

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 828 of 2001

Reserved on : 28.11.2019

Delivered on : 10.01.2020

Dhiran Singh, S/o Harihar Singh Gond, aged about 24 years, Occupation Cultivation, R/o Village- Chhoda, P.S. Pali, Tahsil- Katghora, District- Korba (C.G.)
---- Appellant

Versus

State of Chhattisgarh, through P.S. Pali, Tahsil- Katghora, District- Korba (C.G.)
---- Respondent

For Appellant : Mr. Roop Naik, Advocate.
For State/respondent : Mr. Afroj Khan, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 07.07.2001 passed by Fourth Additional Sessions Judge, Bilaspur (C.G.) in Session Trial No. 53/2001, wherein the said court convicted the appellant for commission of offence under Section 304 (Part-II) of IPC, 1860 and sentenced to undergo R.I. for 10 years.
2. In the present case, name of the deceased is Dasharath. As per version of the prosecution, on 18.09.2000, the deceased along with his cattle had gone to Village- Pond and he was returning after grazing of his cattle, reached near bank of Tangu Tank, where field of Bhag Singh and the appellant are situated. The appellant objected the deceased not to move his cattle through his field and used obscene words and assaulted him mercilessly by club on his head and various vital parts of body. The deceased sustained grievous hurt, the witnesses informed the incident to his son namely Shatrughan, thereafter, the deceased was taken to hospital and during course of

treatment, he died. The case under Section 302 of IPC was registered against the appellant and after completion of trial, the trial court convicted the appellant as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) There is no evidence to establish charge under Section 304 (Part-II) of IPC regarding culpable homicide when enmity between the parties is not proved and no article was seized from the appellant.

(ii) The deceased died after 13 days of the incident and there is no motive of the appellant to kill the deceased.

(iii) The trial court has not evaluated the evidence in its true perspective, therefore, finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the records.

6. Chaitram (PW-4), Shatrughan (PW-8), Nariyal (PW-9), Sehattar (PW-10) & Tilak Yadav (PW-11) are eye-witnesses account to the incident. They have deposed before the trial court that the appellant assaulted the deceased by club. From the evidence, it is clear that the deceased sustained multiple injuries and died due to injuries sustained by him.

7. Dr. Pradeep Agrawal (PW-6) is medical expert who examined the deceased on 18.09.2000 at Community Health Centre, Pali (Ex.P/6) and noticed following injuries:-

(i) Fracture on right side of mandible.

- (ii) Fracture on right side of zygomatic bone and swelling on right side of face.
 - (iii) Swelling on right upper and lower eyelid.
 - (iv) Lacerated wound on right side of chin.
 - (v) Three lacerated wound on right ear pinna and bleeding.
 - (vi) Lacerated wound at the root of right ear pinna
 - (vii) Lacerated wound on middle of dorsum of right forearm.
 - (viii) Lacerated wound on right hand.
 - (ix) Lacerated wound in front and middle of right leg vertical.
8. As per version of this witness, all the injuries were caused by hard and blunt object within 6 hours of the examination. Dr. Manoj Jaiswal (PW-15) is medical expert who conducted autopsy of the deceased on 30.09.2000 and noticed following injuries:-
- (i) Right ear was crushed and temporal bone was also crushed.
 - (ii) Stitched wound on right leg about 2 inch vertical.
 - (iii) Stitched wound on right hand about 1 cm.
 - (iv) Lacerated wound on right fore arm about 2 cm. up to muscle deep.
9. As per version this witness, he found crushed injuries on ear and depressed fracture on temporal bone and the deceased died due to shock which is caused due to injuries on head. He further opined that the bone of brain and brain matter was crushed and no medical treatment was possible for the said injuries.
10. Looking to the ample medical evidence, there may be a difference of opinion whether it is a case of murder or culpable homicide, but the

fact remains that the appellant has been convicted for culpable homicide and no appeal is preferred against the said finding, therefore, it is not a case of enhancement of sentence. It is clear that the trial court convicted the appellant for commission of offence under Section 304 (Part-II) of IPC and the same cannot be modified by this Court looking to the brutal act of the appellant.

11. The trial court elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to record contrary finding. Conviction of the appellant is hereby affirmed.

Heard on the point of sentence.

12. The trial court awarded R.I. for 10 years for commission of offence under Section 304 (Part-II) of IPC, which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence and the factual matrix of the case. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
13. The appellant is reported to be on bail, his bail bond is cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellant and after his arrest, he be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 8th May, 2020.

Sd/-
(Ram Prasanna Sharma)
Judge