

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 844 of 2001

Reserved on : 08.11.2019

Delivered on : 04-12-2019

1. Bablu Prasad, S/o Surjan, aged about 20 years, R/o Ani, P.S. Baikunthpur, District- Korla (C.G.)
2. Nandu, S/o Ramchand, aged about 20 years, R/o Kanchanpur, P.S. Baikunthpur, District- Korla (C.G.)
3. Jeetu, S/o Shirlal, aged about 19 years, R/o Ani, P.S. Baikunthpur, District- Korla (C.G.)

---- Appellants

Versus

The State of Chhattisgarh, through P.S. Baikunthpur, District- Korla (C.G.)

---- Respondent

For Appellants : Mr. Rohitashva Singh, Advocate.

For State/respondent : Mr. Aman Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 31.08.2001 passed by First Additional Sessions Judge, Baikunthpur, Korla (C.G.) in Session Trial No. 171/2001, wherein the said court convicted all the three appellants for commission of offence under Sections 304 (Part-II) & 323 of IPC, 1860 and sentenced to undergo R.I. for 5 years each and R.I. for 6 months to appellant No. 1 & 2 only respectively.
2. As per case of the prosecution, the appellants on 10.03.2001 at about 8 p.m. at Village-Badi Aani assaulted victim Nirmal by iron rod and club in furtherance of common intention who succumbed to injuries. Again, they assaulted Dharamjeet and Dhansai. The matter was

reported, all the appellants were charge-sheeted for commission of murder of Nirmal and for assaulting other persons and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellants submits as under:-
 - (i) Evidence of prosecution witnesses is contrary to each other, therefore, their version is not liable to be acted upon.
 - (ii) It is a case of simple injuries to deceased Nirmal, therefore, case of the appellants may fall within mischief of Section 324 of IPC.
 - (iii) The trial court has not evaluated the evidence in its true perspective, therefore, finding arrived at by the trial court is liable to be set aside.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
4. Dharamjeet (PW-1) is eye-witness account to the incident and injured. As per version of this witness, they had gone to Village- Aani on the date of incident in the house of one Dharampal for settlement of marriage of one Shyamjeet. At about 8 p.m. in night, they were returning from canal side where all the three appellants namely Bablu, Nandu & Jeetu met them and after abusing them, they assaulted deceased Nirmal by iron rod and club. They also assaulted this witness. After receiving injuries, Nirmal got unconscious.
5. Version of this witness is supported by version of Dhansai (PW-2) who is also eye-witness account to the incident. It is further supported by

version of Kavita (PW-3) and Savina Bai (PW-4). All these witnesses have been subjected to searching cross-examination, but it is not rebutted that the appellants assaulted deceased Nirmal and they also assaulted Dharamjeet and Dhansai. Version of these witnesses is supported by FIR (Ex. P/1) which is lodged on the date of incident i.e. 10.03.2001 in which name of all the three appellants is mentioned as culprit and their act of assault is also mentioned in the said FIR.

6. The eye-witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence. Again, it is supported by version of Dr. D.K. Chikanjuri (PW-7). As per version of this witness, he conducted autopsy of deceased Nirmal on 10.03.2001 at Community Health Centre, Baikunthpur and found a number of injuries in his body including injuries in occipital region, eyes and ears. As per opinion of this medical expert, injuries caused on head is the reason behind death of Nirmal which was homicidal in nature. All the injuries were caused within 24 hours of examination. Version of this expert is not rebutted in cross-examination and there is no other expert opinion contrary to the opinion of this expert. This witness also found injuries in body of Dharamjeet and Dhansai which is supported by version of Dharamjeet and Dhansai.
7. The trial court elaborately discussed the entire evidence and recorded finding that the appellants were in possession of iron rod and club and they could have inflicted more injuries, but that is not done, which shows that their intention was not to kill victim Nirmal, therefore, it is a case of causing unintentional death which falls within mischief of Section 304 (Part-II) of IPC. After reassessing the entire evidence, this

Court has no reason to record contrary finding. As per opinion of Dr. D.K. Chikanjuri (PW-7) injuries caused to Nirmal were sufficient for causing death, therefore, it is not a case where conviction of the appellants can be altered under Section 324 of IPC as argued by learned counsel for the appellants.

8. On over all assessment of the evidence, it is not a case where appellants can be convicted for any other small offence, therefore, the finding recorded by the trial court regarding commission of offence by the appellants under Sections 304 (Part-II) and 323 of IPC is hereby affirmed.

Heard on the point of sentence.

9. The trial court awarded R.I. for 5 years for commission of offence under Section 304 (Part-II) of IPC and R.I. for 6 months for commission offence under Section 323 of IPC, which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
10. The appellants are reported to be on bail, their bail bonds are cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellants and after their arrest, they be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 15th April, 2020.

Sd/-

(Ram Prasanna Sharma)
Judge