

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 978 of 2017

- Basant S/o Asharam Korva, Aged About 26 Years R/o Bagdoli, Police Station Sitapur, District Surguja Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Office, Police Station Sitapur, District Surguja Chhattisgarh.

---- Respondent

For Appellant	:Ms. Sofia Khan, Advocate.
For State/Respondent	:Mr. Amit Singh, P.L.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

05.07.2021

1. This appeal has been preferred against the judgment dated 25.09.2014, passed in Sessions Trial No.39/2014 by the learned Fourth Additional 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.
2. According to the case of prosecution, on 21.03.2014, deceased Sakham lodged a report at Police Station, Sitapur (Ex.P-7) to the effect that on 17.03.2014, when he was in his house at that time, the Appellant came there abused him with filthy language and also assaulted him with the help of hand

and fist on his abdomen due to that he sustained injuries. On the basis of above, offence under Section 294, 506 & 323 of the IPC was registered against the Appellant. During course of treatment of the deceased/complainant, after some days he died. Thereafter, offence under Section 302 of the IPC was added. Later on, statements of witnesses recorded under Section 161 of Cr.P.C. After completion of investigation, charge-sheet was filed by the Police. Trial Court framed the charges against the Appellant. To robe the Appellant in the crime-in-question, the prosecution has examined as many as 9 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 convicted and sentenced the Appellant as mentioned in Para 01 of this judgment. Hence, this appeal.

3. Learned Counsel appearing for the Appellant submits that the prosecution agency has failed to prove the guilt of the Appellant beyond all reasonable doubts. She further submits that there are material contradictions and omissions in the deposition of prosecution witnesses. 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. Wife of deceased Saraswati Bai (PW-1), in her Court statement has categorically stated that on the date of incident when she was preparing food in her house at that time the Appellant came there and kicked her husband on his abdomen due to which he fell down on the floor. Thereafter, the Appellant fled away from the spot. The above statement of this witness has not been rebutted during her cross-examination. Uday Kumar Gupta (PW-2) also deposed that after the incident when he reached house of the deceased/complainant at that time the deceased told him that the Appellant has assaulted him. The above statement of this witness has also not been rebutted during his cross-examination.
7. Looking to the above statements of the above witnesses, it is well established that at the time of incident, the Appellant has assaulted the deceased due to that during course of treatment, he died. Thus, 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 has undergone 7 years

4 months out of 10 years of jail sentence, he has no criminal antecedent and suddenly, in a fit of rage, the incident has been taken place. Looking to the above facts, against the conviction, the Appellant 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