

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 46 of 2018

- Shivcharan Gond S/o Sumarsai Gond Aged About 67 Years
Occupation Agriculturist/ Labour R/o Village Shankarpur,
Dumarpara, Police Station Udaypur District Surguja Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through The District Magistrate
Ambikapur, District Surguja Chhattisgarh

---- Respondent

For Appellant	:Mr. Tarun Dansena, Advocate.
For State/Respondent	:Mr. Ghanshyam Patel, G.A.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

01.07.2021

1. This appeal has been preferred against the judgment dated 07.11.2017, passed in Sessions Case No.66/2016 by the learned Sessions Judge, Ambikapur, Distt. Surguja (C.G.) wherein, the Appellant has been convicted for the offence punishable under Section 304 Part 2 of the IPC and sentenced to undergo RI for 10 years and to pay fine of Rs. 500/-, with default stipulation.
2. In this case, the name of the deceased is Panmeshwari who was wife of the Appellant. Sukhnath (PW-1) and Shakuntala (PW-2) are the son and daughter-in-law respectively of the

Appellant and the deceased. According to the case of prosecution, the Appellant and the deceased were resided separately in their old house. On the date of incident i.e. on 26.12.2015, the Appellant has organized some function in his house where his daughter-in-law Shakuntala (PW-2) was cooking food and the Appellant and the deceased was consuming liquor. During that time a quarrel has been taken place between them and the Appellant has assaulted the deceased on his waist with the help of axe (Tangiya) due to which she sustained injury and fell down on the floor. The incident was witnessed by Shakuntala (PW-2). Immediately after the assault, Shakuntala (PW-2) has screamed, hearing Shakuntala's scream, Sukhnath (PW-1) reached the spot, after seeing Sukhnath, the Appellant fled away from the spot. Thereafter, Panmeshwari was taken to hospital in unconscious condition where Doctor declared her dead. Thereafter, morgue intimation and FIR has been lodged by Sukhnath (PW-1) vide (Exs.-P-1 & P-2). Inquest proceedings was conducted vide (Ex. P-3). Postmortem of the deceased was conducted by Dr. JL Miri (PW-7), his report is (Ex.P-12). Statements of witnesses recorded under Section 161 of Cr.P.C. After completion of investigation, charge-sheet was filed by the Police under Section 302 of the IPC. Trial Court framed the charges against the Appellant. To robe the Appellant in the crime-in-question, the prosecution has examined as many as 11 witnesses. In the statement of the

Appellant recorded under Section 313 of Cr.P.C, he has pleaded her innocence and false implication in the matter, however, no defence witness was examined by the Appellant. After completion of trial, Trial Court acquitted the Appellant for the offence punishable under Section 302 of the IPC. However, convicted and sentenced the Appellant under Section 304 Part 2 of the IPC as mentioned in Para 01 of this judgment. Hence, this appeal.

3. Learned Counsel appearing for the Appellant submits that without there being any clinching and reliable evidence available on record, the Trial Court has convicted the Appellant. He further submits that Sukhnath (PW-1) & Shakuntala (PW-2) are not supported the entire case of prosecution and turned hostile. In spite of that, the Trial Court has convicted the Appellant. Hence, his conviction is not sustainable.
4. On the contrary, learned State Counsel opposed the appeal and supported the impugned judgment.
5. I have heard learned counsel appearing on behalf of the parties and perused the record minutely. I have also gone through the statements of the witnesses.
6. Soul eye-witness of the case Shakuntala (PW-2) in her Court statement has categorically deposed that at the time of incident, she went to her old house for cooking food where

her father-in-law and mother-in-law was living at that time the Appellant and the deceased was consuming liquor. According to this witness at around 7 PM when she was serving food to her father Sundar in the courtyard at that time the Appellant assaulted the deceased through axe (tangiya) on her waist due to which she sustained grievous injury and fell down on the floor. She further deposed that after seeing the assault, she screamed and after hearing her scream, Sukhnath (PW-1) reached the spot. She narrated the entire incident to her husband Sukhnath. Sukhnath (PW-1) supported the statement of Shakuntala (PW-2) and also deposed that after hearing the sound of screaming of his wife, he reached the spot, the deceased was fell down on the floor in unconscious condition and his father was standing outside the house. Though this witness has not supported the further case of prosecution but when he reached the spot at that time the Appellant was standing outside the house, this statement is not duly rebutted during his cross-examination. Shakuntala (PW-2) who is a soul eye-witness of the case has duly firmed during her cross-examination and her statement regarding *marpeet* by the Appellant with the deceased is also not rebutted. The above statement of both the witnesses are reliable.

7. Looking to the above statements of the above witnesses which are duly corroborated by medical evidence also, in my considered view, the Trial Court has rightly convicted the

Appellant.

8. The conviction of the Appellant under Section 304 Part 2 of the IPC is affirmed and with regard to the sentence part, considering the fact that the Appellant is in jail since 27.12.2015, presently he is aged about 70 years and he has no criminal antecedent. Looking to the above facts, against the conviction he is sentenced to the period already undergone by him. The fine sentence for the offence punishable under Section 304 Part 2 of the IPC is also affirmed.
9. It is reported that the Appellant is in jail, he be released forthwith if not required in any other case.
10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

**Sd/-
(Arvind Singh Chandel)
Judge**