

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 670 of 2015

Sunder Singh S/o. Ram Singh, Aged about 38 years, R/o. Village Sokobahra, Police Station Kelhari, Tahsil Manendragarh, Civil and Revenue District Korea District Korea (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, Police Station Kelhari, District Korea (CG)

---- Respondent

For Appellant : Mr. Praveen Dhurandhar, Advocate.
on behalf of Mr. Anil Gulati, Advocate
For Respondent : Mr. Anand Verma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

11.06.2020

It is alleged that on 2.10.2011 at about 11.00 PM when Rangbahadur (PW-2) was sleeping in his house, the deceased came there and called out his son Chandan. When PW-2 informed him about his son not being in the house, the accused/appellant asked him to open the door. Thereafter, PW-2 opened the door and offered him a cot to sit on. After making the accused sit on the cot, PW-2 went out to answer the call of nature and saw the accused/appellant standing there. On being asked by PW-2 as to why the accused/appellant was

standing there, he told him about the search for the victim being made by him. It is further alleged that on seeing the victim in the house of PW-2, the accused/appellant went there and started abusing him saying that he would teach him a lesson for posing himself to be his father and saying so he pounced upon the victim and threatening him of being eliminated he started thrashing him with kicks and slippers, as a result of which blood started coming out from his head, mouth and hand. It is alleged that when PW-2 tried to intervene in the matter, the accused/ appellant slapped him too and also threatened him of life. PW-2 thereafter informed about the incident to Heera Singh (PW-4) and by that time Mahendra Singh (PW-5) also reached the spot. On the next day, after arranging a vehicle the victim was taken to police station where FIR (Ex.P-1) was registered against the accused/appellant under Sections 294, 506, 323 IPC. Subsequently, the victim was taken to Primary Health Center, Kelhari on 03.10.2011 but looking to his serious condition he was referred to the Manendragarh Hospital where 7-8 days thereafter he succumbed to the injuries suffered by him on 10.10.2011 while receiving treatment. Intimation regarding death was given to the concerned police station by Rajkaran (PW-6) - the Ward Boy of Community Health Center, Mahendragarh, on the basis of which offences under Sections 452 and 302 IPC were also added. Dead body was sent for postmortem examination to CHC Manendragarh, which was conducted by the doctor (not examined) who gave his report dated 11.10.2011. After

completion of investigation *challan* was filed and the charge framed under the same sections.

2. Learned Court below vide judgment impugned dated 10.04.2015 passed in Sessions Trial No. 109 of 2011 acquitted the accused/appellant under Sections 294, 506 and 302 but has held him guilty under Sections 452 and 304-II IPC with imposition of sentence of ten years RI with fine of Rs. 2000/- under Section 304-II and RI for two years with fine of Rs. 1000/- under Section 452 IPC, plus default stipulations. Hence, this appeal.
3. Counsel for the accused/appellant submits that the judgment impugned convicting the accused/appellant under Sections 452 and 304-II IPC is not based on proper appreciation of the evidence on record and therefore, the same is liable to be set aside. He submits that the Court below has failed to appreciate that the evidence of PW-2 suffers from numbers of contradictions and omissions while holding the accused/appellant guilty under the said sections. According to the counsel for the appellant, the prosecution has not been able to establish any motive or criminal intent on the part of the accused/appellant. Furthermore, it is submitted that in this case the incident had taken place on 02.10.2011 whereas the victim died on 10.10.2011 i.e. after a lapse of 8 days and therefore, it cannot be said that his death was the direct result of the injuries caused to the victim. He submits that non-examination of the doctor conducting

postmortem examination also renders the case of the prosecution doubtful.

4. On the other hand, State counsel supports the judgment impugned and submits that the lodger of the report and the sole eye-witness to the incident has categorically stated about the role played by the accused/appellant in abusing the victim and causing him injuries with kicks and slippers. According to the State counsel, evidence of PW-2 clearly goes to show that the victim suffered injuries on head and both cheeks, and that when he tried to intervene in the matter, the accused/appellant threatening him of life, hit with his elbow on his right arm. He further submits that though the doctor conducting postmortem examination has not been examined yet the postmortem report clearly shows the death to be on account of shock due to hemorrhage in brain as a result of head injury and the death was homicidal in nature. Thus, the State counsel submits that the findings recorded by the Court below holding the accused/appellant guilty are well founded and call for no interference by this Court.
5. Heard counsel for the parties and perused the material available on record.
6. The lodger of the report and eye-witness to the incident (PW-2) has fully supported the case of the prosecution stating that on the date of incident at about 11.00 PM, when he was sleeping in his house after taking dinner, deceased had come to his house and made the door open. He has further stated that after opening the door he asked the

victim to sit on the cot and he went out to answer the call of nature. According to him, after getting out of the house he in the torch light saw the accused/appellant standing there and on being asked by this witness he told him that he was in the quest of the victim. Saying so, according to this witnesses, the accused/appellant started abusing the victim and asking him to teach a lesson for posing himself to be his father, he started inflicting injuries to him with kicks and slippers. Evidence of this witnesses also goes to show that while pacifying the assault, the accused/appellant hit his right arm with his elbow. Thereafter he disclosed the incident to Heera Singh (PW-4) and by that time Mahendra Singh (PW-5) had also reached the spot. In cross-examination also the same thing has been stated by this witness barring certain contradictions and omissions on trivial issues. From the evidence of Veerbahadur Sai (PW-8) it is apparent that on the night of the incident when he was going to witness Durga procession, on the way PW-2 met him and informed about the victim being assaulted by the accused/appellant. Though this witness did not see the actual assault yet he saw his father (the victim herein) lying near the house PW-2 with injuries on his head and he did not even respond to the voice given by him. Almost similar statement has been made by another son of the victim namely Arjun Singh (PW-14). Wife of the victim namely Phoolmati (PW-1) has also stated that she saw her husband lying in front of the house of PW-2 in an injured condition with bleeding wounds. She has stated that the victim died 7-8 days after the incident while receiving medical treatment in the hospital.

Riyaz Ahmad Ansari (PW-12) is the witness who practices medicine in PHC Kelhari and had seen the victim in injured condition. According to him, looking to serious condition of the victim he had referred him to Manendragarh Hospital vide report (Ex.P-11). Though not examined by the prosecution, the doctor conducting postmortem examination vide his report has noticed contusion measuring 4x2 cm over the left temporal region and exposure of brain cavity and hematoma in frontal and left temporal region. He also noticed lacerated wound over left eyebrow and abrasion over forehead. The opinion given by the doctor is that the cause of death was shock due to hemorrhage in brain as a result of head injury, and the death was homicidal in nature. Investigating officer and other police personnel who participated in carrying out the procedural formalities to the aid of prosecution, have also supported its case.

7. Thus the aforesaid factual scenario and the evidence of the witnesses make it clear that it is the accused/appellant who made a house trespass after preparing himself for causing hurt to the victim and assaulted him with kicks and slippers and thereby caused injuries over his head and cheeks, which eventually proved fatal to his life, may be 7 days after the occurrence, in the hospital. Though the intention of the accused/appellant to cause such bodily injury which may be grievous to life in the ordinary course of nature is not visible yet the manner in which he dealt blows on his facial cluster definitely prove that while causing injuries he had the knowledge that such injuries may be dangerous to life in the long run. Being so, his conviction

under Sections 452 and 304-II IPC does not seem to suffer from any illegality or infirmity and therefore it is maintained.

8. As regards sentence, the report received from the Superintendent, Central Jail, Ambikapur, Sarguja, dated 27.05.2020 shows that after getting the benefit of remission, the accused/appellant has already been released from the jail on 30.12.2019, therefore, no observation regarding the sentence part is required to be made by this Court.
9. In view of what has been discussed as above, the appeal being without any substance is liable to be dismissed and is hereby dismissed as such.

Sd/-

(Vimla Singh Kapoor)

JUDGE