

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 16.11.2021

Judgment Delivered on : 08.12.2021

CRA No.1480 of 2018

Amit Ram, S/o- Lohar Sai Painkra, Aged about- 18 years 6 months, R/o- Village Amarth, Police Station- Shankergarh, District- Balrampur (C.G.) ---- **Appellant**

Versus

State of Chhattisgarh, Through- Police Station Sanna, District- Jashpur (C.G.) ---- **Respondent**

For Appellant : Shri S. P. Sahu, Advocate

For Respondent/State : Shri Chitendra Singh, P.L.

Hon'ble Shri Justice Gautam Chourdiya
CAV Judgment

1. This appeal is filed under Section 374 (2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 28.06.2018, passed by the Sessions Judge, Jashpur, District- Jashpur (C.G.) in Session Case No. 17/2018, whereby the appellant Amit Ram stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 304 part-II of Indian Penal Code	R.I. for five years with fine of Rs. 1,000/- and in default of payment of fine amount further R.I. for three months.

2. As per prosecution case, PW/1 Nandkumar Painkra,

appellant Amit Ram and deceased Dhaneshwar were working under Parmanand Chouhan and would operate the swing of Parmanand Chouhan. Prior to one day of incident i.e. 25.11.2017 the swing of Parmanand Chouhan was installed in the fair at village Champa and on the next day i.e. 26.11.2017 when fair was over and while PW/13 Nandkumar Painkra and the appellant were unbolting the swing, deceased Dhaneshwar started raising dispute with them over mobile phone. In this process, the appellant assaulted the deceased with a club on his head. However, next morning as the deceased was not feeling well he was taken to hospital at village Champa and from there he was taken to Ambikapur Hospital where he died on 27.11.2017.

3. Merg intimation was given by PW/9 Utkarsh Kumar. During investigation, inquest over the dead body was conducted vide Ex.P/9 and thereafter, PW/12 Dr. B.C. Painkra conducted post-mortem vide Ex.P/17 and notice following injuries: (i) lacerated wound present over right temporo parietal region of skull sized 2"x1"x1/2 cm, (ii) abrasion over right leg, lower portion (front part) sized 1/2"x1" and (iii) abrasion over left knee joint (front portion) sized 1"x1/2".
4. PW/12 Dr. B.C. Painkra opined the cause of death as coma, mode of death as subdural haemorrhage due to injury number 1 and the death was homicidal in nature.
5. Site plan Ex.P/1 and P/15 were prepared, plain and blood stained soil were seized from the place of occurrence and on

the memorandum of appellant No. 1 bamboo club, half jeans pant & one full shirt were seized vide Ex.P/4. Clothes of the deceased were also seized vide Ex. P/11. As per Progress report and Aadhar Card of the appellant were seized vide Ex.P/12, he was found to be above 18 years of age on the date of incident. The seized articles were sent to FSL for chemical examination and report of FSL is Ex.P/6. According to which, human blood was found on the club and clothes seized from the accused as well as on the cloths of the deceased. After recording statements of the witnesses and completing the investigation charge-sheet was filed against the appellant u/s 302 of IPC.

6. The trial Court framed charge u/s 302 of IPC against the appellant, who denied the same and prayed for trial.
7. Prosecution in order to prove its case examined as many as 14 witnesses and statement of the appellant was also recorded u/s 313 of CrPC where he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and prayed for trial. However, no witness was examined or any evidence aduced by him in his defence.
8. The trial court, considering overall material available on record by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.
9. Learned counsel for the appellant submits that impugned judgment is per se illegal as the trial Court did not

appreciate the omissions and contradiction in the statements of the witnesses. The prosecution has failed to prove its case against the appellant beyond reasonable doubt. Even memorandum and seizure have not been proved by PW/1 Firoj Alam and PW/4 Prem Say, they have also turned hostile and not supported the prosecution case.

10. On the other hand learned State counsel supports the impugned judgment and submits that trial Court after due appreciation of the entire oral and documentary evidence on record has rightly convicted and sentenced the appellant by the impugned judgment which needs no interference by this Court.
11. Heard learned counsel for the parties and perused the material available on record.
12. PW/4 Prem Say, father of the deceased states that he was informed by his nephew Nandkumar and Vicky that the deceased is quarreling with the appellant and the deceased is lying at the place of occurrence, thereafter, he alongwith Nand Kumar, Vicky and his daughter Phoolvati Bai went to the place of occurrence where his son Dhaneshwar was lying and then he was taken to Ambikapur Hospital for treatment where he died. He states that he was informed by Nandkumar Painkra that there was quarrel between the appellant and the deceased over mobile phone and that appellant himself had informed him that he assaulted the deceased with club.

