

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.423 of 2010**

Vijay Kewat, aged 32 years, S/o Gazha Kewat, R/o Village Manakoni, P.S. & Tahsil Kasdol, District Raipur (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through Police Station Kasdol, District Raipur (CG)

---- Respondent

For Appellant : Shri Dharendra Mishra, Advocate

For State/ Respondent : Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****04.01.2019**

1. This appeal is preferred against the judgment dated 22.3.2010, passed by the 2nd Additional Sessions Judge Baloda Bazar, District Raipur (CG) in Sessions Trial No. 40/2009, wherein the said court has convicted the appellant under Section 304 Part I of the IPC and sentenced him to undergo R.I. for 10 years and fine of Rs.100/- with default stipulation.

2. In the present case, name of the deceased is Gazha, who is father of the appellant. As per prosecution case, on the date of incident i.e. 28.7.2008, at about 6.00 pm, the appellant and the deceased were in a state of intoxication after consuming liquor and there was some altercation between them and the appellant

assaulted the deceased by Khura (thick club) resulted into his death. The matter was investigated and the appellant was charge-sheeted. After hearing both the parties, the trial Court has convicted and sentenced the appellant as aforementioned.

3. The appeal is preferred on the following grounds :

(i) The trial Court has based its conviction on the statement of Fulbai Kewat (PW7) and Rajbai Kewat (PW8) but, their version is not stable, therefore, conviction of the appellant is not sustainable in the eyes of law.

(ii) The trial Court has overlooked material contradictions and omissions in the statement of prosecution witnesses and in absence of clinching evidence, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the judgment submits that the finding recorded by the trial Court is based on proper marshalling of evidence and same is not liable to be interfered with.

5. I have heard learned counsel for the parties and perused the record.

6. Dr. Ashok Kumar Verma(PW4) conducted autopsy of the deceased Gazha on 30.7.2008 at Community Health Centre, Kasdol, District Raipur and noticed following injuries:

(A) External examination :

- (i) Lacerated wound of 8 x 0.5 cm on right side of head
- (ii) Lacerated wound with contusion of 5 x 4 cm on back side of head
- (B) Internal examination :
 - (i) Fracture of frontal bone and bone piece size of 5 x 3 cm comes out
 - (ii) Fracture of occipital bone and posterior part of parietal bone
 - (iii) Brain contents comes out from skull

7. As per opinion of this expert deceased died due to head injury and excessive bleeding and nature of death is homicidal. Version of this witness is unshaken during cross-examination and there is no other expert opinion contrary to the opinion of this witness, therefore, it is established that Gazha died homicidal death. Fulbai Kewat (PW7) is wife of the deceased. As per version of this witness, the appellant and the deceased had quarrelled in the night and the appellant made extra judicial confession before her that he had assaulted the deceased by Khura resulting into his death. Rajbai Kewat (PW8) supported version of Fulbai Kewat(PW7) and supported story of quarrel between the appellant and the deceased. She also deposed that the appellant made extra judicial confession regarding assault to the deceased. Fulbai Kewat (PW7) is wife of the deceased and Rajbai Kewat(PW8) is daughter of the deceased. There is no reason for them to implicate the appellant falsely.

Therefore, version of both the witnesses inspire confidence and looking to their evidence, the trial Court opined that during altercation the appellant deprived of power of control due to provocation and act of the appellant falls within mischief of culpable homicide. Finding of the trial Court is based on relevant material placed on record and same is not based on irrelevant or extraneous matter.

8. Looking to the entire evidence this Court has no reason to record contrary finding. The arguments advanced on behalf of the appellant is not sustainable. Accordingly, conviction of the appellant under Section 304 Part I of the I.P.C. is hereby affirmed.

9. Heard on the point of sentence:

The trial Court has awarded R.I. for 10 years, which also cannot be termed as harsh, disproportionate or unreasonable. The sentence part is also not liable to be interfered with.

10. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed.

11. It is reported by the jail authorities that the appellant has suffered full term of his jail sentence and has been released after getting remission, therefore, no order for his arrest etc. is required.

Sd/
(Ram Prasanna Sharma)
JUDGE

