

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 09-01-2020
 Delivered on 06-02-2020

CRA No. 619 of 2013

- Indar @ Kutla, s/o. Parmanand Porte, aged about 23 years r/o. Adivasi Nagar, Chhawani, P.S. Jamul, civil and Revenue Dist Durg (CG).

---Appellant.

Vs.

- State of Chhattisgarh through Police Station Jamul, Civil and Revenue District Durg (CG).

For Appellant : Mr. Ashish Beck, Advocate

For respondent/State : Mr. Ishwar Jaiswal, 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 30-3-2013 passed by First Additional Sessions Judge, Durg CG in Sessions Trial No. 101 of 2012 wherein the said Court has convicted the appellant for commission of offence under Sections 304 Part II of IPC.1860 and Section 25(1)(1B)(B) of the Arms Act, 1959 (for short, "the Act, 1959") and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1000 and RI for

two years and to pay fine of Rs.300/-, with default stipulations. Both sentences are directed to run concurrently.

2. In the present case, name of the deceased is Dani Parte. As per version of the prosecution, on 24-10-2011 appellant was making quarrel in his house in which deceased Dani Parte who is brother of the appellant intervened. On this intervention, appellant attacked on the head of the deceased by iron article as a result of which deceased sustained grievous injury and was shifted to District Hospital, Durg where he succumbed to injuries during treatment. 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) As per version of PW/2 Bhawani, appellant assaulted deceased from back side but as per medical evidence, deceased sustained injury on frontal parietal side, therefore, version of this witness is not supported by medical expert.
- ii) In FIR two persons namely Sanjay and Tanuja were mentioned as eye-witnesses but said Sanjay was not examined before the trial court. Tanuja was examined but she was not claiming to be eye-witness to the incident.
- iii) Seizure witnesses are not supporting the

factum of seizure, but the trial court overlooked the same.

- iv) The trial court has not evaluated the evidence properly, 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. PW/2 Bhawani is eye-witness account to the incident. As per version of this witness deceased Dani Porte was inflicted injury by appellant by knife. Version of this witness is supported by version of Dabal Singh Porte (PW/1) and Hema (PW/3) to whom Bhawani informed about the incident and thereafter they immediately rushed to the spot and saw the victim Dani Porte in a pool of blood. Both have deposed that Dani Porte sustained head injury and the appellant fled away from the spot. Version of these witnesses is corroborated by version of Dr. Beemrakaam (PW/8) who examined the deceased on 27-10-2011 at 12.05 a.m., in the night in Civil Hospital, Supela, Bhili, Dist. Durg and noticed following injuries.

- i) Victim brought to causality in unconscious position.
- ii) Lacerated wound of 4 cm x 1 cm over parietal region of the head.
- lii) Blackening in both side in frontal region.

Version of this expert is again supported by version of Dr. Rajan Tiwari (PW/7) who is the Neurosurgeon and he found that deceased was in deep unconscious and he found blood clot in frontal portion of brain of the deceased. This witness provided ventilation facility and sufficient medicine to the victim, but there was no improvement and during treatment deceased succumbed to the injuries. As per version of this witness, injuries were sufficient to cause death as the injuries were grievous in nature. Version of both experts have been subjected to searching cross examination but nothing could be elicited in favour of defence and there is no other expert opinion contrary to opinion of these two experts.

7. Taking into consideration the entire evidence, it is clearly established that Dani Porte died due to head injury caused by the appellant. It is arguable whether the case of the appellant falls within mischief of Section 302 of IPC or Section 304 Part II of IPC but the fact remains that the State has not challenged the finding recorded by the trial Court. In view of the above, finding of the trial court regarding commission of offence under Section 304 Part II

of IPC by the appellant is not liable to be interfered with and argument advanced on behalf of the appellant is not sustainable. Accordingly, conviction of the appellant for the said offence is hereby affirmed.

8. After evaluating the evidence, the court recorded finding that the appellant was in possession of one sharp object whose width was more than 2 inches and length of six inches which is in contravention of Section 4 of the Arms Act, 1959 and punishable under Section 25 (1)(1B) (B) of the Act, 1959. Finding of the trial court is based on seizure as per version of Asst. Sub Inspector T.S. Rajput (PW/9) which is unrebutted, therefore, this court has no reason to take contrary view. Accordingly, conviction for the said offence is also hereby affirmed. The trial court awarded sentence of ten years for offence under Section 304 Part II of the IPC . After taking into consideration the totality of facts, this court has no reason to reduce the sentence. Sentence part is also not interfered with.

9. Accordingly, the appeal being devoid of meri is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no further order for his arrest is required.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju