

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 204 of 2014**

1. Girim Sai, S/o Basu Uraon Aged About 35 Years
2. Bir Sai S/o Basu Uraon Aged About 40 Years

Both are R/o Vill. Parpatiya, P.S. Kamleshwarpur, Distt. Surguja,
Civil & Revenue District : Surguja (Ambikapur), Chhattisgarh

---- Appellants

Versus

1. State Of Chhattisgarh Through Station House Officer, P.S.
Kamleshwarpur, Distt. Surguja, Chhattisgarh

---- Respondent

For Appellants
For Respondent/State

Shri Anil Das Kuldeep, Advocate
Shri Anil S. Pandey, Dy. Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Ram Prasanna Sharma

Oral Judgment

Ram Prasanna Sharma, J.

10/03/2018

1. This appeal is preferred against the judgment of conviction and order of sentence dated 28-12-2003 passed by the First Additional Sessions Judge, Surguja, Ambikapur, Sessions Division Surguja at Ambikapur, in ST No.67 of 2011 wherein the said Court convicted the appellants under Section 302 read with Section 34 of the Indian Penal Code (IPC) for committing murder of Jagsai Uraon (since deceased) and sentenced them to undergo RI for life and to pay fine of Rs.1000/- each with default stipulations.

2. In the present case, name of the deceased is Jagsai Uraon. As per the version of the prosecution, there was some dispute between the deceased and the appellants on 26-8-2010 at about 10.40 am. In course of their altercation, both the appellants assaulted the deceased by hand, fist & club, as a result of which the deceased sustained injuries. Thereafter, the deceased was admitted at Primary Health Centre, Kamleshwarpur, where he succumbed to the injuries. The matter was reported to the Police of Police Station Kamleshwarpur. Upon registration of the First Information Report (FIR), the authorities investigated the matter. After completion of the investigation, charge sheet was filed and after conclusion of trial, the trial Court convicted & sentenced the appellants as mentioned above.
3. Shri Anil Das Kuldeep, learned counsel appearing for the appellants, would submit that :
 - the trial Court failed to appreciate the version of the medical expert, who deposed that the deceased sustained simple injuries, but the trial Court convicted the appellants for offence of murder;
 - the so called eyewitness Basanti (PW-1) did not reveal the incident to any of the neighbours and nobody has seen the incident, but the trial Court completely relied upon the testimony of the said witness; and
 - the finding of the trial Court is based on the surmises and conjectures.

4. *Per contra*, Shri Anil S. Pandey, learned Dy. Govt. Advocate, appearing for the State would support the impugned judgment. Shri Pandey, learned State counsel would submit that the finding arrived at by the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the appellate jurisdiction.
5. PW-1 Basanti is the eyewitness to the incident. She deposed that both the appellants assaulted the deceased by club & axe though it is not mentioned in her earlier statement that the axe was used at the time of incident, but she is firm in saying that the appellants were having club and they assaulted the deceased by hand & fist also. Even if the exaggerated version of the witness is excluded from her evidence, she is firm right from the date of incident that the appellants assaulted the deceased by club, hand & fist.
6. Looking to the stability of this witness Basanti (PW-1), we are of the view that the appellants are the person, who committed the crime against the victim. Version of this witness is corroborated by medical evidence of Dr. S.N. Bhoi (PW-4).
7. As per the version of Dr. S.N. Bhoi (PW-4) it is manifest that he conducted autopsy on the body of the deceased on 26-8-2010 and found contusion on the left side of abdomen measuring 2 x 1 cm.

He also found two contusions on left side of abdomen each measuring 20 x 1 cm. As per version of this witness, cause of death is due to shock and shock is caused due to internal bleeding on rupture of spleen. The Doctor further opined that time of death is 24 hours since the examination. The death is homicidal in nature.

8. Rest of the witnesses have corroborated and supported the eyewitness or medical evidence. Looking to the direct and medical evidence, it is established that the rupture of spleen is caused due to injuries caused by the appellants and due to shock the deceased died.
9. Now the point for consideration is - whether the offence committed by the appellants would fall under Exception 4 to Section 300 of the IPC punishable under Section 304 Part II of the IPC ?
10. In **Karam Singh v State of Punjab** report in **1994 SCC (Cri.) 64** the Supreme Court held thus :

“The doctor PW-2, who conducted the postmortem found ten injuries. Some of them were abrasions. A lacerated was also found on the head but there was no corresponding internal injury. The contusions on the chest and injury Nos.5 to 7 resulted in the fracture of the ribs which caused his death. The doctor in his evidence has admitted that the fracture of the ribs could have in turn cause the rupture of the liver and the spleen. Under these circumstances

it is difficult to hold that the appellant intended to cause the injuries to the liver and the spleen which unfortunately proved to be fatal. Having regard to the nature of the weapon used and the parts of the body on which blows were dealt, it is difficult to hold that he intended to cause the death or intended to cause that particular injuries to the liver and the spleen. However, under the circumstances he must be attributed to have the knowledge that by dealing such blows he was likely to cause the death of the deceased in which case the offence is one punishable under Section 304 Part II IPC. “

11. The appellants have not used any deadly weapon at the time of incident. The injuries caused were simple in nature though it caused shock to the injured and he died. Looking to the injuries, we are of the view that it is not a case of intentionally causing death of the deceased, but it is an act of causing death unintentionally and, as such, the same falls under Section 304 Part II of the IPC. Accordingly, the conviction of the appellants is altered to Section 304 Part II of the IPC in place of Section 302 of the IPC.
12. Heard on the point of Sentence :
 - Both the appellants are in jail since 27-8-2010. They have already completed the jail term of more than 7 years 6 months. The period already undergone would be sufficient sentence for commission of offence under Section 304 Part II of the IPC. Accordingly, the appellants are convicted under

Section 304 Part II of the IPC and are sentenced to the period already undergone by them. However, the fine amount imposed by the trial Court upon the appellants shall remain intact. The appellants be released forthwith, if not required in any other case.

13. As an upshot, the appeal is allowed in part to the extent indicated above.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma

Gowri