

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.385 of 2010**

Komal alias Golu alias Bhairo Kasyap S/o Kanhaiyalal Kasyap, aged about 19 years, R/o village Hiragarh, Thana Nawagarh and District Janjgir Champa (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through Police Station Nawagarh, District Janjgir Champa (CG)

---- Respondent

For Appellant : Shri Amiyakant Tiwari, Advocate

For State/ Respondent : Shri Raghvendra Verma, Govt. Advocate

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****10.01.2019**

1. Shri Arun Kochar and Shri Ravi Kumar Bhagat, Advocates have been engaged by the appellant, but despite repeated calls, none appeared, therefore, Shri Amiyakant Tiwari, Advocate present in the Court is appointed as amicus curiae to argue the matter on behalf of the appellant.
2. This appeal is preferred against the judgment dated 9.6.2010, passed by the Sessions Judge, Janjgir Champa(CG) in Sessions Trial No.236/2009, 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.1000/- with default stipulation for causing culpable homicide of one Ambedevi on 31.10.2009.

3. As per version of the prosecution, the appellant assaulted the deceased by an axe while some altercation took place between the appellant and the deceased due to pouring of water by the deceased from a container. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.
4. Learned counsel for the appellant submits that prosecution has failed to prove the motive to cause fatal injury to the deceased and child witness namely Madhu (PW1) is not a reliable witness due to her abnormal conduct. The other witnesses have not specifically stated the facts of the case on the same day or other days to the Investigating Officer and therefore, their version is not reliable. The witnesses are interested witnesses, therefore, finding of the trial Court is liable to be reversed.
5. 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.
6. I have heard learned counsel for the parties and perused the record.

7. Dr. Smt. Anita Shrivastava (PW9) conducted autopsy of the deceased on 25th October, 2009 at Govt. Hospital Champa, District Janjgir Champa and noticed one injury on the person of the deceased :

(1) A stitched wound over left parietal region of scalp in the size of 3 ½”.

As per version of this medical expert cause of death was coma due to extensive ante mortem head injury and time of death was 24 hours of the examination.

8. Madhu (PW1) is eye-witness to the incident and as per version of this witness, when the deceased poured water through a container, the appellant had altercation with the deceased and at the same time, he assaulted the deceased by axe on her head. Version of this witness is subjected to searching cross-examination but nothing could be elicited in favour of the defence. From the evidence of eye-witness and medical expert, it is established that the deceased died homicidal death.

9. Now the point for consideration is whether the act of the appellant falls within the mischief of murder or it is culpable homicide. Evidence of the eye-witness clarified that there had been some sudden quarrel between the appellant and the deceased and the appellant caused one injury on the head of the deceased while deprived of the power of self control by provocation and that is why the case of the appellant falls in

Exception of Section 300 IPC which is culpable homicide not amounting to murder for which the trial Court has convicted the appellant.

10. After assessing the evidence, this Court has no reason to record a contrary finding. It is not a case where the trial Court has recorded the finding on the basis of irrelevant or extraneous matter. Finding of the trial Court is based on relevant material placed on record and in view of this Court, same is not liable to be disturbed. 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.

11. 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.

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

13. 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