13. PW/13, Nandkumar Painkra, has also stated that on the date of incident, in the night, while he alongwith the appellant were about to take their dinner, the deceased came there in drunken condition and inquired about his mobile on which he told that he was not having the mobile phone, thereafter, the deceased asked the appellant about his mobile and appellant expressed his ignorance about the same. However, after some time the deceased again came and slapped the appellant but the appellant did nothing and when the deceased was again trying to assault the appellant, he accidentally slipped and fell on the stone. During this, the appellant took up a club lying there and assaulted the deceased with it on his head and his waist and fled from there. According to this witness, he lifted the deceased from the spot and lay him on the bed but the deceased did not eat anything and slept. Next morning, the deceased was talking but he was not feeling well. After some time, the deceased was taken by him to hospital at Champa and from there he was referred to Ambikapur hospital. The deceased was taken to Ambikapur hospital by his father, sister, Parmanand Chouhan and Nandkumar Painkra where the deceased died during the course of treatment. In cross examination, he remained firm.
14. PW/1 Firoj Alam and PW/2 Jagdish Yadav witnesses to the memorandum and seizure, though admitted their signatures on the said documents but they did not support the

prosecution case. PW/3, S.K. Singh, Senior Scientist Officer has proved receipt of articles sent by the police for chemical examination. According to him, he examined the articles and prepared the FSL report vide Ex.P/6.

15. PW/5, Phoolvati bai, sister of the deceased, states that she was informed by Nandkumar and Vicky that the deceased was assaulted by the appellant with club.
16. PW/6, Rudreshwar Say has proved site plan Ex.P/15. PW/7, L. R. Bhagat, Head Constable assisted in the investigation. PW/8, Dr. Kapil Kumar Shrivastava had given primary treatment to the deceased on 27.11.2017 at Primary Health Centre Champa and then referred him for higher treatments vide Ex.P/20.
17. PW/11, Gambhir Das Sonwani, Investigating Officer, has duly supported the prosecution case. PW/12, Dr. BC Painkra conducted *post-mortem* on the body of the deceased on 28.11.2017 vide Ex.P/30 and noticed certain injuries as mentioned in the preceding paragraph. According to him, cause of death is coma, mode of death is subdural haemorrhage due to injury number 1 and the death was homicidal in nature.
18. Considering the statement of the PW/13 Nandkumar Painkra which remains uncontroverted in cross-examination, it also finds corroboration from the evidence of autopsy surgeon Dr. BC Painkra, there is no reason to disbelieve this witness. There is no omissions and material contradiction in the

statement of PW/13. FSL report Ex.P/6 also supports the prosecution case, according to which human blood was found on the clothes of the deceased and the appellant, human blood was also found on the club which was seized on the memorandum of the appellant. The defence could not bring on record anything which could suggest that there was previous enmity between the appellant and the deceased, due to which he was falsely implicated in the crime. In these circumstances, the complicity of the appellant in the crime stands proved beyond all reasonable doubt. However, considering the fact that the incident took place between the appellant and the deceased all of a sudden, over mobile phone, there was no premeditation on the part of the appellant to commit crime, he assaulted the deceased with a club which was lying on the spot itself, the evidence goes to show that in fact, the deceased was the aggressor as first he slapped the appellant and while he was again trying to assault the appellant, out of anger the appellant too assaulted him with club, the appellant did not act in any unusual or cruel manner, this Court is of the opinion that the trial Court was justified in convicting the appellant u/s 304 Part-II of IPC.

19. As regards the sentence, in the matter of **Lakshmi Chand and another** Versus **State of Uttar Pradesh** reported in **(2018) 9 SCC 704** the Hon'ble Supreme Court considering the fact that the incident took place as the bullocks of the

appellants strayed into the neighbouring compound of the deceased. Prem Lal who drove them out with a lathi, appellants with accused Kashmira (since deceased) went to the house of the deceased Prem Lal, armed with a lathi, iron rod and knife, assaulted the deceased and when PW/1, Banarasi, PW2, Omveer and another witnesses Rajendra Singh intervened, the appellants scampered away from the spot, considering the act of the appellant, the fact that the occurrence took place on the spur of the moment, the assault was not made on a vital part of the body, the appellant went away upon being challenged, the genesis of the assault lay in a dispute between neighbors with regard to strayed cattle, the occurrence had taken place long ago in 1980, reduced the sentence of the appellant No.2 to a period of two years.

20. In the present case, considering the facts and circumstances of the case, nature of dispute regarding mobile phone giving rise to the incident, the incident took place all of sudden in the heat of passion upon a sudden quarrel without any premeditation on the part of the appellant, the deceased was the aggressor, the manner in which the assault was made by the appellant on the deceased, detention period of the appellant, the age of the appellant at the relevant time, there is no criminal antecedent of the appellant, the fact that the appellant has remained in jail since 21.12.2017 for about last four years, keeping in view of the judgment of the

Hon'ble Supreme Court in Lakshmi Chand (supra), this Court is of the opinion that the ends of justice would be served if the appellant is sentenced to the period already undergone by him.

21. In the result, the appeal is allowed in part. While maintaining conviction of the appellant u/s 304 Part-II of IPC, his jail sentence is reduced to the period already undergone by him. However, the fine amount with the default sentence as imposed by the trial Court shall remain intact. The appellant is reported to be in jail, therefore, he be set at liberty forthwith if not required in any other case.

Sd/-

(Gautam Chourdiya)

Judge

Nadim