

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 391 of 2011

Judgment Reserved on 11-01-2019

Judgment delivered on 30 -01-2019

- Madan Verma s/o. Tikaram Verma, aged about 22 years, r/o. Pahadipara, Tilak Nagar, Janta Colony, Near Pani Tanki, Gudidyari Raipur, PS Gudiyari, District Raipur (CG).

---- Appellant

Versus

- State of Chhattisgarh through District Magistrate, Raipur, District Raipur. (CG).

---- Respondent

For Appellant : Mrs. Indira Tripathi, Advocate.
For Respondent/State : Mr. Ravish Verma, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is directed against the judgment of conviction and order of sentence dated 11-01-2011 passed by the Sessions Judge, Raipur (CG) in Sessions Trial No. 161 of 2009, wherein the said Court convicted the appellant for commission of offence under Sections 304 Part II of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1000/- with default stipulations.

2. In the present case, name of the deceased is Balram Deep. As per prosecution case, in the intervening night of 28/29-5-2009

deceased along with his cousin (brother) Anil Kumar Deep and Prahlad Kaur went to Railway Station for drinking some cool drink and when they reached near the bus stop, at the same time appellant along with one Ramesh Sahu came there and abused the deceased and assaulted him by knife on his thigh. Deceased was admitted in Ambedkar hospital and then shifted to Mekahara Hospital where he died during the course of treatment. The matter was reported and investigated. After completion of the trial, the trial Court convicted and sentenced the appellants as mentioned above.

3. Learned counsel for the appellant would submit as under:

- i) Evidence of PW/1 Prahlad Kaur and PW/2 Anil Kumar Deep is not reliable because they have given different story and it appears that Prahlad Kaur was not present on the spot at the time of incident.
- ii) Conduction of identification parade is also not reliable because photograph of the appellant was shown in the Police Station to the witnesses.
- lii) The appellant had no intention to kill the deceased and injury is caused on thigh of the deceased

which shows that the injury was not sufficient in the ordinary course of nature to cause death and at the most, it may be a case under Section 324 of the IPC, therefore, the finding of the trial Court is liable to be reversed.

4. On the other hand, learned State counsel supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of evidence which is not liable to be interfered while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the trial Court in which impugned judgement is passed.

6. PW/1 Prahlad Kaur deposed before the trial Court that at the time of incident, the deceased and appellant had some conversation and at the same time appellant assaulted the deceased by knife. Deceased was admitted in hospital where he succumbed to the injuries. Version of this witness is supported by version of Anil Kumar Deep (PW/2).

7. From the evidence of Sub Inspector T.R. Sahu (PW/17), it is established that one knife was seized from the appellant and as per version of Dr. Shiv Narayan Manjhi (PW/6) injury caused

on the body of the deceased was stab wound and the deceased died due to excessive bleeding and shock and duration of death was 12 hours since examination and injury was ante-mortem in nature. He noticed the following injury.

- I) Stab wound on upper 1/3 part of left thigh in the size of 2 x 0.5 cm x 7 cm x deep. Vertically obliquely. Lower end sharply cut and upper end was wide in compare to lower end. There was contusion in stab wound cutting the skin and soft tissues. Femoral artery and femoral vein sharply cut which directed anterior to posterior.

As per version of this witness, stab wound caused to the deceased was sufficient in ordinary course of nature to cause death. All the witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence.

8. In the present case, report was lodged on the date of incident i.e., 29-3-2009 as per Ex.P/1 in which name of the appellant is clearly mentioned as culprit and his act of causing stab injury is also mentioned in the said report. Now the point for consideration of this court is whether the act committed by the appellant falls under murder or culpable homicide.

9. From the evidence it is established that the appellant caused one stab injury on the body of thigh of the deceased. If there was any intention to eliminate the victim, he would have tried to cause more injuries fatal in nature but that is not done, therefore, it is not a case where intention of murder is established. Causing unintentional injury is culpable homicide which falls under Section 304 Part II of the IPC for which the trial Court convicted the appellant. As the injury was fatal in nature, it is not a case under Section 324 of the IPC as per argument advanced on behalf of the appellant.

10. Again, there is no material contradiction in the statement of PW/1 Prahlad Kaur and PW/2 Anil Kumar Deep. Minor contradictions which do not go to the root of the case are insignificant and have no adverse affect to prosecution case. Finding of the trial Court is based on proper marshaling of the evidence and this court has no reason to record contrary finding. Conviction of the appellant under Section 304 Part II of IPC is hereby affirmed.

11. Heard on the point of sentence.

The trial Court has awarded ten years looking to the gravity of the offence which cannot be termed as harsh, disproportionate or unreasonable. Sentence part is also affirmed.

12. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed. As per report of the jail authorities, the appellant has suffered full jail term and has been released from jail, therefore, no fresh order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju