

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 15-2-2019

Delivered on 28-3-2019

CRA No. 6 of 2011

- Janata Ram Dhruw s/o. Hirawan Dhruw aged 46 years, Labour worker, resident of village Purena Police Station Baloda Bazar, District Raipur (CG).

---- Appellant

Versus

- State of Chhattisgarh through PS Bhatapara Gramin, Dist. Rapur. (CG).

---- Respondent

For Appellant : Mr. Manoj Mishra, Advocate appears
as Amicus Curiae

For respondent/State : Mrs. Shubha Shrivastava, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 24-11-2010 passed by the Additional Sessions Judge, Bhatapara, Dist. Raipur in Sessions Trial No. 20 of 2009 wherein the said Court has convicted the appellant for the commission of offence under Section 304 Part 1 of IPC and sentenced him to undergo RI for seven years and to pay fine of Rs.100/- with default stipulations.

2. As per version of prosecution, dead body of deceased Santram was found near the road at village Tonatar to village

Purena. Report was lodged on 18-1-2009 by the son of the deceased Santram. On investigation, it is found that the appellant committed murder of deceased Santram. 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) The case of the prosecution is based on extra judicial confession made before the son of the appellant namely Govind (PW/19) which is not trustworthy, therefore, conviction on the basis of extra judicial confession is illegal.
- ii) Wife of the deceased namely Asin PW/18) and his son Anil (PW/4) admitted that the deceased was addicted to liquor and on several occasions he had fallen on road, therefore, it is not a case of any criminal act.
- iii) There is no eye-witness account to the incident and circumstantial evidence is not such which warrants conviction of the appellant. It is settled law that suspicion,

however strong, cannot take place of proof and therefore, conviction on the basis of suspicion is liable to be set aside.

4. On the other hand, learned counsel for the respondent/State 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. Dr. D.P. Verma (PW/24) conducted autopsy of the deceased Santram and noticed the following injuries as per Ex.P/18.

- I) Excessive crush injury present on lower half of face, reaching upto middle of neck in such an extent the skin over chin are badly crushed, maxilla and mandible fractured into many pieces, thyroid bone and thyroid cartilage fractured.
- ii) Two lacerated wounds found on left side of scalp one on frontal region and other on parietal region in the size of 3 cm x 5 cm in length and skin deep.

- lii) Multiple abrasions found in front of chest and right shoulder region and skin deep 1.5 cm size wound on chest between abrasions.

As per version of this medical expert, injuries were caused by hard and blunt object and deceased died due to excessive bleeding. Version of this witness is unshaken during cross examination, therefore, there is nothing to disbelieve the opinion of the expert. Again, there is no other expert's opinion contrary to opinion of this expert, therefore, there is nothing to disbelieve the opinion of this medical expert according to which deceased died due to injuries caused by hard and blunt object.

7) Now the point for consideration of this court is as to who assaulted the deceased Santram. PW/19 Govind who is son of the appellant/accused deposed before the trial that the appellant made extra judicial confession before him that he committed murder of the deceased. Version of this witness is supported by version of Dauram (PW/12), Yashoda (PW/13) and Narsingh (PW/14) before whom the appellant made extra judicial confession that he committed murder of deceased Santram. All these four witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence. Extra judicial

confession was made just after the incident and it is made to his son by the appellant and there is no reason to say that his son is falsely implicating his father.

8. From the evidence of all these four witnesses, it is established that the appellant after commission of murder confessed his guilt regarding murder of the deceased which is supported by the version of medical evidence. It is not a case where the trial Court has recorded its finding on the basis of any irrelevant or extraneous material, but the same is based on relevant evidence placed on record and this court has no reason to substitute contrary finding. Again, as per evidence the trial Court opined that both appellant and deceased were in state of drunkenness and it appears that due to sudden quarrel appellant assaulted the victim unintentionally, therefore, the act of the appellant falls within mischief of Section 304 Part 1 of IPC and the finding of the trial Court is not liable to be interfered with. In view of the above, argument advanced on behalf of the appellant is not sustainable. Conviction of the appellant under Section 304 Part 1 of IPC is affirmed. The trial Court awarded sentence of seven years. The sentence awarded by the trial Court cannot be termed as harsh, disproportionate or unreasonable. Sentence part is also not interfered with.

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

Sd/-

(Ram Prasanna Sharma)

Judge

Raju