

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1755/2000****Reserved on 19-2-2019****Delivered on 1-4-2019**

(Arising out of judgment of conviction and order of sentence dated 24-5-2000 passed by the Sessions Judge, Raigarh, M.P. (now in CG) in Sessions Trial No. 04/1996)

...

Amit Kumar son of Kapil Ram Kashyap, aged about 22 years, Business Salesman, R/o. Behind Railway Hospital, Jayram Colony, Raigarh (CG)

Appellant

VERSUS

State of Madhya Pradesh (now Chhattisgarh), through PS Kotwali, Distt. Raigarh (CG)

Respondent

 For Appellant : Mr. Mukesh Sharma and Mr. Samir Singh, Adv.
 For Respondent : Mr. Vinod Tekam, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV JUDGMENT**

1. In this criminal appeal, challenge is levied to the judgment of conviction and order of sentence dated 24-5-2000 passed by the Sessions Judge, Raigarh, M.P. (now in CG) in Sessions Trial No. 04/1996 whereby and whereunder he convicted the appellant as under :-

Conviction under Section	Sentence
323 IPC	RI for 6 months
304 (Part II) IPC	RI for 10 Years

Both the jail sentences have been directed to run concurrently.

2. In brief, prosecution case is that on 26.9.1995 at about 2.30 p.m., appellant and co-accused Shiv Kumar Sharma reached near Kewadabadi Chowk, Raigarh. Co-accused Shiv Kumar Sharma caught hold complainant Shyam Das. Deceased Bhagwan Das who is father of complainant Shyam Das, complainant Nirmala Bai

who is mother of complainant Shyam Das intervened, the appellant caused injuries on the head of deceased Bhagwan Das and complainant Nirmala Bai. Deceased Bhagwan Das gave information regarding incident on very day at about 15.10 hour at Police Station Kotwali Raigarh where Rojnamcha Sanha was written. Deceased Bhagwan Das and complainant Nirmal Bai were sent for the medical examination in the hospital. On very day at about 12.30 hours deceased Bhagwan Das was taken back to his house, at about 1.00 p.m. he became unconscious. He was again taken to hospital and admitted. On 08/09/1995 he died in the hospital. Thereafter merg intimation and FIR were lodged in Police Station Raigarh on 26-9-1995. After completion of investigation a charge sheet was filed against him and co-accused Shiv Kumar Sharma under Section 302/34 of the IPC. The trial Court framed charge against him under Sections 323 and 302 of the IPC and against co-accused Shiv Kumar Sharma under Section 341 and 302/34 of IPC. They abjured the charges levelled against them and faced trial. To bring home the charges against them, prosecution examined as many as 16 witnesses. The appellant did not also examine any witness in his defence. After conclusion of the trial, the trial Court convicted and sentenced the appellant as aforesaid, however, co-accused Shiv Kumar Sharma was acquitted of the charges punishable under Section 341 and 302/34 of IPC.

3. Being aggrieved, the appellant has preferred this criminal appeal.

4. Counsel for appellant submits that trial Court has not appreciated the evidence in proper perspective, trial Court wrongly rejected his defence, he was also injured and this fact was suppressed by the prosecution. Thus, he may acquitted of the aforesaid charges.

5. The Panel Lawyer appearing for the State argued that the aforesaid conviction and sentences are based on the sufficient evidence available on record. Thus no interference is called for.

6. As per alleged MLC report Ex. P-7, P.W. 5 Dr. Sharad Awasthy had examined the complainant Nirmala and found one

lacerated wound – size $\frac{3}{4}$ inch x $\frac{1}{4}$ inch on right forehead and opined that aforesaid injury was caused by hard and blunt object and simple in nature.

7. There is no such evidence on record on strength of which it can be said that Ex. P-7 is not believable. Thus this Court believes on Ex. P-7.

8. As per alleged MLC report Ex. P-8, P.W. 5 Dr. Sharad Awasthy had examined the Deceased Bhagwan Das and found following injuries on his person :-

(I) One lacerated wound – size 1.5 inch x $\frac{1}{4}$ inch skin deep on left parietal region of skull,

(ii) One lacerated wound – size 2 inch x $\frac{1}{2}$ inch skin deep, on left occipital region of skull.

9. P.W-5 Dr. Sharad Awasthy opined that aforesaid injuries were caused by hard and blunt object.

10. There is no such evidence on record on strength of which it can be said that Ex. P-8 is not believable. Thus this Court believes on Ex. P-8.

11. As per the alleged postmortem report Ex.P-10 P.W. 6 Dr. P.K. Mishra had conducted the autopsy on the dead body of deceased Bhagwan Das and found that healed scar mark was present over scalp at parietal and occipital region measuring about 2.5 c.m. long. Dressed wound was present over the sacral region size 3 c.m. x 2 c.m. On opening his skull he found that clotted blood was present below the parietal region of scalp left side, intra cerebral hemorrhage was present over right fronto parietal region, clotted blood was present there, encircled within membrane about $\frac{1}{2}$ cm thick and 2cm long. He opined that cause of death is system disease involving heart and brain with ischemic heart disease, hypertension intra cerebral hemorrhage. The mode of death is coma.

12. There is no such evidence on record on strength of which it can be said that Ex. P-10 is not believable. Thus this Court believes on Ex.P-10.

13. As per the alleged copy of medico legal register Ex.-D-4(C), P.W. 5 Dr. Sharad Awasthy had examined appellant and found following injuries on his person :-

(I) One lacerated wound – size 2.5 inch x ½ inch, on right parietal region of skull,

(ii) One lacerated wound – size 1/4 inch x 1/6 inch on left lower lip.

14. P.W-5 Dr. Sharad Awasthy opined that aforesaid injuries were caused by hard and blunt object and were simple in nature.

15. There is no such evidence on record on strength of which it can be said that Ex. D-4(C) is not believable. Thus this Court believes on Ex. D-4(C).

16. P.W. 1 Shyam Das says in para 2 of his statement given on oath that, appellant had caused two blows on the head of deceased Bhagwan Das and one blow on the head of complainant Nirmala by wooden club.

17. P.W. 11 Nirmala says in para 1 of her statement given on oath that, appellant caused one blow on his head by wooden club, he had also caused 2-3 blows on the head of deceased Bhagwan Das by wooden club.

18. P.W. 12 Bhoswa Ram says in para 1 of his statement given on oath that, the appellant had caused two blows on the head of deceased Bhagwan Das by wooden club.

19. P.W. 13 Shambhu Nath says in para 1 of his statement given on oath that, Shyam Das tried to cause injury to appellant by wooden club, appellant turned down, the blow was caused on the head of deceased Bhagwan Das.

20. P.W. 5 Dr. Sharad Awasthy says in para No. 8 during his cross-examination that, injuries of deceased Bhagwan Das could be caused by hit with iron pipe. He says in para 9 that the injury of complainant Nirmala could be caused by hit with iron pipe.

21. There is no such evidence available on record on strength of which it can be said that deceased Bhagwan Das and

complainant Nirmal had received injuries allegedly as a result of hit with iron pipe and P.W. 1 Shyam Das, P.W. 11 Nirmala, P.W. 12 Bhoshwa Ram made aforesaid statements knowingly that appellant had not committed any offence. Thus appellant does not get any help from the aforesaid statement of para No. 8 & 9 of P.W. 5 Dr. Sharad Awasthy.

22. There is no such evidence on record on strength of which it can be said that P.W. 12 Bhoshwa Ram had made aforesaid statement only because he was interested with complainant party for any such reason or prejudice with appellant for any such reason, knowingly that appellant had not beaten deceased Bhagwan Das and complainant Nirmala.

23. No such omissions and contradictions have been dealt during the cross-examination of P.W. 1 Shyam Das, P.W. 11 Nirmala, P.W.12 Bhoshwa Ram on behalf of appellant on strength of which it can be said that the testimony of P.W. 1 Shyam Das, P.W. 11 Nirmala, P.W. 12 Bhoshwa Ram is untrustworthy.

24. Alleged Rojnamcha Sanha Ex.13 was written on very day by 15.10 hours, promptly without delay. In Ex.13(C) it has been mentioned that appellant caused injuries on the head of deceased Bhagwan Das and complainant Nirmala.

25. There is no such evidence on record on strength of which it can be said that Ex. P-13 is fabricated and lodged as an afterthought with intention to falsely implicate appellant in alleged crime.

26. In the matter of **Ramsunder Yadav vs. State of Bihar**, 1998 (7) SCC 365, Hon'ble Supreme Court relying on the decision of Hon'ble Supreme Court in **Vijayee Singh -v- State of UP** [(1990) 3 SCC 190] has laid down judicial precedent that it is not obligatory for the prosecution to explain the injuries on the person of the accused in all cases.

