

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1090 of 2014**

- Jagat Ram S/o. Late Amar Sai Majhwar, aged about 35 Years, Occupation-Agricultural, R/o. Village Parogiya Chowki Tara, Police Station-Prem Nagar, Revenue & Civil District-Surajpur, Chhattisgarh

---- Appellant**Versus**

- State of Chhattisgarh through SHO, P.S. and Tehsil-Premnagar, Revenue and Civil District-Surajpur, Chhattisgarh

---- Respondent

For the Appellants : Mr. Dashrath Kushwaha, Advocate.

For the State/Respondent : Mr. Arun Shukla, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on board****09/01/2019**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 17.10.2014 passed by the learned 3rd Additional Sessions Judge, Surajpur, District-Surajpur, Chhattisgarh in Sessions Trial No.15/2013 convicting the accused/appellant under Section 304 Part-II of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for 10 years with fine of Rs.500/-, with usual default clause.
2. The prosecution case, in brief, is this that on 24.6.2013 between

12.30 and 1.00 pm in the afternoon the appellant was quarreling with his wife and when his father Amar Sai intervened, appellant had assaulted him with a club causing fatal injury on his head resulting into his death.

3. Ram Sai PW-1 lodged merged intimation ExP-2 and FIR ExP-1 on the same day. After inquest procedure and postmortem examination, it was found vide report ExP-9 that death of deceased was due to head injury caused to him. The case was further investigated and the witnesses were examined under Section 161 of CrPC. On completion of investigation charge-sheet was filed against the appellant before the concerned Court.
4. The appellant was charged for the offence punishable under Section 302 of IPC. He abjured his guilt and sought for trial. Statement of appellant under Section 313 of CrPC has been recorded in which he denied all the incriminating evidence available against him, pleaded innocence and false implication. No witness was examined in defence. After completion of trial, impugned judgment has been passed in which the appellant stands convicted and sentenced in the manner as described above.
5. It is submitted by counsel for appellant that appellant has been convicted without there being any support of the prosecution evidence beyond reasonable doubt. The weapon of offence in this case was only a club and it had been a case of single blow, hence, intention of the appellant was only to cause simple injury to the

deceased. Deceased died due to natural causes for which the appellant cannot be held responsible. In these circumstances, the appellant could have been convicted only for the offence of simple hurt punishable either under Section 323 of IPC or 324 of IPC. Hence, the conviction of the appellant is bad in law. In the alternative, it is submitted that in case this is not inclined to allow this appeal.....

6. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the counsel for the appellant. He submits that the prosecution has proved its case beyond reasonable doubt. There is unrebutted statement of eyewitness Mundri Bai PW-5. Statements of other witnesses, who reached the spot soon after the incident are also of relevance and have corroboratory value. Further, the postmortem report itself speaks that the cause of death of the deceased was injuries caused to him and death was homicidal in nature. Therefore, no error has been committed by trial Court in convicting and sentencing the appellant in the manner as aforementioned. The appeal be dismissed.
7. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
8. The question that requires determination in this appeal is as to whether on the basis of evidence available on record the prosecution has been able to establish guilt of accused/appellant beyond reasonable doubt ?
9. Mundri PW-5 has stated clearly that she saw the appellant quarreling

with deceased Amar Sai and in that process he picked-up a club, assaulted on the head of the deceased with the said club and fled from the spot. In cross-examination, she has admitted that she had not seen the appellant assaulting the deceased with club and she came on the spot after the incident was over and the deceased was lying on the ground. However, on being examined by the Court, she has admitted that she saw the appellant assaulting the deceased with a club which has not been challenged in the recross-examination by the defence.

10. Ram Sai PW-1 arrived on the spot and saw his father lying on the ground with injury on his head. He is the person at whose instance FIR ExP-1 & merg intimation ExP-2 were registered. In cross-examination, he has admitted that he did not see the appellant assaulting his father with club.

11. Dhan Sai also reached the spot after the incident had taken place and saw the deceased lying on the ground with injury. He was informed by his wife that appellant had assaulted the deceased and injured him. In cross-examination, his statement remained unrebutted.

12. Ratni Bai PW-8 is also a witness in this case but she has not supported the prosecution case. Saniro PW-9 is a hearsay witness who came to know about the incident later on and she has also not made any statement against the appellant.

13. After closely scrutinizing the evidence of the witnesses who were

present on the spot soon after, it appears that there is sufficient proof to the effect that it is the appellant who gave fatal blow on the head of deceased which led to his death in the hospital while undergoing treatment. According to the autopsy surgeon, who conducted post-mortem examination vide Ex.P-9, the injury inflicted on the head of the deceased was the cause of his homicidal death. Nothing contradictory could be elicited in the cross-examination of the material prosecution witnesses so as to render their evidence doubtful in any manner.

14. As there is evidence that the appellant was the person who had assaulted the deceased and as per medical evidence also the cause of death of the deceased was the injury on his head, hence, both these facts get connected with each other and therefore the conclusion arrived at by the trial Court that it is the appellant who had assaulted and caused death of his father deceased Amar Sai, appears to be correct and needs no interference. Further the conclusion arrived at by the trial Court that there is no legal evidence in this case to show that the accused intended to cause murder of the deceased also appears to be based upon the materials and evidences and the same cannot be said to be illegal or perverse.

15. As regards the sentence, the appellant is in jail from the date of his arrest i.e. 24.6.2013 and thereby he has served out more than half of the sentence awarded to him. Considering that there is no minimum sentence prescribed for the offence under Section 304-II of IPC and further considering the very genesis of incident which resulted in

unfortunate death of the deceased, this Court is of the considered opinion that it will be in the interest of justice to sentence him to the period already undergone by him.

16. Accordingly, the appeal is partly allowed. While maintaining the conviction of appellant under Section 304 Part II of IPC, the sentence imposed upon him under that section is reduced to the period of detention already undergone by him. Sentence of fine is, however, maintained along with its default clause. Appellant is reported to be in custody, he be set at liberty forthwith if not required to be detained in connection with any other offence.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha