

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 03.3.2020

Delivered on 08.05.2020

Criminal Appeal No.102 of 2011

Sarga Singh Tandi, S/o. BC Tandi, aged about 48 years,
R/o. Oriya Basti, Ramkund, Police Station Sarswati Nagar,
Raipur Distt. Raipur (CG)

---- Appellant

Versus

State of Chhattisgarh, through District Magistrate,
Raipur, Distt. Raipur(CG)

---Respondent

For the appellant : Smt. Mandavi Bhardwaj, Advocate
For the respondent/State : Shri Ishwar Jaiswal, Panel Lawyer

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

1. The appeal is directed against judgment dated 06.4.2010 passed by Sessions Judge Raipur in Session Trial No.161/2008 wherein the said Court convicted appellant for commission of offence under Section 304 Part-II of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for 05 years and to pay fine of Rs.1000/- with default stipulation.
2. In the present case, name of the deceased is Kalu @ Tarun Bagh. As per the version of the prosecution, on 11.6.2008 at

noon, the appellant and the deceased were drinking liquor in the house of the appellant. During the course of drinking, a dispute arose regarding daughter of the appellant namely Suman. On this dispute, the appellant and other persons assaulted the deceased and the appellant sat on the chest of the deceased and pressed his neck due to which the deceased become unconscious. He was taken to hospital but succumbed to the injuries. The matter was reported, investigated and the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Version of Basanti Bai (PW-3) and Rama Tandi (PW-5) is not supported by other independent witnesses, therefore, finding of the trial Court is not sustainable.

(ii) The appellant has no knowledge to cause bodily injury to the deceased with intention to kill him, therefore, it is not a case which falls within mischief under Section 304 Part-II IPC.

(iii) The appellant has been charge sheeted on false ground and the trial Court overlooked the material contradictions and omissions in the statement of the prosecution witnesses, 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. In the present case, date of incident is 11.6.2008. Report was lodged on the same day at Police Station Saraswati Nagar, Raipur naming the appellant as culprit and his act of assault to the deceased is also mentioned in the said report. Basanti Bai (PW-3) is mother of the deceased. As per the version of this witness, she has been informed regarding assault by the appellant and other persons against her son that is why she reached to the spot and found that the appellant sat over the chest of the deceased and the appellant and other accused persons assaulted him. Version of this witness is supported by Rama Tandi (PW-5). Both witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence. There is no material contradiction in the statement of the witnesses which goes to the root of the case. Minor contradictions which do not go to the root of the case are insignificant and the same has no adverse effect to the case of the prosecution. Version of this witness is further supported by version of Dr. Ullas Gonnade (PW-

2) who conducted autopsy of the deceased on 12.6.2008 and noticed following injuries:

- (i) Lacerated wound of 6.3 cm x 4 cm on the upper portion of thyroid cartilage
- (ii) five abrasions were found out of which two linear abrasion of 2cm x 0.1cm; 2cm x 0.1cm with tenderness line at upper margin of thyroid; 3cm x 1 cm on the left side of the neck; 1.9cm x 1cm on oblique position on the cartilage; 3cm x 1 cm on thyroid cartilage;
- (iii) Two abrasions of 1.5cm x 8 cm & 1.5cm x 0.5 cm on back side of shoulder obliquely
- (iv) abrasion of 2cm x 1 cm on the centre of back side of the shoulder
- (v) abrasion of 3 cm x 2 cm on right upper limb position.

As per the version of this witness, the deceased died within 24 hours of the examination due to asphyxia.

7. From the eyewitness account of the incident and evidence of the medical expert it is established that the appellant is the author of the crime and participated in assaulting the deceased. The trial Court after evaluating the entire evidence recorded finding of conviction. The view taken by the trial Court is based on relevant material place in record and the same is not based on irrelevant and extraneous circumstances. Therefore, there is no

reason for this Court to take a contrary view that the deceased died due to the assault of the appellant.

8. The appellant has not been convicted under Section 302 IPC but he has been convicted under Section 304 Part-II IPC which is for causing unintentional death. Therefore, arguments advanced on behalf of the appellant has no force and conviction of the appellant for the said offence is hereby affirmed. The trial Court has awarded sentence of 05 years which cannot be termed as harsh, disproportionate and unreasonable. Therefore, sentence part is not liable to be interfered with.

9. 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 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 30.9.2020.

Sd/-

(Ram Prasanna Sharma)

JUDGE