

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Reserved on 25-01-2012

Delivered on 14-02-2019

**CRA No. 1159 of 2012**

- Maneesh Mashih s/o. Sugandh Mashih, aged about 20 years, r/o. Nehru Nagar, Balko, Dist. Korba (CG).

---- Appellant

**Versus**

- State of Chhattisgarh through Police Station Balko Nagar, Dist. Korba (CG).

---- Respondent

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For Appellant : Mr. Samir Singh, Advocate

For State : Mr. Raghavendra Verma, Govt. Advocate.

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**Hon'ble Shri Justice Ram Prasanna Sharma**

**CAV JUDGMENT**

1. This appeal is preferred against the judgment dated 21-12-2012 passed by the Additional Sessions Judge, Korba (CG) in Session Trial No. 70 of 2012, wherein the said Court has convicted the appellant for the commission of offence under Sections 304 Part II of IPC and sentenced him to undergo RI for seven years and to pay fine of Rs.5000/- with default stipulations.

2. In the present case, name of the deceased is Maheshu Yadav. As per version of the prosecution on the date of incident i.e., 28-4-2012 at about 10.00 pm appellant assaulted the deceased with legs and fists as a result of which the deceased sustained

injuries on vital parts of his body. He was taken to District Hospital, Korba and on 30-4-2012 he was declared dead. The matter was reported and investigated and after completion of investigation charge sheet was filed, the appellant did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

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

- i) There is major contradiction with respect to place where Dehati Nalishi was recorded. This contradiction casts serious doubt upon story of the prosecution.
- ii No weapon is used in commission of offence, therefore, the case falls within mischief of Section 323 of IPC.
- iii) The trial Court has overlooked the material contradictions and omissions, therefore, finding of the trial court is liable to be reversed.
- iv) The trial Court has not evaluated the evidence in its true perspective, therefore, the finding of the trial Court is liable to be set aside.

**4** On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper

marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. In the present case, date of incident is 28-4-2012 and deceased died due to injuries on 30-4-2012. FIR was lodge on 1-5-2012 as per Ex.P/9. PW/2 Ratan Bai, PW/3 Balram Yadav and PW/5 Annapurna Yadav are eye-witness account to the incident. All the witnesses have deposed in same voice that on the date of incident the appellant assaulted the deceased by legs and fists resulting injuries on abdomen, throat and both sides of waist. All the witnesses have been subjected to searching cross-examination, but remained unshaken. Version of these witnesses is supported by Dr. K.N. Sarkar (PW/6) who conducted autopsy of the deceased Maheshu Yadav on 30-4-2012 at 2.10 pm at District Hospital, Korba and noticed the following injuries.

- i) Injuries were found under the low jaw, over the cornu of thyroid, oval shaped bruise reddish in colour in the size of 1 cm x 2cm both on right and left side of neck.
- ii) Finger nail abrasion – crescentric marks in the size of 1cm regularly curved over both sides of neck 2 in left and 3 in right side of neck

- lii) Abrasion location round and low in neck, back reddish contusion around edge.
- iv) Subcutaneous tissue under abrasion is confused.

7 As per version of this expert, mode of death is syncope due to septic shock and it is caused since 12- 14 hours of the examination and nature of death is homicidal. This expert has been subjected to searching cross examination, but nothing could be elicited in favour of defence. There is no other expert's opinion contrary opinion of this expert, therefore, it is established that deceased died due to septic shock and his death is homicidal in nature.

8. Now the point for consideration of this court is whether the act of the appellant falls within mischief of murder or culpable homicide. As per evidence of eye-witnesses, incident took place suddenly and appellant assaulted the deceased with legs and fists. No weapon was used by him and looking to the act of the appellant, it appears that he had no intention or knowledge to kill the deceased, therefore, death of the deceased is unintentional and the act of the appellant falls within mischief of culpable homicide punishable under Section 304 Part II of the IPC for which the trial Court convicted the appellant.

9. Looking to the direct evidence and medical evidence, this court has no reason to substitute the contrary finding. Conviction of the appellant for the said offence is hereby affirmed. The trial Court awarded sentence of seven years for the said offence which cannot be termed as harsh, disproportionate or unreasonable. Sentence part is also not liable to be interfered.

10. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no further order for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)  
Judge

Raju