

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****RESERVED ON 7-5-2019****DELIVERED ON 10-5-2019****CRIMINAL APPEAL No. 385/2006**

(Arising out of judgment of conviction and order of sentence dated 17-3-2006 passed by Addl. Sessions Judge, Bilaspur (CG) in ST No. 220/2005)

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Beeresh Yadav, son of Ramnaresh Choudhary, aged about 24 years, R/o. Village Kamlakant Karariya Bahari, PS. Meergoj, Distt. Gopalganj (Bihar), at present near Shivraj Hotel, Sipat, PS Sipat, Distt. Bilaspur (CG)

---Appellant**-VERSUS-**

State of Chhattisgarh through P.S. Sipat, Distt. Bilaspur (CG)

---Respondent

For appellant : Shri Rupesh Trivedi, Adv.
For State : Shri Vikram Dixit, Govt. Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV JUDGMENT**

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 17-3-2006 passed by Addl. Sessions Judge, Bilaspur (CG) in ST No. 220/2005 whereby and whereunder he convicted and sentenced the appellant as under :-

Offence u/S.	RI for	Fine Rs.	RI in default of payment of fine
304 - II, IPC	10 Years	500/-	1 month

2. In brief the prosecution story is that on 16-4-2005 between 1.00 am to 5.00 am in front of Material Gate, linhay of pond appellant had caused injuries on body of deceased Jawahar Suryavanshi by hands and fists. Informant Foolan Prasad intervened. Deceased Jawahar had laid on the linhay of the pond. At about 5.00 pm he was found dead. On very day Foolan Prasad intimated police station Seepat where merg intimation was lodged. Thereafter an FIR was lodged in said police station. After the investigation, a charge sheet was filed against him. The trial Court framed charge against him under Section 302 of the Indian Penal Code (in brevity 'IPC'). After completion of trial, trial Court convicted and sentenced him as aforesaid and acquitted him of the charge punishable under Section 302, IPC.

3. Counsel for the appellant submits that trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentence of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charge.

4. Counsel for the State argued that the conviction and sentence of the appellant are based on clinching evidence. The conviction and sentence of the appellant do not call for any interference by this Court.

5. As per the post mortem report Ex. P-7, P.W. 7 Dr. Rajesh Kumar had conducted the autopsy on the dead body of the deceased Jawahar Suryavanshi. He found 6 contusions and one abrasion on his body out of which one contusion was present on his left frontal head region, another contusion was present on upper neck region, left 6th, 7th, 8th, 9th and 10th ribs were fractured, left lower lungs was ruptured. He opined that cause of death was shock and hemorrhage as a result of thoracic injury and said fractures and said rupture of left lower lung.

6. There is no such evidence on record on strength of which it can be said that Ex P-7 is not believable. Thus this court believes on Ex P-7.

7. P.W.1 Foolan Prasad says in para 2 of his statement given on oath that he had seen that appellant was beating deceased Jawahar Suryavanshi by legs.

8. P.W. 2 Chunnilal says in para 1 of his statement given on oath that Foolan Prasad had told him that appellant was beating deceased Jawahar Suryavanshi. Appellant had also told him that he had beaten deceased Jawahar Suryavanshi.

9. P.W. 3 Ramchandra Yadav says in para 1 of his statement given on oath that Foolan, deceased and appellant were present. Foolan had told him that appellant had caused injury to the deceased.

10. P.W. 9 Kanhaiya Gautam says in para 2 of his statement given on oath that appellant had told that he caused a fist blow to the deceased.

11. In merg intimation Ex. P-1 it has been mentioned that the appellant had caused injury by hands and fists on the body of the deceased.

12. There is no such evidence on record on strength of which it can be said that Ex. P-1 is fabricated or concocted.

13. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W. 1 Foolan Prasad, P.W. 2 Chunnilal, P.W. 3 Ramchandra Yadav, P.W. 9 Kanhaiya Gautam are not simple, not natural, not normal.

14. Looking to the above mentioned facts and circumstances of the case, Ex. P-1 and Ex. P-7, this court finds that prosecution has succeeded to prove beyond reasonable doubt the charge punishable under Section 304-II, IPC against the appellant.

15. After appreciation of the evidence discussed herebefore, this court finds that trial Court has not committed any illegality in convicting and sentencing the appellant as aforesaid. Hence, the appeal deserves to be dismissed.

16. The appeal is accordingly dismissed. The conviction and sentence of the appellant are hereby affirmed.

17. As per the report received from the Jail Superintendent, Central Jail, Bilaspur dated 27-3-2019 the appellant has been released on 9-9-2010 after getting the benefit of remission extended to him. Thus, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge