

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 694/2002****Reserved on 28-3-2019****Delivered on 3-4-2019**

(Arising out of judgment of conviction and order of sentence dated 5-6-2002 passed by the 3rd Additional Sessions Judge (FTC), Raigarh, CG in Sessions Trial No. 70/2002)

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Keshar son of Budu Lohar, aged 30 years R/o. Village Kasdol, P.S. Tamnar Distt. Raigarh (CG)

Appellant

VERSUS

State of Chhattisgarh, through District Magistrate, Raigarh (CG)

Respondent

 For Appellant : Mr. Vijay K. Sahu, Adv.
 For Respondent : Mr. Wasim Miyan, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV JUDGMENT**

1. In this criminal appeal, challenge is levied to the judgment of conviction and order of sentence dated 5-6-2002 passed by the 3rd Additional Sessions Judge (FTC), Raigarh, CG in Sessions Trial No. 70/2002 whereby and whereunder he convicted the appellant as under :-

Conviction under Section	Sentence
323 IPC	RI for 3 months
304 (Part II) IPC	RI for 5 Years

Both the jail sentences have been directed to run concurrently.

2. In brief, prosecution case is that on 18-1-2002 in the morning at village Kasdol complainant Johan Kumar Agariya and Kartikram were cutting the branches of mango tree. Panbudi and Naghadi had climbed over the tree to cut its branches. At about 11 am appellant reached there holding an axe. Deceased Taingani who is the father of complainant Johan Kumar Agariya reached and stood beneath the tree. Appellant told deceased that he stay there to pull the branches of the

tree by rope. Deceased said that he is going to take rice. Appellant became annoyed and caused injury on his neck by sharp side of axe. He also caused blow on the complainant Johan Kumar Agariya which he stopped by hands and sustained injury. Deceased Taigani died instantaneously. The complainant intimated the incident in police station Tamnar on very day where a mere intimation was lodged. After the mere inquiry, an FIR was registered in PS Tamnar on very day. After completion of investigation a charge sheet was filed against him under Section 323, 302 of the IPC. The trial Court framed charges against him under Sections 323 and 302 of the IPC. He abjured the charges levelled against them and faced trial. To bring home the charges against them, prosecution examined as many as 5 witnesses. The appellant also examined 2 witnesses in his defence. After conclusion of the trial, the trial Court convicted and sentenced him as aforesaid.

3. Being aggrieved, the appellant has preferred this criminal appeal.

4. Counsel for appellant submits that trial Court has not appreciated the evidence in proper perspective. Thus, he may be acquitted of the aforesaid charges.

5. The Panel Lawyer appearing for the State argues that the aforesaid conviction and sentences are based on the sufficient evidence available on record. Thus no interference is called for.

6. As per alleged MLC report Ex. P-10, P.W. 4 Dr. B.S. Baghel had examined the complainant Johan Kumar Agariya and found pain and swelling over his left elbow and opined that aforesaid injury was caused by hard and blunt object and simple in nature.

7. There is no such evidence on record on strength of which it can be said that Ex. P-10 is not believable. Thus, this Court believes in Ex. P-10.

8. As per alleged PM report Ex. P-9, P.W. 4 Dr. B.S. Baghel had conducted autopsy on the dead body of the deceased Taigani and found one incised wound measuring 8 cm x 4 cm x 3 cm over the right side of neck. He opined that injury was ante mortem and caused by hard and sharp object, mode of death was shock due to injury over the

right side of neck leading to excessive hemorrhage causing respiratory arrest leading to death. The nature of death was homicidal in nature.

9. There is no such evidence on record on strength of which it can be said that Ex. P-9 is not believable. Thus, this Court believes on Ex. P-9.

10. PW-1 Johan Kumar Agariya says in para 3 of his statement given on oath that, appellant had caused injury on neck of deceased by axe. Thereafter he caused injury on his left arm.

11. P.W. 2 Kartikram son of Mangal Singh says in para 2 of his statement given on oath that, appellant caused injury on the neck of deceased by axe. He also caused injury on the left hand of the complainant.

12. D.W. 1 Panbudi says in para 2 of his statement given on oath that, he had heard that by mistake axe of Johan hit the deceased.

13. D.W. 2 Kartikram son of Buduram who is real elder brother of the appellant says in para 2 of his statement given on oath that, axe of Johan Kumar Agariya was slipped and hit the neck of the deceased.

14. There is no such evidence on record on strength of which it can be said that PW-1 JohanKumar Agariya, P.W. 2 Kartikram son of Mangal Singh had made aforesaid statements only because there was enmity between them and the appellant, knowingly that appellant had not committed alleged offences.

15. There is no such evidence on record on strength of which it can be said that PW-2 Kartikram son of Mangal Singh had made aforesaid statement only because he was interested with complainant and deceased for any reason, knowingly that nothing was done by appellant.

16. No such omissions and contradictions have been dealt during the cross-examination of PW-1 Johan Kumar Agariya, PW-2 Kartikram son of Mangal Singh on behalf of appellant on strength of which it can be said that the testimony of PW-1 Johan Kumar Agariya, PW-2 Kartikram son of Mangal Singh, is untrustworthy.

17. DW 1 Panbudi did not say clearly and strongly that he had himself seen that allegedly axe of complainant Johan Kumar Agariya

was slipped and hit the neck of deceased Taingani.

18. Looking to the above mentioned facts and circumstances, this possibility cannot be ruled out that D.W. 2 Kartikram son of Buduram had made aforesaid statement only on account of being real elder brother of the appellant.

19. There is no such evidence on record on strength of which it can be said that aforesaid statements of PW-1 Johan Kumar Agariya, PW-2 Kartikram son of Mangal Singh are not simple, not natural, not normal.

20. After the appreciation of the evidence discussed here before this Court believes on the aforesaid statements of PW-1 Johan Kumar Agariya, PW-2 Kartikram son of Mangal Singh and disbelieves aforesaid statements of para 2 of D.W. 1 Panbudi and D.W. 2 Kartikram son of Buduram.

21. D.W. 1 Panbudi says in para 2 that at the time of the alleged incident, mind of appellant was not well.

22. D.W. 2 Kartikram son of Buduram says in para 2 that at the time of the alleged incident, appellant was behaving like a person of unsound mind.

23. There is no such medical evidence available on record on the strength of which it can be said that at the time of incident appellant was, by reason of unsoundness of mind, incapable of knowing the nature of the act done by him or that what he is doing is either wrong or contrary to law. Thus, this Court disbelieves the aforesaid statements of para 2 of D.W. 1 Panbudi and D.W. 2 kartikram son of Buduram.

24. It would be pertinent to mention the provisions of Section 299 of IPC which read as under :-

“299. Culpable homicide – Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as he likely to cause death or with the knowledge that he is likely by such act to cause death, commits the off once of culpable homicide.

25. The provisions of Section 304 of IPC are noticeable which are reproduced below:-

304- Punishment of culpable homicide not amounting to murder – whoever commits culpable homicide not amounting to murder- shall be punished with (imprisonment for life) or imprisonment of

either description for a term which may extend to ten years and shall also be liable to fine, if the act by which the death is caused is done with intention of causing death or of causing such bodily injury as is likely to cause death,

or with imprisonment of either description for a term which may extend to ten years or with fine or with both, if the act is done with the knowledge- it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

26. In the case in hand, prosecution has succeeded to prove beyond reasonable doubt that appellant had caused one injury on left elbow of complainant Johan Kumar Agariya by hard and blunt object and caused one incised wound to deceased Taingani by hard and sharp object on his neck, he died due to shock and excessive hemorrhage on account of said injury. In these circumstances, this Court finds that prosecution succeeded to prove that appellant had caused the death of deceased Taingani by causing aforesaid injury with the knowledge that he would likely cause death of the deceased.

27. After the appreciation of evidence discussed here this Court finds that prosecution succeeded to prove beyond reasonable doubt the charges punishable under Section 323 and 304 part II of IPC against the appellant.

28. After complete and full appreciation of the evidence discussed herebefore this Court finds trial Court has not committed any error in convicting and sentencing the appellant as aforesaid.

29. Thus, this Court affirms the impugned judgment of conviction and order of sentence dated 5-6-2002. Hence, the appeal being devoid of merit deserves to be and is hereby dismissed.

30. The appellant is reported to be on bail. His bail and bonds are cancelled. He is directed to surrender immediately before the trial Court for undergoing the remaining part of sentences. The trial Court is also directed to take the appellant in custody immediately for undergoing the remaining part of sentences.

Sd/-
(Sharad Kumar Gupta)
Judge