

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 79 of 2017

Pawan Kumar Dhurve S/o Rain Singh, Aged About 20 years R/o Village Goutul Munda Dharni, Police Station Ambagarh Chouki Thana Urla, Revenue And Civil District Rajnandgaon, Chhattisgarh

---- **Appellant**

Versus

State of Chhattisgarh Through Police Station Urla Revenue and Civil District Raipur Chhattisgarh.

---- **Respondent**

For appellant	: Ms. Preeti Jha, Advocate, appears as <i>Amicus Curiae</i> .
For State	: Mr. Afroj Khan, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

28.02.2020

1. This appeal is preferred against the judgment dated 24th of March, 2015 passed by Sessions Judge, Raipur (C.G.) in Sessions Trial No.174/2013 wherein the said Court convicted the appellant for charge under Section 304 (Part-I) of Indian Penal Code, 1860 and sentenced him to undergo R.I. for 10 years.
2. In the present case, name of the deceased is Puran Lal Sahu. As per version of the prosecution on 26th of April, 2013 at the night time about 10.30 pm the appellant Pawan Kumar Dhurve came near to deceased and created dispute with him for the payment which was not given by the deceased against the tanker of unloading 10 to 12 days ago. During this dispute the appellant assaulted the deceased by weapon rod on his head and other part of the body. Later on the injured Puran Lal succumb to the injuries. Thereafter, the appellant was charge-

sheeted for commission of murder under Section 302 of IPC and sentenced him for offense under Section 304 (Part-I) of IPC, 1860.

3. Learned counsel for the appellant submits that the prosecution has failed to prove the intention of the appellant therefore, it is not a case under Section 304 (Part-I) of the IPC. The trial Court passed sentence of conviction on the evidence of Kanhaiya Lal Mandavi (PW-1) who is interested witness therefore, finding of the trial Court is not sustainable. The trial court has not evaluated the evidence properly therefore, conviction and sentence of the appellant is liable to be set-aside.
4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. In the present case, date of incident is 26th of April, 2013 and F.I.R. was lodged by Kanhaiya Kumar at Police Station Urla on same day, naming the appellant as culprit and assault by rod on the body of the deceased and on head was also mentioned. Version of this witness was unrebutted during cross examination. Version of this witness is supported with the version of M. Prasad Rao (PW-3) who saw head injuries on the body of the deceased. Version of this witness is supported by version of Dr. S.K. Bag (PW-6) who conducted autopsy of the deceased on 27th of April, 2013 and noticed following injuries(Ex.P-8)

- (I) Contused lacerated wound present at forehead of 6x5 cm, bone of frontal bone exposed, depressed fracture.
- (ii) contused lacerated wound with sharp effect present on head and face which is 15 in nos. with same size of 5x0.3 cm.
- (iii) 16 fracture of mandible bone into multiple pieces.
- (iv) 17 fracture of Nasal bone.
- (v) Two upper incisors and three lower incisors teeth fracture(broken).
- (vi) 19 lacerated wound on under surface of lower lip.
- (vii) 20 complete fracture of right tibia bone of middle 1/3rd part.
- (viii) 21 impacted abrasion present on right side forehead at frontal region of 4x2 cm obliquely.
- (ix) 22 incised looking wound on under surface of chin of 5x2cm.

As per opinion of this expert, all the injuries were caused by hard and blunt object and injuries were caused within 12 hrs. of examination. The deceased died due to multiple injuries and profuse bleeding. He died of shock due to the injuries. As per version of this witness, the injuries were sufficient to cause death and nature of death is homicidal. One iron rod was seized in the present case and brought before this witness and opined that injuries could be caused by this weapon.

6. There is nothing to turn the expert opinion because there is nothing contrary to this expert opinion. Therefore, it is established that death of the deceased is homicidal. There is nothing on record to say that appellant has been falsely roped in charge. There is nothing on record to disbelieve the version of the prosecution witnesses and opinion of the expert. The

F.I.R. was lodged promptly on the same day of incident and name of the appellant also mentioned as culprit. Therefore, version of prosecution is not rebutted and it is established that appellant is author of the crime.

7. In view of legal position, argument advanced on behalf of the appellant is not sustainable. Though it is arguable whether act of the appellant falls within mischief of Section 302 or 304 (Part-1) of IPC but the fact remains that no appeal is preferred by the state against finding of the trial Court.
8. View adopted by the trial Court is one of the plausible view. Therefore, this Court has no reason to take a contrary view. Conviction of the appellant for offence under Section 304(part-1) is hereby affirmed.
9. Considering the facts and circumstances of the case and further considering the act of the appellant. 10 year sentence awarded to the appellant by the trial Court cannot be termed as harsh, disproportionate or unreasonable. Accordingly, the appeal is liable to be and is hereby dismissed.
10. As per report of jail authorities, appellant is reported to be in jail therefore, no further order for his arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
Judge