

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Reserved on 29.11.2019

Delivered on 10-01-2020

**CRA No.2825 of 1999**

- Chaganlal Dubey s/o. Kishanlal Dubey, aged about 29 years, r/o. Bajrang Nagar, Tahsil and District Durg (MP now CG).

--Appellant.

Vs.

- The State of Madhya Pradesh (Now State of CG).

– Respondent.

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For appellant : Mr. Anand Kumar Gupta, Advocate

For respondent/State : Mr. Ishwar Jaiswal, P.L.

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

1. The appeal is directed against judgment dated 6-10-1999 passed by the First Additional Sessions Judge, Durg (CG) in Session Trial No. 38 of 1993 wherein the said Court convicted the appellant for commission of offence under Section 304 Part I of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of 1000/- with default stipulations.

2. In the present case name of the deceased is Dinesh. As per version of prosecution, on 2-11-1992 at about 9.30 pm deceased Dinesh and his family members had a heated altercation. Present appellant along with other co-accused came to the house of the deceased Dinesh where atmosphere is subsided but the appellant gave knife blow to the deceased on his chest resulted into death of the deceased. The matter was reported and investigated and the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

- (i) There was no pre-meditation to assault the victim and there was grappling between the deceased and appellant.
- (ii) The assault was on the spur of moment, 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 marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. The question for consideration of this court is whether the appellant assaulted the deceased namely Dinesh. Makhulal (PW/1) and Susheela Bai (PW/2) are eye-witness account to the incident.

From the evidence of both the witnesses it is established that the appellant assaulted deceased with knife as a result of which he sustained injury on his chest. Both witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of defence. There is nothing on record to say that deceased was aggressor at the time of incident, therefore, the act of the appellant is voluntary in nature and his act does not fall in any of the exception mentioned in IPC. Version of both the witnesses is again supported by FIR which is lodged on the same day of the incident ie., on 2-11-1992 in which name of the appellant is mentioned as culprit and his act of assault is also mentioned. Again, version of both the witnesses is supported by version of Dr. R.B. Agarwal (PW/6) who conducted autopsy on 3-11-1992 at District Hospital, Durg and noticed the following injuries.

"Incised injury on the right side of chest wall of 10 cm x 3cm x 10 cm deep occupying 6, 7, 8 and 9th ribs vertically blood found in right pleural cavity'.

As per opinion of medical expert, death was caused due to shock which is happened due to injury on chest and lungs. This witness has deposed that one knife was brought to him and he opined that there is possibility that injury is caused by this weapon. Version of medical expert is unrebutted and there is no other medical evidence to rebut the opinion of this medical expert.

7. Though it is contended on behalf of the appellant that appellant was also assaulted by the injured/complainant with spade but his version is not supported by any medical evidence, therefore, contention of the appellant and statement of defence witnesses namely Shailendra Tiwari (DW/1), Umedi Chakradhari (DW/2) and Chaganlal (DW/3) do not help the version of defence.

8. Now the next question for consideration before this Court is whether the act of the appellant falls within definition of murder or culpable homicide but the fact remains that no appeal is preferred by the State against the finding of the trial court regarding commission of offence under Section 304 Part I of the IPC. After reassessing the entire evidence adduced by both sides, finding recorded by the trial court for commission of offence under Section 304 Part 1 of IPC is hereby affirmed.

9. The trial Court awarded sentence of ten years which cannot be termed as harsh, disproportionate or unreasonable looking to the death caused by the appellant by inflicting knife injuries on vital part of the deceased, therefore, sentence part is not liable to be interfered with.

10. Accordingly, the appeal 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 super-session 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