

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 452 of 1999

Judgment reserved on 21/08/2019

Judgment delivered on 28/08/2019

1. Ramadhar S/o. Gambhir Sai, Aged about 48 years,
2. Bandhsai @ Bandhu Gond, S/o. Gambhir Sai, Aged about 31 years,

Both R/o. Village Saraipara, P.S. Ramanuj nagar, District Sarguja (MP) now CG

---- Appellants

Versus

State of M.P., through Police Station Ramanujnagar, District Sarguja MP now (C.G.)

---- Respondent

For Appellants : Mr. Anil Gulati, Advocate
For Respondent : Ms. Shriya Mishra, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

On the basis of merg intimation Ex.P-4 and Dehati Merg Intimation Ex.P4-A recorded by (PW-7) Sub-inspector the police came to the village and on the door being broken open it was found that the Bhaktu was lying dead on his bed. Based on these Informations, FIR (Ex.P-7) was registered against the accused/appellant. The dead body was sent to Government Hospital, Ramanujnagar, for post mortem examination where Dr. Dinesh Kumar Vishvakarma (PW-9) conducted the same and gave his report (Ex.P6-A), stating that apart from number of external injuries, the right lung of the deceased was also injured

causing cardiorespiratory arrest and the death was homicidal in nature.

2. After due investigation, charge-sheet was filed in the Court of JMFC, Surajpur, who, in turn, committed the case for trial to the Court of Additional Sessions Judge, Surajpur who convicted the appellants under Section 304 part II IPC and sentenced them to undergo RI for four years and to pay fine of Rs. 200/- each with default stipulations.

3. To prove the prosecution case, Amarsingh (PW-1), Chandrika (PW-2), Noharsaid (PW-3), Prem Sai (PW-4), Sohansai (PW-5), Ramdeo (PW-6), Phuleshwar Paikra (PW-7), Sukhram (PW-8), Dr. Dinesh Kumar Vishwakarma (PW-9), Budheshwar Prashad (PW-10) were examined. To nullify the charge, the defence has examined one witness in his support. Statement of the accused under Section 313 Cr.P.C. was also recorded in which they denied their guilt.

4. Counsel for the appellants/accused would argue that the impugned judgment is contrary to the facts, law and circumstances of the case. He would argue that there is no evidence on record to warrant the conviction of the appellants under Section 304 part II IPC. He would argue that there is absolutely no evidence on record to connect the appellants with the commission of murder of the deceased. Lastly, the counsel for the appellants would argue that even on the statements of the Chandrika, Moharsai and Ramdeo no case is made out against the appellant. The version regarding assault of the

deceased by the appellants is very shaky and unreliable, therefore, benefit of doubt should have been given to the appellants.

5. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellant as mentioned above are based on the proper appreciation of the evidence on record and, therefore, no illegality or infirmity is traceable in the same worth interference in this appeal.

6. It is undisputed that the accused/appellants happen to be the brothers-in-law of the deceased. The record shows that as there was some conflict between the deceased and his wife, the accused/appellants being brothers did not like this attitude of the deceased and on the date of incident they went to the village of the deceased and at the time when he was grazing his cattle, they developed some verbal altercation, took him home and assaulted him with the hands, fists and kicks which ultimately proved fatal to him and ultimately on the next day his dead body was recovered by the police from his house. This apart, three eye witnesses PW-2, PW-3 and PW-6 are also there who have supported the case of the prosecution stating that they saw the accused/appellants taking the deceased home and opened an assault with hands and fists and that on the next morning his dead body was recovered by the police after breaking open the door of his house. In addition to number of external injuries, the doctor PW-9 who conducted the post mortem examination on the

body of the deceased vide report Ex.P6-A has also noticed that an injury on his right lung resulting in respiratory failure and shock which was sufficient in nature to cause his death in the ordinary course of nature. While answering to the query vide Ex.P 11-A this witness has clarified that the injuries suffered by the deceased could have been caused with the hands and fists. Thus the finding recorded by the Court below that while causing injuries to the deceased with the hands and fists the accused/appellants had knowledge that such injuries are likely to cause his death in the ordinary course of nature and thereby convicting them under Section 304 (part-II) IPC cannot be said to be at fault particularly when there are three eye witnesses to the incident. Being so, their conviction recorded by judgment impugned is hereby maintained.

7. As far as the sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place 22 years ago and the appellants have already remained in jail for about one year and 5 months and deposited fine amount imposed on them, in my opinion, no useful purpose is going to be served in again sending them to jail. Accordingly, their jail sentence is reduced to the period already undergone by them.

8. With the above, the revision stands allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE