

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 26-11-2019

Delivered on 10-01-2020

CRA No. 831 of 1999

- Chhotu @ Rajadhani s/o. Dilwar aged about 30 years r/o. Village Shemrakala, P.S. Pratappur, District Surguja MP now CG.

---- Appellant

Versus

- State of Madhya Pradesh (now State of Chhattisgarh).

---- Respondent

For Appellant	:	Mr. Roop Naik, Advocate
For respondent/State	:	Mr. Aman Kesharwani, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 5-3-1999 passed by the Additional Sessions Judge, Surguja, (CG) in Sessions Trial No. 18 of 1996 wherein the said Court has convicted the appellant for commission of offence under Section 304 Part I of the IPC, 1860 and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.200/- with default stipulations.

2. In the present case, name of the deceased is Sanku. As per prosecution case, on 18-8-1995 at 7.00 pm., appellant caused injury to deceased by club on various parts of the body. When wife of deceased namely Jamuna Bai (PW/3) tried to save her husband,

she was also beaten by the appellant. The incident took place due to land dispute between appellant and one Sonsai. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) A per version of Dr. Shiv Kumar Paikra (PW/13) no injury was directly fatal but the trial court gave contradictory finding in this regard.
- ii) Version of Jamuna Bai (PW/3) is contradictory in nature but same is overlooked by the prosecution.
- iii) The trial court acquitted co-accused Pradeep on the same set of evidence giving benefit of doubt to him and the case of the appellant is less or more similar.
- iv) The trial court disbelieved the prosecution story so far as it relates to allegation that the appellant also caused injury to Jamuna Bai (PW/3). Since the statement of Jamuna Bai

(PW/3) is not reliable, conviction cannot be based on her testimony and at the most offence falls within ambit of Section 324 of IPC for which appellant has already suffered the jail sentence of about 3 1/2 years, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling 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. The question for consideration of this court is whether the appellant assaulted deceased Sanku. Jamuna Bai (PW/3) is eye-witness account to the incident. As per version of this witness, appellant assaulted deceased on his head by club as a result of which he fell down. When she rushed to the spot to save her husband, appellant also assaulted her by club. Version of this witness is unrebutted during searching cross examination. It is supported by FIR (Ex.P/3) in which name of the appellant is

mentioned as culprit and his act of assault is also mentioned. FIR is lodged by eye-witness Jamuna Bai (PW/3) who is firm to her version from day of the incident to deposition before the trial court.

7. In the matter of **Vadivelu Thevar v. State of Madras (AIR 1957 SC 614)** Hon'ble the Supreme Court held that it is quality and not quantity of evidence which has to be weighed. Single testimony is sufficient to bring home the guilt if it is wholly reliable. As per Section 134 of the Indian Evidence Act, 1972 no particular number of witnesses is required to prove any fact. In the present case, evidence of Jamuna Bai (PW/3) inspires confidences looking to the quality of evidence, therefore, no corroboration is required but in the present case, there is corroborative piece of evidence which is also brought on record. Dr. Shiv Kumar Paikra (PW/13) conducted autopsy of the deceased Sanku on 12-8-1995 and noticed the following injuries.

- i) Swelling of 4 cm x 3 cm over face which is below the left eye due to this injury. Left eye is closed by its swelling.
- ii) Lacerated wound of 3 cm x 2 cm x 1/2 cm over back of the right elbow. Clotted blood present.
- iii) Lacerated wound of 4 cm x 2 cm x 1/2 cm over back of the body which is just below and lateral to the right shoulder blade, clotted blood present.

- lv) Abrasion of 2 cm x 2 cm over right shoulder bluish in colour.

As per version of this witness, bones of 6th and 7th ribs of deceased were broken and his left lung was punctured which is due to breaking of ribs. Deceased died of asphyxia due to puncture of left lung. This witness has examined the deceased on 12-8-1995 at 10.00 a.m., and opined that the injuries were caused within 24 – 36 hours of the examination. He further opined that the injuries were sufficient to cause death. Version of medical expert is unrebutted and there is nothing on record contrary to the opinion of this expert, therefore, there is no reason to take contrary view what is recorded by the expert. From the entire evidence, it is clearly established that the appellant is the author of the crime and injuries were sufficient to cause death.

8. Now the point for consideration of this court is whether the act of the appellant falls within definition of murder or culpable homicide, but the fact remains that the State has not preferred any appeal against the finding of the trial court. The trial court recorded finding of lesser offence, therefore, argument advanced on behalf of the appellant is not sustainable. Conviction of the appellant is hereby affirmed.

9. Heard on the point of sentence.

The trial Court awarded RI for ten years for the said offence which cannot be termed as harsh or unreasonable or

disproportionate. Sentence part is also not liable to be interfered with.

10. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds stand cancelled. The trial Court will prepare supersession warrant and issue non-bailable warrant against the appellant and after his arrest he be sent to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 6-5-2020.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju