

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 945 of 2015**

- Basant Gupta son of Khakhanu Sao @ Rambhanu Gupta, aged about 33 years, R/o village Chalgali, P.S. Lundra, District Surguja (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : The Police Station Lundra, District Surguja (CG).

---- Respondent

For Appellant	:	Shri S.P. Sahu and Shri Pradeep Kumar Sahu, Advocate.
For Respondent/State	:	Shri Subhash Yadav, Dy. G.A.

D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava & Hon'ble Smt Justice Rajani Dubey

Judgment On Board**26.02.2019****Per Rajani Dubey, J**

This appeal is directed against the impugned judgment of conviction and order of sentence dated 22.07.2015 passed by learned Special Judge, Surguja (Ambikapur), in Special Sessions Trial No.19/2012 whereby and whereunder, the appellant has been held guilty of commission of offence under Section 302 IPC (on two counts) and sentenced to undergo life imprisonment along with fine of Rs.3,000/- and in default of payment of fine, additional R.I. for one year.

02. The prosecution story, in brief, is that on 26.09.2011, Vrund Kumar Jaiswal along with Thibhu Korwa went to village Tilsinwa on motorcycle and from there, they went to Ambikapur District Court on 27.09.2011 for appearance before it in connection with civil dispute and, thereafter, they stayed in the house of the daughter of Vrunda Kumar at village Sidhma. On 28.09.2011, when they were coming back to Chalgali, appellant driving his tractor bearing registration No.CG-15-AE-0846, in rash and negligent manner, ran over them from opposite side near village Chandrapida, as a result of which, Vrund Kumar Jaiswal died on the spot and Thibu Korwa died during the course of treatment in the hospital. Further case of the prosecution is that there was an old land dispute between the appellant and deceased Thibhu and a civil suit was also pending before the Court. A dehati nalisi in Ex.P/1 was recorded, at the instance of Banshidhar Jaiswal (PW/1) on 28.09.2011, at about 09.45 AM, followed by recording of merg intimation in Ex.P/25 and registration of FIR in Ex.P/26 on the same day at about 03.00 PM, naming the appellant to be the offender. Inquest on the body of deceased Vrund Kumar Jaiswal was prepared vide Ex.P/3 and dead body was sent for postmortem, which was conducted by Dr. Y.K. Kindo (PW/6) who gave his report in Ex.P/11 opining the cause of death to be nurogenic shock and injuries in lung, liver, spleen caused due to accident. Postmortem on the body of deceased Thibhu was conducted by Dr. Sanjay Singh (PW/9) and gave his report in Ex.P/17 opining the cause of death to be coma due to multiple injuries in body. After filing of the charge sheet, the trial Court framed charge against the appellant under Sections 302 IPC (on

two counts) and 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'the SC/ST Act'). The appellant abjured guilt and was put to trial. The Prosecution led evidence regarding there being old land dispute between the appellant and deceased Thibhu Korwa and that a civil suit was also pending in District Court, Ambikapur.

03. So as to hold the accused guilty, the prosecution examined as many as 25 witnesses. Two defence witnesses were also examined to substantiate its case.

04. The trial Court, considering the material available, convicted and sentenced the appellant as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant would argue that he had no intention to kill the deceased and unfortunately, they died in the accident when their motorcycle dashed with his tractor trolly. He would further argue that Bindeshwar Singh (PW/2), Bifan Ram (PW/10) and Dilip Nagesiya, who are said to have seen the incident, have not supported the case of the prosecution and turned hostile. He would also argue that the appellant has been implicated in the crime in question merely on the ground that there was old land dispute between them and a civil suit was also pending in the Court and only on suspicion he has been convicted.

06. On the other hand, learned counsel for the State supports the impugned judgment and submits that the appellant has intentionally killed the deceased on account of old land dispute. The eye-witnesses

to the incident PW/2, PW/10 and PW/12, who, at the time of incident, were sitting in the tractor, have clearly stated against the appellant. He would further argue that so far as old land dispute is concerned, the prosecution has been able to establish this fact by bringing credible evidence on record.

07. We have heard the rival submissions made by learned counsel for the parties and perused the records of the Court below.

08. Banshidhar Jaiswal (PW/1), brother of deceased Vrunda Kumar and lodger of FIR (Ex.P/26), has stated in his evidence that on the date of incident, he was informed by Dinesh Jaiswal, who is the nephew of the deceased, that the appellant has killed Vrunda Kumar by deliberately driving his tractor in rash and negligent manner near Chandardipa in Sahanpur. Thereafter, he along with other persons of the family of the deceased reached the place of occurrence and saw the motorcycle of Vrunda Kumar lying between the wheels of the tractor trolley and his body was lying on the right side of the tractor at a distance of 1-1.5 meter. This witness also states that at the time of incident, Thibhu Korwa was also going along with Vrunda Kumar, who had also suffered injuries and was taken to hospital. This witness, in para 9, further states that in the alleged accident, Vrunda Kumar died on the spot, whereas Thibhu Korwa died in Ambikapur Hospital during treatment. This witness also went on to state that a land dispute under Section 170 (B) of Chhattisgarh Land Revenue Code was going on between the appellant and deceased Thibhu Korwa in Ambikapur Court and his (this witness) brother Vrunda Kumar was assisting Thibhu Korwa on humanitarian ground.

09. Bindeshwar Singh (PW/2) has stated in his evidence that he does not know the deceased as also the appellant. In para 2 of his examination-in-chief, he states that on the date of incident at about 7.00 AM, he was going to his work. While he was going from Patora to village Kirkima, he saw that two persons came from behind and the rider was unable to keep balance. This witness also states that when he reached near Chandarpida, he saw two motorcyclists were lying on the left side of the road and their motorcycle was also lying there. He further states that there was a turning on road. He stayed there for some time, saw them and then due to fear, he went to his work. This witness has not supported the prosecution case and has been declared hostile.

10. Bifan Ram (PW/10) is the eye-witness to the incident. He has stated that he was working as labour with the appellant and he knew him as well as deceased Vrund Kumar Jaiswal. At the time of incident, the tractor was being driven by the appellant and he (this witness) was sitting in the tractor. They were going to Dhourpur from Chalgali for taking sand from river. This witness, in para 2, has stated that there was a turning near Chanrapida road and head-on collision took place there between the tractor and the motorcycle of the deceased. He then states that he could not see as to what happened to motorcycle, he even did not know as to whether any person died or is alive and he also does not know whether any person died in the accident. This witness has proved the patwari map (Ex.P/10) and admitted his signature thereon. This witness has also not supported the prosecution case and turned hostile.

11. Dilip Nagesiya (PW/12) is another eye-witness of the incident. He has stated that on the date of incident, he along with the appellant, was going to take sand from Gagar river. They were going from Chalgali. Along with him, other persons namely Suresh Natesh, Shambhu Nagesh, Bifan Korwa, Juganu Korwa and Ishwar Korwa were also present in the tractor and the said tractor was being driven by the appellant. He has further stated that their tractor met with an accident near Chandrapida when motorcycle of deceased was coming from Dhourpur. This witness has also stated that he saw the incident from far away and, therefore, he could not say as to which vehicle dashed. This witness, in para 2, has stated that the place of incident was a turning point of road and a narrow space was there near the road. This witness has also stated that he never saw any accident and due to fear he fled away from the spot. This witness has not supported the prosecution case and turned hostile.

12. Suresh Nagesiya (PW/13) has stated in his evidence that at the time of incident, he was present in the tractor and near Chandrapida he heard the sound of collision. He then states that the dashing vehicle was motorcycle of deceased Vrund Jaiswal and one more person was also along with him (Vrunda), whom he did not recognize. He has also stated that Vrund died and his friend was alive. This witness has further stated that the place of incident was turning point of road. This witness has also not supported the prosecution case and has been declared hostile.

13. Juganu Ram (PW/15) has stated that on the date of incident when they reached near village Chandarpida, at that time, deceased

Vrunda Kumar Jaiswal along with his one friend was seen coming from village Karouli. The place where incident took place was a turning point. When deceased Vrunda Kumar was crossing the tractor, the appellant turned his tractor towards the direction of motorcycle as a result of which motorcycle dashed the engine of the tractor and deceased fell down on the ground and his motorcycle, as also his friend, came under the wheel of tractor. He has further stated that the place where the incident took place was a single road (narrow). This witness has also not supported the prosecution case and has been declared hostile. This witness, in para 9 of his cross-examination, has stated that he does not know whether the tractor-trolley deliberately dashed the motorcycle of the deceased or not.

14. Close scrutiny of the evidence makes it clear that on the date of incident, there was a head on collision between the tractor trolley of the appellant and motorcycle of deceased Vrunda Kumar Jaiswal on which his friend Thibhu Korwa was also sitting. In the accident, Vrunda Kumar Jaiswal died on the spot whereas, Thibhu Korwa died in the hospital during the course of treatment. The evidence of Bindeshwar Singh (PW/2), Bifan Ram (PW/10), Dilip Nagesiya (PW/12), Suresh Nagesiya (PW/13) and Jugnu Ram (PW/15), who, at the time of incident, were present on the spot and were sitting in the tractor trolley, have not specifically stated against the appellant and all the witnesses have been declared hostile, but the only thing which came in their statement is that the accident spot was a turning point of the road and that it was a single (narrow) road.

Dayashankar Singh (PW/5), Patwari, has stated that he prepared

spot map vide Ex.P/10 and has proved his signature thereon. He has stated that the tractor trolley was going from Sahanpur to Chandrapida and motorcycle was coming from Chandrapida to Sahanpur. In cross-examination, he has further stated that it was narrow and asphalt road and only one vehicle could only pass through the road. Crime detail form (Ex.P/4) also confirms that the road, where the accident took place, had taken a turn, narrow and asphalt road and only one vehicle could pass through. Thus, it is crystal clear that the place where the accident took place was a turning point. The another aspect of the case is that there was a long standing land dispute between the appellant and deceased Thibhu Korwa, a civil suit was also pending before the Ambikapur Court, deceased Vrund Kumar Jaiswal was assisting deceased Thibhu and the trial Court recorded the finding that this land dispute was the motive behind the crime and raised suspicion against the appellant. The prosecution, to substantiate this motive, has brought on record the documents related to land dispute (Ex.P/15 and P/16).

On the date of incident, both the appellant and the deceased were passing through the road in connection with their respective work and it has not come on the record that there was any specific planning to eliminate them and only on the ground of suspicion, the appellant has been held guilty by the trial Court. Had there been any intention or planning on the part of the appellant to eliminate the deceased, the entire picture would have been different and some incriminating material would have definitely come like appellant's statement before someone else regarding elimination, threat etc., but no such evidence

is there in the present case. Most surprising thing in this case is that there are as many as five eye-witnesses to the incident, but none of the witness has stated against appellant and turned hostile. Only on the basis of there being old land dispute between them, no inference can be drawn that the appellant might have killed the deceased unless there is clinching and credible evidence on record to prove the involvement of the accused beyond reasonable doubt. One of the fundamental principles of criminal jurisprudence undeniably is that the burden of proof squarely rests on the prosecution and that this burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion, howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed. Though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.

15. The Supreme Court in the matter of **Jaharlal Das v. State of Orissa**, reported in **(1991) 3 SCC 27**, has held that even if the offence is a shocking one, the gravity of offence cannot by itself, overweight as far as legal proof is concerned. In another case **Varkey Joseph v. State of Kerala** reported in **1993 Suppl (3) SCC 745**, the Supreme Court has held that suspicion is not the substitute for proof. There is a long distance between 'may be true' and 'must be true' and the

prosecution has to travel all the way to prove its case beyond reasonable doubt. In another case, in the matter of **Sujit Biswas v. State of Assam** reported in **(2013) 12 SCC 406**, the Supreme Court held in para 13 as under:-

“**13.** Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusion. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense”.

16. It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused, should be adopted.

17. From the aforesaid evidence of the prosecution, the only irresistible conclusion can be drawn that the appellant had no intention to kill the deceased and the deceased died due to negligent driving of the appellant and he is liable to be convicted under Section 304-A IPC instead Section 302 IPC.

18. In the result, the appeal is allowed in part. Conviction of the appellant under Section 302 IPC (on two counts) is altered to Section 304-A IPC and he is sentenced to undergo R.I. for two years and to pay fine of Rs.3,000/-. From the record, it appears that the appellant has undergone eight years of imprisonment and he is in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge