

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.211 of 2011**

1. Chhote Lal, aged about 38 years, Gouchand Kurey, R/o Village Mopaki, Police Station Bhatapara (Gramin), District Raipur (CG)
2. Dilharan, S/o Chhote Lal, aged about 20 years, R/o Village Mopaki, Police Station Bhatapara (Gramin), District Raipur (CG)

---- Appellant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Bhatapara (Gramin), District Raipur(CG)

---- Respondent

For Appellant : Shri Hemant Gupta, Advocate

For State/ Respondent : Shri Vijay Bahadur Singh, P.L.

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****11.01.2019**

1. This appeal is preferred against the judgment dated 7.3.2011, passed by the Additional Sessions Judge, Bhatapara, District Raipur (CG) in Sessions Trial No.17/2010, wherein the said court has convicted the appellants under Section 304 Part I of the IPC and sentenced them to undergo R.I. for 7 years and fine of Rs.500/- with default stipulation.
2. In the present case, name of the deceased is Sanwal Das and date of incident is 7.2.2010 at village Mopki. It is alleged

that the deceased was constructing boundary of his field to which the appellant Chhotelal objected that said land is within his territory and on this pretext some hot words were exchanged between them. Due to objection of the appellant Chhotelal, the deceased badly damaged the roof of house of the appellant and abused them by filthy language repeatedly. Again, he tried to break the door of the house of the appellant that is why the appellants assaulted him by rod and club resulting into his death.

3. The appeal has been preferred on the following grounds:
 - (i) Eye-witnesses have turned hostile and the trial Court based its conviction on the statement of Jamuna Bai (PW1) and Amardas (PW12), who are interested witnesses, therefore, finding of the trial Court is not sustainable.
 - (ii) At the most, it is a case under Section 323 IPC but the trial Court has convicted them under Section 304 Part I IPC, which is liable to be set aside.
 - (iii) The trial Court has overlooked the material contradictions and omissions in the statements of prosecution witnesses which is not sustainable.
4. 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.

5. I have heard learned counsel for the parties and perused the record.

6. Dr. Rajendra Maheshwari (PW10) conducted autopsy of the deceased and noticed following injuries on the person of the deceased :

(1) Skull:

(a) Lacerated wound on left parietal area of 9cm x 3cm x bone deep

(b) Lacerated wound on left temporal area of 8cm x 3 cm x bone deep

(c) Lacerated wound on left temporal area of 5 x 1.5 cm x bone deep

(d) Lacerated wound on mastoid area of 3 x 1cm, 1 x 1cm

(e) Left parietal area and temporal area bone fractured into multiple pieces.

(2) Left leg lacerated wound 2 x 1 cm

As per opinion of this medical expert, the deceased died due to head injury and death was caused since 18 to 24 hours of the examination.

7. Jamuna Bai (PW1) is wife of the deceased and Amardas (PW12) is son of the deceased. Both have categorically stated that the appellants assaulted the deceased by rod and club. Though Amrit Bai (PW3) and Gauchand Satnami (PW2) have deposed that the deceased sustained injury due to fall over the stone, but from the evidence of medical expert head injury sustained by the deceased is not due to fall. The trial

Court has elaborately discussed the entire evidence and came to the conclusion that both the appellants are authors of the crime and the deceased died due to injuries caused by them.

8. From the evidence, it is clear that the deceased damaged roof of the house of the appellants and again damaged the door of the house of the appellants by axe and used abusive language against them that is why they deprived of the power of self control by provocation and looking to this aspect of the matter, the trial Court opined that it is a case of culpable homicide.
9. 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 appellants is not sustainable. Accordingly, conviction of the appellants under Section 304 Part I of the I.P.C. is hereby affirmed.
10. Heard on the point of sentence:

The trial Court has awarded R.I. for 7 years, which also cannot be termed as harsh, disproportionate or unreasonable. The sentence part is also not liable to be interfered with.

11. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed.
12. It is reported by the jail authorities that the appellants have suffered full term of their jail sentence and have been released, therefore, no order for their arrest etc. is required.

Sd/

(Ram Prasanna Sharma)
JUDGE