

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 583 of 2011**

N. Laxman, S/o Airayya, 46 years, R/o Village- Lingagiri, P.S. Basaguda, District- Bijapur (C.G.) **---- Appellant**

Versus

State of Chhattisgarh, Through: District Magistrate, Dantewada, District- South Bastar (C.G.) **---- Respondent**

For Appellant : Mr. Prafull N. Bharat & Mr. Paras
Mani Shriwas, Advocates.

For State/respondent : Mr. Vijay Bahadur Singh, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT****31/01/2019**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 11.07.2011 passed by Sessions Judge, South Bastar, Dantewada (C.G.) in Session Trial No. 01/2010, wherein the said court convicted the appellant 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. 1000/- with further default stipulations.
2. In the present case, name of the deceased is Mahesh Ram Dhruv. As per version of the prosecution, the appellant was posted at Police Station- Bhadrakali. On 07.10.2009 at about 8:20 p.m. in the night, the appellant along with deceased Mahesh Ram Dhruve came into the barrack and appellant was in possession of one AK-47 rifle. He started discrete firing

and one B.Toppo another constable who was present on the spot, caught hold of the appellant, at that point of time, the deceased Mahesh Ram also came forward to snatch the rifle but, a bullet pierced him due to which he succumbed to the injury. The matter was reported, appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

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

(i) B.Toppo (PW-1) deposed before the trial court that at the time of incident, he was sleeping after switching off the light and incident happened at that time, therefore, this witness had no occasion to see as to who really fired from rifle.

(ii) The rifle was allotted in the name of one D.S. Nishad as per FIR, but D.S. Nishad is silent about allotment of rifle in his name.

(iii) Rifle is not seized during investigation and no ballistic expert examined the said rifle.

(iv) The doctor who conducted autopsy of the deceased has not been examined before the trial court.

(v) The trial court has not appreciated the entire evidence in its true perspective, therefore, finding arrived at by the trial court is liable to be reversed.

4. He placed reliance in the matter of **The State Vs. Peddahanumappa & others** reported in **(2004) Cri.L.J. 2255**

wherein it is held that when postmortem report was not tendered, it would be impossible to hold that death was homicidal. He also placed reliance in the matter of **Om Prakash Vs. State of U.P.** reported in **(2009) Cri.L.J. 782** wherein, it is held that when a number of accused persons fired the deceased, but use of rifle by one of the appellant is not established, then conviction is improper.

5. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
6. The case of the prosecution is based on statement of B.Toppo (PW-1) who was also posted as Constable at Police Station-Bhadrakali. He deposed before the trial court that after performing the duty as Rear Guard on 07.10.2009, he returned to the barrack at about 8 to 8:30 p.m. in the night and after switching off the light went to his bed. He further deposed that after hearing sound of firing, he wakeup and saw that the appellant was in possession of one AK-47 rifle and he caught him and at that time the deceased Mahesh Ram Dhruv entered from door of the barrack and one bullet was inflicted in his vital part of the body that is why he succumbed to the injury on the spot. This witness is unshaken during cross-examination.

7. It is not the case that this witness was unable to identify the appellant. In FIR which is lodged by this witness as per Ex.P/1, name of the appellant is mentioned as culprit and his act of firing is also mentioned in the said FIR which is lodged on the date of incident i.e. on 07.10.2009.
8. Dr. B.R. Pujari (PW-6) is a person who is acquainted with the signature of Dr. D.P. Singh, who conducted autopsy of the deceased and proved that the deceased died due to bullet injury. It is not the case where postmortem report was not tendered but, due to absence of medical expert, some other medical expert who was posted in the same hospital i.e. District Hospital, Bijapur has deposed on behalf of the said medical expert, therefore, the same is admissible evidence and on the basis of the document, it is proved that the deceased died due to bullet injury.
9. There is nothing to say that the appellant has been falsely roped in the present case due to grudge of any of the witnesses. The other piece of evidence is supportive in nature, but the fact remains that the case of the prosecution is based on eyewitness account which is reliable one. There is nothing to say that B.Toppo (PW-1) is falsely implicated the present appellant.
10. Looking to the entire evidence, the trial court opined that the appellant was discretely firing and deceased entered into the same room that is why he sustained bullet injury, therefore, act of the appellant is unintentional in causing death of the

deceased. Finding of the trial court is based on proper marshalling of evidence, therefore, argument advanced on behalf of the appellant is not sustainable and case law cited are clearly distinguishable in the facts and circumstances of the present case

11. The trial court has elaborately discussed the entire evidence and recorded finding of conviction. After reassessing the entire evidence, this Court has no reason to record contrary finding. Culpable homicide is an offence punishable under Section 304 (Part-II) of IPC for which the trial court convicted the appellant and the same is not liable to be interfered with. Conviction of the appellant is hereby affirmed.

Heard on the point of sentence

12. The trial court awarded jail sentence of 7 years for commission of offence under Section 304 (Part-II) of IPC. Looking to the gravity of offence, it cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
13. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge