

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.864 of 2010**

Amar Singh, S/o. Kartik Ram Pav, aged about 30 years, R/o.
Village Katra, Police Station Marwahi, Distt. Bilaspur (CG)

---- Appellant

Versus

State Of Chhattisgarh, Through the Police Station Marwahi,
Distt. Bilaspur (CG)

---- Respondent

For the appellant : Shri Bhupendra Singh, Advocate
For the respondent/State: Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****02.01.2019.**

1. Shri Ashok Soni, Advocate has been engaged by the appellant, but despite repeated calls, none appeared, therefore, Shri Bhupendra Singh, Advocate present in the Court is appointed as Amicus Curiae to argue the matter on behalf of the appellant.
2. This appeal is directed against the judgment dated 08.10.2010 passed by Additional Sessions Judge (FTC), Pendra Road, Distt. Bilaspur (CG) in Session Trial No.14/2010 wherein the said Court convicted the appellant for commission of offence under Section 304 Part-I of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of 100/- with default stipulation.
3. As per the version of the prosecution, deceased Lakhan Singh was rearing cattle on 30.11.2009 at about 8.00 am and at that time the appellant and other co-accused persons came there

and assaulted him by *farsi* and *latti*. The victim was succumbed to the injuries and thereafter the matter was reported and investigated. After completion of trial, the appellant has been convicted as mentioned above.

4. Learned counsel for the appellant submits as under:-

(i) As per the version of the prosecution, the deceased was assaulted by club and at the most it is a case of Section 323 IPC.

(ii) Version of Mohan (PW-3) is contradictory in nature because at one point of time, he deposed that the deceased was assaulted by axe while in another point of time, he deposed that the deceased was assaulted by club.

(iii) Seizure of axe and club were not connecting piece of evidence in the present case because the same were lying in the house of the deceased and it is not an incriminating piece of evidence against the present appellant.

(iv) The trial Court has over looked the material contradictions in the statement of the prosecution witnesses, therefore, finding of the trial Court is liable to be reversed.

5. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

6. From the statement of Channa Bai (PW-4 and Chotte Lal (PW-5) it is established that the appellant assaulted the deceased. Version of these witnesses was subjected to searching cross-

examination, but their version remained unshaken. Their version is also supported by the version of Dr. BS Paikra (PW-6) who conducted autopsy of the deceased on 01.12.2009 and noticed following injuries.

- (1) compound fracture on left leg of tibia fibula bone of 3x2 cm
- (2) Rupture of left scrotum
- (3) stab wound on the left thigh upto 1 cm deep
- (4) stab wound on the left arm middle third lateral aspect
- (5) abrasion on buttock of left side of 10 x 5 cm
- (6) lacerated wound of 4 x 3 cm on left side of forehead
- (7) compound fracture on right leg, lacerated wound 5 x 2 cm + bleeding 2/3rd anterior aspect
- (8) abrasion of 5 x 4 cm on right buttock
- (9) stab wound deep with left arms with bleeding
- (10) incised wound of 10 x 1 cm x bone deep on front to vertex of head (middle)
- (11) multiple contusion marks on back with fracture of ribs left side 5,6,7,8, right side fracture of ribs of 5, 6, 7, 8 no fecal matter protruded at left side of scrotum ruptured.

As per the version of the medical expert cause of death of the deceased is head injury and excessive bleeding and mode of death is coma. He further opined that duration of death is within 24 hours of examination and the death is homicidal in nature.

7. From the medical evidence it is established that the deceased died of homicidal death and the appellant has participated in assaulting the deceased. It is further corroborated by the FIR (Ex-P/15) which was lodged on the date of incident i.e. 30.11.2009 at Police Station Marwahi.

8. Now the only point for consideration is whether the case of the appellant falls within the mischief of murder or culpable homicide. From the report (Ex-D/3, D/4, D/6 & D/8) it was established by the defence side that the deceased has cut the crop from the land of the appellant without any authority and when he did not come in the meeting arranged by the villagers for this purpose the appellant deprived of the power of self control by grave and sudden provocation, assaulted the appellant, therefore, it is a case of culpable homicide. Report of this effect is already lodged in the Police Station which is supported by the version of Dashrath Singh (DW-1) and Prabhu Singh (DW-2).

9 After assessing the entire evidence the trial Court opined that due to the act of the deceased, the appellant lost his power of self control and therefore, case of the appellant falls within the exception 1 of Section 300 IPC and his act falls under Section 304 Part-I of the IPC.

10. After reassessing the evidence, this Court has no reason to record a contrary finding. Therefore, arguments advanced on behalf of the appellant is not sustainable and the finding arrived at by the trial Court is hereby affirmed.

11. Heard on the sentence part.

The trial Court has awarded sentence of 10 years, which cannot be termed as harsh, disproportionate or unreasonable looking to the facts and circumstances of the case. Therefore, sentence part is also not liable to be interfered with.

12. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. As per the report, the appellant has

been released from jail after serving the full jail sentence awarded to him and after remission granted to him by the jail authorities. In view of this no further order is required for his arrest.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

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