

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1233 of 2003

Reserved on : 06.12.2019

Delivered on : 30.01.2020

Mahajan, S/o Budhu Singh Gond, age 34 years, Occupation- Farmer, R/o Village- Barpani, Modipara, P.S.- Baikunthpur, District- Korea (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through P.S.- Baikunthpur, District- Korea (C.G.)

---- Respondent

For Appellant : Mr. Anand Kumar Gupta, 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 28.10.2003 passed by Additional Sessions Judge, Baikunthpur (Korea) (C.G.) in Session Trial No. 232/2003, 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 5 years and fine of Rs. 3000/- with further default stipulations.
2. In the present case, name of the deceased is Mangal who was son of Buddhu Singh Gond. As per version of the prosecution, there had been some dispute between the deceased and the appellant and on 13.06.2003 at about 8:00 p.m., the appellant hit the deceased with Lathi on his head as a result of which Mangal died. The matter was reported, appellant was charge-sheeted and after completion of trial,

the trial court convicted the appellant as mentioned above.

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

(i) All the prosecution witnesses are hostile and they have not supported version of the prosecution, but the trial court recorded finding of conviction on the basis of imagination which is not permissible under the law.

(ii) The prosecution witnesses have deposed that the deceased was found hurt from door frame of house, but the trial court overlooked the same and also overlooked contradiction and omission in statement of the prosecution witnesses.

(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. First question for consideration before this Court is whether the appellant assaulted the deceased on the date of incident i.e. on 13.06.2003. Parasram (PW-1) deposed before the trial court that he gave information at Police Station regarding death of the deceased Mangal as per Ex. P/1, but he is not aware of the fact as to how Mangal died. Birbal (PW-2) also did not depose as to how Mangal died. Though, he deposed that when Mangal invited people of locality, he also visited house of deceased at the same time, there was quarrel

between the appellant and the deceased, but he has not seen the appellant assaulting the deceased. This witness deposed (Para 5) that the deceased was hurt from door frame and sustained injury on his head. From evidence of this witness, it is not established that the injury on head of the deceased was caused by the appellant.

7. Ram Pyare (PW-5) deposed before the trial court that one Birbal informed regarding quarrel between the appellant and the deceased, but he has not seen the incident. Sumariya (PW-6) also did not state regarding any criminal act by the appellant. Hiralal (PW-7) is also not able to state as to who assaulted the deceased. Jailal (PW-8) has also not deposed anything against the appellant.
8. From the entire evidence, it is not clear as to who really caused injury on body of the deceased. Dr. Rameshwar Sharma (PW-4) is medical expert who conducted autopsy of the deceased and recorded finding that death of the deceased is caused due to head injury, but the fact remains that there is no connecting piece of evidence against the present appellant. It is settled law that graver the offence stricter the proof. It is also settled law that there is long mental distance between 'may be true and must be true'. If the act of the appellant is within the category of must be true then only he can be held liable.
9. In the present case, the entire evidence adduced by the prosecution is shaky in nature which is not sufficient to establish guilt the appellant. The charge under Sections 304 (Part-II) of IPC, 1860 is not established, therefore, the finding arrived at by the trial court is not sustainable.
10. Accordingly, the appeal is allowed. Conviction and sentence passed

by the trial court is set aside. The appellant is acquitted of the charge under Sections 304 (Part-II) of IPC, 1860. The appellant is reported to be in jail. He be set at liberty forthwith if not required in any other case. The fine amount, if paid, shall be refunded to the appellant.

**Sd/-
(Ram Prasanna Sharma)
Judge**

Arun