed under Section 304 Part-II of IPC, this Court is of the opinion that the sentence of 10 years imposed on the appellant by the trial Court is on the higher side and needs to be reduced to seven years.

12. In the result, the appeal is allowed in part. While maintaining conviction of the appellant u/s 304 Part-II of IPC, the sentence of 10

years' RI awarded to him by the trial Court is reduced to the period of 07 years' RI. He is reported to be in jail, therefore, no order regarding his arrest/surrender etc. is required to be passed.

Sd/

(Pritinker Diwaker)

Judge

Khan