27. Though, prosecution failed to give explanation regarding aforesaid injuries of appellant, but looking to the aforesaid judicial precedent laid-down by the Hon'ble Supreme Court in the matter

of **Ram Sunder Yadav** (supra) this Court finds that due to said failure of the prosecution, the credibility of aforesaid statements of P.W. 1 Shyam Das, P.W. 11 Nirmala and P.W. 12 Bhoshwa Ram is not adversely affected.

28. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W. 1 Shyam Das, P.W. 11 Nirmala and P.W. 12 Bhoshwa Ram are not simple, not natural, not normal.

29. Looking to the above mentioned facts and circumstances of the case, this Court finds that aforesaid statement of P.W. 13 Shambhu Nath is not simple, not natural, not normal.

30. After the appreciation of the evidence discussed here before this Court believes on the aforesaid statements of P.W. 1 Shyam Das, P.W. 11 Nirmala, P.W. 12 Bhoshwa Ram and disbelieves aforesaid statements of P.W. 13 Shambhu Nath.

31. It would be pertinent to mention the provisions of Section 299 of IPC which read as under :-

“299. Culpable homicide – Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as he likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

32. The provisions of Section 304 of IPC are noticeable which are reproduced below:-

304- Punishment of culpable homicide not amounting to murder – whoever commits culpable homicide not amounting to murder- shall be punished with (imprisonment for life) or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine, if the act by which the death is caused is done with intention of causing death or of causing such bodily injury as is likely to cause death,

or with imprisonment of either description for a term which may extend to ten years or with fine or with both, if the act is done with the knowledge- it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

33. The Hon'ble Supreme Court in the matter of **Jayappa Dattu Rajage Vs. State of Maharashtra (1982) 2 SCC 453** where medical evidence showed that there were three contused

lacerated wounds on the head, two of which were on frontal and fronto parietal region of the skull, there was extensive subdural haemateoma and having regard to the location of the wounds, haemateoma was quite obviously due to head injuries, all the bones of right left broken and death of the deceased in the opinion of the doctor was due to shock and haemorrhage due to haemateoma and fractures, it was held that the fact that the deceased had consumed alcohol makes no difference. It was also observed that consumption of alcohol leads to dilation of blood vessels and it cannot undo the circumstances that the haemataeoma was due to injuries to the head. Even if the opinion of the doctor that the injuries were not sufficient to cause death is admitted the offence would not come only under Section 325 of IPC. As the injuries were clearly of the nature likely to cause death, they could certainly be said to be results of acts so imminently dangerous that it must in all probabilities cause death or such bodily injury as is likely to cause death, so as to fall within the fourth limb of Section 300 of IPC. As such the acts of the appellant resulting in the injuries to the deceased were done with the knowledge that they would cause such bodily injury as was likely to cause death. The conviction of the accused-appellants under Section 304 part II was held is justified.

34. In the case in hand, prosecution has succeeded to prove beyond reasonable doubt that appellant had caused two injuries to deceased Bhagwan Das by hard and blunt object on the left parietal and left occipital region of skull respectively. As per the Ex. P-10 clotted blood was found below the parietal region of skull. Intra cerebral haemorrhage was also present on right fronto parietal region of skull, blood was clotted there. P.W. 6 Dr. P.K. Mishra opined that intra cerebral haemorrhage was also one of the causes for the death of deceased Bhagwan Das. From the location of aforesaid injuries it is quite clear that intra cerebral hamorrhage was due to aforesaid head injuries. In these circumstances and looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in **Jayappa Dattu Rajage**, this Court finds that prosecution succeeded to prove that appellant had caused the

death of deceased Bhagwan Das by causing aforesaid injuries with the knowledge that he would likely cause death of the deceased Bhagwan Das.

35. After the appreciation of evidence discussed here this Court finds that prosecution succeeded to prove beyond reasonable doubt the charge punishable under Section 304 part II of IPC against the appellant.

36. After complete and full appreciation of the evidence discussed herebefore this Court finds trial Court has not committed any error in convicting and sentencing the appellant as aforesaid.

37. Thus, this Court affirms the impugned judgment of conviction and order of sentence dated 24.05.2000. Hence, the appeal being devoid of merit deserves to be and is hereby dismissed.

38. The appellant is reported to be on bail. His bail and bonds are cancelled. He is directed to surrender immediately before the trial Court for undergoing the remaining part of sentences. The trial Court is also directed to take the appellant in custody immediately for undergoing the remaining part of sentences.

Sd/-
(Sharad Kumar Gupta)
Judge