

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3120 of 1999

Reserved on : 08.11.2019

Delivered on : 04-12-2019

1. Dukalu Ram, S/o Bhikham Sahu, aged about 22 years.
2. Man Vishram @ Gendu, S/o Bhikham Sahu, aged about 35 years.
Both R/o Village- Kapsi, District- Durg (M.P.) (Now C.G.)

---- Appellants

Versus

The State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellants	:	Mrs. Savita Tiwari, Advocate.
For State/respondent	:	Mr. Raghvendra Verma, Govt. Adv.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 03.11.1999 passed by Fifth Additional Sessions Judge, Durg (C.G.) in Session Trial No. 96/1999, wherein the said court convicted both the appellants for commission of offence under Section 304 (Part-II) of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 2000/- each with further default stipulations.
2. As per case of the prosecution, the date of incident is 01.12.1998. Report is lodged on 03.12.1998 as per Ex. P/3. Both the appellants were named in the said FIR. It is alleged that both the appellants assaulted deceased Ganga Ram on the date of incident at Village-

Kapsi by club which ultimately resulted into death of said Ganga Ram. The matter was reported, both the appellants were charge-sheeted for commission of murder of Ganga Ram and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellants submits as under:-
 - (i) The deceased was fallen from bullock cart and sustained head injuries and the appellants being neighbour attended him upto two different hospitals, therefore, finding of the trial court is not liable to be sustained.
 - (ii) The trial court is not right in believing statement of Dukhiya Kumari (PW-1) and Ramji (PW-2).
 - (iii) The evidence of other witnesses is also contrary to each other but the same is overlooked by the trial court. The trial court should have evaluated the evidence properly, but that is not done, therefore, the finding arrived at by the trial court is liable to be set aside.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on eye-witnesses and medical evidence supported with document, therefore, the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused the records.
6. First question for consideration before this Court is whether the appellants assaulted deceased Ganga Ram. Dukhiya Kumari (PW-1) and Ramji (PW-2) are eye-witnesses account to the incident. Both have deposed in one voice that both the appellants assaulted deceased Ganga Ram by club repeatedly. Version of these witnesses

in un rebutted during cross-examination at length. Though, Manohr Lal Patel (PW-10) deposed before the trial court that the deceased was assaulted by his elder brother, but version of this witness is entirely different from his version stated by him before investigating officer as per Ex. P/12. This witness stated before the investigating officer that he has not seen the incident and when he reached to the spot, the deceased was fallen unconscious. In his earlier statement, he stated that on enquiry, it is informed to him that both the appellants assaulted the deceased, therefore, version of this witness which is entirely different from his earlier version is fully unreliable.

7. It is contended on behalf of the appellants that version of Manohar Lal Patel (PW-10) is the same which is written in the map (Ex. P/2) prepared during investigation. In view of this Court, the said map is not substantive piece of evidence because it is prepared after commission of the offence and after registration of FIR and it is written on the basis of some information which is hearsay. As the map (Ex. P/2) is not substantive piece of evidence, no finding can be recorded on the basis of Ex. P/2, therefore, argument advanced on behalf of the appellants in this regard is not sustainable.
8. Version of eye-witnesses namely Dukhiya Bai (PW-1) and Ramji (PW-2) is supported by version of Dr. R.D. Sharma (PW-18) who conducted autopsy of the deceased on 03.12.1998 at District Hospital, Durg. As per version of this witness, he found multiple fracture in body of the deceased and death is caused due to hemorrhage. He further deposed that death is caused within 24 hours of autopsy. Version of Dr. R.D. Sharma (PW-18) is supported by version of Dr. Ashok Kumar

Raj (PW-11), Dr. Vinod Yadav (PW-12) & Dr. Lata Dewangan(PW-13).

9. From direct and medical evidence, it is clear that deceased died homicidal death which is caused by both the appellants. Looking to the fact that appellant No. 2- Man Vishram @ Gendu taken the deceased to hospital, the trial court recorded finding that intention of the appellants was not to kill the deceased, but it is a case of causing unintentional death which falls within mischief under Section 304 (Part-II) of IPC. Reasoning of the trial court is one of the plausible reasoning, therefore, this Court has no reason to take a contrary view. Accordingly, the argument advanced on behalf of the appellants is not liable to be sustained. Finding recorded by the trial court regarding commission of offence by the appellants under Section 304 (Part-II) of IPC is hereby affirmed.

Heard on the point of sentence.

10. The trial court awarded R.I. for 7 years and fine of Rs. 2000/- for commission of offence under Section 304 (Part-II) of IPC, which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
11. The appellants are reported to be on bail, their bail bonds are cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellants and after their arrest, they be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or

before 15th April, 2020.

Sd/-

(Ram Prasanna Sharma)

Judge

Arun